



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**



DOT HS 812 394

June 2017

Digest of Impaired Driving and Selected Beverage Control Laws

Thirtieth Edition

Current as of December 31, 2015

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Suggested APA Format Citation:

National Highway Traffic Safety Administration. (2017, June). *Digest of impaired driving and selected beverage control laws, 30th edition, Current as of December 31, 2015* (Report No. DOT HS 812 394). Washington, DC. Author.

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INTRODUCTION

This digest reports the status of State laws concerned with impaired driving offenses and alcoholic beverage control for all 50 States, the District of Columbia, and Puerto Rico. It is designed to be an easily accessible reference to all States' current laws on alcohol and other issues related to impaired driving. The digest contains a selection of the most important laws pertaining to impaired driving.

Each State entry includes:

- Basis for a DWI Offense;
- Chemical Breath Tests for Alcohol;
- Adjudication of Driving While Intoxicated Charges;
- Sanctions;
- Pre and Post DWI Conviction Administrative Licensing Actions;
- Ignition Interlock;
- Sobriety Checkpoints;
- Homicide by Vehicle; DWI Offenses and Commercial Motor Vehicles;
- Driving While License Suspended for DWI; Habitual Traffic Offender Law;
- Other State Laws Related to Alcohol Use, including Minimum Age Alcohol Laws;
- Dram Shop and Social Host Laws; Establishments Serving Alcohol;
- Happy Hour Laws;
- Open Container Laws; and
- Alcohol Exclusion Laws.

DEFINITIONS

Administrative Per Se Law:

This allows a State's driver licensing agency to suspend or revoke a driver's license based on a specific blood alcohol concentration (BAC) or on 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 $\geq 26,001$ pounds; (2) is designed to transport 16 or more people including the driver; or (3) transports hazardous materials.

Dram Shop Laws:

These are statutory or case laws that provide 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, OWI, OUI, and Impaired Driving Offense:

These are general terms that refer to any criminal action related to driving or operating a motor vehicle while "illegal per se" or while either impaired by, under the influence of, or intoxicated by alcohol or other drugs. For the purposes of this digest, DWI will be used as standard terminology. Each State's specific legal terminology will be used in the State legislative details section.

Happy Hour Laws:

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

Illegal Per Se Law:

This law makes it a criminal offense to operate a motor vehicle: (1) at or above a specified alcohol concentration in 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.

Vehicular Homicide:

This is the unlawful and unintentional death caused by a person while violating laws related to motor vehicle operation

Intoxicating Liquor:

It is illegal to operate a motor vehicle while under the influence of “intoxicating liquor” (instead of under the influence of alcohol) in a number of States. 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 terms usually refer to all types of alcoholic beverages (i.e., beer, wine, and distilled spirits). See the definitions of “alcoholic liquor,” “intoxicating liquor,” and “liquor” in Black’s Law Dictionary, Eighth 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 prior to sentencing

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.”

Off-Highway Vehicles:

This digest does not report on State laws that prohibit the operation of non-highway vehicles (e.g., snowmobiles, 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 BAC.

Sanctions (Criminal and Administrative):

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

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, 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 illegal for a young person (e.g., a person under 21) 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. Please note that the sanctions for fines listed in this digest do not include court costs.

Note on Terminology:

The 50 States, territories and jurisdiction all use different terminology to describe blood alcohol concentrations. As of December 31, 2015, four States and Puerto Rico use language that describes a blood alcohol concentration (BAC) simply as a “percentage” of alcohol in the blood, using the old toxicology language, which is shorthand for “percentage of alcohol in the blood, by weight per volume.” “Percent” or “percentage” all by itself is a misnomer; it is impossible to have a weight per volume measurement expressed simply as a percentage. Thirty-one States and the District of Columbia have completely abandoned the old toxicology shorthand and simply use “grams per 100 milliliters,” with no reference whatsoever to “percentages” of anything. Fifteen additional States retain part of the old language, “percent of weight,” meaning percent of weight per volume, but immediately add in the additional language defining that. Eight of these 15 use “grams per 100 milliliters,” and 7 State use “grams per cubic centimeters.”

These two measurements, grams per 100 milliliters and grams per 100 cubic centimeters, also equal grams per deciliter, which is the notation that the National Highway Traffic Safety Administration uses, simply because the abbreviation g/dL is shorter and easier to use than either g/100mm or g/100 cu cm and the word “deciliter” is easier and shorter than its other equivalents, “100 milliliters” or “cubic centimeter.”

Without exception, every jurisdiction uses .08 g/dL as the “per se” level of illegal, impaired driving. However, how they express this number likewise varies, from .08% and 0.0.8% to .08 g/100 ml and 0.08 g/100 ml to .08 g/100 cu cm, while NHTSA uses .08 g/dL. Very often the number appears just as .08.

LEGISLATIVE SUBJECT AREAS

Basis for a DWI Charge

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

Chemical Breath Tests for Alcohol

Concentration

- Preliminary Breath Test Law
- Implied Consent Law
- Arrest Required
- Implied Consent Law Applies to Drugs
- Refusal to Submit to Chemical Test Admitted into Evidence
- Other Information

Non-Breath Chemical Tests for Alcohol Concentration Authorized Under the Implied Consent Law

- Blood
- Urine
- Other

Adjudication of DWI Charges

- Mandatory Adjudication Law
- Anti-Plea-Bargaining Statute
- Pre-Sentencing Investigation Law (PSI)

Sanctions for Refusal to Submit to a Chemical Test

- Refusal to Take a Preliminary Breath Test – Criminal Sanction
- Refusal to Take a Preliminary Breath Test – Administrative Licensing Action
- Preliminary Breath Test – Other
- Refusal to Take Implied Consent Chemical Test – Criminal Sanction
- Refusal to Take Implied Consent Chemical Test – Administrative Licensing Action
- Implied Consent Chemical Test – Other

Administrative Sanctions – Pre-Conviction

- Administrative Per Se Law
- Other

Administrative Sanctions – Post-Conviction

- Type of Licensing Action
- Term of Withdrawal
- Mandatory Minimum Term of Revocation

- Alcohol Education
- Substance Abuse Treatment
- Vehicle Impoundment/Confiscation
- Authorized by Specific Statutory Authority
- Terms Upon Which Vehicle Will Be Released
- Other Miscellaneous Sanctions

Criminal Sanctions Following a DWI Conviction

- Imprisonment/Fine
- Mandatory Minimum Term/Fine
- Community Service
- Restitution
- Child Endangerment
- Other

Ignition Interlock

- Permitted or Prohibited
- Type of Law
- Sanction
- Conditions of Use
- Other Provisions

Sobriety Checkpoints

- Permitted or Prohibited

Homicide by Vehicle

- State Has Such a Law
- Imprisonment/Fine
- Mandatory Minimum Term/Fine
- Authorized Licensing Action
- Length of Term of Licensing Withdrawal
- Mandatory Minimum License Withdrawal
- Other

DWI Offenses and Commercial Motor Vehicles (CMV)

Driving While License Suspended for DWI Offense

- Criminal – Fine/Imprisonment
- Mandatory Minimum Fine/Imprisonment Term
- Administrative Licensing Action Type
- Withdrawal Action
- Mandatory Term of License Withdrawal Action
- Other

Habitual Traffic Offender Law

- State Has Such a Law

Other State Laws Related to Alcohol Use

- BAC Chemical Tests on Persons Killed in Traffic Crashes – State Has Such a Law
- BAC Chemical Test Given to Deceased Driver Killed in Crash
- BAC Chemical Test Given to Deceased Pedestrian Killed in Crash
- BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law
- Minimum Age (Years) for Sale/Purchase of Alcohol
- Minimum Age (Years) for Possession/Consumption of Alcohol

Dram Shop and Social Host Laws

- State Has a Dram Shop Law
- “Dram Shop Law” Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State
- Dram Shop Actions – Social Hosts
- Social Host – Criminal Enforcement

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons

- Type of Criminal Action
- Imprisonment/Fine

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons

- License to Serve Alcoholic Beverages Withdrawn
- Length of License Withdrawal

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age

- Type of Criminal Action
- Imprisonment/Fine

Administrative Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age

- License to Serve Alcoholic Beverages Withdrawn
- Length of Term of License Withdrawal

Anti-Happy Hour Laws/Regulations

Open Container Laws

- Open Container Law
- Anti-Consumption Law

Alcohol Exclusion Law - Uniform Accident and Sickness Policy Provision Law (UPPL)

ABBREVIATIONS and SYMBOLS

ALR = administrative license revocation

BAC = blood alcohol concentration

BrAC = breath alcohol concentration

CDL = commercial driver's license

CMV = commercial motor vehicle

DUI = driving under the influence

DWI = driving while intoxicated

EMS = emergency medical services

Mand = mandatory

N/A = not applicable

OUI = operating under the influence

OWI = operating while intoxicated

Susp = suspended

Rev = revoked

UrAC = urine alcohol concentration

> = greater than

< = less than

≥ = greater than or equal to

≤ = less than or equal to

OVERVIEW OF KEY PROVISIONS OF STATE IMPAIRED DRIVING LAWS

State statutes or regulations concerned with impaired driving violations, i.e., DWI, typically include several major components: the basis for an offense; requirements for chemical breath tests for alcohol concentration; the adjudication of charges; sanctions; administrative licensing actions (applied pre- and post-conviction); and other criminal actions related to DWI. Details of State's statutes or regulations pertaining to each of these components are provided in the State-by-State analysis of this document.

THE BASIS FOR A DWI CHARGE

The basis of a charge for driving while intoxicated for each State is established, by statute, to be the level of blood or breath alcohol content at or above which a person is presumed to be under the influence of alcohol. BAC, measured in grams per deciliter (g/dL), is the most accurate measurement of alcohol concentration in a person's blood, and as such, the most reliable measure of alcohol impairment.

As of 2005 all States, the District of Columbia, and Puerto Rico had enacted *illegal per se* laws, making it illegal to operate a motor vehicle when the person's BAC is at or above .08 g/dL. The basis for a DWI charge in each State also sets forth the conditions under which a person is *presumed* to be under the influence of alcohol, also set at or above .08 g/dL in all States. Last, the statutes in many States also provide for a determination of DWI when a person is found to have been under the influence of substances other than alcohol, e.g., any illegal or controlled substance which impairs one's mental and/or physical faculties.

Several States have statutes establishing a lower BAC level for DWI for certain groups of people. For example, school bus drivers, day care vehicle operators, and people under 21 in Alabama are presumed to be under the influence of alcohol if found to have a BAC at or above .02 g/dL.

SANCTIONS FOR FIRST and REPEAT OFFENDERS

Forty-four States and DC have *administrative license revocation* laws, which provide for the administrative suspension of a driver's license prior to conviction for DWI. The driver's license is suspended by the States' licensing agency prior to conviction for DWI when the driver's BAC test result is found to be at or above .08 g/dL, or the driver refuses to submit to chemical testing.

First-time DWI offenders, upon conviction, are often subject to additional licensing sanctions (suspension or revocation), jail time, and/or fines, and can receive other sanctions such as community service, vehicle impoundment, alcohol education and treatment, etc., independent of the administrative license suspension or revocation that occurs prior to conviction. Information on the entire range of sanctions that may be imposed upon first-time convicted repeat DWI offenders is provided in the Key Provisions of State Impaired Driving Laws Summary Tables and in the State Laws section of this document.

Under 23 United States Code (U.S.C.) § 164 and 23 Code of Federal Regulations (CFR) Part 1275—Repeat Intoxicated Driver Laws, States are required to enact and enforce laws establishing minimum sanctions for repeat offenders to avoid the reservation and transfer of Federal-aid highway funds. A repeat offender is defined in 23 CFR §1275.3 as "...a person who has been convicted of DWI or DUI more than once in any five-year period." In general, the minimum sanctions include a one-year license sanction (i.e., a driving privilege suspension, a restriction requiring use of an ignition interlock device, or a restriction requiring participation in a 24-7 sobriety program), an alcohol assessment and treatment as appropriate, and imprisonment or community service. The Federal statute and implementing regulations provide additional details on requirements and allowable exceptions.

Information on the entire range of sanctions that may be imposed upon convicted repeat DWI offenders is provided in the Key Provisions of State Impaired Driving Laws Summary Tables and in the State Laws section of this document.

HIGH-BAC OFFENDERS

A number of States have laws establishing enhanced sanctions for those DWI offenders considered to be high-BAC offenders, including increased jail time, longer suspension periods, use of ignition interlocks, higher levels of fines, etc. High-BAC offenders are defined by the States, with levels ranging from BACs of .10 to .20 g/dL or greater. Data indicates that offenders with high BACs are at greater risk than other impaired drivers of being involved in alcohol-impaired-driving fatal crashes. Specific information on enhanced sanctions for high-BAC offenders in each State is provided in the Key Provisions of State Impaired Driving Laws Summary Tables and the State-by-State analysis portion of this document.

SOBRIETY CHECKPOINTS

Sobriety checkpoints are used in many States as part of a comprehensive law enforcement approach aimed at reducing impaired driving by increasing the public's perceived risk of being apprehended in violation of DWI laws. Sobriety checkpoints provide law enforcement officers with an opportunity to identify and assess drivers for the possibility of alcohol impairment at one or more established points on a roadway.

Moreover, they are designed to be highly visible, with the intention of serving as an impaired driving deterrent to the public. Vehicle checkpoint campaigns are often highly publicized. Vehicles are stopped during a sobriety checkpoint using a random pattern, such as every fourth or fifth vehicle. If law enforcement has reason to believe that the driver has been drinking, the driver is given the Standardized Field Sobriety Test, followed by chemical testing to determine whether the driver is impaired by alcohol and/or other drugs. While many States do not have statutes specifically

pertaining to the use of sobriety checkpoints, most permit their use. Please refer to the Key Provisions of State Impaired Driving Laws Summary Tables and to the State-by-State analysis portion of this document for details on legislation and case law governing the use of sobriety checkpoints in specific States.

IGNITION INTERLOCKS

Under certain conditions, DWI offenders in all 50 States and DC may be required to equip their vehicles with ignition interlock devices. When an ignition interlock is installed on a vehicle, the driver breathes into the device, which analyzes the driver's breath and prevents the vehicle's engine from starting if the breath sample registers at or above a preset level, typically .02 g/dL. The installation of an ignition interlock device is mandatory upon conviction for DWI in some States and discretionary in other States.

For the purposes of this document, a State's ignition interlock statute is characterized as "permissive" if it provides for the installation of an ignition interlock as an *option* in DWI sentencing, either in lieu of, or in addition to other sanctions (jail, fines, community service) or "mandatory" if the installation of an ignition interlock device is required for DWI offenders. States typically grant the authority to impose an ignition interlock sanction to either the judiciary or the administrative agency responsible for licensing. In some cases, this authority is shared, depending on the specific DWI offense. In these cases, the digest labels the sanction as a "hybrid" sanction. Specific information regarding ignition interlock laws in each State is provided in the Key Provisions of State Impaired Driving Laws Summary Tables, and the State-by-State analysis portion of this document.

SOCIAL HOST VIOLATIONS

Social host laws assign criminal or civil responsibility for providing alcohol to those persons obviously intoxicated and, in so doing, endangering their lives and/or the lives of others. These laws also address the provision of alcohol to those under the minimum legal drinking age of 21 and, in so doing, endangering the welfare

of minors. While the definition of a social host and the laws governing them vary from State to State, many States have laws establishing enhanced sanctions for violating social host laws, particularly in cases where those to whom the alcohol was served are subsequently involved in motor vehicle crashes resulting in fatality or injury. Please refer to Key Provisions of Impaired Driving Laws Summary Tables and the State-by-State analysis of this document for details regarding such legislation in each individual State.

OTHER CRIMINAL ACTIONS RELATED TO DWI

Most States also have laws defining other specific criminal actions related to DWI under certain circumstances or conditions. Actions such as vehicular homicide, driving while one's license is suspended for DWI, and operating a commercial motor vehicle while under the influence are among those considered to be criminal actions related to DWI. Drivers found to be in violation of laws pertaining to other criminal actions related to DWI are often subject to enhanced sanctions, including, but not limited to: license revocation, jail time, and vehicle forfeiture. Details regarding the specific actions considered to be criminal related to DWI and the sanctions associated with these actions are provided in the State-by-State analysis of this document.

**Summary Charts of Key Provisions of State Impaired Driving and Selected Beverage Control Laws
(through December 31, 2015)**

Table 1. Key Provisions of State Administrative License Revocation (ALR) Laws and Sanctions¹²³								
State	ALR Revocation Law ⁴⁵	Post-Conviction Sanctions for 1st Offenders ⁶		Post-Conviction Sanctions for Repeat Offenders ⁷		Post-Conviction Sanctions for High-BAC Offenders ⁸		
		Minimum Licensing Sanctions	Jail or Community Service	Minimum Licensing Sanctions	Jail or Community Service	High-BAC Level ⁹	Minimum Licensing Sanctions	Jail or Community Service
AL	Yes	Suspension/revocation 90 days	Not more than 1 year	1-year license revocation	Not less than 5 days or not less than 30 days community service (if no jail time)	.15 and above	Revocation not less than 1 year	At least double the minimum sentence or 1 year (if misdemeanor)
AK	Yes	Revocation not less than 90 days (mand)	Not less than 72 consecutive hours (1 year max); at least 24 hours community service	Not less than 1 year (revocation)	Not less than 20 days (1 year max); at least 160 hours community service	No statutory provision	N/A	N/A
AZ	Yes	Suspension not less than 90 days or more than 1 year	Not less than 1 day (6 months max)	Revocation 1 year (mand)	Not less than 90 days (6 months max); 30 hours of community service	.15 and above	Suspension 90 days	BAC ≥ .15 - < .20 = 30-120 days (mand) BAC ≥ .20 = 45 - 180 days (mand)

¹ State statutes or regulations on impaired driving violations, e.g., driving while intoxicated (DWI) or driving under the influence (DUI). Provisions of local laws are NOT reported.

² Impaired driving offenses are “non-legal” terms that refer to any criminal action related to driving a motor vehicle either while illegal per se or while impaired by, under the influence of, or intoxicated by alcohol or other drugs.

³ All 50 States, the District of Columbia, and Puerto Rico have illegal per se laws defining driving with a BAC at or above .08 as a crime.

⁴ Under a State’s ALR statute, a driver’s license can be suspended or revoked, prior to conviction, if the driver is found to have a BAC level of .08 or greater (administrative per se) or refuses to submit to chemical testing for DWI.

⁵ Forty-four States and the District of Columbia have administrative per se laws, which allow the driver’s license to be suspended or revoked, prior to conviction, if the driver fails a BAC test or refuses to take a BAC test.

⁶ Laws in most States provide for mandatory minimum jail terms and fines. Laws in many States also include community service and/or restitution as a sanction. Several States also assess fees, mandate alcohol/drug therapy, place offenders on probation, or require training as additional sanctions.

⁷ A repeat offender is defined in 23 CFR §1275.3(k) as “...a person who has been convicted of DWI or DUI more than once in any five-year period.” For this table, the sanctions listed are for a second offense. Please refer to the States section for details regarding sanctions for subsequent offense beyond a second offense.

⁸ Laws in a number of States provide for enhanced sanctions for drivers with a high BAC, i.e., a BAC test result at or above an amount (e.g., .15 or greater) specified in the State’s statute at the time of arrest. The sanctions listed may be imposed in addition to jail time and fines, where not specifically stated. Please refer to the State-by-State analysis for details.

⁹ Although most States do not have specific statutes that establish “high-BAC,” many States do have statutes providing for graduated levels of sanctions when DWI offenders are found to have BAC levels above .08, such as at .15 or greater. In these cases, an inference has been made as to what is a “high-BAC” level for each individual State, which is shown here.

**Summary Charts of Key Provisions of State Impaired Driving and Selected Beverage Control Laws
(through December 31, 2015)**

Table 1. Key Provisions of State Administrative License Revocation (ALR) Laws and Sanctions¹²³								
State	ALR Revocation Law ⁴⁵	Post-Conviction Sanctions for 1st Offenders ⁶		Post-Conviction Sanctions for Repeat Offenders ⁷		Post-Conviction Sanctions for High-BAC Offenders ⁸		
		Minimum Licensing Sanctions	Jail or Community Service	Minimum Licensing Sanctions	Jail or Community Service	High-BAC Level ⁹	Minimum Licensing Sanctions	Jail or Community Service
AR	Yes	Suspension 6 months (pre-conviction)	24 hrs. to 1 year or community service	Suspension 24 months (pre-conviction)	7 days to 1 year or not less than 30 days community service	No statutory provision	N/A	N/A
CA	Yes	Suspension 6 months (mand)	96 hrs. – 6 months	Suspension 2 years	10 days – 1 year; community service	No statutory provision	N/A	N/A
CO	Yes	Revocation/suspension not less than 1 year	5 days to 1 year; 48 - 96 hrs. community service	Revocation/suspension not less than 1 year (mand)	10 days to 1 year; 48 hrs. to 120 hrs. community service	.20 and above	N/A	10 days to 1 year
CT	Yes	Suspension 45 days	48 hrs. (mand) - 6 months; or 100 hrs. community service	Suspension 3 years	120 days (mand)- 2 years; 100 hrs. community service (mand)	No statutory provision	N/A	N/A
DE	Yes	Revocation 12 months (6 months mand)	Not more than 12 months	Revocation 18 months (6 months mand)	60 days (mand) to 18 months	.15 and above	Revocation: BAC .15 - .19 = 18 months; BAC ≥ .20 = 24 months	Not specified
DC	Yes	Revocation 6 months (mand)	Not more than 180 days	Revocation 1 year (mand)	10 days to 1 year; At least 30 days community service	.20 and above	N/A	10 - 30 days (mand)
FL	Yes	Revocation 180 days (mand) to 1 year	Not more than 6 months; 50 hrs. community service	Revocation not less than 5 years (12 months mand)	10 days (48 hrs. mand) to 9 months	.15 and above	N/A	Not more than 9 months

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		Minimum Licensing Sanctions	Jail or Community Service	Minimum Licensing Sanctions	Jail or Community Service	High-BAC Level ⁹	Minimum Licensing Sanctions	Jail or Community Service
GA	Yes	Suspension 12 months (120 days mand)	10 days to 12 months (24 hrs. mand); 40 hrs. community service	Suspension 3 years (18 months mand.)	90 days to 12 months (72 hrs. mand); 30 days community service (mand)	No statutory provision	N/A	N/A
HI	Yes	Revocation 1 year	48 hrs. to 5 days; 72 hrs. community service	Revocation 18 months (mand) to 2 years	5 – 14 days; 240 hrs. community service	No statutory provision	N/A	N/A
ID	Yes	Suspension 30 days (mand) to 150 days	Not more than 6 months	Suspension 1 year (mand)	10 days (mand) to 1 year	.20 or greater	Suspension 1 year (mand)	10 days (mand) – 1 year
IL	Yes	Revocation 1 year	Up to 1 year	Revocation 5 years	5 days (mand) to 1 year or 240 hrs. community service	.16 and above	N/A	Not more than 1 year; 100 hrs.
IN	Yes	Discretionary	Not more than 60 days	Discretionary	6 months to 2-1/2 years; 180 - 360 hrs. community service	.15 and above	N/A	Not more than 1 year and not more than \$5,000
IA	Yes	Revocation 180 days (30 days mand) to 1 year	48 hrs. (mand) to 1 year or community service	Revocation 2 years (1 year mand)	7 days (mand) to 2 years	No statutory provision	N/A	N/A
KS	Yes	Suspension 30 days (mand)	48 hrs. to 6 months or 100 hrs. community service	Suspension 1 year (mand)	5 days (mand) to 1 year or community service	.15 and above	Suspension 1 year (mand)	N/A
KY	Yes.	Revocation 30 to 120 days	48 hrs. to 30 days jail or community service ¹⁰	Suspension 12 - 18 months	7 days (mand) to 6 months; 10 days to 6 months community service	.15 and above	N/A	Additional 4 to 240 days depending on number of offenses

¹⁰ For a first offense, a defendant must be sentenced to at least one of the penalties listed: (1) 48 hours in jail; (2) a \$200 fine; or (3) 48 hours of community service. KRS §189A.010(5)(a), (9).

**Summary Charts of Key Provisions of State Impaired Driving and Selected Beverage Control Laws
(through December 31, 2015)**

Table 1. Key Provisions of State Administrative License Revocation (ALR) Laws and Sanctions¹²³								
State	ALR Revocation Law ⁴⁵	Post-Conviction Sanctions for 1st Offenders ⁶		Post-Conviction Sanctions for Repeat Offenders ⁷		Post-Conviction Sanctions for High-BAC Offenders ⁸		
		Minimum Licensing Sanctions	Jail or Community Service	Minimum Licensing Sanctions	Jail or Community Service	High-BAC Level ⁹	Minimum Licensing Sanctions	Jail or Community Service
LA	Yes	Suspension 12 months	2 days to 6 months or 4 (8 hour) days of community service	Suspension 24 months (12 months mand)	48 hrs. (mand) to 6 months; 30 (8 hour) days of community service	.15 and above	Suspension 2 years (BAC ≥ .20)	48 hrs. to 2 years mand depending on number of offense
ME	Yes	Suspension 150 days	Community service may be ordered	Suspension 3 years	7 days (mand) to 12 months; community service	.15 and above	N/A	48 hrs. (mand) to 12 months
MD	Yes	Suspension 60 days	Not more than 2 months; community service may be ordered	Suspension 1 year	5 days (mand) to 1 year; community service may be ordered	.15 and above	Suspension 90 days (pre-conviction)	N/A
MA	Yes	Suspension/Revocation 3 months (mand) to 1 year	Not more than 2½ years; community service	Suspension/Revocation 1 year (mand) to 2 years	30 days (mand) to 2 ½ years community service	.20 or above	N/A	N/A
MI	Yes	Suspension 30 days (mand) to 180 days	93 days (5 days mand) or 360 hrs. community service	Revocation 1 year (mand)	5 days (mand) to 1 year or 30-90 days community service	.17 or above	Suspension 45 days (mand)	Not more than 180 days or more than 360 hrs. of community service
MN	Yes	Revocation 15 days (mand) to 30 days	Not more than 90 days; 8 hrs. community service for each day less than 30 days in jail	Revocation 15 days (mand) to 1 year	30 days (mand) to 1 year	Twice the legal limit	Not less than 1 year	N/A
MS	Yes	Suspension 30 days (mand) to 90 days	Not more than 48 hrs.	Suspension 1 year (mand) to 3 years	5 days (mand) to 1 year; 10 days - 1 year of community service	No statutory provision	N/A	N/A

**Summary Charts of Key Provisions of State Impaired Driving and Selected Beverage Control Laws
(through December 31, 2015)**

Table 1. Key Provisions of State Administrative License Revocation (ALR) Laws and Sanctions¹²³

State	ALR Revocation Law ⁴⁵	Post-Conviction Sanctions for 1st Offenders ⁶		Post-Conviction Sanctions for Repeat Offenders ⁷		Post-Conviction Sanctions for High-BAC Offenders ⁸		
		Minimum Licensing Sanctions	Jail or Community Service	Minimum Licensing Sanctions	Jail or Community Service	High-BAC Level ⁹	Minimum Licensing Sanctions	Jail or Community Service
MO	Yes	Suspension 30 days	Not more than 6 months	Revocation 2 years (mand) to 5 years	5 days (mand) to 1 year; community service	.15 or above	N/A	≥.15 - .20 = 48 hrs. mand > .20 = 5 days mand.
MT	No	Suspension 6 months	24 hrs. (mand) to 6 months	Suspension 1 year	5 days (mand) to 1 year; community service	Excessive BAC	Suspension 6 months – 1 year	1st: up to 6 months 2nd: 5 days-1 year 3rd: 30 days-1 year 4th: 13 months-5 years
NE	Yes	Revocation 6 months 30 days mand)	7 days (mand) to 60 days; community service may be ordered	Revocation 18 months (45 days mand)	30 days (mand) to 6 months; community service may be ordered	.15 and above	Revocation 1 year (60 days mand)	Not more than 60 days
NV	Yes	Revocation 90 days (45 days mand)	2 days to 6 months; community service may be ordered	Revocation 1 year (mand)	10 days (mand) to 6 months; community service	No statutory provision	N/A	N/A
NH	Yes	Revocation 3 months (mand) to 2 years	Community service may be ordered	Revocation 12 months (mand)	5 to 60 days; Community service may be ordered	No statutory provision	N/A	N/A
NJ	No	Revocation 3 months	12 hrs. (mand) to 48 hrs.	Revocation 2 years	48 hrs. (mand) to 90 days; 30 days community service	.10 and above	Revocation 7 months – 1 year	12 - 48 hrs.
NM	Yes	Revocation 1 year	Not more than 90 days; 24 hrs. community service	Revocation 2 years	96 hrs. (mand) to 364 days; 48 hrs. community service	.16 and above	1 year to life	Not more than 90 days
NY	Yes	Suspension 90 days	Not more than 15 days	Suspension 6 months (mand)	Not more than 30 days; 30 days community service	.18 or above	Revocation 1 year (mand) to 18 months	Not more than 1 year

**Summary Charts of Key Provisions of State Impaired Driving and Selected Beverage Control Laws
(through December 31, 2015)**

Table 1. Key Provisions of State Administrative License Revocation (ALR) Laws and Sanctions¹²³

State	ALR Revocation Law ⁴⁵	Post-Conviction Sanctions for 1st Offenders ⁶		Post-Conviction Sanctions for Repeat Offenders ⁷		Post-Conviction Sanctions for High-BAC Offenders ⁸		
		Minimum Licensing Sanctions	Jail or Community Service	Minimum Licensing Sanctions	Jail or Community Service	High-BAC Level ⁹	Minimum Licensing Sanctions	Jail or Community Service
NC	Yes ¹¹	Revocation 1 year	24 hrs. – 60 days; 24 hrs. community service	Revocation 2 years (mand) to 4 years	48 hrs. – 120 days; 48 hrs. community service	No statutory provision	N/A	N/A
ND	Yes	Suspension 91 days (30 days mand)	Not more than 30 days or 10 hrs. of community service for each day of jail (in lieu of jail)	Suspension 365 days (mand)	10 days (mand) to 30 days or 30 days community service (in lieu of jail)	.16 and above	180 days – 3 years (for BAC .18)	2 days mand
OH	Yes	Suspension 6 months to 3 years	3 days (mand) to 6 months; community service	Suspension 1-5 years	10 days (mand) to 6 months; community service	.17 and above	N/A	6 consecutive days in jail ¹²
OK	Yes	Suspension 30 days	10 days – 1 year; community service	Suspension 6 months (mand)	1 – 5 years (5 days mand); community service	.15 and above	N/A	480 hrs. community service (mand)
OR	Yes	Suspension 30 days (mand) to 1 year	Not more than 1 year (48 hrs. mand); 80 - 250 hrs. community service	Suspension 90 days (mand) to 3 years	Not more than 1 year (48 hrs. mand); 80 – 250 hrs. community service	.15 and above	N/A	A minimum fine of \$2000; community service may be ordered
PA	No	N/A	6 months probation (mand); up to 150 hrs. community service	Suspension 12 months (mand)	5 days (mand) to 6 months; up to 150 hrs. community service	.16 and above	Suspension 12 months (mand)	48 consecutive hrs. (mand) to 6 months
PR	No	Suspension not more than 30 days	Community service may be ordered	Suspension not less than 1 year	15 days (mand) to 30 days; community service	No statutory provision	N/A	N/A

¹¹ In NC, the driver’s license is revoked prior to conviction if the driver’s BAC > .08. For drivers under 21, the license is revoked if the driver’s BAC > .00. For commercial motor vehicle operators, the license is revoked if the driver’s BAC > .04.

¹² Or, 3 consecutive days in jail with 3 consecutive days of a driver’s intervention program.

**Summary Charts of Key Provisions of State Impaired Driving and Selected Beverage Control Laws
(through December 31, 2015)**

Table 1. Key Provisions of State Administrative License Revocation (ALR) Laws and Sanctions¹²³								
State	ALR Revocation Law ⁴⁵	Post-Conviction Sanctions for 1st Offenders ⁶		Post-Conviction Sanctions for Repeat Offenders ⁷		Post-Conviction Sanctions for High-BAC Offenders ⁸		
		Minimum Licensing Sanctions	Jail or Community Service	Minimum Licensing Sanctions	Jail or Community Service	High-BAC Level ⁹	Minimum Licensing Sanctions	Jail or Community Service
RI	No	Suspension 30 days (mand) to 180 days	Up to 1 year; 10 - 60 hrs. community service	Suspension 1 year (mand) to 2 years	10 days (mand) to 1 year	.10 and above	Suspension 3 months (mand) to 18 months	Up to 1 year; 10 - 60 hrs. community service
SC	Yes	Suspension 6 months	48 hrs. to 30 days; 48 hrs. community service	Suspension until enrollment in interlock	5 days (mand) to 1 year	.10 and above	Suspension 1 month (BAC ≥ .15) (pre-conviction)	72 hrs. – 90 days; 72 hrs. – 30 days community service
SD	No	Revocation not less than 30 days	Not more than 1 year; community service may be ordered	Revocation not less than 1 year (mand)	Not more than 1 year; community service	No statutory provision	N/A	N/A
TN	No	Revocation 1 year	48 hrs. (mand) to 11 months, 29 days; 24 hrs. community service	Revocation 2 years (1 year mand)	45 days (mand) to 11 months, 29 days	.20 and above	N/A	7 days (mand)
TX	Yes	Suspension 90 days to 1 year	72 hrs. (mand) to 180 days; community service may be ordered	Suspension 180 days to 2 years (1 year mand with ignition interlock)	30 days (mand) to 1 year; community service	.15 and above	N/A	Not more than 1 year
UT	Yes	Suspension 120 days or revocation not more than 1 year	Not more than 6 months (48 hrs. mand) or 48 hrs. of community service	Revocation 2 years	Not more than 5 years (240 hrs. mand) or 240 hrs. of community service	N/A	N/A	N/A
VT	Yes	Suspension 90 days (mand)	Not more than 2 years; community service may be ordered	Suspension 18 months (mand)	Not more than 2 years (60 hrs. mand); At least 200 hrs. (mand in lieu of jail)	.16 and above	Suspension 3 years (second or subsequent conviction)	N/A

**Summary Charts of Key Provisions of State Impaired Driving and Selected Beverage Control Laws
(through December 31, 2015)**

Table 1. Key Provisions of State Administrative License Revocation (ALR) Laws and Sanctions¹²³								
State	ALR Revocation Law ⁴⁵	Post-Conviction Sanctions for 1st Offenders ⁶		Post-Conviction Sanctions for Repeat Offenders ⁷		Post-Conviction Sanctions for High-BAC Offenders ⁸		
		Minimum Licensing Sanctions	Jail or Community Service	Minimum Licensing Sanctions	Jail or Community Service	High-BAC Level ⁹	Minimum Licensing Sanctions	Jail or Community Service
VA	Yes	Suspension/revocation 1 year	Not more than 12 months; community service may be ordered	Revocation: 3 years (1 year mand if within 5 years; 4 months mand if within 10 years)	Not more than 1 year (20 days mand); community service may be ordered	≥ .15 - .19; .20 and above	N/A	5 days (mand) 10 days (mand)
WA	Yes	Suspension 90 days	1 day – 364 days	Suspension 2 years	30 – 364 days, 60 days home monitoring or at least 4 days in jail	.15 and above	Revocation 1 year	2 – 364 days
WV	Yes	Revocation 6 months ¹³	Up to 6 months; community service may be ordered	Revocation 10 years	6 months to 1 year; community service may be ordered	.15 and above	Revocation 45 days (+ 275 days with ignition interlock)	2 days to 6 months (24 hrs. mand)
WI	Yes	Revocation 6 to 9 months	Community service may be ordered	Revocation 60 days (mand) to 18 months	5 days (mand) to 6 months; community service may be ordered	.17 and above	N/A	.17 - .199 = jail term doubled; 20 - .249 = jail term tripled; ≥ .25 = quadrupled.
WY	Yes	Suspension 90 days	Not more than 6 months; community service may be ordered	Suspension 1 year (mand)	7 days (mand) to 6 months; community service may be ordered	No statutory provision	N/A	N/A

¹³ Or, 15 days revocation plus 120 days ignition interlock.

**Summary Charts of Key Provisions of State Impaired Driving and Selected Beverage Control Laws
(through December 31, 2015)**

Table 2. Key Provisions of State Ignition Interlock Laws¹

State	Offenders Subject to Mandatory Ignition Interlocks	Length of Interlock Period	Judicial, Administrative, or Hybrid	Other Provisions
AL	First Offenders with BAC \geq 0.15 and Repeat Offenders	6 months – 10 years	Hybrid	Ignition interlock is included in an array of punishments permitted.
AK	All Offenders	12 months minimum for 1st DWI Offense	Judicial	A court may waive the ignition interlock requirement if it determines a defendant is required as a condition of employment to drive a vehicle owned or leased by his employer.
AZ	All Offenders	12 months for DWI Conviction with BAC $<$.20 ²	Hybrid	Court may order ignition interlock for more than 12 months.
AR	All Offenders	Not specified	Administrative	Only alcohol offenders are eligible for ignition interlock use.
CA	All Offenders*	Not more than 3 years	Hybrid	*Mandatory for all convictions in Alameda, Los Angeles, Tulare and Sacramento counties until July 1, 2017 (pilot project) but discretionary for convicted drunk drivers in other counties. Failure to use ignition interlock when required can result in arrest and vehicle impoundment.
CO	All Offenders	Not specified	Administrative	Courts are encouraged to require use of ignition interlock devices as a condition of bond or probation.
CT	All Offenders	Not specified	Hybrid	An offender is subjected to re-suspension if he/she fails to comply.
DE	All Offenders	12 to 54 months	Hybrid	Offenders convicted of DUI death or DUI serious injury are not eligible for the program.
DC	None	1 year	Administrative	No person may be accepted into the ignition interlock program if he/she has a prior conviction for causing injury or death while operating a motor vehicle in any jurisdiction.
FL	High BAC and Repeat Offenders	6 months to 5 years	Hybrid	Use of ignition interlock may be required when applying for reinstatement of a suspended or revoked license.
GA	Repeat Offenders	1 year	Judicial	Offenders must complete a DUI Alcohol or Drug Use Risk Reduction Program.

¹ Under certain conditions of DWI/DUI offenders' convictions in many States, their vehicles may be equipped with an ignition interlock device as a penalty. The driver breathes into the ignition interlock device, which analyzes the driver's breath and prevents the engine from starting if the breath sample registers at or above a preset level, typically .02.

² Longer terms of ignition interlock as a penalty are applied in AZ under certain conditions. Please refer to detailed information for Arizona in the State Laws section of this document.

Summary Charts of Key Provisions of State Impaired Driving and Selected Beverage Control Laws
(through December 31, 2015)

Table 2. Key Provisions of State Ignition Interlock Laws¹

State	Offenders Subject to Mandatory Ignition Interlocks	Length of Interlock Period	Judicial, Administrative, or Hybrid	Other Provisions
HI	All Offenders	1 year for 1st offense; 18 months for 2nd offense; 2 years for 3rd offense	Judicial	Only applies to offenders who are able to drive during the period and who have otherwise valid licenses.
ID	Repeat Offenders	Not more than the Probationary Period	Judicial	It is a criminal offense to override the ignition interlock device.
IL	All Offenders	Not specified	Administrative	A violation of ignition interlock device use may add 3 months to the suspension period.
IN	None	Court Determined	Judicial	Court may waive device use if an offender participates in a court supervised alcohol treatment program.
IA	High BAC Offenders and Repeat Offenders, with Restricted License	1 year or Less	Administrative	Offender must wait at least 30 days if DUI causes an accident resulting in personal injury or property damage.
KS	All Offenders	Not specified	Administrative	Restricted license must be accompanied by use of ignition interlock for a second offender whose license is suspended for 1 year.
KY	High BAC and Repeat Offenders	6 - 30 months	Judicial	Hardship privileges may be granted.
LA	All Offenders	Court Determined	Hybrid	Offenders convicted of driving on a suspended/revoked license are eligible for a restricted license if they use an ignition interlock.
ME	All Offenders	150 days - 4 years	Administrative	Ignition interlock may be required for up to 2 years for driving on a suspended/revoked license.
MD	All Offenders	6 months – 3 years (At least 1 year if BAC \geq .15)	Hybrid	Failure to participate or complete the program successfully results in suspension for an additional year.
MA	Repeat Offenders	2 years	Administrative	Failure to operate with ignition interlock when required is a criminal offense.
MI	Offenders with BAC \geq .17 and Repeat Offenders	1 year	Administrative	Removal of ignition interlock only upon verification of no instances of reaching or exceeding BAC .025.
MN	Offenders with BAC \geq .16 and Repeat Offenders, with Restricted License	Not specified	Hybrid	Commissioner has authority to determine the appropriate period of participation.

Summary Charts of Key Provisions of State Impaired Driving and Selected Beverage Control Laws
(through December 31, 2015)

Table 2. Key Provisions of State Ignition Interlock Laws¹

State	Offenders Subject to Mandatory Ignition Interlocks	Length of Interlock Period	Judicial, Administrative, or Hybrid	Other Provisions
MS	All Offenders	At least 6 months	Judicial	Proof of installation shall be ordered by the court.
MO	Repeat Offenders	Not less than 6 months	Judicial	First offenders who enroll in the ignition interlock program shall not have their licenses suspended, but must complete a 90-day period of restricted driving.
MT	Repeat Offenders, if Probationary License Granted	Not specified	Hybrid	The administrative entity determines the length of use.
NE	All Offenders	At least 1 year	Judicial	Mandatory use for implied consent refusals.
NV	Offenders with BAC \geq .18 and Felony Offenders	3 – 6 months for BAC $<$.18 12 – 36 months for BAC $>$.18	Judicial	Offenders operating a vehicle within the scope of employment must follow special provisions.
NH	Aggravated or Repeat Offenders ³	12 months – 2 years	Judicial	Violation of court order could result in jail and suspension/revocation of license.
NJ	Offenders with BAC \geq .15 and Repeat Offenders	6 months – 3 years	Judicial	Mandatory use for second or subsequent refusals.
NM	All Offenders	1 year – life	Administrative	Installation of ignition interlock prior to sentencing will result in credit at time of sentencing.
NY	All Offenders	12 months	Judicial	Mandatory use if sentence of probation only.
NC	First Offenders with BAC \geq .15 and Repeat Offenders	1 year to Permanent	Hybrid	A person subject to ignition interlock who violates the restriction and is not charged shall have his license revoked for 1 year.
ND	None	Not specified	Hybrid	A restricted license issued is solely for the use of a motor vehicle during the individual's normal working hrs. and may contain any other restrictions authorized

³ In New Hampshire, an aggravated DWI is a Class A misdemeanor. With “serious bodily injury,” an aggravated DWI is a Class B felony. Please refer to the N.H. Rev. Statutes in this document for specific details.

Summary Charts of Key Provisions of State Impaired Driving and Selected Beverage Control Laws
(through December 31, 2015)

Table 2. Key Provisions of State Ignition Interlock Laws¹

State	Offenders Subject to Mandatory Ignition Interlocks	Length of Interlock Period	Judicial, Administrative, or Hybrid	Other Provisions
OH	Repeat Offenders, if Restricted License Granted	Not specified	Judicial	If an offender violates his terms of restricted driving privileges, the court may require the offender to wear a monitor that provides continuous alcohol monitoring that is remote.
OK	First Offenders with BAC > .15 and Repeat Offenders	30 days to 5 years	Hybrid	As a condition of reinstatement of driving privileges and restricted license, installation of an ignition interlock device for a second or subsequent offender convicted within 5 years shall run concurrently with a court order, if any.
OR	All Offenders	1 – 5 years	Hybrid	Such person must provide proof of installation. Failure to submit proof extends the suspension or revocation period for 5 years.
PA	Repeat Offenders	Not specified	Administrative	The court may sentence an offender to “any other requirement or condition with the treatment needs of the person, the restoration of the victim to pre-offense status or the protection of the public.”
PR	Repeat Offenders	Not specified	Judicial	A defendant must show proof of ignition interlock purchase and installation within 5 days of sentencing.
RI	All Offenders	3 months – 4 years	Judicial	N/A
SC	Offenders with BAC > .15 and Repeat Offenders	2 years to life	Administrative	South Carolina uses a point system managed by the Department of Probation, Parole & Pardon Services. The number of points received by an offender determines the length of time ignition interlock use is extended.
SD	None	Not specified	Judicial	Any driving permit issued by the court to any person who has been convicted of a subsequent offense of driving under the influence, or DUI \geq .17 shall be conditioned upon the person’s total abstinence from alcohol and participation in the 24/7 sobriety program (which may include the use of ignition interlock), where available. SDCL § 32-23-23.
TN	All Offenders	Up to 1 year	Judicial	If a person convicted of a DUI violation has a prior conviction within 5 years, the court shall order, or the department of safety shall require, prior to issuing an operator’s license and after the revocation period, the person to operate a motor vehicle equipped with an ignition interlock device for a period of 6 months.

Summary Charts of Key Provisions of State Impaired Driving and Selected Beverage Control Laws
(through December 31, 2015)

Table 2. Key Provisions of State Ignition Interlock Laws¹

State	Offenders Subject to Mandatory Ignition Interlocks	Length of Interlock Period	Judicial, Administrative, or Hybrid	Other Provisions
TX	All Offenders	Duration of the suspension	Judicial	An offender who has an occupational license 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.
UT	All Offenders	Court determined	Judicial	There is an exemption for an employer-owned vehicle.
VT	All Offenders	Up to 1 year	Administrative	N/A
VA	All Offenders	Not less than 6 months	Judicial	If the court fails to enforce mandatory use of an ignition interlock, it can be enforced administratively.
WA	All Offenders	1 to 10 years	Hybrid	Ignition interlock shall be required for a person who is convicted of negligent driving or reckless driving.
WV	All Offenders	See footnote ⁴	Administrative	In any county or city where a 24/7 sobriety program is available, the court shall order the person to install and use an ignition interlock device; order the person to a period of 24/7 sobriety program; or order both ignition interlock and 24/7 sobriety program.
WI	Offenders with BAC \geq .15 and Repeat Offenders	Not less than 1 year	Judicial	The ignition interlock restriction period begins on the date any license is issued.
WY	Offenders with BAC \geq .15 and Repeat Offenders	6 months - Permanent	Administrative	A person whose license has been suspended/revoked may apply for an ignition interlock license after serving 45 days of the suspension/revocation.

⁴ Please refer to West Virginia State for the specific conditions under which first offenders are subject to the installation of ignition interlock and for the specific time periods.

**Summary Charts of Key Provisions of State Impaired Driving and Selected Beverage Control Laws
(through December 31, 2015)**

Table 3. Key Provisions of State Sobriety Checkpoint, Drug Per Se, and Selected Beverage Control Laws¹

State	Are Sobriety Checkpoints ² Permitted?	Penalty for Chemical Test Refusal ³	Drug Per Se Law ⁴	Drug Per Se Sanctions (First Offense)	Sanctions for Social Host Violations ⁵ (Jail Time and/or Fine)	Alcohol Exclusion Law (UPPL ⁶)
AL	Yes	Administrative	No	N/A	Not more than 1 year and \$6,000	Yes
AK	No statutory provision ⁷	Criminal and Administrative	No	N/A	Not more than 1 year and \$10,000	Yes
AZ	Yes	Administrative	Yes	Not more than 6 months (1 day mand) and between \$250 and \$2,500	Not more than 6 months and/or \$2,500	Yes
AR	Yes	Criminal and Administrative	No	N/A	None. ⁸	Yes
CA	Yes	Criminal and Administrative	No	N/A	Not less than 6 months and/or not more than \$1,000	No
CO	Yes	Administrative	No	N/A	3-12 months and/or \$250 - \$1,000	No

¹ Key provisions of State statutes, regulations, or laws concerned with impaired driving, i.e., DWI or DUI. Provisions of local laws are NOT reported.

² “Permitted” indicates that the State either has statutory authority for checkpoints and/or checkpoints have been upheld in court under the Federal and/or State Constitution. “Prohibited” indicates that the State does not have a statute providing authority for checkpoints and/or does not allow State and local law enforcement to use them.

³ The penalties, if any, will be administrative (license suspension), criminal (jail and/or a fine) or civil (a fine). Please refer to the State Laws section of this digest for specific sanctions.

⁴ Refers to a “zero tolerance” law that forbids the presence of any drug in the body. Some States have laws that identify a specific threshold for drugged driving. These are not included in the Table 3. Please refer to the State Laws section of this digest for specific details.

⁵ Social host laws assign criminal or civil responsibility for providing alcohol to those under the minimum legal drinking age of 21 and in so doing endangering the welfare of minors. The definitions of social hosts and the laws governing them vary by State. See the State Laws section of this digest for specific details.

⁶ The Alcohol Exclusion Law, embedded in the Uniform Accident and Sickness Policy Provision Law (UPPL) of many states, allows insurance companies to deny reimbursement to hospitals for treatment to those who are injured while impaired by alcohol or any drug not prescribed by a physician at the time of injury.

⁷ However, the United States Supreme Court upheld the constitutionality of sobriety checkpoints in *Michigan Department of State Police v. Sitz*, 496 U.S. 444 (1990), and the United States District Court of Alaska referenced the constitutionality of sobriety checkpoints, as held in *Sitz*, in a ruling concerning convicted sex offenders’ right to privacy. See *Rowe v. Burton*, 884 F.Supp. 1372, 1382 (D.Alaska 1994).

⁸ Social host liability is prohibited by statute. A.C.A. §16-126-106. But a social host may be charged with contributing to the delinquency of a minor or contributing to the delinquency of a juvenile. Each is a class A misdemeanor, punishable by a term of not more than 1 year and/or a fine of not more than \$2,500. A.C.A. §§5-4-201; 5-4-401; 5-27-209; 5-27-220

**Summary Charts of Key Provisions of State Impaired Driving and Selected Beverage Control Laws
(through December 31, 2015)**

Table 3. Key Provisions of State Sobriety Checkpoint, Drug Per Se, and Selected Beverage Control Laws¹						
State	Are Sobriety Checkpoints² Permitted?	Penalty for Chemical Test Refusal³	Drug Per Se Law⁴	Drug Per Se Sanctions (First Offense)	Sanctions for Social Host Violations⁵ (Jail Time and/or Fine)	Alcohol Exclusion Law (UPPL⁶)
CT	Yes	Administrative	No	N/A	Not more than 18 months and/or \$3,500	No
DE	Yes	Administrative	Yes	Not more than 12 months and/or not less than \$500 or more than \$1,500	\$100 - \$1,000	Yes
DC	Yes	Administrative	No	N/A	Not more than 6 months and/or not more than \$1,000	No
FL	Yes	Criminal and Administrative	No	N/A	Not less than 3 months or more than 6 months	Yes
GA	Yes	Administrative	Yes	Not less than 10 days or more than 12 months and between \$300 and \$1,000	Not more than 12 months or 3 years and/or not more than \$1,000 - \$5,000	Yes
HI	Yes	Administrative	No	N/A	Not more than 1 year and/or not more than \$2,000	Yes
ID	Prohibited	Civil and Administrative	No	N/A	Not more than 6 months and/or \$1,000	Yes
IL	Yes	Administrative	Yes	Up to 1 year and \$2,500	Less than 1 year and/or not less than \$500 or more than \$2,500	No
IN	Yes	Criminal and Administrative	Yes	Not more than 60 days and a possible fine of up to \$500	Not more than 180 days and \$1,000	No
IA	Prohibited	Administrative	Yes	Not less than 48 hrs. or more than 1 year and \$1,250	\$65 - \$625 and not more than 30 days	No
KS	Yes	Criminal and Administrative	No	N/A	Not more than 1 year and/or \$1,000 - \$2,500	Yes
KY	Yes	Administrative	Yes	Not less than 48 hrs. or more than 30 days and/or between \$200 and \$500	Not more than 12 months and/or \$500	Yes
LA	Yes	Criminal and Administrative	No	N/A	30 days to 6 months and/or \$25 - \$1,000	Yes

**Summary Charts of Key Provisions of State Impaired Driving and Selected Beverage Control Laws
(through December 31, 2015)**

Table 3. Key Provisions of State Sobriety Checkpoint, Drug Per Se, and Selected Beverage Control Laws¹						
State	Are Sobriety Checkpoints² Permitted?	Penalty for Chemical Test Refusal³	Drug Per Se Law⁴	Drug Per Se Sanctions (First Offense)	Sanctions for Social Host Violations⁵ (Jail Time and/or Fine)	Alcohol Exclusion Law (UPPL⁶)
ME	Yes	Criminal and Administrative	No	N/A	30 days – 1 year and \$500	No
MD	Yes	Criminal and Administrative	No	N/A	Not more than 3 years and/or \$2,500	No
MA	Yes	Administrative	No	N/A	Not more than 1 year and/or \$2,000	No
MI	Prohibited	Administrative	Yes	Not more than 93 days and/or not more than 360 hrs. community service and/or not less than \$100 or more than \$500	30 days for 1st offense, 90 days for 2nd offense and not more than \$1,000	Yes
MN	Prohibited	None ⁹	Yes ¹⁰	Not more than 90 days and/or \$1,000	Not more than 1 year and/or \$3,000	Yes
MS	Yes	Criminal and Administrative	No	N/A	Not more than 6 months and/or \$500	Yes
MO	Yes	Administrative	No	N/A;	Not more than 6 months and/or \$500	Yes
MT	Prohibited	Administrative	No	N/A	Not more than 6 months and/or \$500	Yes
NE	Yes	Criminal and Administrative	No	N/A	Not more than 1 year and/or \$1,000	Yes
NV	Yes	Administrative	Yes ¹¹	Not less than 2 days or more than 6 months and not less than \$400 or more than \$1,000	Not more than 6 months and/or \$1,000	No

⁹ In *State v. Thompson*, 873 N.W. 2d 873 (Minn. App. 2015), the Minnesota Court of Appeals deemed the legislative penalization of a person's refusal to submit to a chemical breath test unconstitutional. Review of this decision was granted by the Minnesota Supreme Court on February 24, 2016, and at the time of this publication this decision was still under review. It should be noted Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. (2016).

¹⁰ It is a crime for any person to drive, operate, or be in physical control of any motor vehicle if he person is under the influence of a controlled substance, a hazardous substance, or if the person's body contains any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols. M.S.A. § 169A.20.

¹¹ At specific cut-off levels. Please refer to NV in the State Laws section for the statute citation of prohibited substances and corresponding prohibited amounts in blood and urine.

**Summary Charts of Key Provisions of State Impaired Driving and Selected Beverage Control Laws
(through December 31, 2015)**

Table 3. Key Provisions of State Sobriety Checkpoint, Drug Per Se, and Selected Beverage Control Laws¹

State	Are Sobriety Checkpoints ² Permitted?	Penalty for Chemical Test Refusal ³	Drug Per Se Law ⁴	Drug Per Se Sanctions (First Offense)	Sanctions for Social Host Violations ⁵ (Jail Time and/or Fine)	Alcohol Exclusion Law (UPPL ⁶)
NH	Yes	Administrative	No	N/A	Not more than 1 year and/or \$2,000	Yes
NJ	Yes	Criminal and Administrative	No	N/A	\$500	Yes
NM	Yes	Administrative	No	N/A	18 months and not more than \$5,000	Yes
NY	Yes	Administrative and Civil	No	N/A	Not more than 1 year and/or not more than \$1,000	Yes
NC	Yes	Administrative	Yes ¹²	Not less than 24 hrs. or more than 60 days and may be fined up to \$200	10 – 59 months or \$250 and 25 hrs. of community service	No
ND	Yes	Administrative	No	N/A	Not more than 30 days and/or not more than \$1,500	No
OH	Yes	Criminal and Administrative	Yes ¹³	Not more than 6 months and not less than \$375 or more than \$1,075	Not more than 6 months and not more than \$1,000	No
OK	Yes	Administrative	No	N/A	Not more than 1 year and/or \$1,000	Yes
OR	Prohibited	Criminal and Administrative	No	N/A	\$500 - \$1,000	No
PA	Yes	Criminal and Administrative	Yes	Not less than 72 hrs. or more than 6 months and between \$1,000 and \$5,000	Not less than \$1,000 and/or not more than 1 year	Yes
PR	No provisions	N/A	No	N/A	N/A	Yes

¹² Schedule I controlled substances only.

¹³ At specific cut-off levels. Please refer to OH in the State Laws section for the statute citation of prohibited substances and corresponding prohibited amounts in the body.

**Summary Charts of Key Provisions of State Impaired Driving and Selected Beverage Control Laws
(through December 31, 2015)**

Table 3. Key Provisions of State Sobriety Checkpoint, Drug Per Se, and Selected Beverage Control Laws¹						
State	Are Sobriety Checkpoints² Permitted?	Penalty for Chemical Test Refusal³	Drug Per Se Law⁴	Drug Per Se Sanctions (First Offense)	Sanctions for Social Host Violations⁵ (Jail Time and/or Fine)	Alcohol Exclusion Law (UPPL⁶)
RI	Prohibited	Criminal and Administrative	Yes ¹⁴	Up to 1 year and/or between \$100 and \$300	Not more than \$500 or 1 year	No
SC	No statutory provisions or case law	Administrative	No	N/A	Not more than 30 days or \$200-\$500	Yes
SD	Yes	Administrative	Yes (age < 21 only)	Not more than 1 year and/or \$2,000	Not more than 1 year and/or \$2,000	No
TN	Yes	Administrative	No	N/A	Not more than 11 months, 29 days and/or \$2,500	Yes
TX	Prohibited	Administrative	No	N/A	Not more than 1 year and/or \$100 - \$500	No
UT	Yes	Administrative	Yes	Not more than 6 months and/or \$1,000	Not more than 6 months and/or \$1,000 plus civil cause of action	Yes
VT	Yes	Administrative	No	N/A	Not more than 2 years and/or \$500 - \$2,000	Yes
VA	Yes	Criminal, Administrative and Civil	Yes ¹⁵	Not more than 12 months and between \$250 and \$2,500.	Not more than 12 months and/or \$2,500	Yes
WA	Prohibited	Administrative	Yes ¹⁶	Not less than 1 day or more than 364 days and between \$350 and \$5,000	Not more than 364 days and/or \$5,000	No
WV	Yes	Administrative	No	N/A	Not more than 10 days to 1 year and/or \$100	Yes
WI	Prohibited	Administrative	Yes	Not less than \$150 or more than \$300	Not more than 60 days and/or \$100 - \$500	Yes

¹⁴ Scheduled controlled substances only.

¹⁵ At specific cut-off levels for cocaine, methamphetamine, PCP or MDMA (ecstasy). Please refer to VA in the State Laws section for prohibited levels in the body.

¹⁶ For THC with a concentration of 5.00 Ng/mL or higher in the person's blood.

Summary Charts of Key Provisions of State Impaired Driving and Selected Beverage Control Laws
(through December 31, 2015)

Table 3. Key Provisions of State Sobriety Checkpoint, Drug Per Se, and Selected Beverage Control Laws¹						
State	Are Sobriety Checkpoints² Permitted?	Penalty for Chemical Test Refusal³	Drug Per Se Law⁴	Drug Per Se Sanctions (First Offense)	Sanctions for Social Host Violations⁵ (Jail Time and/or Fine)	Alcohol Exclusion Law (UPPL⁶)
WY	Prohibited	N/A	No	N/A	Not more than 6 months and/or \$750	Yes

State Laws

STATE

General Reference:

ALABAMA

Code of Alabama (Ala.)

Alabama Administrative Code of Regulations (Ala. Admin. Code R.)

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Under the influence of alcohol.¹ Ala. §32-5A-191(a)(2).≥ **.08** Ala. §32-5A-191(a)(1).> **.02**.² School Bus and Day Care Vehicle Operators**Persons Under 21** ≥ **.02** Ala. §32-5A-191(b).≥ **.08**. Ala. §32-5A-194(b)(3).≥ **.02** – Presumption of driving under the influence of alcohol for school bus drivers and day care vehicle operators.

Ala. §32-5A-194(b)(3)

≥ **.02** – Presumption of driving under the influence of alcohol for persons under 21. Ala. §32-5A-194(b)(3).

Presumption (BAC/BrAC):

Types of Drugs/Drugs and Alcohol:

Under the influence of a controlled substance (or alcohol and a controlled substance) to a degree which renders the person incapable of safely driving, or under the influence of any substance which impairs the mental or physical faculties to such a degree which renders the person incapable of safely driving. Ala. §32-5A-191(a).

Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

No. Not required for probable cause determination.³

Implied Consent Law:

Yes. Ala. §32-5-192

Arrest Required (Yes/No):

Yes. Ala. §32-5-192.

Implied Consent Law Applies to Drugs

No. See *State v. Radford*, 557 So.2d 1285 (Ala. Crim. App. 1989).

(Yes/No):

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes. Criminal and Civil Cases. Ala. §32-5A-194(c).

Other Information:

Special Note: A person arrested for a DWI offense shall not be released until his/her BAC/BrAC is < **.08** (or for persons under 21, < **.02**). Ala. §32-5A-191(n).Non-Breath Chemical Tests for AlcoholConcentration Authorized Under the ImpliedConsent Law:

Blood:

Yes. Ala. §32-5-192(a).

Urine:

Yes. Ala. §32-5-192(a).

Other:

NoneAdjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No¹ In *Ex Parte Buckner*, 549 So.2d 451, 454 (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.”² Standard: Percentage of alcohol by weight in the blood. The law defines this as grams of alcohol per 100 cubic centimeters of blood or grams of alcohol per 210 liters of breath. Ala. §32-5A-194(a)(5).³ See, e.g., *Boyd v. City of Montgomery*, 472 So. 2d 694 (Ala. Crim. App. 1985) (noting that an officer’s observations may establish probable cause).

Anti-Plea-Bargaining Statute (Yes/No): **No**
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes.** Felony DUI (4th or subsequent conviction within 5 years) Ala. §13A-5-5.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test – Criminal Sanction (Fine/Jail): **N/A**
 Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **N/A**
 Preliminary Breath Test – Other: **N/A**

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**

Refusal to Take Implied Consent Chemical Test – Administrative Licensing Action (Susp/Rev): First Refusal – **Suspension 90 days** (mand⁴); Second Alcohol or Drug-Related Enforcement Contact⁵ (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). Ala. §§32-5-192(c); 32-5A-300(b); 32-5A-304; 32-5A-305.

Implied Consent Chemical Test – Other: Refusing to Submit to a Test Under the Accident Related Implied Consent Law – **Suspension 2 years.** Ala. §32-5-200(a). This suspension appears to be mandatory.⁶

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine: First offense – Not more than **1 year** and/or not less than **\$600** or more than **\$2,100**;⁷ Second offense (within 5 years) – Not more than **1 year** (with 5 days mandatory or 30 days community service) and not less than **\$1,100** or more than **\$5,100**; Third offense (within 5 years) – Not less than **60 days** (mand) or more than **1 year** and not less than **\$2,100** or more than **\$10,100**; Fourth or subsequent offense (within 5 years) – Not less than **1 year & 1 day** (with 10 days mandatory) or more than **10 years** and not less than **\$4,100** or more than **\$10,100**.⁸ Ala. §32-5A-191(e), (f), (g), (h).

⁴ However, if a person is acquitted of the DWI charge, then the Director of Public Safety may, in his discretion, reduce the mandatory suspension period. Ala. §32-5-192(c).

⁵ An “alcohol or drug-related enforcement contact” includes either a refusal, administrative per se violation or a conviction for a drunk-driving offense. Ala. §32-5A-304(b)(5).

⁶ 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. Ala. §32-5-200(d).

⁷ The jail and fine sanctions do not apply to first offenders who are under 21. Ala. §32-5A-191(b).

⁸ A court may choose to suspend or probate a portion of the sentence conditioned upon the defendant’s enrollment in and successful completion of a chemical dependency program. If probation is granted, an offender may be placed on house arrest with electronic monitoring. Ala. §32-5A-191(h).

≥ .15 BAC:

When any person is found to have a BAC of **≥ .15**, he/she shall be sentenced to at least double the minimum punishment. If the offense is a misdemeanor, then the minimum punishment shall be 1 year, all of which may be suspended, except for the mandatory minimums outlined for second and third offenses.

Ala. §32-5A-191(i).

Serious Bodily Injury related to a DWI Offense (assault in the first degree – Class B felony): Not less than **2 years** or more than **20 years**,⁹ and may be fined not more than **\$30,000**. Ala. §§13A-5-2(b); 13A-5-6(a)(2); 13A-5-11(a)(2); 13A-6-20(a)(5), (b).

Mandatory Minimum Term/Fine:
Community Service:

N/A

Second offense (within 5 years) – **Not less than 30 days** if no jail time is served. Ala. §32-5A-191(f).

Restitution:

Yes. Victims' Compensation Fund. Ala. §15-23-1, *et seq.* **Special Note:** Under Ala. §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.

Child Endangerment:

The minimum sentence is double the usual sanction if an offender age 21 or over was operating a vehicle while transporting a passenger under age 14 at the time of the DWI offense. Ala. §32-5A-191(j).

Other:

Court Authorized Licensing Action: In addition to any other sanction for a criminal violation of the traffic laws, the court may issue an order “forbidding” an offender from operating a motor vehicle for either a specified period of time or perpetually. Ala. §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 enhancement of punishment under the State's Habitual Felony Offender Law. Ala. §32-5A-191(h).

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

Yes.¹⁰ **≥ .08.**

First Admin Per Se Violation – **Suspension 90 days** (mand);

Second Alcohol or Drug-Related Enforcement Contact (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).

⁹ These sanctions apply to first offense convictions for assault in the first degree. To determine the sanctions for a 2nd or subsequent offense of this type, see Ala. §13A-5-9. Murder: If a person causes the death of another while operating a motor vehicle while intoxicated and in an erratic manner with excessive speed, that person may be prosecuted for murder. See *Tims v. State*, 711 So. 2d 1118 (Ala. Crim. App. 1997).

¹⁰ If the DWI criminal charges against the driver are dismissed or result in a *nolle prosequi*, or if the driver is found not guilty of the DWI offense, the administrative per se licensing action is rescinded. Ala. §32-5A-304(c).

Other:	Ala. §§32-5A-300; 32-5A-304; 32-5A-305. Under Ala. §32-5A-195(k), (1), (m), a person's license may be suspended <u>without</u> a preliminary hearing, for not more than 1 year if such person committed an offense that usually requires license revocation (e.g., DWI). Such action could occur prior to conviction.
	The administrative <i>per se</i> license suspensions supersede license suspension penalties for a DWI conviction pursuant to Ala. §32-5A-191. Ala. §32-5A-304(c).
<u>Administrative Sanctions – Post-Conviction:</u>	
Type of Licensing Action (Susp/Rev):	Suspension or Revocation
Term of Withdrawal:	<u>First offense</u> – Suspension or revocation 90 days , unless driver elects ignition interlock for 6 months. ¹¹ School Bus and Day Care Vehicle Operators – 1-year mandatory suspension. Persons under 21 – 30 days mandatory suspension. <u>Second offense</u> – 1 year revocation ; <u>Third offense</u> – 3 years revocation ; <u>Fourth or subsequent offenses</u> – 5 years revocation . Ala. §32-5A-191.
Mandatory Minimum Term of Revocation:	<u>First and second offenses</u> – 45 days (then, ignition interlock); <u>Third offense</u> – 180 days (then, ignition interlock); Fourth or subsequent offense – 1 year (then, ignition interlock). Ala. §32-5A-191.
Alcohol Education:	Yes. Ala. §32-5A-191(k).
Substance Abuse Treatment:	Yes. Ala. §32-5A-191(k).
Vehicle Impoundment/Confiscation:	Impoundment. Ala. §§ 32-6-19, 32-13-2.
Authorized by Specific Statutory Authority:	For a subsequent offense within 5 years, the registrations of all vehicles owned by the offender shall be suspended for the duration of the license suspension. There is a hardship exemption for other individuals. Ala. §32-5A-191(q).
Terms Upon Which Vehicle Will Be Released:	N/A
Other Miscellaneous Sanctions:	N/A
<u>Ignition Interlock:</u>	
Permitted or Prohibited:	Permitted
Type of Law (Mandatory or Permissive):	Mandatory for First Offenders With BAC ≥ .15 & Repeat Offenders
Sanction (Judicial, Administrative or Hybrid)	Hybrid
Conditions of Use:	<u>First offense</u> – 6 months if driver elects to have it installed; <u>First offense</u> (≥ .15 BAC; refusal; driving with child under 14; causing someone to be injured at time of offense) – 2 years ; <u>Second offense</u> (within 5 years) – 2 years ;

¹¹ 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 the driving privileges suspended for 6 months. Ala. §§13A-12-290; 13A-12-291(10).

Other Provisions:	<u>Third offense – 3 years;</u> <u>Fourth or subsequent offense – 5 years.</u> <u>Repeat offender within a five-year period – duration of license suspension period.</u> Ala. §§32-5A-191; 32-5A-191.4. N/A
<u>Sobriety Checkpoints:</u> Permitted or Prohibited:	Permitted. <i>Cains v. State</i> , 555 So.2d 290 (Ala. Cr. App. 1989).
<u>Homicide by Vehicle:</u> State Has Such a Law: Imprisonment/Fine:	Yes <u>Criminally Negligent Homicide</u> while driving under the influence – Not less than 1 year & 1 day or more than 10 years and may be fined not more than \$15,000 . Ala. §§13A-5-6; 13A-5-11; 13A-6-4(a), (c).
Mandatory Minimum Term/Fine: Authorized Licensing Action: Length of Term of Licensing Withdrawal: Mandatory Minimum License Withdrawal: Other:	None Suspension/Revocation. ¹² Ala. §32-5A-195(j), (k), (l). Revocation period is not specified in the statute. ¹³ None N/A
<u>DWI Offenses and Commercial Motor Vehicles (CMV):</u>	A person is “disqualified” from operating a CMV for not less than 1 year (not less than 3 years if transporting hazardous materials) if: (1) while driving a CMV, that person has a BAC/BrAC/UrAC ≥.04 (Standards: grams of alcohol per 100 milliliters of blood; grams of alcohol per 210 liters of breath; 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. Note: The disqualification provision (Ala. §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 (Ala. §32-6-49.13) applies to tests for alcohol concentration and drugs. For a subsequent violation or a combination of two or more violations of any of the above listed items, the “disqualification” is for life (10 years mand). Additionally, a CMV operator who has any measurable (or detectable) amount of alcohol in the system must be placed “out-of-service” for 24 hours. Ala. §§32-6-49.3(2), (3); 32-6-49.11; 32-6-49.12; 32-6-49.13.
<u>Driving While License Suspended for DWI Offense:</u>	

¹² Applies only to "Homicide by Vehicle" or vehicle manslaughter offenses. For DWI criminally negligent homicide offenses, licensing action appears to be through the regular DWI offense provisions.

¹³ However, a license or privilege to drive cannot be suspended for more than 1 year. Ala. §32-5A-195(m).

Criminal - Fine/Imprisonment:	Note. ¹⁴ Misdemeanor – Not less than \$100 or more than \$500 and may be imprisoned for not more than 180 days . Ala. §32-6-19(a).
Mandatory Minimum Fine/Imprisonment Term:	None . However, there is an additional penalty of \$50 used to fund safety and training funds. This penalty appears to be mandatory. Ala. §32-6-19(a), (b), (c).
Administrative Licensing Action Type:	Revocation (discretionary). Ala. §32-6-19(a).
Withdrawal Action:	An additional period of 6 months Ala. §32-6-19(a).
Mandatory Term of License Withdrawal Action:	None
Other:	
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	No
<u>Other State Laws Related to Alcohol Use:</u>	
BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	No , but the implied consent law applies to dead persons. Ala. §32-5-200(c).
BAC Chemical Test Given to Deceased Driver Killed in Crash:	N/A
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	N/A
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	N/A
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes . 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 content or the presence of the drugs listed. Ala. §32-5-200(a).
Minimum Age (Years) for Sale/Purchase of Alcohol:	21 . Ala. §§28-1-5; 28-3A-25(a)(3).
Minimum Age (Years) for Possession/Consumption of Alcohol:	21 . There is an employment exemption. Ala. §28-3A-25(a)(18).
<u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	Yes . Ala. §§6-5-71; 6-5-72.
"Dram Shop Law" Has Been Adopted Via a	No . ¹⁵

¹⁴ There is no specific statutory provision for driving on a suspended or revoked license, where the basis was a DWI offense. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are suspended or revoked. Further, neither the CMV laws nor the general code provisions concerned with driving on a suspended or revoked license provides specific sanctions for operating a CMV while disqualified or under an out-of-service order.

¹⁵ Alabama’s highest court previously recognized a common-law cause of action for negligence in the dram shop context. *See Buchanan v. Merger Enterprises, Inc.*, 463 So.2d 121 (Ala. 1984). However, the enactment of Alabama’s dram shop liability act,

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: A social host can be held liable for the actions of *intoxicated minors* if such host *provided* alcoholic beverages to the minors. *Runyans v. Littrell*, 850 So.2d 244 (Ala. 2002); *Martin v. Watts*, 513 So.2d 958 (Ala. 1987).

Social Host – Criminal Enforcement:

A social host may be charged with endangering the welfare of a child, a class A misdemeanor, which punishes a parent or legal guardian with the care or custody of a child less than 18, who fails to exercise reasonable diligence in the control of the child to prevent him from becoming a “dependent child” or “delinquent child.” Ala. §13A-13-6. A class A misdemeanor is punishable by a term of not more than 1 year and a fine of not more than \$6,000. Ala. §§13A-5-7; 13A-5-12.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

See Ala. Admin. Code r. 20-X-6-.02(4), which prohibits the sale of alcoholic beverages to persons “acting in a manner as to appear to be intoxicated.” It is a **misdemeanor** to violate a regulation. Ala. §28-3-20.

Imprisonment/Fine:

Not more than **\$500** and may be imprisoned for not more than **6 months**. Ala. §28-3-20.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Suspension/Revocation. Ala. §§28-3A-24; 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 subsequent offense – revocation for **1 year**. (This revocation appears to be mandatory; however, see Ala. §28-3A-24(c) which authorizes a fine up to \$1,000 in lieu of revocation.) Ala. §§28-3A-24; 28-3A-26.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Misdemeanor. Ala. §28-3A-25(a)(3).

Imprisonment/Fine:

First offense – Not less than **\$100** or more than **\$1,000** and may be imprisoned for not more than **6 months**;
Second offense – Not less than **\$100** or more than **\$1,000** and not less than **3 months** or more than **6 months**;
Third and subsequent offense – Not less than **\$100** or more than **\$1,000** and not less than **6 months** or more than **12**

Ala. §§6-5-71; 6-5-72, superseded this decision. Currently a person only has a cause of action under the statute, rather than one for common law negligence. *Jackson v. Azalea City Racing Club, Inc.*, 553 So.2d 112 (Ala. 1989).

months. Ala. §28-3A-25(b)(1).

Administrative Actions Regarding
Establishments That Serve Alcohol to Persons
Under the Legal Drinking Age:

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

Yes – Suspension/Revocation. Ala. §§28-3A-24; 28-3A-26.

First offense – **Suspension – Not more than 1 year;
revocation – 1 year;**

Second or subsequent offense – revocation for **1 year.** (This revocation appears to be mandatory; however, see Ala. §28-3A-24(c) which authorizes a fine up to \$1,000 in lieu of revocation.) Ala. §§28-3A-24; 28-3A-26.

Anti-Happy Hour Laws/Regulations:

No. Ala. Admin. Code r. 20-X-6-.13 places restrictions on “happy hours” but does not ban or eliminate them.

Open Container Laws:

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

Yes. Ala. §32-5A-330.

Yes. Ala. §32-5A-330

Alcohol Exclusion Law (UPPL):

Yes. Ala. §27-19-26

STATE

ALASKA

General Reference:

Alaska Statutes (AS); Alaska Administrative Code (AAC)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of an alcoholic beverage. AS §28.35.030(a)(1).

Illegal Per Se Law (BAC/BrAC):

≥ .08.⁴⁹ AS §28.35.030(a)(2).

Presumption (BAC/BrAC):

≥ .08. AS §28.35.033(a)(3).

Types of Drugs/Drugs and Alcohol:

“Under the influence of an alcoholic beverage, intoxicating liquor, inhalant, or any controlled substance, singly or in combination.” AS §28.35.030(a)(1).

Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

Yes. AS §28.35.031(b). This also applies to CMV operators. AS §28.33.031(c).

Implied Consent Law:

Yes. AS §28.35.031

Arrest Required (Yes/No):

Yes. Unless death or serious physical injury. AS §28.35.031(a), (g).

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. AS §§28.35.032(e); 28.35.285(c).

Other Information:

Note.⁵⁰Non-Breath Chemical Tests for AlcoholConcentration Authorized Under the Implied Consent Law:

Blood:

No. Except as per “Other Information” above.

Urine:

No. Except as per “Other Information” above.

Other:

NoneAdjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea-Bargaining Statute (Yes/No):

No

⁴⁹ Alcohol concentration is based upon either “percent by weight” of alcohol in the blood, in milligrams of alcohol per 100 milliliters of blood, or grams of alcohol per 210 liters of breath. AS §28.35.030(a)(3). Under AS §28.35.033(b), “percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 100 milliliters of blood.”

⁵⁰ In Alaska, technically a “chemical test” of blood, breath, and urine for alcohol or a controlled substance may be administered to a person without consent if that person has been arrested for a DUI offense where there has been an accident involving death or physical injury to another person.⁵⁰ AS §28.35.035(a). See also AS §28.35.031(g) (blood and urine for controlled substances); and *Municipality of Anchorage v. Ray*, 854 P.2d 740 (Alaska App. 1993) (holding, among other things, that a blood sample drawn by a physician was not so great of an intrusion as to violate due process, and search and seizure provisions of Federal and Alaska Constitutions were not violated by statute allowing police to take blood alcohol sample from arrested motorist without consent). However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

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

Yes. AS §28.35.030(h) (for felony DWI conviction under AS §§28.35.030(n); 28.35.032(l) (for felony Refusal conviction under AS §28.35.032(p)).

Sanctions for Refusal to Submit to a
Chemical Test:

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

Infraction (non-criminal offense) – Not more than **\$300**.
AS §§28.35.031(e); 28.90.010(c).

Refusal to Take a Preliminary Breath Test –
Administrative Licensing Action (Susp/Rev):

None

Preliminary Breath Test – Other:

Refusal to submit to a PBT may be admitted into evidence at either a criminal or civil proceeding, AS §28.35.031(c). It is a Class B misdemeanor for a CMV operator to refuse to submit to a PBT. AS §28.33.031(f). The sanctions for this offense are not more than **90 days** in jail and/or a fine of not more than **\$2,000**. AS §12.55.035(b)(6); 12.55.135(b).

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

Note⁵¹

Class A misdemeanor

1st refusal = not less than 72 consecutive hours and a fine of not less than \$1,500; ignition interlock for at least 6 months;

2nd refusal = not less than 20 days and a fine of not less than \$3,000; ignition interlock for at least 12 months;

3rd refusal = not less than 60 days and a fine of not less than \$4,000; ignition interlock for at least 18 months;

4th refusal = not less than 120 days and a fine of not less than \$5,000; ignition interlock for at least 24 months;

5th refusal = not less than 240 days and a fine of not less than \$6,000; ignition interlock for at least 30 months;

6th and subsequent refusal = not less than 360 days and a fine of not less than \$7,000; ignition interlock for at least 36 months. AS §28.35.032(g)(1).

Class C felony – Fine of not less than \$10,000, ignition interlock for a minimum 60 months after restoration of license, and:

3rd refusal (within 10 years of the preceding offense) = 120 days⁵²;

4th refusal (within 10 years) = 240 days;

5th or subsequent refusal (within 10 years) = 360 days

All convictions include license revocation for at least 10 years. AS 28.35.032(f), (g), (p).

⁵¹ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

⁵² These are minimum sentences. For maximum sentences, see AS §12.55.125(e).

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 offenses⁵³ are the same as for DWI offenses. These sanctions run consecutively with any other sanctions. AS §28.35.032(f), (g)(5).⁵⁴

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):

Revocation. AS §§28.15.165(a)(1); 28.15.181(a)(8).

First Refusal – Not less than **90 days**;

Second Refusal – Not less than **1 year**;

Third Refusal (misdemeanor) – Not less than **3 years**;

Fourth or Subsequent Refusal (misdemeanor) – Not less than **5 years**. AS §§28.15.165(d); 28.15.181(c).

Implied Consent Chemical Test - Other:

State Forfeiture of the vehicle used in subsequent refusal offenses. This action is permissible but not mandatory for misdemeanor DWI or Refusal convictions. AS §28.35.036.

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine:

I. Class A Misdemeanor – Not more than **1 year** and/or not more than **\$10,000**. AS §§12.55.035; 12.55.135; 28.35.030(b).

II. Class C felony (second or subsequent offense within 10 years)⁵⁵ – Not more than **5 years** and may be fined not less than **\$10,000** or more than **\$50,000**. AS §§12.55.035; 12.55.125; 28.35.030(n).

Mandatory Minimum Term/Fine:

I. Class A Misdemeanor offenses:

First offense – Not less than **72 consecutive hours** (to be served at a community residential center or by electronic monitoring at a private residence) and not less than **\$1,500**;

Second offense – Not less than **20 days** and not less than **\$3,000**; ignition interlock for at least 12 months;

Third offense⁵⁶ – Not less than **60 days** and not less than **\$4,000**; ignition interlock for at least 18 months;

Fourth offense – Not less than **120 days** and not less than

⁵³ For 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. AS §§28.35.030(u)(4); 28.35.032(p).

⁵⁴ Persons Under 21: A person at least 14 but not yet 21 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 (AS §28.35.280). The sanctions for this offense are a fine of not more than \$1,500 and community service. AS §28.35.285(d). In addition, the driver’s license is revoked via an administrative procedure for the following mandatory periods: first revocation – 30 days; second revocation – 60 days; third revocation – 90 days; fourth or subsequent revocation – 1 year. AS §28.15.183(d).

⁵⁵ 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. AS §§28.35.030(u)(4); 28.35.032(o).

⁵⁶ Third and subsequent offense sanctions for a Class A misdemeanor only apply when the person is not subject to the Class C felony provisions in AS §28.35.030(n).

\$5,000; ignition interlock for at least 24 months;
Fifth offense – Not less than **240 days** and not less than
\$6,000; ignition interlock for at least 30 months
Sixth and subsequent offense – Not less than **360 days** and
 not less than **\$7,000**; ignition interlock for at least 36
 months. AS §28.35.030(b).

II. Class C felony offenses (offenses occurring within 10
 years) - Fine of not less than \$10,000, ignition interlock
 for a minimum 60 months after restoration of license, and:
Second offense – **120 days**;
Third offense – **240 days**;
Fourth and subsequent offense – **360 days**.

AS §28.35.030(n). If a second or subsequent felony
 offense, sentence is subject to AS §§12.55.125; 12.55.155.
 Note.⁵⁷

Community Service:

First offense – At least **24 hours**;
Second offense – At least **160 hours**. AS §28.35.030(k).
 Discretionary for subsequent offenses. AS § 12.55.055.

Restitution:

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

Child Endangerment:

N/A

Other:

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 \$2,000. The cost may be reimbursed from an Alaska
 Permanent Fund Dividend of an indigent defendant.
 AS §28.35.030(k).

EMS, Police, and 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. AS §28.35.030(m).

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.”
 AS §28.35.030(b)(4).

Double Jeopardy: A person who has been subjected to
 licensing action under the administrative per se law may
 also be subsequently prosecuted for a drunk-driving
 offense. Such subsequent criminal trial does not violate the
 constitutional prohibition against double jeopardy. *State v.*
Zerkel, 900 P.2d 744 (Alaska App. 1995). Likewise, a

⁵⁷ 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.

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. *Aaron v. City of Ketchikan*, 927 P.2d 335 (Alaska App. 1996).

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

Yes \geq **.08** (BAC/BrAC). AS §§28.15.165; 28.35.030(a)(2). 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, as listed above.

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Revocation. AS §28.15.181(a)(5), (c).

Term of Withdrawal:

First offense – Not less than **90 days**;

Second offense – Not less than **1 year**;

Third offense – Not less than **3 years**;

Fourth or subsequent offense – Not less than **5 years**.

AS §§28.15.181(c); 28.35.030(b)(3), (o).

If convicted of Class C felony, the license is revoked **permanently**.⁵⁸

Mandatory Minimum Term of Revocation:

The terms above are mandatory, except if the license is permanently revoked.

Alcohol Education:

Yes.⁵⁹ AS §28.35.030(h).

Substance Abuse Treatment:

Yes. AS §28.35.030(i).

Vehicle Impoundment/Confiscation:

Yes. Mandatory for Class C felonies.

AS §28.35.030(n)(5).

Authorized by Specific Statutory Authority:

Yes. Forfeiture of the vehicle used in DWI/Refusal offenses. AS §§28.35.030(n)(5); 28.35.032(p)(6); 28.35.036.

Terms Upon Which Vehicle Will Be Released:

A person claiming ownership or security interest in the vehicle must establish by a preponderance of the evidence that the interest in the vehicle was acquired in good faith; that such person was not the person convicted of the offense; and did not know or have reasonable cause to believe such vehicle would be used in the offense. If this is established, then the vehicle shall be released or an amount equal to the value of that person's interest shall be ordered. AS §§28.35.036(b); 28.35.037.

Other Miscellaneous Sanctions:

N/A

⁵⁸ Subject to review if: (1) the license has been revoked for a period of at least 10 years; (2) the person has not been convicted of a criminal offense since the license was revoked; and (3) the person provides proof of financial responsibility. AS §28.35.030(o).

⁵⁹ For any DWI or refusal conviction, before the license is restored, a defendant may be required to complete an alcohol education or treatment program the court feels is appropriate for that defendant. AS §§28.15.211(d), 28.35.030(h). A defendant may participate in this rehabilitation program while incarcerated or while on probation. AS §§12.55.015(a)(10); 12.55.100(a)(5); 28.35.030.

Ignition Interlock:

Permitted or Prohibited:

Permitted.

An ignition interlock shall be required during the probation period upon conviction of a DWI offense. AS §28.35.030(b), (n).

Type of Law (Mandatory or Permissive):

Mandatory for all offenders

Sanction (Judicial, Administrative or Hybrid)

Judicial

Conditions of Use:

Class A misdemeanor:First conviction – minimum of 6 months;Second conviction – minimum of 12 months;Third conviction – minimum of 18 months;Fourth conviction – minimum of 24 months;Fifth conviction – minimum of 30 months;Sixth and subsequent conviction – minimum of 36 months**Class C felony:** minimum of 60 months

AS §§12.55.102; 28.35.030(b), (n).

Other Provisions:

A court may waive the ignition interlock requirement if it determines the defendant is required as a condition of employment to drive a vehicle owned or leased by his employer. AS §12.55.102.

Sobriety Checkpoints:

Permitted or Prohibited:

There is no statute or case law.⁶⁰Homicide by Vehicle:

State Has Such a Law:

Yes, Case Law – Vehicular homicide can be second-degree murder (AS §11.41.110(a)(2)), manslaughter (AS §11.41.120(a)), or criminally negligent homicide (AS §11.41.130(a)), depending on the degree of the risk created by the defendant's conduct and level of awareness of risk.⁶¹

Imprisonment/Fine:

Second-degree murder – At least **10 years** but not more than **99 years** and may be fined not more than **\$500,000**;Manslaughter (Class A felony) – Not more than **20 years** and may be fined not more than **\$250,000**;Criminally negligent homicide (Class B felony) – Not more than **10 years** and may be fined not more than **\$100,000**. AS §§12.55.035; 12.55.125.

Mandatory Minimum Term/Fine:

None

Authorized Licensing Action:

Revocation (manslaughter or negligent homicide conviction). AS §28.15.181.

⁶⁰ However, the United States Supreme Court upheld the constitutionality of sobriety checkpoints in *Michigan Department of State Police v. Sitz*, 496 U.S. 444 (1990), and the United States District Court of Alaska referenced the constitutionality of sobriety checkpoints, as held in *Sitz*, in a ruling concerning convicted sex offenders' right to privacy. See *Rowe v. Burton*, 884 F.Supp. 1372, 1382 (D.Alaska 1994).

⁶¹ See *Jeffries v. State*, 169 P.3d 913 (Alaska 2007); *Puzewicz v. State*, 856 P.2d 1178 (Alaska App. 1993); *Foxglove v. State*, 929 P.2d 669 (Alaska App. 1997).

Length of Term of Licensing Withdrawal:	Note. ⁶² <u>First conviction</u> – Not less than 30 days ; <u>Second conviction</u> – Not less than 1 year ; <u>Third or subsequent conviction</u> – Not less than 3 years . AS §28.15.181(b).
Mandatory Minimum License Withdrawal:	The terms above are minimums. However, the court may grant a limitation to a person’s license if such person’s ability to earn a livelihood would be severely impaired and there would not be excessive danger to the public. Such limitation shall be for no less than 60 days. AS §28.15.181(b).
Other:	N/A
<u>DWI Offenses and Commercial Motor Vehicles (CMV):</u>	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 percent by weight of alcohol in the blood of $\geq .04$, a blood alcohol concentration of ≥ 40 milligrams of alcohol per 100 milliliters of blood, or a breath alcohol concentration of $\geq .04$ 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 a second violation or a combination of two violations of any of the above listed items, the “disqualification” is for life (10 years mandatory). For a subsequent violation or a combination of more than two violations of any of the above listed items, there is a <u>mandatory</u> lifetime “disqualification.” A person who operates a CMV with a BAC/BrAC of $\geq .04$ while under the influence of any controlled substance or who refuses to submit to a breath test is also subject to the regular DWI/implicit consent law criminal and administrative (licensing) sanctions, including <u>all</u> mandatory sanctions. Additionally, a CMV operator who has any “measurable” or “detectable” amount of alcohol in the system must be placed “out-of-service” for 24 hours. AS §§28.15.165; 28.15.219; 28.33.030; 28.33.031(a); 28.33.130; 28.33.140; 28.35.032(f).
<u>Driving While License Suspended for DWI Offense:</u>	
Criminal - Fine/Imprisonment:	Note. ⁶³ <u>Class A Misdemeanor</u> – Not more than 1 year and may be

⁶² Alaska courts have held that lifetime revocation should be reserved for chronic offenders, whose records demonstrate that they never should be allowed to drive a motor vehicle again. See *Fine v. State*, 22 P.3d 20 (Alaska App. 2001); *Dodge v. Municipality of Anchorage*, 877 P.2d 270 (Alaska App. 1994).

⁶³ It is Class A misdemeanor to operate a CMV during a CDL disqualification or a CDL out-of-service order. The sanctions for a first offense – jail for not less than 20 days with 10 days suspended and not less than 80 hours community service; subsequent offense (within 10 years) – not less than 60 days and a fine of \$1,000. For both first and subsequent offenders, driving privileges cannot be restored for an additional 90 days. AS §§12.55.035; 12.55.135; 28.33.150(a), (b), (c).

Mandatory Minimum Fine/Imprisonment Term:	fined not more than \$10,000 . AS §§12.55.035; 12.55.135(a); 28.15.291.
Administrative Licensing Action Type:	Not less than 20 days with 10 days suspended and a fine of not less than \$500 , and not less than 80 hours community service. AS §28.15.291(b)(1)(C).
Withdrawal Action:	Revocation . AS §28.15.291(b)(4).
Mandatory Term of License Withdrawal Action:	Not less than 90 days . AS §28.15.291(b)(4).
Other:	Original revocation extended not less than 90 days . The court may order forfeiture. AS §28.15.291(b)(5).
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	No
<u>Other State Laws Related to Alcohol Use:</u>	
BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	No
BAC Chemical Test Given to Deceased Driver Killed in Crash:	N/A
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	N/A
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	N/A
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes . AS §28.35.031(b)(2), (g).
Minimum Age (Years) for Sale/Purchase of Alcohol:	21 . AS §04.16.051.
Minimum Age (Years) for Possession/Consumption of Alcohol:	21 . There are exemptions for parents, physicians, or employers furnishing alcoholic beverages to minors. AS §§04.16.050; 04.16.051; 04.16.052.
<u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	Yes . <u>I. Persons Who Hold Licenses Under the Alcoholic Beverage Law</u> – A licensee or agent may be held civilly liable for serving alcohol to a person under age 21 or to a drunken person. AS §§04.21.020(a); 04.21.080(a)(1). <u>II. Alcoholic Beverage Law Violators</u> – Persons who sell or barter alcoholic beverages to individuals without obtaining the appropriate license are “strictly liable” for any resulting injuries sustained by such individuals and person who knowingly furnish alcohol to a person under 21 may also be liable for civil damages. AS §04.21.020(b), (d).
"Dram Shop Law" Has Been Adopted Via a Change to the Common Law Rule by Action	No

of the Highest Court of Record in the State
(Case Citation):

Dram Shop Actions – Social Hosts:
Social Host – Criminal Enforcement:

No. AS §04.16.020.
A person who is physically in possession and exercising dominion and control over a dwelling may not knowingly permit a person under 21 to possess an alcoholic beverage in the dwelling. Such person may be guilty of a “violation,” and pay not more than \$500. AS §§04.16.057; 12.55.035(b)(7).

Additionally, a social host may be charged with contributing to the delinquency of a minor, a class A misdemeanor, punishable by not more than 1 year and a fine of not more than \$10,000. AS §§11.51.130; 12.55.035; 12.55.135.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:
Imprisonment/Fine:

Class A misdemeanor – AS §§04.16.030; 04.16.180.
Not more than **1 year** and may be fined not more than **\$10,000**. AS §§12.55.035; 12.55.135(a). Organizations may be fined not more than **\$500,000** for offenses not resulting in death; and not more than **\$2.5 million** for offenses resulting in death. AS §12.55.035(c)(1).

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

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

Yes. AS §04.16.180.
First conviction – Suspension for not more than **45 days**;
Second conviction (within 5 years) – Suspension for not more than **90 days**;
Third and subsequent convictions (within 5 years) – Suspension or revocation (no time limit specified). AS §04.16.180(b).

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:
Imprisonment/Fine:

Class A misdemeanor. AS §§04.16.052; 04.16.180.
Not more than **1 year** and may be fined not more than **\$10,000**. AS §§12.55.035; 12.55.135(a). Organizations may be fined not more than **\$500,000** for offenses not resulting in death; and not more than **\$2.5 million** for offenses resulting in death. AS § 12.55.035(c)(1).

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages

Yes. AS §04.16.180.

Withdrawn (Yes/No):	
Length of Term License Withdrawal:	<u>First conviction</u> – Suspension for not more than 45 days ; <u>Second conviction</u> (within 5 years) – Suspension for not more than 90 days ; <u>Third and subsequent convictions</u> (within 5 years) – Suspension or revocation (no time limit specified). AS §04.16.180(b).
<u>Anti-Happy Hour Laws/Regulations:</u>	Yes. AS §04.16.015.
<u>Open Container Laws:</u>	
Open Container Law (Yes/No):	Yes. AS §28.35.029.
Anti-Consumption Law (Yes/No):	Yes. 13 AAC 02.545(a)
<u>Alcohol Exclusion Law (UPPL):</u>	Yes. AS §21.51.260

STATE

General Reference:

ARIZONA

Arizona Revised Statutes Annotated (A.R.S.)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor.

A.R.S. §28-1381(A)(1).

Illegal Per Se Law (BAC/BrAC):

≥ **.08**.⁶⁴ A.R.S. §28-1381(A)(2)≥ **.15**.⁶⁵ A.R.S. § 28-1382(A)(1).≥ **.20**. A.R.S. § 28-1382(A)(2).

Presumption (BAC/BrAC):

Persons Under 21: Operating a motor vehicle with any “Spirituous Liquor” in the body. A.R.S. §§4-244(34); 4-246(B).

Types of Drugs/Drugs and Alcohol:

≥ **.08**. A.R.S. §28-1381(G)(3).

Under the influence of any drug, a vapor-releasing substance containing a toxic substance, or a combination of liquor, drugs or toxic vapor releasing substance if the person is impaired to the slightest degree.

While there is any drug or its metabolite⁶⁶ in the person’s body. A.R.S. §28-1381(A)(1), (3).Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

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

Implied Consent Law:

Yes. A.R.S. §28-1321

Arrest Required (Yes/No):

Yes. A.R.S. §28-1321(A).

Implied Consent Law Applies to Drugs (Yes/No):

Yes. A.R.S. §28-1321(A).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal and Civil Cases. A.R.S. §28-1388(D).

Other Information:

Persons (e.g., medical facility personnel) who collect blood, urine or other bodily substances from drivers may be requested by law enforcement authorities to supply samples of such substances to them for testing. A.R.S. §28-1388(E). If a person under arrest refuses, samples may be obtained through a search warrant. A.R.S. §28-1321(D)(1).

Non-Breath Chemical Tests for AlcoholConcentration Authorized Under theImplied Consent Law:

Blood:

Yes. A.R.S. §28-1321(A).

Urine:

Yes. A.R.S. §28-1321(A).

Other:

“Other bodily substance.” A.R.S. §28-1321(A).⁶⁴ Standards: Grams of alcohol per 100 milliliters of blood, or grams of alcohol per 210 liters of breath. A.R.S. §28-101(2).⁶⁵ Driving at or above this level is considered to be driving “while under extreme influence of intoxicating liquor.” A.R.S. §28-1382(B). Specifically, it is unlawful if a person has an alcohol concentration of .15 or more within 2 hours of driving or being in actual physical control of the vehicle.⁶⁶ This statute has been interpreted to apply only to metabolites “capable of causing impairment.” *State ex rel. Montgomery v. Harris*, 346 P.3d 984 (Ariz. 2014).

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea-Bargaining Statute (Yes/No):

Yes. A.R.S. §28-1387(I). The State shall not dismiss a charge unless there is an insufficient legal or factual basis.

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

Yes. Alcohol Screening Required. A.R.S. §28-1387(B).Sanctions for Refusal to Submit to a Chemical Test:

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

None

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev):

None

Preliminary Breath Test – Other:

N/A

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

None

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):

First refusal – 12-month suspension (mand);
Subsequent refusal (within 84 months) – **2-year suspension** (mand). A.R.S. §28-1321(B), (G)(3), (L).

Implied Consent Chemical Test - Other:

A person under 21 who has been arrested for a violation of A.R.S. §4-244(34) (driving with any amount of “spirituous liquor” in the body) is subject to the implied consent law. A.R.S. §28-1321(A)(2).

Criminal Sanctions Following a DWIConviction:

Imprisonment/Fine:

I. Standard DWI Offense and .08 Offense:**First offense** (Class 1 misdemeanor) – Not more than **6 months** (with not less than 10 consecutive days) and a fine of not less than **\$250** or more than **\$2,500** may be imposed, plus two **\$500** mandatory assessments;**Second offense** (within 84 months) (Class 1 misdemeanor) – Not more than **6 months** (with not less than 90 days) and a fine of not less than **\$500** or more than **\$2,500**, plus at least **30 hours** of community service and two **\$1,250** mandatory assessments. A.R.S. §§13-707; 13-802; 28-1381.**II. ≥ .15 Offense but < .20:****First offense** (Class 1 misdemeanor) – Not more than **6 months** (with not less than 30 consecutive days) and a fine of not less than **\$250** or more than **\$2,500**, plus a **\$250** mandatory assessment and two **\$1,000** mandatory assessments; and may be ordered to perform community service;**Second offense** (within 84 months) (Class 1 misdemeanor) – Not more than **6 months** (with not less than 120 days) and a fine of not less than **\$500** or more than **\$2,500**, plus an additional mandatory assessment of **\$250** and two **\$1,250** mandatory assessments; and at least **30 hours** of community

service. A.R.S. §28-1382(D), (E).

III. \geq .20:

First offense (Class 1 misdemeanor) – Not more than **6 months** (with not less than 45 consecutive days) and a fine of not less than **\$500** or more than **\$2,500**, plus a **\$250** mandatory assessment and two **\$1,000** mandatory assessments; and may be ordered to perform community service;

Second offense (within 84 months) (Class 1 misdemeanor) – Not more than **6 months** (with no less than 180 days) and a fine of not less than **\$1,000** or more than **\$2,500**, plus a **\$250** mandatory assessment and two **\$1,250** mandatory assessments; and at least 30 hours community service. A.R.S. §28-1382(D), (E).

III. Aggravated DWI:⁶⁷

Class 4 felony – **1-3.75 years** and may be fined not more than **\$150,000**. A.R.S. §§13-702(D); 13-801; 28-1383.

IV. Persons Under 21:

Operating a motor vehicle with any “Spirituos Liquor” in the body (Class 1 misdemeanor) – Not more than **6 months** and may be fined not more than **\$2,500**.

A.R.S. §§4-244(34); 4-246(B); 13-707; 13-802.

I. Standard DWI Offense and .08 Offense:

First offense – **1 day**;⁶⁸ not less than **\$250**;

Second offense⁶⁹-(within 84 months) – **90 days (30 consecutive)**; not less than **\$500**. A.R.S. §28-1381(I), (K).

II. \geq .15 Offense but $<$.20:

First offense – **30 consecutive days**; not less than **\$250**;

Second offense (within 84 months) – **120 days** (60 days consecutively); not less than **\$500**.

A.R.S. §28-1382(D), (E).⁷⁰

III. \geq .20:

First offense – **45 consecutive days**; not less than **\$500**;

Second offense (within 84 months) – **180 days** (90 days shall be served consecutively); not less than **\$1,000**.

A.R.S. §28-1382(D), (E).

Mandatory Minimum Term/Fine:

⁶⁷ A court may sentence a person found guilty of a felony crime to a mitigated term, minimum term, presumptive term, maximum term or aggravated term. These terms are listed in order of severity. The court will take into consideration any mitigating or aggravating factors of the crime or defendant when sentencing such person. The terms listed for the Class 4 and 6 felonies are the ranges set forth by A.R.S. §13-702(D), from mitigated term to aggravated term.

⁶⁸ Provided the defendant completes an alcohol/drug screening, counseling, education/treatment program.

⁶⁹ For sentence enhancement purposes, a prior offense includes any previous drunk-driving offense.

⁷⁰ If the person convicted of DUI (\geq .15 but $<$.20) equips any motor vehicle with a certified ignition interlock device for a period of 12 months, the minimum jail sentence may be 9 days. If the conviction is for .20 or greater, the minimum jail sentence may be 14 days. A.R.S. §28-1382(I).

IV. Aggravated DWI:

DWI while licensed is suspended/revoked as a result of a DWI offense – 4 months; not less than \$750;
Third DWI offense (within 84 months) – 4 months; not less than \$750;
Fourth and subsequent offense (within 84 months) – 8 months; not less than \$750;
DWI with a person under 15 in vehicle – 10 consecutive days; \$250.
Driving with a person under 15 in vehicle with .15- < .20 – 30 consecutive days; not less than \$250;
Driving with a person under 15 in vehicle with \geq .20 – 45 consecutive days; not less than \$500.
 A.R.S. §§28-1381; 28-1382; 28-1383.

V. Persons Under 21: None

Community Service:

First and second offenses (including .15 and .20 offenses)
Yes.⁷¹ Discretionary with the court, except that for second or subsequent offenses within 84 months, the court must impose at least 30 hours of community service.
 A.R.S. §§28-1381(I), (K); 28-1382(D), (E);
Felony offenses – Community service cannot be assigned.
 A.R.S. §11-459(B)(4).

Restitution:

Yes. Victims' compensation fund. A.R.S. §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.
 A.R.S. §13-804.

Child Endangerment:

An intoxicated driver with a person < 15 in the vehicle commits aggravated DUI. (See sanctions for aggravated DUI.) A.R.S. §28-1383(A)(3).

Other:

Driver Training Course: A person may be required to attend and successfully complete a driver-training course.
 A.R.S. §28-3306.

Probation: This is discretionary.

First or second offense (including .15 offenses) – 5 years;
Aggravated DWI Offenses – 10 years.

Probation may be extended if a condition of probation, such as restitution, is not met. A.R.S. §13-902.

Surcharges: Under A.R.S. §§12-116.01; 12-116.02, the court is to levy penalty assessments based on a percentage of the fine imposed. These surcharges may be waived if they create a hardship on the offender or his/her family.

Reimbursement: The court shall order misdemeanants sentenced to a jail term to reimburse for costs, and the court may require reimbursement for any public costs incurred

⁷¹ First offenders are eligible for community service after having served 1 day in jail. Second offenders are eligible for community service after they have served 20% of the initial term of incarceration. A.R.S. §§9-499.07(N); 11-459(M).

pursuant to defendant's case. A.R.S. §§13-804.01; 13-809.

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

Yes. \geq .08 (\geq .04 for Commercial Motor Vehicle operators; any drug or its metabolite found in the person's body except if such person possesses a valid prescription) **Suspension – Not less than **90 consecutive days** (30 consecutive days mandatory).⁷² A.R.S. §28-1385(A), (F), (G).**

The procedures of the *admin. per se* law also apply to persons under 21 who have been arrested for a violation of driving with any amount of "spirituous liquor" in the body under A.R.S. §4-244(34).

Other:

The Department may suspend/revoke a person's license for not more than 1 year if that person has committed an offense that usually requires license revocation. Such action may be taken without a preliminary hearing and could occur prior to a conviction. A.R.S. §§28-3306(A); 28-3315(A).

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

I. Except as noted in II, First offense (including .15 offenses) – **Suspension** for not less than **90 consecutive days or more than 1 year**;⁷³

Second offense (including .15 and .20 offenses) – **Revocation for 1 year**;⁷⁴

Aggravated DWI offenses – **Revocation for 1 year**.⁷⁵

A.R.S. §§28-1381(K); 28-1382(E); 28-1383(J); 28-1385; 28-1387(D); 28-3304(A); 28-3315.

II. Persons Under 18: A person < 18 convicted of a DWI offense or driving with any "spirituous liquor in the body" is subject to a **suspension for 2 years**. However, if that person is convicted of an Aggravated DWI offense he/she is subject to a **suspension for 3 years**. This licensing action is in addition to any other sanctions that may be imposed. Restricted driving privileges are available. A.R.S. §28-3320(A).

III. Persons \geq 18 but < 21: A person \geq 18 but < 21 convicted of driving with any "spirituous liquor in the body" is subject to a **suspension for 2 years**. This licensing action is in

⁷² For an administrative 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. A.R.S. §§28-1385(G); 28-1387(E).

⁷³ This licensing action does not apply to first and second offenders who have been suspended pursuant to the implied consent or administrative per se laws. A.R.S. §28-1387(D).

⁷⁴ A person convicted of a second offense within 84 months may be eligible for an ignition interlock restricted driver license after completing 45 days of the revocation period. A.R.S. §28-1381(O).

⁷⁵ Except homicide or aggravated assault resulting from the operation of a motor vehicle, for which the revocation period is 3 years. §§ 28-3304(A); 28-3315(E)(1).

addition to any other sanctions that may be imposed. Restricted driving privileges are available. Presumably such person would be subject to the same sanctions for a DWI as those > 21. A.R.S. §28-3322.

Term of Withdrawal:

Mandatory Minimum Term of Revocation:

ALL OFFENSES:

First offense – **90 consecutive days**,^{76,77}

Second offense – **1 year**;

Third and subsequent offense – **3 years**. A.R.S. §28-1381.

Alcohol Education:

Yes.⁷⁸ Mandatory for Aggravated DWI. A.R.S. §§28-1383(H); 28-1387(B).

Substance Abuse Treatment:

Yes – All offenses. A.R.S. §28-1387(B).

Vehicle Impoundment/Confiscation:

Forfeiture (Mandatory)

Authorized by Specific Statutory Authority:

The vehicle used in the offense and owned by the offender is forfeited for: (1) 3rd or subsequent DWI offense; (2) a DWI offense while transporting a child < 15; (3) a DWI offense while the license is still suspended or revoked for a prior DWI offense, or; (4) a DWI offense or refusal to submit to a breath, blood or urine test while required to have an ignition interlock device. A.R.S. §28-1384(A).

Terms Upon Which Vehicle Will Be Released:

N/A

Other Miscellaneous Sanctions:

Home Detention (Work Release): Only 1st and 2nd DWI offenders (including .15 offenders) are eligible for the home detention (or work release) program. However, before starting this program, 1st offenders must complete 1 day in jail and 2nd offenders must complete 20% of the initial term of incarceration. A.R.S. §§9-499.07(N); 11-459(M).

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. A.R.S. §§13-804.01; 28-1444.

EMS Costs: A person convicted of a DWI offense who as a result of such offense has negligently caused an accident that resulted in an emergency response is liable for the expenses associated with the response, not to exceed \$1,000 for a single accident. A.R.S. §28-1386(A), (B).

Ignition Interlock:

Permitted or Prohibited:

Permitted. A.R.S. §28-3319

⁷⁶ 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. A.R.S. §§28-1385(G); 28-1387(E).

⁷⁷ This suspension does not apply to first or second offenders who have been suspended pursuant to the implied consent or administrative per se laws. A.R.S. §28-1387(D).

⁷⁸ If a defendant has been ordered to participate in an alcohol education or treatment program, the license cannot be restored until he/she proves completion of such program. A.R.S. §28-3319(C).

Type of Law (Mandatory or Permissive):	Mandatory for all offenders (by the department of transportation); Permissive (by the courts).
Sanction (Judicial, Administrative or Hybrid)	Hybrid
Conditions of Use:	<u>Term:</u> 12 months for DWI conviction (< .20) 18 months for BAC ≥ .20 24 months for subsequent DWI with BAC ≥ .20, or aggravated DWI. A.R.S. §28-3319(D). Offender must provide proof of compliance at least once every 90 days. A.R.S. §28-1461. A.R.S. §§28-1321; 28-1381; 28-1382; 28-1401, <i>et seq.</i> ; 28-3319.
Other Provisions:	The court may order ignition interlock for more than 12 months beginning on the date of reinstatement of administratively revoked driving privileges. A.R.S. §§28-1381(K)(4); 28-1382(D)(5).
<u>Sobriety Checkpoints:</u> Permitted or Prohibited:	Permitted. <i>State v. Superior Court In and For Pima County</i> , 691 P.2d 1073 (Ariz. 1984).
<u>Homicide by Vehicle:</u> State Has Such a Law:	Yes. <i>See</i> A.R.S. §13-1102 and <i>State v. Venegas</i> , 669 P.2d 604 (Ariz. App. Div. 1 1983); A.R.S. § 13-1103 and <i>State v. Montoya</i> , 608 P.2d 92 (1980). Note. ⁷⁹
Imprisonment/Fine:	Negligent Homicide – Class 4 Felony. ⁸⁰ A.R.S. §13-1102. Manslaughter - Class 2 Felony. A.R.S. §13-1103.
Mandatory Minimum Term/Fine:	N/A
Authorized Licensing Action:	Revocation – 3 years. A.R.S. §§28-3304(A); 28-3315(E)(1). ⁸¹
Length of Term of Licensing Withdrawal:	N/A
Mandatory Minimum License Withdrawal:	N/A
Other:	N/A
<u>DWI Offenses and Commercial Motor Vehicles (CMV):</u>	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 has a BAC/BrAC ≥ .04, or is under the influence of intoxicating liquor or a controlled substance. For a subsequent violation,

⁷⁹ Additionally, I. A person who causes a death while committing certain traffic violations (failure to stop a red light, failure to yield to oncoming 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. A.R.S. §28-672(C), (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. A.R.S. §§13-701(D)(16); 13-702.

⁸⁰ A court may sentence a person found guilty of a felony crime to a mitigated term, minimum term, presumptive term, maximum term or aggravated term. These terms are listed in order of severity. The court will take into consideration any mitigating or aggravating factors of the crime or defendant when sentencing such person. The terms listed for the Class 2 and 4 felonies are the ranges set forth by A.R.S. §13-702(D), from mitigated term to aggravated term.

⁸¹ It appears that such a conviction would also trigger a 180-day license revocation pursuant to a civil penalty. A.R.S. §28-672(C).

the “disqualification” is for life.

A CMV operator is subject to normal DWI sanctions. Under the regular DWI law, it is illegal per se for a person to drive a CMV with a BAC/BrAC \geq .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 \geq .04. A.R.S. §§28-101(2); 28-1301; 28-1381(A)(4); 28-1385(A); 28-3312.

The State has also adopted Federal CDL disqualification (which are similar to the above actions) and out-of-service provisions via A.R.S. §28-5204(B). Under these provisions, a person holding a CDL must be placed “out-of-service” for 24 hours if operating a CMV with any measurable or detectable amount of alcohol in the system. 49 CFR §§383.51; 392.5.

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

A.R.S. §28-3473.

Note.⁸²

Class 1 misdemeanor – Not more than **6 months** and may be fined not more than **\$2,500**; A.R.S. §§13-707; 13-802.

Class 4 felony – Any DWI offense and driving on a suspended/revoked license for a previous DWI conviction (Aggravated DWI) – **1 year-3.75 years** and may be fined not more than **\$150,000**. A.R.S. §§13-702; 13-801; 28-1383.

Class 1 Misdemeanor offense – **None**. A.R.S. §28-3473.

Class 4 Felony offense – **4 months**. A.R.S. §28-1383(D).

Mandatory Minimum Fine/Imprisonment Term:

Administrative Licensing Action Type:

Withdrawal Action:

Class 1 Misdemeanor offense – None specified

Class 4 felony – **revocation**. A.R.S. §28-1383(J).

Class 4 Felony – **24 months**. A.R.S. §28-1383(J).

Mandatory Term of License Withdrawal Action:

Other:

The term above is mandatory.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Other State Laws Related to Alcohol Use:

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):

Yes. A.R.S. §28-668.

BAC Chemical Test Given to Deceased

Yes. A.R.S. §28-668.

⁸² 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: (1) a civil penalty of at least \$2,500 (first violation); \$5,000 (subsequent violation). [A.R.S. §28-5241(B), (D)(1), (F)]; (2) the following CDL disqualification periods: first violation – 180 days (mand); second violation (within 10 years) – 2 years (mand); 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); second or subsequent violation (within 10 years) – 3 years (mand). A.R.S. §28-3312(B), (C).

Driver Killed in Crash: BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash: BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	No No No
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes. A.R.S. §28-673.
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. A.R.S. §§4-101(18); 4-244(9), (16).
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. There is an exemption for religious services or ceremonies and for beer that is used for personal or family use that is not for sale. A.R.S. §§4-226(4), (5); 4-244(9), (41); 4-249.
<u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	Yes. A.R.S. §4-311. ⁸³
"Dram Shop Law" 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. ⁸⁴
Dram Shop Actions – Social Hosts:	Yes (Limited). Liability is limited to providing alcohol to persons < 21. A.R.S. §§4-301; 4-311; 4-312(B). ⁸⁵
Social Host – Criminal Enforcement:	Yes. A social host may be charged with contributing to the dependency or delinquency of a minor, a class 1 misdemeanor, punishable by not more than 6 months and/or not more than \$2,500. A.R.S. §§13-707; 13-802; 13-3613.
<u>Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
Type of Criminal Action:	Class 1 Misdemeanor. A.R.S. §§4-244(14); 4-246(B).
Imprisonment/Fine:	Not more than 6 months , and may be fined not more than \$2,500 . A.R.S. §§13-707; 13-802. For businesses, the fine may be not more than \$20,000 . A.R.S. §13-803. Surcharges: An offender is also subject to surcharges. A.R.S. §§12-116.01; 12-116.02.
<u>Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes. Suspension or revocation. ⁸⁶ A.R.S. §4-210(A)(9).

⁸³ A.R.S. §4-311 limits liability to situations where the injury-causing patron was obviously intoxicated or under the legal drinking age.

⁸⁴ *Ontiveros v. Borak*, 667 P.2d 200 (Ariz. 1983); *Brannigan v. Raybuck*, 667 P.2d 213 (Ariz. 1983). However, it should be noted that such cases have been superseded by A.R.S. §§4-311 and 4-312. See *Booth v. State*, 83 P.3d 61 (Ariz. 2004).

⁸⁵ See also *Estate of Hernandez v. Arizona Board of Regents*, 866 P.2d 1330 (Ariz. 1994); *Petolicchio v. Santa Cruz County Fair and Rodeo Ass'n, Inc.*, 866 P.2d 1342 (Ariz. 1994).

⁸⁶ In lieu of, or in addition to suspension or revocation, a licensee may be subject to a civil fine of not less than \$200 or more than \$3,000. A.R.S. §4-210.01.

Length of Term of License Withdrawal: Length of term not fixed.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the

Legal Drinking Age:

Type of Criminal Action:

Imprisonment/Fine:

Class 1 Misdemeanor.⁸⁷ A.R.S. §§4-244(9); 4-246(B). Not more than **6 months**, and may be fined not more than **\$2,500**. A.R.S. § 13-707; A.R.S. § 13-802. For businesses, the fine may be not more than **\$20,000**. A.R.S. §13-803. **Surcharges:** An offender is also subject to surcharges. A.R.S. §§12-116.01; 12-116.02.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes. Suspension or revocation A.R.S. §4-210(A)(9).

Length of Term License Withdrawal:

Length of term not fixed.

Anti-Happy Hour Laws/Regulations:

Yes.⁸⁸ A.R.S. §4-244(23).

Open Container Laws:

Open Container Law (Yes/No):

Yes. A.R.S. §4-251(A)(2).

Anti-Consumption Law (Yes/No):

Yes. A.R.S. §4-251(A)(1).

Alcohol Exclusion Law (UPPL):

Yes. A.R.S. §20-1368

⁸⁷ 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 under 21. The sanctions are jail for not more than 4 months, and a possible fine of less than \$750. A.R.S. §4-244(16); 4-246(A); 13-707; 13-802.

⁸⁸ The Arizona Court of Appeals 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 (A.C.A.)

Basis for a DWI Charge:

Standard DWI Offense:

Intoxicated.⁸⁹ A.C.A. §§5-65-102(1); 5-65-103(a).

Persons Under 21: Under the Influence.

A.C.A. §5-65-303(a).

≥ **.08**.⁹⁰ A.C.A. §5-65-103(a)(2).

Persons Under 21 – ≥ .02 but < .08.⁹¹

A.C.A. §5-65-303(a).

None. A.C.A. §5-65-206⁹²

Any Intoxicant or Controlled Substance.

A.C.A. §§5-65-102(3), (4); 5-65-103(a).

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC/BrAC):

Types of Drugs/Drugs and Alcohol:

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

No

Implied Consent Law:

Yes. A.C.A. §§5-65-202; 5-65-309(a).

Arrest Required (Yes/No):

No⁹³

Implied Consent Law Applies to Drugs

Yes. A.C.A. §5-65-202.

(Yes/No):

Refusal to Submit to Chemical Test

Yes – Criminal Cases. *Medlock v. State*, 964 S.W.2d 196

Admitted into Evidence:

(Ark. 1998); *Spicer v. State*, 799 S.W.2d 562 (Ark.App. 1990).

Other Information:

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the

Implied Consent Law:

Blood:

Yes. A.C.A. §5-65-202(a)

Urine:

Yes. A.C.A. §5-65-202(a)

Other:

Yes. Saliva. A.C.A. §5-65-202(a)

Adjudication of DWI Charges:

⁸⁹ The term “intoxicated” means influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant, or any combination thereof, to such a degree that the driver’s reactions, motor skills, and judgment are substantially altered and the driver, therefore, constitutes a clear and substantial danger of physical injury or death to himself/herself or another person. A.C.A. §5-65-102(4). The term “influence” means being controlled or affected by the ingestion of an alcoholic beverage or similar intoxicant or a combination thereof to a such a degree that a person’s reactions, motor skills, and judgment are altered or diminished, even to the slightest scale, and the underage driver, due to inexperience and lack of skill, constitutes a danger of physical injury or death to himself/herself or another person. A.C.A. §5-65-102(3). The term “controlled substance” means a drug, substance, or immediate precursor in Schedules I-IV. A.C.A. §5-65-102(1).

⁹⁰ Standard: Grams of alcohol per 100 milliliters or 100 cubic centimeters of blood; grams of alcohol per 210 liters of breath; the alcohol concentration of urine, saliva, or other bodily substance is based upon grams of alcohol per 100 milliliters or 100 centimeters of blood, the same being percent weight per volume or percent alcohol concentration. A.C.A. §§5-65-204(a).

⁹¹ Under A.C.A. §5-65-311(a), the sanctions for this offense are in addition to any other sanctions that may be applicable under other provisions of law. To complement this provision, A.C.A. §5-65-311(d) provides that a person under 21 may be prosecuted for a regular DWI offense if having a BAC > .04 but < .08.

⁹² A result of .08 or higher is a strict liability offense. A.C.A. §5-65-103.

⁹³ 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 (or driving under the influence or with a BAC ≥ .02 but < .08, for underage drivers). A.C.A. §§5-65-202(a); 5-65-309(a).

Mandatory Adjudication Law (Yes/No): **Yes.**⁹⁴ A.C.A. §5-65-107.
 Anti-Plea-Bargaining Statute (Yes/No): **Yes.** A.C.A. §5-65-107.
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes.** A.C.A. §5-65-109. The report must include the offender’s driving record, an alcohol problem assessment, and a victim impact statement (if applicable).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **N/A**
 Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **N/A**
 Preliminary Breath Test – Other: **N/A**

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **Note.**⁹⁵

Persons Under 21:⁹⁶

First offense – Not less than **\$100** or more than **\$500**;
Second offense – Not less than **\$200** or more than **\$1,000** and not less than **30 days** (mand) community service;
Third or subsequent offense – Not less than **\$500** or more than **\$2,000** and not less than **60 days** (mand) community service. The minimum fines appear to be mandatory. A.C.A. §§5-65-305(a); 5-65-306.

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev): First refusal – Suspension **180 days (mand)**;⁹⁷
Second refusal⁹⁸ (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). A.C.A. §§5-65-205(b); 5-65-402.

For Persons Under 21:

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).**

⁹⁴ Persons charged with a DWI offense must be tried on such charges or plead to such charges and no such charges shall be reduced. A.C.A. §5-65-107. For persons who are convicted of or who have pleaded guilty to or *nolo 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. A.C.A. §5-65-108(c). The same applies for persons under 21. A.C.A. §5-65-308.

⁹⁵ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

⁹⁶ There are no statutory provisions providing criminal sanctions for refusal to take implied consent chemical test for offenders 21 and older.

⁹⁷ 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. A.C.A. §5-65-120(a).

⁹⁸ However, A.C.A. §5-65-205(c) 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.

Implied Consent Chemical Test - Other: A.C.A. §5-65-310(b).
N/A

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine:

First offense – Not less than **24 hours** or more than **1 year** or community service in lieu of jail and not less than **\$150** or more than **\$1,000**;
Second offense (within 5 years) – Not less than **7 days** or more than **1 year**, or no fewer than 30 days community service and not less than **\$400** or more than **\$3,000**;
Third offense (within 5 years of 1st offense) – Not less than **90 days** or more than **1 year**, or no fewer than 90 days community service and not less than **\$900** or more than **\$5,000**;
Fourth offense (within 5 years of 1st offense) (Felony) – At least **1 year** but not more than **6 years** or not less than 1 year community service and not less than **\$900** or more than **\$5,000**;
Fifth or subsequent offense (within 5 years of the 1st offense) (Unclassified Felony) – At least **2 years** but not more than **10 years** or not less than 2 years community service and not less than **\$900** or more than **\$5,000**.
Sixth or subsequent offense (within 10 years of the 1st offense) (Class B Felony) – No less than **5 years** nor more than 20 years and a fine of up to \$15,000.
A.C.A. §§5-4-201; 5-4-401; 5-65-111; 5-65-112

For Persons Under 21:

First offense – Not less than **\$100** or more than **\$500**;
Second offense – Not less than **\$200** or more than **\$1,000**;
Third or subsequent offense – Not less than **\$500** or more than **\$2,000**. A.C.A. §5-65-305(a).

Mandatory Minimum Term/Fine:

The base fines above appear to be mandatory.

Community Service:

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 offense (within 5 years) – Not less than **2 years (mand)** in lieu of jail. A.C.A. §5-65-111(a), (b).
Sixth or subsequent offense (within 10 years) – Not less than **2 years** or more than 10 years in lieu of jail
II. Persons unable to pay a fine may be given community service as an alternative sanction. A.C.A. §5-65-114.

III. For Persons Under 21:

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)**. A.C.A. §5-65-306.

Restitution:

Yes. A.C.A. §§5-4-104(d)(4); 5-4-205; 16-90-307; 16-90-701, et seq.

Child Endangerment:

If Person Under 16 is Passenger:

First offense – Not less than **7 days** or more than **1 year** or community service in lieu of jail;

Second offense (within 5 years) – Not less than **30 days** or more than **1 year** or no fewer than 60 days community service;

Third offense (within 5 years of 1st offense) – Not less than **120 days** or more than **1 year** or no fewer than 120 days community service;

Fourth offense (within 5 years of 1st offense) (Unclassified Felony) – At least **2 years** but not more than **6 years** or not less than 2 years community service;

Fifth or subsequent offense (within 5 years of 1st offense) (Unclassified Felony) – At least **3 years** but not more than **10 years** or not less than 3 years community service.

Sixth or subsequent offense (within 10 years of 1st offense) (Class B Felony) - No less than **5 years** nor more than 20 years and a fine of up to \$15,000, or not less than **3 years** or more than 10 years community service.

A.C.A. §5-4-201; 5-4-401; 5-65-111; 5-65-112.

Other:

A defendant may have to pay assessments or fees.
A.C.A. § 5-65-115.

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

Yes.⁹⁹

First violation – **Suspension 6 months;**¹⁰⁰

Second violation (within 5 years) – **Suspension 24 months;**

Third violation (within 5 years) – **Suspension 30 months;**

Fourth or subsequent violation (within 5 years) –

Revocation 4 years. A.C.A. §5-65-104.

For Persons Under 21:

First offense – **Suspension 90 days;**

Second offense (while underage) – **Suspension 1 year (mand);**

Third or subsequent offenses (while underage)– **Revocation until the person reaches 21 or for 3 years whichever is longer (mand).**

A.C.A. §§5-65-120; 5-65-304(a), (b); 5-65-402.

⁹⁹ The administrative licensing action is reversed if the licensee is acquitted of the drunk-driving charges upon which such action was based. A.C.A. § 5-65-402(d)(2)(B).

¹⁰⁰ A person is eligible for a restricted license, per A.C.A. §5-65-120.

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

No specific licensing following a conviction under A.C.A. §5-65-103 (regular drunk-driving offenses) or A.C.A. §5-65-303 (.02 offense for persons < 21). It appears that licensing action is done through the administrative per se laws.^{101,102}

Term of Withdrawal:

N/A

Mandatory Minimum Term of Revocation:

None. If the Office of Driver Services allows the issuance of an ignition interlock restricted license, then such license shall be available immediately.
A.C.A. §5-65-104(a)(2)(B)(ii), (C)(ii); 5-65-118

Alcohol Education:

Yes. A.C.A. §§5-65-104(b); 5-65-115(a).¹⁰³
Persons under 21 who are convicted of “driving while under the influence” or with a BAC \geq **.02 but < .08**, or have refused to submit to a chemical test, must complete an alcohol and driving education program. This program must be completed before a person's license can be reinstated.
A.C.A. §5-65-307.

Substance Abuse Treatment:

No.

Vehicle Impoundment/Confiscation:

Forfeiture

Authorized by Specific Statutory Authority:

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

Terms Upon Which Vehicle Will Be Released:

N/A

Other Miscellaneous Sanctions:

I. License Plate Impoundment. License plates shall be impounded for no less than **90 days** if a driver has been arrested for driving while suspended/revoked where such suspension/revocation was based on an alcohol offense conviction.¹⁰⁴ A.C.A. §5-65-106.

II. Motor Vehicle Registration Suspension. A person who has had his/her license suspended or revoked for **ANY** drunk-driving offense (A.C.A. §§5-65-103; 5-65-303) or the CDL disqualified for driving a CMV in violation of the drunk-driving provisions of A.C.A. §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

¹⁰¹ Under separate law, a person convicted of any criminal offense involving the illegal possession or use of controlled substances must have the driving privileges suspended for 6 months. For extreme hardships, restricted driving privileges may be granted. A.C.A. §27-16-915.

¹⁰² In addition to any other sanctions provided by law, a person under 18 who is convicted of a DWI offense (including driving while under the influence of a controlled substance) must have the license suspended for either 12 months or until reaching 18 whichever is the longer suspension period. However, a restricted hardship driving permit is available for employment/educational purposes. A.C.A. §§5-64-710; 5-65-116; 27-16-914.

¹⁰³ An alcohol education/treatment program must be completed before a suspended/revoked license can be reinstated. A.C.A. §§5-65-115(b). Additionally, a reinstatement fee of \$100 must be paid. A.C.A. §27-16-508.

¹⁰⁴ 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.

action or for 1 year whichever is longer.¹⁰⁵

A.C.A. §§5-65-402; 5-65-403.

Highway Work Zone:¹⁰⁶ The fine is **doubled** if the offense is committed in a Highway Work Zone.

A.C.A. §27-50-408(b).

Ignition Interlock:

Permitted or Prohibited:

Type of Law (Mandatory or Permissive):

Sanction (Judicial, Administrative or Hybrid)

Conditions of Use:

Other Provisions:

Permitted.

Mandatory. The Office of Driver Services shall restrict an offender (alcohol-based violation only) to operating only a motor vehicle that is equipped with a functioning ignition interlock device. A.C.A. §§5-65-104; 5-65-118.

Administrative

Only offenders convicted of DWI (alcohol) are ordered to operate a motor vehicle that is equipped with an ignition interlock device. Any offender convicted of DWI (drugs) shall not be eligible to receive an ignition interlock restricted license. A.C.A. §§5-65-104; 5-65-118; 5-65-205.

An offender may drive only to and from work, school, and alcohol safety treatment or ignition interlock service. The restriction may continue up to 1 year after the person's license is no longer suspended or restricted.

A.C.A. §§5-65-104; 5-65-118.

A violation of the ignition interlock rules or protocols may be a class A misdemeanor, punishable by jail of up to 1 year and a fine of not more than \$2,500. Additionally, a violator shall have his restricted license revoked and original term of license suspension reinstated.

A.C.A. §5-65-118(d); 5-65-123.

Sobriety Checkpoints:

Permitted or Prohibited:

Homicide by Vehicle:

State Has Such a Law:

Imprisonment/Fine:

Mandatory Minimum Term/Fine:

Authorized Licensing Action:

Length of Term of Licensing Withdrawal:

Mandatory Minimum License Withdrawal:

Other:

Permitted. *Sheridan v. State*, 247 S.W.3d 481 (Ark. 2007).

Negligent homicide – Class B felony.

A.C.A. §§5-10-105(a); 27-50-307

Not less than **5 years** or more than **20 years** and not more than **\$15,000**. A.C.A. §§5-4-401(a)(3); 5-4-201(a)(1).

None

Revocation (mandatory). A.C.A. §§27-16-905(1); 27-50-307(b).

1 year. A.C.A. §27-16-912.

1 year. A.C.A. §§27-16-905(1); 27-16-912.

N/A

¹⁰⁵ If 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. A.C.A. §5-65-403(j).

¹⁰⁶ An additional fine 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 driving while intoxicated, under age driving while the influence and refusal to submit to a chemical test. A.C.A. §27-50-408(b)(1)(A), (e).

DWI Offenses and Commercial Motor Vehicles (CMV):

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 has a BAC/BrAC $\geq .04$, is intoxicated, or refuses to submit to a chemical test for an alcohol concentration.¹⁰⁷ For a subsequent violation or 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 Class B Misdemeanor to operate a CMV while intoxicated or with a BAC/BrAC $\geq .04$.

A.C.A. §§27-23-112; 27-23-114.

Sanctions:

First offense – Not more than **90 days** and not more than **\$1,000**;

Second offense – Mandatory community service for not less than 30 days in lieu of jail;

Third or subsequent offense - Mandatory community service for not less than 60 days in lieu of jail.

A.C.A. §§5-4-201; 5-4-401; 27-23-112; 27-23-114(g).

A person who is convicted of this offense must undergo an alcohol abuse assessment. A.C.A. §27-23-114(f).

In addition, persons who have any alcohol in the system must be placed “out-of-service” for 24 hours. A.C.A. §§27-23-103; 27-23-111; 27-23-112; 27-23-113; 27-23-114; 27-23-115.

Under separate provisions of law, persons may have the CDL suspended for 1 year if convicted of operating a CMV while under the influence of a controlled substance.

A.C.A. §§27-16-915(a), (b); 27-23-112(a).

DWI Offenses Involving Motor Vehicles Used in Commerce and Regulated Under the State's Motor Carrier Act.

A person commits a misdemeanor if that person operates a motor vehicle regulated under this act while possessing, using, or under the influence of intoxicating liquor, a controlled substance, or any substance that renders the person incapable of safely operating a motor vehicle. The sanctions for this offense are as follows:

First offense – not less than \$200 or more than \$1,000;

Second and subsequent offense – not less than \$500 or more than \$1,000. A.C.A. §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

¹⁰⁷ The CMV implied consent provision (A.C.A. §27-23-115(a)) applies to a test for both a blood alcohol concentration and drugs.

fine, that person may be given community service as an alternative sanction. A.C.A. §5-65-114.

Driving While License Suspended for DWI

Offense:

Criminal - Fine/Imprisonment:

Misdemeanor – Not less than **2 days** or more than **6 months** and not more than **\$1,000**. A.C.A. §§5-65-105; 27-16-303.

Mandatory Minimum Fine/Imprisonment Term:

10 days if suspension or revocation is based on a DWI charge. A.C.A. §5-65-105.

Administrative Licensing Action Type:

Suspension or Revocation. A.C.A. §27-16-303.

Withdrawal Action:

1 year

Mandatory Term of License Withdrawal Action:

Other:

Original suspension period is extended a like period. Original period of revocation is extended 1 year. A.C.A. §27-16-303.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Other State Laws Related to Alcohol Use:

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):

Yes. A.C.A. §§5-65-208(a); 5-65-202(b).

BAC Chemical Test Given to Deceased Driver Killed in Crash:

Yes¹⁰⁸

BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:

N/A

BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:

N/A

BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:

Yes – for drivers involved in accidents. A.C.A. §§5-65-202(a)(2); 5-65-208(a).

Minimum Age (Years) for Sale/Purchase of Alcohol:

21. A.C.A. §§3-3-202; 3-3-203. There is an exemption for family and religion.

Minimum Age (Years) for Possession/Consumption of Alcohol:

21. A.C.A. §3-3-203. There is an employment exemption for persons over 18. A.C.A. §3-3-204. **Note:** Under A.C.A. §3-3-203(a)(2), “intoxicating liquor, wine or beer in the body of a minor is deemed to be in his possession.”

Dram Shop and Social Host Laws:

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

Yes. A.C.A. §§16-126-103; 16-126-104; 16-126-105.

"Dram Shop Law" Has Been Adopted Via a Change to the Common Law Rule by Action

Yes. *See Jackson v. Cadillac Cowboy, Inc.*, 986 S.W.2d 410 (Ark. 1999); *Shannon v. Wilson*, 947 S.W.2d 349

¹⁰⁸ 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. A.C.A. §§5-65-202(b); 5-65-208(a); 5-65-309(b).

of the Highest Court of Record in the State
(Case Citation):

(Ark. 1997).

Dram Shop Actions – Social Hosts:

No. Social host liability is prohibited via statute.
A.C.A. §16-126-106.

Social Host – Criminal Enforcement:

A social host may be charged with contributing to the delinquency of a minor or contributing to the delinquency of a juvenile. Each is a class A misdemeanor, punishable by a term of not more than 1 year and/or a fine of not more than \$2,500. A.C.A. §§5-4-201; 5-4-401; 5-27-209; 5-27-220.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Misdemeanor for all offenses.¹⁰⁹

Imprisonment/Fine:

Package Sales:

(1) All alcoholic beverages except those noted below:

First offense – not less than **\$100** or more than **\$250**;

Second and subsequent offense – **6 months to 1 year** and **\$250 to \$500**.

(2) Beer and wine not in excess of 5% alcohol by weight:
first offense – not more than **6 months**.

On-Premises Consumption Sales:

(1) All alcoholic beverages except those noted below – not more than **6 months** and not more than **\$1,000**;

(2) beer (all types) – **none**; (3) wine not exceeding 14% – **10 to 30 days** and **\$100 to \$500**.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages

N/A

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Misdemeanor for all offenses (except as noted)

Imprisonment/Fine:

Package Sales:

(1) All alcoholic beverages except those noted below
(a) where “knowledge” is a factor¹¹⁰–

First offense (Class D felony) – **not more than 6 years** and not more than **\$10,000**;

Second offense (within 5 years) (Class C felony) – not less than **3 years** or more than **10 years** or **\$10,000**;

(b) where “knowledge” is not a factor –

First offense – **\$200 to \$500**;

¹⁰⁹ Citations: A.C.A. §§3-3-102; 3-3-103; 3-3-201; 3-3-202; 3-3-206, 3-3-208, 3-3-209; 3-4-301; 3-4-401 through 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; 5-4-201(a)(2); 5-4-401(4), (5).

¹¹⁰ *State v. Jarvis*, 427 S.W.2d 531 (Ark. 1968).

Second and subsequent offense – **not more than 1 year** and **\$500 to \$1,000**;

(2) beer and wine not in excess of 5 percent alcohol by weight – **not more than 1 year** and not more than **\$500**.

On-Premises Consumption Sales:

(1) All alcoholic beverages except those noted below – **not more than 6 months** and not more than **\$1,000**;

(2) beer and wine not in excess of 5 percent alcohol by weight – **not more than 1 year** and not more than **\$500**;

(3) wine not in excess of 14 percent – **10 to 30 days** and **\$100 to \$500**.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes. Under certain conditions.

Package Sales:

(1) All alcoholic beverages except those noted below – for two or more convictions – **Revocation**;¹¹¹

(2) beer and wine not in excess of 5 percent alcohol by weight – **1 year Revocation/Suspension**

On-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

Open Container Laws:

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

Yes. A.C.A. §5-71-212(c).

Alcohol Exclusion Law (UPPL):

Yes – Optional Provision. A.C.A. §23-85-126.

¹¹¹ Length of revocation/suspension is not specified in the statute.

STATE

CALIFORNIA

General Reference:

West's Annotated California Code (Cal. Vehicle Code)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of an alcoholic beverage.
Cal. Vehicle Code §§23152; 23153.

Illegal Per Se Law (BAC/BrAC):

≥ **.08**.¹¹² Cal. Vehicle Code §§23152(b); 23153(b);
≥ **.01** for persons under 21. Cal. Vehicle Code §23136
≥ **.08**. Cal. Vehicle Code §23610(a)(3).

Presumption (BAC/BrAC):

Types of Drugs/Drugs and Alcohol:

Under the influence of any drug or a combination of
alcoholic beverage and a drug. Cal. Vehicle Code §§23152;
23153.

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

Yes. Cal. Vehicle Code §23612(h).¹¹³

Persons under 21 who have been detained for operating a
motor vehicle with a blood alcohol concentration ≥ .01.
Cal. Vehicle Code §§13388; 23136(c).

Persons on probation for prior DWI conviction detained for
operating a motor vehicle with a BAC of .01% or higher. Cal.
Vehicle Code §§23154(c); 13389.

Implied Consent Law:

Yes. Cal. Vehicle Code §23612

Arrest Required (Yes/No):

Yes. Cal. Vehicle Code §23612. Detention with reasonable
cause for persons under 21. Cal. Vehicle Code §23136(c).

Implied Consent Law Applies to Drugs
(Yes/No):

Yes. Cal. Vehicle Code §23612(a)(1).

Refusal to Submit to Chemical Test

Yes - Criminal and Civil Cases.

Admitted into Evidence:

Cal. Vehicle Code §23612(a)(4).

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the

Implied Consent Law:

Blood:

Yes. Cal. Vehicle Code §23612(a)(1)(A).

Urine:

Yes (Limited). Cal. Vehicle Code §23612(a)(1)(B), (d)(2).

Other:

N/A

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. Cal. Penal Code
§1192.7(a)(2).

¹¹² Standard: Percent, by weight of alcohol in the blood, is based on grams of alcohol per 100 milliliters of blood, or grams of alcohol per 210 liters of breath. Cal. Vehicle Code §23152(b).

¹¹³ A PBT may be conducted without legislative authority. A.G. Opinion No. 88-1102, Oct. 26, 1989.

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

In addition, a criminal charge cannot be dismissed without the court's approval. Cal. Penal Code §1385. Under Cal. Vehicle Code §23635, the court must give the reasons a DWI charge was reduced to a lesser offense or was dismissed. **Yes.**¹¹⁴ (Mand for subsequent offenses and offenders whose BAC is .15 or more). Cal. Vehicle Code §23646, et seq.; Cal. Vehicle Code §23655.

Sanctions for Refusal to Submit to a Chemical Test:

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

None

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev):

Persons Under 21: Upon refusal by a person under age 21, or upon results of .01 or greater, an officer shall serve such person with a notice of suspension and take possession of the person's driver's license. Cal. Vehicle Code §13388(b).

Persons on DWI Probation: Upon refusal by a person on probation for DWI, or upon results of .01% or greater, an officer shall serve such person with a notice of suspension and take possession of the persons driver's license. Cal. Vehicle Code §13389(b).

First refusal – **Suspension 1 year** (mand);
Second refusal¹¹⁵ (within 10 years) – **Revocation 2 years** (mand);
Third and subsequent refusal¹¹⁶ (within 10 years) – **Revocation 3 years** (mand). Cal. Vehicle Code §§13353.1(a); 13353.8; 13388; 23136(c).
N/A

Preliminary Breath Test – Other:

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

Yes (Upon conviction for underlying DWI).¹¹⁷

DWI non-injury offenses:

First refusal – if probation is granted, the court must use the following sentence structure: mandatory 48 hours in jail, a fine of not less than \$390 and a 6-month license suspension;
Second refusal (within 10 years) – 96 hours additional custody;
Third refusal (within 10 years) – 10 days additional custody;
Fourth refusal (within 10 years) – 18 days additional custody.
Cal. Vehicle Code §23577(a)

¹¹⁴ Each county shall develop a PSI alcohol assessment program. Cal. Vehicle Code §23646.

¹¹⁵ Or a refusal within 10 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.

¹¹⁶ Or a refusal, where within 10 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 administrative per se license suspensions of any type.

¹¹⁷ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):

DWI injury offenses:

First refusal - 48 continuous hours in jail (mandatory);

Second refusal - 96 hours in jail (mandatory).

Cal. Vehicle Code §23577.

First refusal – **Suspension – 1 year** (mand);

Second refusal (within 10 years) – **Revocation – 2 years**¹¹⁸ (mand);

Third refusal (within 10 years) **Revocation – 3 years**¹¹⁹ (mand).

These sanctions also apply to persons under 21 who are arrested for a violation of Cal. Vehicle Code §23140 (driving with a BAC ≥ .05) and who refuse to submit to a test under the implied consent law. Cal. Vehicle Code §§13353; 13353.4(a); 23612(a)(1)(D).

Implied Consent Chemical Test - Other:

N/A

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine:

Non-Injury DWI Offenses are **misdemeanors**.

Cal. Vehicle Code §§23152; 40000.15.

Citations: Sanctions for violating the drunk-driving laws are codified under Cal. Vehicle Code §23536, *et seq.*

Non-Injury DWI Offense (with no previous DWI offenses¹²⁰)

– Not less than **96 hours** (at least 48 hours shall be continuous) or more than **6 months** and not less than **\$390** or more than **\$1,000**. Cal. Vehicle Code §23536(a).

Non-Injury DWI Offense (with one previous DWI offense within 10 years) – Not less than **90 days** or more than **1 year** and not less than **\$390** or more than **\$1,000**. Cal. Vehicle Code §23540.

Non-Injury DWI Offense (with two previous DWI offenses within 10 years) – Not less than **120 days** or more than **1 year** and not less than **\$390** or more than **\$1,000**. Cal. Vehicle Code §23546.

Non-Injury DWI Offense (with three previous DWI offenses within 10 years)¹²¹ – Not less than **180 days** or more than **1 year** and not less than **\$390** or more than **\$1,000**. Cal. Vehicle Code §23550.

Injury-Related DWI Offense (with no previous DWI offenses) – Not less than **90 days** or more than **1 year** in county jail and not less than **\$390** or more than **\$1,000**.

¹¹⁸ Or within 10 years, a person has been previously convicted of a DWI/Vehicle Homicide offense or had the license previously suspended/revoked for an admin. per se violation as of the date of refusal.

¹¹⁹ Or within 10 years, a person has been convicted of two or more DWI/Vehicle Homicide offenses or had the 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. Cal. Vehicle Code §13353(a)(3)(D).

¹²⁰ A previous offense includes Cal. Vehicle Code §§23152; 23153 (non-injury or injury DWI offenses). A guilty or nolo contendere plea to reckless driving (Cal. Vehicle Code §23103) instead of a DWI charge, is considered a previous DWI offense as well (Cal. Vehicle Code §23103.5(c)), as is a conviction for operating a vessel while under the influence. Cal. Harb. & Nav. Code §655.

¹²¹ A fourth or subsequent non-injury drunk-driving offense is a felony if the offender is sentenced to incarceration in the State prison. Cal. Penal Code §17; Cal. Vehicle Code §23550.

	<p>Cal. Vehicle Code §23554. <u>Injury-Related DWI Offense</u>¹²² (with one previous DWI offense within 10 years) –Not less than 120 days or more than 1 year in county jail and not less than \$390 or more than \$5,000.</p>
	<p>Cal. Vehicle Code §23560. <u>Injury Related DWI Offense</u>¹²³ (with two or more previous DWI offenses) – A term (in State prison) for 2, 3 or 4 years and not less than \$1,015 or more than \$5,000.</p>
	<p>Cal. Vehicle Code §23566. <u>DWI Offense with Great Bodily Injury</u> where there have been 4 or more previous DWI offenses within 10 years, an additional consecutive sentence of 3 years in the State prison. Cal. Vehicle Code §23566(c).</p>
Mandatory Minimum Term/Fine:	<p><u>Non-Injury DWI offense</u> (with no previous DWI offenses) – \$390. Cal. Vehicle Code §23538. <u>Non-Injury DWI offense</u> (with one previous DWI offense) – 10 days; or 96 hours (as 2 continuous periods of 48 hours) and \$390. Cal. Vehicle Code §23542. <u>Non-Injury DWI offense</u> (with two previous DWI offenses) – 120 days and \$390. Cal. Vehicle Code §23548. <u>Non-Injury DWI offense</u> (with three or more previous DWI offenses) – 180 days and \$390. Cal. Vehicle Code §23552. <u>Injury-related DWI offense</u> (with no previous DWI offenses) – 5 days and \$390. Cal. Vehicle Code §23556. <u>Injury-related DWI offense</u> (with one previous DWI offense) – 30 days and \$390. Cal. Vehicle Code §23562. <u>Injury-related DWI offense</u> (with two or more previous DWI offenses) – 1 year and \$390. Cal. Vehicle Code §23568.</p>
Community Service:	Yes . Cal. Penal Code §1203.1.
Restitution:	Yes . Cal. Penal Code §1203.1.
	<p><u>Injury-related DWI offenses</u>. Cal. Gov. Code §13950, <i>et seq.</i> (Victims' Assistance Fund).</p>
Child Endangerment:	<p>If any person is convicted of DWI and a minor under age 14 was in the vehicle at the time of the offense, the court shall impose the following penalties <i>in addition</i> to any other penalty: <u>First offense</u> – an additional 48 continuous hours in jail (mand); <u>Second offense</u> – an additional 10 days in jail (mand); <u>Third offense</u> – an additional 30 days in jail (mand); <u>Fourth offense</u> – an additional 90 days in jail (mand). Cal. Vehicle Code §23572.</p>

¹²² 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. Cal. Vehicle Code §23558.

¹²³ Also includes DWI offenses where there has been great bodily injury and there were 2 or more previous DWI offenses (injury/non-injury) within 10 years. Cal. Vehicle Code §23566(b).

Other:

A person may also be charged with child endangerment under Cal. Penal Code §273(a).¹²⁴

Prior Drunk-Driving Felony Offenses: A person (1) who has been convicted of a drunk-driving offense (injury or non-injury offense) with a prior conviction 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 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: (A) 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 consecutive hours of imprisonment or 10 days of community service are mandatory); (B) a fine of not less than \$390 nor more than \$1,000; and (C) 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 an 18-or 30-month alcohol rehabilitation program). Cal. Vehicle Code §§13352(a)(7); 23550.5; 23552; 23580; 23600.

Test Fee: The counties are authorized to impose on defendants a fee of not more \$50 for conducting an alcohol chemical test. Cal. Penal Code §1463.14.

EMS Cost: A person may be held liable for the cost of an emergency response that resulted from the negligent operation of a motor vehicle while under the influence of either alcohol or drugs. Cal. Govt. Code §53150, *et seq*; Cal. Penal Code §1203.1(l). 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. Cal. 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, and an assessment not to exceed \$100 may be imposed for PSI alcohol/drug evaluation. Cal. Vehicle Code §23649.

Special State Penalty (Fine): An additional State penalty of

¹²⁴ No punishment enhancement under Cal. Vehicle Code §23572 may be imposed if the person is also convicted of Cal. Penal Code §273(a) arising out of the same facts and incident.

\$10 is assessed against every defendant for every \$10 of a fine (or fraction thereof) actually imposed and paid by a defendant. Cal. Penal Code §§1463(1)(2); 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. Cal. Gov. Code §76000; Cal. Penal Code §1463(1)(2). As a condition of probation the court may require the defendant to pay costs of probation investigation, incarceration, and provision of parole supervision. Cal. Penal Code §§1203.1b; 1203.1c; 1203.1e.

Drunk Driver Visitation Program (Persons Under 21): For a first DWI non-injury offense or a violation of Cal. Vehicle Code §23140, a person, with his consent and as part of his probation, may be ordered by the court to visit trauma or hospital facilities to observe victims of accidents where alcohol was involved. In order to participate in this program, persons under 21 must agree not to drink alcoholic beverages until they are 21. Cal. 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 Cal. Vehicle Code §23580 (48 continuous hours or 10 days of community service) apply nevertheless. Cal. Penal Code §1203.016.

Juvenile Offenses Involving Alcohol: Under Cal. Vehicle Code §23136, it is unlawful for a person under 21 to operate a motor vehicle with a BAC of .01% or higher. (“Zero Tolerance”)

Under Cal. Vehicle Code §23140, it is unlawful for a person under 21 to operate a motor vehicle if having a BAC \geq **.05**. Offenders convicted of Cal. Vehicle Code §23140 who are at least 18 participate in 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). Cal. Health & Safety Code §§11836; 11837(c)(1); Cal. Vehicle Code §§13352.6; 23502.

ALL persons < 21 are subject to administrative license suspension if operating a motor vehicle with a BAC \geq **.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. Cal. Vehicle Code §13353.8.

A person under 18 who violates the regular DWI laws must also participate in either an alcohol education or rehabilitation program. Also, if such person fails to complete such programs, the license may be either suspended or revoked until either the person shows proof of completion or reaches 21. Cal. Vehicle Code §23520.

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

Persons 21 and Above – BAC ≥ .08 or Persons Under 21 – BAC ≥ .05/.01¹²⁵:

First violation: Suspension **4 months** (mand for persons under 21). A person 21 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 successful 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. Cal. Vehicle Code §§13353.3; 13353.7.

Second and subsequent violations:¹²⁶ (within 10 years) Suspension **1 year** (mand).^{127, 128, 129}

Cal. Vehicle Code §§13353.2; 13353.3; 13353.4(a); 13382.

Under separate provisions of law, persons under 21 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. Cal. Vehicle Code §§13353.3(b)(3); 13353.8; 23136.

Other:

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Suspension or Revocation.¹³⁰

¹²⁵ Based upon a person driving with a blood alcohol concentration ≥ .05 based on “percent by weight” of alcohol in the blood, with an alcohol concentration of .01 based on a preliminary breath test or “other chemical test.” Cal. Vehicle Code §13353.2(a).

¹²⁶ For purposes of determining whether a license sanction enhancement should be imposed, the following convictions are considered prior violations: any DWI offense; vehicular 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). Cal. Vehicle Code §13353.3(b)(2).

¹²⁷ 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. Cal. 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. See *Gikas v. Zolin*, 863 P.2d 745 (Cal. 1993).

¹²⁸ 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. Cal. Vehicle Code §13353.3(c).

¹²⁹ 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 (Cal. App. 1Dist., 1992). However, a restricted licensing period does not lessen the suspension period. *Piper v. Dept. of Motor Vehicles*, 182 Cal. Rptr.3d 200 (2014).

Term of Withdrawal:	<p>Postponement of Licensing Action: If an offender is sentenced to serve 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 released from incarceration. Cal. Vehicle Code §23665.</p> <p><u>Non-Injury DWI Offense</u> (with no previous DWI offenses) – Suspension – 6 months. Cal. Vehicle Code §§13352(a)(1); 23536.</p> <p><u>Non-Injury DWI Offense</u> (with one previous DWI offense) – Suspension - 2 years. Cal. Vehicle Code §§13352(a)(3); 23540.</p> <p><u>Non-Injury DWI Offense</u> (with two previous DWI offenses) – Revocation - 3 years. Cal. Vehicle Code §§13352(a)(5); 23546(a).</p> <p><u>Non-Injury DWI Offense</u> (with three or more previous DWI offenses) – Revocation - 4 years. Cal. Vehicle Code §§13352(a)(7); 23550.</p> <p><u>Injury-Related DWI Offense</u> (with no previous DWI offenses) – Suspension – 1 year. Cal. Vehicle Code §§13352(a)(2); 23554.</p> <p><u>Injury-Related DWI Offense</u> (with one previous DWI offense) – Revocation - 3 years. Cal. Vehicle Code §§13352(a)(4); 23560.</p> <p><u>Injury-Related DWI Offense</u> (with two or more previous DWI offenses) – Revocation - 5 years. Cal. Vehicle Code §§13352(a)(6); 23566.</p>
Mandatory Minimum Term of Revocation:	<p><u>Non-Injury DWI Offense</u> (with no previous DWI offenses)¹³¹ – 6 months.</p> <p><u>Non-Injury DWI Offense</u> (with one previous DWI offense) – 90 days (if the underlying conviction did not include use of drugs), otherwise 12 months.¹³²</p> <p><u>Non-Injury DWI Offense</u> (with two previous DWI offenses) – 18 months (12 months with ignition interlock).</p>

¹³⁰ If a person is involved in an accident and has a BAC \geq .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. Cal. 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 Cal. Vehicle Code §13352.3, a person who is < 18 and who is convicted of an alcohol driving offense is subject to a license revocation until 18 or for 1 year, whichever period is longer. Cal. Vehicle Code §13352. II. Under Cal. Vehicle Code §13202.5, a person who is \geq 13 but < 21 and who is convicted 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.” Cal. Vehicle Code §13202.5(c).

¹³¹ Driving privileges may be restricted for 90 days under certain probation conditions. Cal. Vehicle Code §§13352; 13352.5; 23538; Cal. Health & Safety Code §11837(a), (c), (d).

¹³² 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. Alternatively, 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. Cal. Vehicle Code §§13352(a)(3); 23542(b); Cal. Health & Safety Code §11837.

Alcohol Education:

Substance Abuse Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority:

Non-Injury DWI Offense (with three or more previous DWI offenses) – **18 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 offense) – **18 months (12 months with ignition interlock)**.

Injury Related DWI Offense (with two or more previous DWI offenses) – **18 months (12 months with ignition interlock)**. Cal. Vehicle Code §13352.

See Substance Abuse Treatment

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.^{133, 134} Cal. Vehicle Code §§23538, *et seq.*; 13352. The court may also require a “driving under the influence” program for 18 or 30 months. Cal. 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. Cal. Vehicle Code §23538; 23556; Cal. Health & Safety Code §11837(a) (c),(d).

Yes

Yes.

Temporary Impoundment: A law enforcement officer may “remove” from the highway any vehicle driven by a person who has been taken into custody or by a person under 21 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. Cal. Vehicle Code §22651.

Impoundment Upon Conviction:¹³⁵ A vehicle owned and driven by the offender may be impounded as follows for a DWI offense (non-injury/injury):

First offense – The court *may* order impoundment for not less than **1 day** or more than **30 days**;

Second offense (within 5 years) – The court *shall* order impoundment for not less than **1 day** or more than **30 days**;

Third or subsequent offense (within 5 years) – Not less than **1 day** or more than **90 days**. Cal. Vehicle Code §23594.

¹³³ 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. Cal. Penal Code §8001.

¹³⁴ First offenders who have been placed on probation and at the time of the offense had a BAC ≥ .20 or refused to submit to a chemical test must be placed in an alcohol education/counseling program for at least 6 months. Cal. Health & 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. Cal. Vehicle Code §23103.5.

¹³⁵ 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. Cal. Vehicle Code §§23594; 23596. Additionally, it appears that Cal. Vehicle Code §23594 concerns DWI offenses only. Whereas, Cal. Vehicle Code §23592 lists DWI offenses along with other types of offenses that would trigger impoundment.

Impoundment at Sentencing: The vehicle owned and driven by the offender may be impounded as follows for a DWI or other offense, as listed in the statute:

First offense – Not more than **6 months**;

Subsequent offense – Not more than **12 months**.

Cal. Vehicle Code §23592(a)(1).

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

Cal. Vehicle Code §23596.

N/A

Terms Upon Which Vehicle Will Be Released:

Other Miscellaneous Sanctions:

For the purpose of imposing enhanced sanctions, the court shall consider whether the offender’s blood alcohol level was $\geq .15$, the person refused to submit to a test under the implied consent law. Cal. Vehicle Code §23578.

Ignition Interlock:

Permitted or Prohibited:

Type of Law (Mandatory or Permissive):

Sanction (Judicial, Administrative or Hybrid)

Conditions of Use:

Permitted

Both

Hybrid

A court may order a first offender convicted of a DWI offense to operate only motor vehicles equipped with ignition interlock devices for not more than 3 years from the date of conviction. For first offenders with a BAC of **.15 or greater**, the court shall take into consideration the results of a county alcohol and drug problem assessment in determining the term. Cal. Vehicle Code §23575(a)(1).

A person convicted of driving while revoked for a DWI offense under §14601.2 shall be court ordered to install an ignition interlock device on any vehicle that the person owns or operates. Cal. Vehicle Code §23575(a)(2).

Additionally, if an offender convicted of a subsequent offense is granted restricted driving privileges, the licensing agency must require that offender to operate only motor vehicles equipped with ignition interlock devices.

Cal. Vehicle Code §13352(f).

Other Provisions:

Persons required to drive vehicles equipped with ignition interlock devices who drive without such device are considered to have driven without a license and may be immediately arrested, with vehicle impoundment for 30 days. Cal. Vehicle Code §14602.6(a)(1).

Sobriety Checkpoints:

Permitted or Prohibited:

Permitted. Cal. Vehicle Code §2814.1.

Homicide by Vehicle:

State Has Such a Law:

Yes. Vehicular Manslaughter.¹³⁶ Cal. Penal Code §§191.5; 192(c); 193.

Imprisonment/Fine:

Note¹³⁷

Gross Vehicular Manslaughter While Intoxicated^{138, 139} – Imprisonment in the State prison for **4, 6, or 10 years** and not more than **\$10,000**. Cal. Penal Code §191.5(a).

Vehicular Manslaughter While Intoxicated¹⁴⁰ – Imprisonment in the county jail for not more than **1 year**, or imprisonment in the State prison for **16 months** or **2 or 4 years** and not more than **\$10,000**. Cal. Penal Code §§191.5(b); 672.

Note: An offender could also be charged with murder upon facts exhibiting wantonness and a conscious disregard for life of any person.¹⁴¹

Mandatory Minimum Term/Fine:

None

Authorized Licensing Action:

Suspension or Revocation

Length of Term of Licensing Withdrawal:

1 year and until proof of financial responsibility provided. Cal. Vehicle Code §13350.

Mandatory Minimum License Withdrawal:

N/A

Other:

I. Vehicle Forfeiture. Cal. Vehicle Code §23596.
 II. Victims' Assistance Fund. Cal. Gov. Code §13959, *et seq.*
 III. See Special State Penalty (Fine) and Special County Penalty (Fine). Cal. Penal Code §§1463(l), (2); 1464(a); Cal. Vehicle Code §§1203.1(b), (c), (e); Cal. Gov. Code §76000.

¹³⁶ 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. An offender could be charged with murder upon facts exhibiting wantonness and a conscious disregard for life to support a finding of implied malice. Additionally, courts have recognized that an offender's previous encounters with the consequences of recklessness on the highway – whether provoked by the use of alcohol or of another intoxicant, among other things, sensitizes such offender to the dangerousness of such life-threatening conduct. Cal. Penal Code §§29.4; 188; 191.5 (e); *People v. Watson*, 637 P.2d 279 (Cal. 1981), superseded by statute on another point as stated in *People v. Bradford*, 22 Cal. App.4th 433, 439 (1994); *People v. Ortiz*, 109 Cal. App.4th 104, 112 (Cal. App.1Dist. 2003).

¹³⁷ 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. Cal. Vehicle Code §23558.

¹³⁸ This is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driver was intoxicated and the killing was either a proximate result of the commission of an unlawful, but non-felonious act and with gross negligence, or the proximate result of the commission of an unlawful act that might produce death, in an unlawful manner, and with gross negligence. Cal. Penal Code §191.5(a).

¹³⁹ Subsequent Offenses: A defendant convicted of this offense is subject to imprisonment from 15 years to life, if that person had a prior vehicle manslaughter offense with gross negligence, a prior vehicle-intoxicated manslaughter offense without gross negligence, a prior injury-related drunk-driving offense or a drunk-driving offense that was punished as a second or subsequent offense. Cal. Penal Code §191.5(d).

¹⁴⁰ This is the same as gross vehicular manslaughter *except* there is no gross negligence. Cal. Penal Code §191.5(b).

¹⁴¹ 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).

DWI Offenses and Commercial Motor Vehicles (CMV):

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).
Cal. Vehicle Code §§15300; 15302.

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. Cal. Vehicle Code §§23152(d); 23153(d); 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. Cal. Civ. Code §3333.7(a); Cal. Vehicle Code §34520(a).

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

Misdemeanor:

First offense – Not less than **10 days** or more than **6 months**, and not less than **\$300** or more than **\$1,000**;
Second and subsequent offenses¹⁴² (within 5 years) – Not less than **30 days** or more than **1 year**, and not less than **\$500** or more than **\$2,000**. Cal. Vehicle Code §14601.2.

Mandatory Minimum Fine/Imprisonment Term:

First offense – **10 days**;¹⁴³
Second and subsequent offenses (within 5 years) – **30 days**;
For a second or subsequent offense (within 7 but more than 5 years) – **10 days**. Cal. Vehicle Code §14601.2(d), (g).

Additionally, the court shall require a person convicted of a violation to install an ignition interlock device. Cal. Vehicle

¹⁴² A previous offense includes not only a prior conviction under Cal. Vehicle Code §14601.2, but also a violation of Cal. Vehicle Code §14601 (which prohibits driving after a license has been suspended or revoked for a reckless driving offense), Cal. Vehicle Code §14601.1 (the general prohibition against driving while a license is either suspended or revoked) and Cal. Vehicle Code §14601.5.

¹⁴³ 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. Cal. Vehicle Code §14601.4.

Administrative Licensing Action Type:	Code §§14601.2(h); 23575. 2 points are assigned to the driving record. Cal. Vehicle Code §12810(e)
Withdrawal Action:	N/A
Mandatory Term of License Withdrawal Action:	The following sanctions apply if a person was driving while the license was either suspended or revoked <u>and</u> where the basis for the licensing action was either an implied consent refusal or an admin. per se violation: <u>First offense</u> – Not more than 6 months and/or not less than \$300 ¹⁴⁴ or more than \$1,000 ; <u>Subsequent offense</u> (within 5 years) ¹⁴⁵ – Not less than 10 days (mand) or more than 1 year and not less than \$500 or more than \$2,000 . Cal. Vehicle Code §14601.5.
Other:	Vehicle Forfeiture. A vehicle is subject to forfeiture if it is driven by a person who has a suspended or revoked license, 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 who is the registered owner of such vehicle. However, the vehicle is not subject to forfeiture if there is a community property interest in the vehicle and it is the “only vehicle available to the driver’s immediate family.” Cal. Vehicle Code §14607.6.
<u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No):	Yes. Cal. Penal Code §193.7; Cal. Vehicle Code §§13350(b); 14601.3(a); 23546(b); 23550; 23550.5.
Grounds for Being Declared Habitual Offender:	A person is a “ habitual traffic offender ” for a period of 3 years, if that person: (1) commits a DWI-related vehicle homicide within 7 years of two or more separate violations of DWI offenses or reckless driving; (2) commits a DWI non-injury or injury offense and has two or more previous DWI offenses; (3) is sanctioned under Cal. Vehicle Code §23550 because that person has prior drunk driving felony offenses; or (4) accumulates a “driving record” ¹⁴⁶ while operating a vehicle when the license is either suspended or revoked. ¹⁴⁷
Term of License Revocations While on Habitual Offender Status:	1 year and proof of financial responsibility. Cal. Vehicle Code §13350(c).
Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status:	Misdemeanor. Cal. Penal Code §17; Cal. Vehicle Code §14601.3(e).

¹⁴⁴ This fine is usually mandatory. However, the court may reduce this fine in the “interests of justice.” Cal. Vehicle Code §14601.5(e).

¹⁴⁵ A previous offense includes a violation of Cal. Vehicle Code §14601 (which prohibits driving after a license has been suspended or revoked for a reckless driving offense), Cal. Vehicle Code §14601.1 (the general prohibition against driving while a license is either suspended or revoked) and Cal. Vehicle Code §14601.2 (which prohibits driving while a license is either suspended or revoked for a drunk driving offense).

¹⁴⁶ 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. Cal. Vehicle Code §14601.3(a).

¹⁴⁷ A declaration of “habitual offender status” on this basis automatically means a person may be subject to criminal sanctions.

Imprisonment (Term):	For “habitual traffic offender” status based on vehicle homicide or DWI offenses: 180 days imprisonment and a fine of \$2,000 . ¹⁴⁸ Cal. Vehicle Code §14601.3(e)(3).
	For “habitual traffic offender” status based on vehicle operation while suspension/revocation <u>and</u> after accumulating a “driving record”: <u>First offense</u> – 30 days and a fine of \$1,000 ; <u>Second and subsequent offenses</u> (within 7 years) – 180 days and a fine of \$2,000 . Cal. Vehicle Code §14601.3(e).
Mandatory Minimum Term/Fine: Licensing Action (Specify):	The terms above appear to be mandatory. N/A
<u>Other State Laws Related to Alcohol Use:</u>	
BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes . Cal. Gov. Code §27491.25; Cal. Vehicle Code §23612(a)(5).
BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	Yes
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	Yes
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	No
Minimum Age (Years) for Sale/Purchase of Alcohol:	21 . Cal. Bus. & Prof. Code §§25658; 25662.
Minimum Age (Years) for Possession/Consumption of Alcohol:	21 . Possession in a public place; exception, possession under 21 is legal if the minor is acting under a parent’s order. Cal. Bus. & Prof. Code §§25658; 25662.
<u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	Limited . The law is limited to the serving of alcoholic beverages to minors obviously intoxicated. Cal. Bus. & Prof. Code §§25602; 25602.1; Cal. Civ. Code §1714.
"Dram Shop Law" 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 . Cal. Bus. & Prof. Code §§25602(c); 25602.1; Cal. Civ. Code §1714.
Dram Shop Actions – Social Hosts:	No . Cal. Bus. & Prof. Code §§25602(c); 25602.1; Cal. Civ. Code §1714(c); <i>Strang v. Cabrol</i> , 691 P.2d 1013 (Cal. 1984).
Social Host – Criminal Enforcement:	A parent or legal guardian who: (1) knowingly permits his or her child, or a person in the company of the child, or both, who are under age 18 to consume an alcoholic beverage or use a controlled substance at home; and (2) knowingly permits that child or other underage person to drive a vehicle

¹⁴⁸ This penalty shall be consecutive to any other penalty imposed. Cal. Vehicle Code §14601.3 (e)(3).

with a blood alcohol concentration of **.05** percent or greater, or under the influence of a controlled substance, may be found guilty of a misdemeanor if that child causes a traffic collision. Cal. Bus. & Prof. Code §25658.2.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Misdemeanor. Cal. Bus. & Prof. Code §25602.

Imprisonment/Fine:

Not more than **6 months** and/or not more than **\$1,000**.

Cal. Bus. & Prof. Code §25617.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Yes. Suspension or revocation. Cal. Bus. & Prof. Code §24200.

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

The length of suspension/revocation is not fixed by statute.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Misdemeanor. Cal. Bus. & Prof. Code §25658(a).

Imprisonment/Fine:

\$1,000 and no less than **24 hours of community service.**¹⁴⁹

Cal. Bus. & Prof. Code §25658(e).

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages

Yes. Suspension or revocation. Cal. Bus. & Prof. Code §§24200; 25658.1(b).

Withdrawn (Yes/No):

Length of Term License Withdrawal:

The length of suspension/revocation is not fixed by statute.

Anti-Happy Hour Laws/Regulations:

No

Open Container Laws:

Open Container Law (Yes/No):

Yes. Cal. Vehicle Code §§23222; 23223; 23225; 23226.

Anti-Consumption Law (Yes/No):

Yes. Cal. Vehicle Code §§23220; 23221.

Alcohol Exclusion Law (UPPL):

No. Cal. Ins. Code §10369.12(b)

¹⁴⁹ Cal. Bus. & Prof. Code §25658(e)(3) provides that 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 no less than 6 months or more than 1 year and/or a fine of \$1000.

STATE

COLORADO

General Reference:

Colorado Revised Statutes (C.R.S.A.)

Basis for a DWI Charge:

Standard DWI Offense:

I. Under the influence of alcohol.

II. Impaired by alcohol.

C.R.S.A. §42-4-1301(1).

Illegal Per Se Law (BAC/BrAC):

≥ **.08**.¹⁵⁰

Persons Under 21 – BrAC only ≥ **.02 but ≤ .05**.

C.R.S.A. §42-4-1301(2).(d)(I)

Presumption (BAC/BrAC):

> **.05 but < .08** = permissible inference that person was driving while impaired.

≥ **.08** = permissible inference that person was driving under the influence. C.R.S.A. §42-4-1301(6)(a).

Types of Drugs/Drugs and Alcohol:

Any drug or a combination of alcohol and drugs¹⁵¹ (applies to both driving under the influence and driving while impaired).

C.R.S.A. §42-4-1301(1)(a), (b).

Other:

If a driver’s blood contained 5 nanograms or more of delta 9-tetrahydrocannabinol (marijuana) per milliliter in blood, such fact gives rise to a permissible inference that the driver was under the influence of one or more drugs. C.R.S.A. §42-4-1301(6)(a).

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

Yes. C.R.S.A. §42-4-1301(6)(i).

Implied Consent Law:

Yes.¹⁵² C.R.S.A. §42-4-1301.1.

Arrest Required (Yes/No):

No. However, probable cause is required.

Implied Consent Law Applies to Drugs (Yes/No):

C.R.S.A. §42-4-1301.1(2)(a)(I).

Yes. C.R.S.A. §42-4-1301.1(2)(b)(I).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal Cases. C.R.S.A. §42-4-1301(6)(d).

Other Information:

Note.¹⁵³

Non-Breath Chemical Tests for Alcohol

¹⁵⁰ Standards: Grams of alcohol per 100 milliliters of blood, or grams of alcohol per 210 liters of breath. C.R.S.A. §42-1-102(8.5).

¹⁵¹ A “drug” is defined as a substance intended to cure or prevent disease listed in the U.S. pharmacopoeia, a controlled substance or toxic vapor or vapors including, but not limited to, glue sniffing and aerosol inhalation. C.R.S.A. §§18-18-102; 18-18-412; 27-80-203(13) (a); 42-4-1301(1)(d).

¹⁵² Colorado calls this law an “express consent” law instead of an “implied consent” law. For example, any person who operates a motor vehicle in Colorado is “deemed to have expressed such person’s consent” to submit to chemical test of either his/her blood, breath, urine, or saliva.

¹⁵³ In Colorado, technically the Statutes provide that a law enforcement officer may physically restrain any person who refuses when he has probable cause to believe that the person committed criminally negligent homicide, vehicular homicide, 3rd degree assault or vehicular assault. C.R.S.A. §42-4-1301.1(3). The Statutes further provide that person’s blood may be taken by force if there is probable cause that the person committed an alcohol-related driving offense, or there is a clear indication that the blood sample will provide evidence of the level of intoxication. Exigent must circumstances exist and the test must be reasonable and conducted in a reasonable manner. *People v. Shepherd*, 906 P. 2d 607 (Colo. 1995). However, these legislative exceptions to the search warrant requirement should be relied upon with caution in light of the United States Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

Concentration Authorized Under the Implied Consent Law:

Blood: **Yes** – Alcohol and Drugs. C.R.S.A. §42-4-1301.1(2)(a)I, (b)I
 Urine: **Yes** – For Drugs only. C.R.S.A. §42-4-1301.1(2)(b)I
 Other: **Saliva** – For Drugs only. C.R.S.A. §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. C.R.S.A. §§18-1.3-101; 18-1.3-102.
 Anti-Plea-Bargaining Statute (Yes/No): **Yes.**¹⁵⁴ C.R.S.A. §42-4-1301(4).
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes.** Alcohol and Drug Evaluations may be required. C.R.S.A. §42-4-1301.3(1).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **No**
 Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **No**
 Preliminary Breath Test – Other: **N/A**
 Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**
 Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev): **First refusal – Revocation 1 year (mand);
 Second refusal – Revocation 2 years;
 Third or subsequent refusal – Revocation 3 years.**
 C.R.S.A. §42-2-126(3)(c).
 Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine: **First offense driving under the influence/illegal per se (misdemeanor) – Not less than 5 days¹⁵⁵ or more than 1 year and not less than \$600 or more than \$1,000;
 BAC ≥ .20 – Not less than 10 days or more than 1 year.**
 C.R.S.A. §42-4-1307(3).
**First offense driving while ability impaired (misdemeanor) – Not less than 2 days or more than 180 days and not less than \$200 or more than \$500;
 BAC ≥ .20 – Not less than 10 days or more than 1 year.**

¹⁵⁴ 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. C.R.S.A. §42-4-1301(4).

¹⁵⁵ The court may suspend the mandatory minimum period if, as a condition of the suspended sentence, the offender undergoes a pre-sentence or post-sentence alcohol and drug evaluation and satisfactorily completes and meets all financial obligations of a level I or level II program. C.R.S.A. §42-4-1307(3)(a)I.

C.R.S.A. §42-4-1307(4).

Second or subsequent offense of DUI, DUI per se, DWAI, or habitual user – Not less than **10 days** or more than **1 year** and not less than **\$600** or more than **\$1,500**. BAC > .20 – Not less than **10 days** or more than **1 year**. C.R.S.A. §42-4-1307(5).

Third or subsequent offense of DUI, DUI per se, DWAI, or habitual user – Not less than **60 days** or more than **1 year** and not less than **\$600** or more than **\$1,500**.
C.R.S.A. §42-4-1307(6).

Mandatory Minimum Term/Fine:

Injury-Related DWI Offense (Vehicle Assault) (Class 4 felony) – **2 to 6 years** and **\$2,000 to \$500,000**.

C.R.S.A. §§18-1.3-401; 18-3-205(1)(b), (c).

Driving Under the Influence/Illegal per se:

First offense– **5 days**;¹⁵⁶

Second offense – **10 days**.

Subsequent offense – **60 days**.

C.R.S.A. §42-4-1307(3), (4), (5), (6).

Driving While Impaired:

First offense– **2 days**;

Second offense – **10 days**;

Subsequent offense – **60 days**.

C.R.S.A. §42-4-1307(3), (4), (5), (6).

Community Service:

Injury Related DWI Offense (Vehicle Assault) (Class 4 felony) – **1 year**. C.R.S.A. §18-1.3-401(6).

Driving under the influence/illegal per se:

First offense – Not less than **48 hours** or more than **96 hours**.

C.R.S.A. §42-4-1307(3).

Subsequent offense of DUI, DUI per se, or habitual user¹⁵⁷ –

Not less than **48 hours** or more than **120 hours**. C.R.S.A. §42-4-1307(5), (6).

Driving While Impaired:

First offense– Not less than **24 hours** or more than **48 hours**.

C.R.S.A. §42-4-1307(3).

Subsequent offense– Not less than **48 hours** or more than **120 hours**. C.R.S.A. §42-4-1307(5), (6).

Persons assigned to community service must pay a fee of no more than \$120. C.R.S.A. §§42-4-1307(14); 42-4-1301.4(5).

Restitution:

Yes

I. Court costs which credit the crime victim compensation fund. C.R.S.A. §24-4.1-119(1).

¹⁵⁶ Note: The mandatory 5-day sentence may be suspended if the offender undergoes a pre-sentence or post-sentence alcohol and drug evaluation and satisfactorily completes and meets all financial obligations of the program. C.R.S.A. §42-4-1307.

¹⁵⁷ But where there has been a conviction for a driving while impaired offense.

II. A defendant may be ordered to pay restitution as part of the sentence. C.R.S.A. §§18-1.3-205; 18-1.3-601.

Other Penalties:

I. A penalty surcharge of not less than \$100 or more than \$500 shall be imposed on all DUIs.

II. A penalty surcharge of \$20 for the traumatic brain injury trust fund.

III. A penalty surcharge of not less than \$1 or more than \$10 for programs to address alcohol and substance abuse problems. C.R.S.A. §42-4-1307(10).

Child Endangerment:

Knowingly or recklessly committing an act that either kills or injures a child (< 16) is child abuse.

If death results, it is a Class 2 felony, which carries a term of **8-24 years** in prison and/or a fine of **\$5,000 – \$1,000,000**.

If injury results, it is a Class 3 felony, which carries a term of **4-12 years** in prison and/or a fine of **\$3,000 – \$750,000**.

Mandatory parole is 5 years for both felonies.

C.R.S.A. §§18-1.3-401; 18-6-401(1), (2), (7)(a)(I), (III); *People v. Deskins*, 927 P. 2d 368 (Colo 1996).

Other:

Mandatory Parole: Persons who have been convicted of Vehicle Assault must be placed on parole for 3 years.

C.R.S.A. §18-1.3-401(1)(a)(V)(A).

Administrative Sanctions –Pre-Conviction:

Administrative Per Se Law:

Yes ≥ .08 (BAC/BrAC):

First Violation – Revocation – **9 months**;¹⁵⁸

Second – Revocation – **1 year**;

Third or subsequent violation – Revocation – **2 years**.¹⁵⁹

C.R.S.A. §§42-2-126(3)(a)(I); 42-2-126(6)(b).

If the person is also convicted of a DWI offense, the licensing actions for the admin. per se violation and for the DWI conviction may run concurrently. C.R.S.A. §42-2-125(5).

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

I. Driving while under the influence and illegal per se – Suspension/Revocation.

II. Driving while impaired – Suspension/Revocation.^{160,161}

¹⁵⁸ The revocation periods for admin. per se violations are mandatory, except that a person may apply for a restricted license, under C.R.S.A. §42-2-132.5.

¹⁵⁹ The revocation periods for admin. per se violations are mandatory, except that a person may apply for a restricted license, under C.R.S.A. §42-2-132.5.

¹⁶⁰ For driving while under the influence, 12 points and, for driving while impaired conviction, 8 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 driving while under the influence – first offense) but a probationary/restricted license may be issued. C.R.S.A. §§42-2-127(1)(a), (5), (12), (14); 42-2-132(1).

III. Injury Related DWI Offense (Vehicle Assault) – Revocation.

Term of Withdrawal:	C.R.S.A. §42-2-125. Driving while under the influence and illegal per se – Not less than 9 months ; Driving while impaired – Not less than 1 year . ^{162,163,164} Injury-Related DWI Offense (Vehicle Assault) – 1 year. C.R.S.A. §§42-2-125(1), (2); 42-2-132(2).
Mandatory Minimum Term of Revocation:	Driving while under the influence and illegal per se – None . ¹⁶⁵ Driving while impaired – None . ^{166,167} Injury-Related DWI Offense (Veh. Assault) – 1 year. C.R.S.A. §42-2-132.
Alcohol Education:	Yes. C.R.S.A. §§42-2-126(4); 42-2-132(2)(a)(II); 42-4-1301.3.
Substance Abuse Treatment:	Yes. C.R.S.A. §§42-2-126 (4); 42-2-132(2)(a)(II); 42-4-1301.3.
Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority: Terms Upon Which Vehicle Will Be Released:	Yes. ¹⁶⁸
Other Miscellaneous Sanctions:	I. A DWI offender may be sentenced to attend a “victim impact panel” and assessed an attendance fee of not more than \$25. C.R.S.A. §42-4-1307(12). II. A DWI offender is required to pay \$75 (deposited into the Law Enforcement Assistance Fund) and \$15 (deposited into the county treasury). C.R.S.A. §43-4-402(1).

¹⁶¹ A conviction for 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 results in revocation. C.R.S.A. §§42-2-125(1)(g); 42-2-132(2). A conviction for 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 results in revocation. C.R.S.A. §42-2-125(1)(i).

¹⁶² If the first offender is a minor, a person under 21, the license must be revoked for 1 year. C.R.S.A. §§42-2-125(g); 42-2-132(2).

¹⁶³ A conviction for 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 results in revocation for 1 year. C.R.S.A. §§42-2-125(1)(g); 42-2-132(2). A conviction for 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 results in revocation for an indefinite period. C.R.S.A. §42-2-125(1)(i).

¹⁶⁴ 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. C.R.S.A. §§42-2-125(1)(b), (2); 42-2-132(2).

¹⁶⁵ A probationary-restricted license may be issued for reasons of employment/alcohol education, et al. This license is renewable for additional 1-year periods, except if the person is designated a “persistent drunk driver” (i.e., has a BAC ≥.15) any probationary license must require ignition interlock for at least one year. C.R.S.A. §42-2-127(12), (14).

¹⁶⁶ If the first offender is a person under 21, his/her license must be revoked for a 1-year period. C.R.S.A. §§42-2-125(1)(g); 42-2-132(2).

¹⁶⁷ I. A conviction for 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 results in a mandatory 1-year revocation (notwithstanding participation in an ignition interlock program). C.R.S.A. §§42-2-125(1)(g); 42-2-132(2). II. A conviction for 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 results in revocation for 2 years (1 year mandatory notwithstanding participation in an ignition interlock program). C.R.S.A. §41-2-125(1)(i). III. Early reinstatement (C.R.S.A. §42-2-132.5(4)): A person who has had his/her driving privileges revoked for 1 month or more for driving while impaired, under the influence or illegal per se, or for an admin per se violation, is eligible to apply for early reinstatement with an interlock-restricted license after the person’s privilege to drive has been revoked for 1 month (except a person under age 21, who must wait 1 year).

¹⁶⁸ A vehicle used by its owner in the commission of a felony would be classified as a Class 1 public nuisance and may be subject to forfeiture. C.R.S.A. §16-13-302, 16-13-303(1)(i).

III. Misdemeanor offenders are assessed a surcharge of 37% of the fine imposed, or \$78 (misd.), \$46 (Class 1 misd. traffic) or \$33 (Class 2 misd. traffic), whichever amount is greater. Felony offenders are assessed a surcharge of 37% of the fine imposed or \$163, whichever amount is greater.

C.R.S.A. §24-4.2-104(1)(a)(I)

IV. 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. C.R.S.A. §42-4-1717.

Ignition Interlock:

Permitted or Prohibited:

Type of Law (Mandatory or Permissive):

Sanction (Judicial, Administrative or Hybrid)

Conditions of Use:

Permitted

Mandatory

Administrative

Ignition interlock is both mandatory and available depending on the circumstances of the driver/offender. For example, if a person has an ignition interlock device installed in his/her vehicle, the terms under which his/her license has been revoked may be reduced. C.R.S.A. §42-2-126.

For an impaired, under the influence, illegal per se offense or 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, or an excess BAC (≥ .15) 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. C.R.S.A. §42-2-132.5

Other Provisions:

Courts are “encouraged” to require use of ignition interlock as a condition of bond, probation and participation in programs. C.R.S.A. §42-4-1307(8).

Sobriety Checkpoints:

Permitted or Prohibited:

Permitted. *People v. Rister*, 803 P.2d 483 (Colo. 1990); *Orr v. People*, 803 P.2d 509 (Colo. 1990).

Homicide by Vehicle:

State Has Such a Law:

DWI Vehicle Homicide – Class 3 felony.

C.R.S.A. §18-3-106(1)(b), (c).

Imprisonment/Fine:

Class 3 felony – 4 to 12 years (8-24 years if the victim was a pregnant woman and defendant *knew or should have known* this fact) and **\$3,000 to \$750,000**. C.R.S.A. §§18-1.3-401(1)(a), (13).

Mandatory Minimum Term/Fine:

None

Authorized Licensing Action:

Revocation. C.R.S.A. §§42-2-125(a); 42-2-128.

Length of Term of Licensing Withdrawal:

1 year. C.R.S.A. §42-2-132(2)(a).

Mandatory Minimum License Withdrawal:

1 year. C.R.S.A. §42-2-132(2)(a).

Other:

Class 3 felony – Mandatory parole for 5 years.

C.R.S.A. § 18-1.3-401(a).

Persons Under 21:

Infraction/Misdemeanor. A person < 21 who operates a motor

vehicle with a BAC/BrAC \geq .02 but \leq .05:

First Offense (Class A Traffic Infraction) – **\$15 penalty and revocation for 3 months;**

Second or subsequent offense (Class 2 Traffic Misdemeanor) – **10-90 days imprisonment** and/or **\$150-\$300**, and revocation for **6 months** (2nd offense) or **1 year** (3rd or subsequent offense). C.R.S.A. §§42-2-125(1)(g.5), (2.5); 42-4-1301(2)(d); 42-4-1701(3)(a).

DWI Offenses and Commercial Motor Vehicles (CMV):

Any person who holds a commercial driver’s license or who drives a commercial motor vehicle is subject to the same disciplinary actions and penalties as listed above for all DWI offenses, except a person who drives a commercial motor vehicle transporting hazardous materials under the influence of a controlled substance or commits a felony is subject to a three-year license revocation. C.R.S.A. §42-2-405(1); 42-2-125(1)(b), (1)(c), (2).

A person who drives, operates, or is in physical control of a commercial motor vehicle while having *any* alcohol in his/her system, or who refuses to submit to a breath or blood test, shall be placed out of service. C.R.S.A. §42-2-405(2).

Any person who violates an out of service order commits a Class 1 traffic misdemeanor. C.R.S.A. §42-2-405.5.

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

Misdemeanor:

First offense – Not less than **30 days** or more than **1 year** and may be fined not less than **\$500** or more than **\$1,000**;

Second and subsequent offenses – Not less than **90 days** or more than **2 years** and may be fined not less than **\$500** or more than **\$3,000**. C.R.S.A. §42-2-138(1)(d)(I).

The minimum terms listed above are mandatory. The fines are discretionary. C.R.S.A. §42-2-138(1)(d)(I).

Mandatory Minimum Fine/Imprisonment Term:

Administrative Licensing Action Type:

Withdrawal Action:

For a second or subsequent offense within 5 years, the driver is not “eligible” for driving privileges for a period of **4 years** after such second or subsequent conviction.

C.R.S.A. §42-2-138(1)(e).

Mandatory Term of License Withdrawal Action:

Second and subsequent offenses – **4 years**

C.R.S.A. §42-2-138(1)(e).

Other:

N/A

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. C.R.S.A. §42-2-201.

Grounds for Being Declared Habitual Offender:	(1) 3 or more serious offenses in 7 years ¹⁶⁹ ; (2) 10 or more convictions for offenses of 4 points ¹⁷⁰ or more within 5 years; or (3) 18 or more convictions of 3 points ¹⁷¹ or less within 5 years. C.R.S.A. §42-2-202.
Term of License Revocations While on Habitual Offender Status:	Revocation – 5 years. C.R.S.A. §42-2-205.
Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status:	Class 1 Misdemeanor. ¹⁷² C.R.S.A. §42-2-206(1)(a)(I).
Imprisonment (Term):	6 to 18 months and/or \$500 to \$5,000. C.R.S.A. §18-1.3-501.
Mandatory Minimum Term/Fine:	30 days and/or \$3,000. ¹⁷³ C.R.S.A. §42-2-206(1)(a)(II).
Licensing Action (Specify):	None
 <u>Other State Laws Related to Alcohol Use:</u>	
BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes. C.R.S.A. §§42-4-1301.1(8); 42-4-1304.
BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes. C.R.S.A. §§42-4-1301.1(8); 42-4-1304(1).
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	Yes – only if the driver cannot be immediately determined. C.R.S.A. §42-4-1304(1).
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	Yes – 15 or older. C.R.S.A. §42-4-1304(1).
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	No
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. C.R.S.A. §12-47-901(1)(a.5).
Minimum Age (Years) for Possession/Consumption of Alcohol:	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. C.R.S.A. §§12-47-901(1)(c); 18-13-122(5)(a), (6).

¹⁶⁹ These include DUI, DUI per se or DWAI, reckless driving, driving on suspended or revoked license, vehicular assault and vehicular homicide, etc. C.R.S.A. §42-2-202(2)(a).

¹⁷⁰ These include DUI/DUI per se, habitual user, DWAI, UDD, certain speeding offenses, reckless and careless driving. C.R.S.A. §42-2-127(2)(b)(5).

¹⁷¹ These include certain speeding offenses and various traffic infractions. C.R.S.A. §42-2-127(2)(b)(5).

¹⁷² 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 a drunk-driving offense, reckless driving, eluding a police officer, or a violation of the accident reporting requirements. C.R.S.A. §42-2-206(1)(b)(I), (II). Sanctions: 1 year to 18 months imprisonment (mandatory parole for 1 yr.) and \$1,000 – \$100,000 in fines. C.R.S.A. §18-1.3-401(1)(a). Vehicle Forfeiture: A vehicle used in the commission of a “felony” is subject to *in rem* civil forfeiture. C.R.S.A. §§16-13-302; 16-13-303(1)(i). Under this law, the State is able to seize a driver’s vehicle based upon the offense of driving after license revocation. The driver may be subjected to criminal prosecution for such behavior. This does not constitute double jeopardy. *People v. Ferrel*, 929 P.2d 65 (Colo.App. 1996).

¹⁷³ A person must be sentenced to 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 no less than 40 (mandatory) hours or no greater than 300 hours of community service. C.R.S.A. §42-2-206(1)(a)(II).

Dram Shop and Social Host Laws:

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

Yes. C.R.S.A. §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.^{174,175}

"Dram Shop Law" 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. C.R.S.A. §12-47-801(1).

Dram Shop Actions – Social Hosts:

Yes (Limited). C.R.S.A. §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.

Social Host – Criminal Enforcement:

Any person convicted of providing alcohol to an underage person or allowing an underage person to use an adult’s identification to purchase alcohol commits a Class 2 misdemeanor, and is subject to the following punishment: **3-12 months in jail** and/or **\$250-\$1,000 fine**. C.R.S.A. §§12-47-901; 12-47-903(2); 18-1.3-501(1)(a).

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Class 2 Misdemeanor. C.R.S.A. §§12-47-901(1)(a), (5)(a)(1); 12-47-903(2).

Imprisonment/Fine:

3-12 months and/or **\$250 -\$1,000**. C.R.S.A. §18-1.3-501(1)(a).

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Suspension or Revocation. C.R.S.A. §12-47-601(1).

Length of Term of License Withdrawal:

Suspension – Not more than **6 months**;¹⁷⁶ **Revocation** – Period not specified in the statutes. C.R.S.A. §12-47-601.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Class 2 Misdemeanor. C.R.S.A. §§12-47-901(1)(a), (5)(a)(1); 12-47-903(2).

Imprisonment/Fine:

3-12 months and/or **\$250-\$1,000**. C.R.S.A. §18-1.3-501(1)(a).

Administrative Actions Regarding Establishments That Serve Alcohol to

¹⁷⁴ A separate dram shop law, C.R.S.A. §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 C.R.S.A. §13-21-102.5.

¹⁷⁵ Damages awards are limited to \$150,000, but are adjusted each year to account for inflation. C.R.S.A. §12-47-801(3)(c),(4)(c), (5)(a).

¹⁷⁶ Summary suspension is allowed for not more than 15 days. C.R.S.A. §12-47-601(2).

Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes – Suspension or Revocation. C.R.S.A. §12-47-601(1).

Suspension – Not more than **6 months**; **Revocation** – Period not specified in the statutes. C.R.S.A. §12-47-601.

Anti-Happy Hour Laws/Regulations:

No

Open Container Laws:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes. C.R.S.A. §§42-4-1305; 42-4-1305.5.

Yes. C.R.S.A. §§12-47-901(1)(h); 42-4-1305.5.

Alcohol Exclusion Law (UPPL):

No. C.R.S.A. §10-16-201(6)

STATE

General Reference:

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC/BrAC):

Types of Drugs/Drugs and Alcohol:

Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to Drugs
(Yes/No):Refusal to Submit to Chemical Test Admitted
into Evidence:Non-Breath Chemical Tests for AlcoholConcentration Authorized Under the Implied
Consent Law:

Blood:

Urine:

Other:

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

Anti-Plea-Bargaining Statute (Yes/No):

Pre-Sentencing Investigation Law (PSI)
(Yes/No):Sanctions for Refusal to Submit to a
Chemical Test:Refusal to Take a Preliminary Breath Test -
Criminal Sanction (Fine/Jail):

Refusal to Take a Preliminary Breath Test –

CONNECTICUT

Connecticut General Statutes Annotated (C.G.S.A.)¹⁷⁷

Under the influence of intoxicating liquor.

C.G.S.A. §14-227a(a).

≥ **.08**.¹⁷⁸ C.G.S.A. §14-227a(a)(2).**Persons Under 21:** BAC ≥ **.02**.¹⁷⁹ C.G.S.A. §14-227g(a).Under the influence of any intoxicating liquor or any drug
or both. C.G.S.A. §14-227a(a).**No****Yes.** C.G.S.A. §14-227b.**Yes.** C.G.S.A. §14-227b.**Yes.** C.G.S.A. §14-227b(b).**Yes** – Criminal Cases. C.G.S.A. §§14-227a(e); 14-227b(b).**Yes.** C.G.S.A. §14-227b(a).**Yes.** C.G.S.A. §14-227b(a).**N/A****No.**¹⁸⁰**No.** However, the law does require the State to give to the
court, in open session, the reasons why a DWI charge was
reduced, nolle prossed or dismissed. C.G.S.A. §14-227a(f).**Yes.** However, a court is not required to conduct a pre-
sentence investigation for first offenders or subsequent
offenders whose maximum sentence is one year or less.
C.G.S.A. §54-91a.**N/A****N/A**¹⁷⁷ Connecticut refers to DWI as “OUI”.¹⁷⁸ Standard: “Percent by weight” of alcohol in the blood. C.G.S.A. § 14-227a(a); C.G.S.A. §14-227g(a).¹⁷⁹ The sanctions for a violation of this offense are the same as for a violation of C.G.S.A. §14-227a(a) – driving under the influence
intoxicating liquor/illegal per se. C.G.S.A. §14-227g(c).¹⁸⁰ A pre-trial diversion program is available only for first DWI offenders where death or serious injury is not involved. C.G.S.A.
§§54-56g; 54-56e.

Administrative Licensing Action (Susp/Rev):
Preliminary Breath Test – Other:

N/A

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

None

First action (refusal)¹⁸¹ – **Suspension 45 days, and 1 year** of ignition interlock upon restoration.¹⁸²
Second action (refusal)– **Suspension 45 days, and 2 years** of ignition interlock upon restoration.
Subsequent action (refusal) – Suspension 45 days, and 3 years of ignition interlock upon restoration.
C.G.S.A. §§14-227a(g); 14-227b(i); 14-227g(c).

Under C.G.S.A. §54-56g(b), a person’s participation in an alcohol or treatment program does not affect the mandatory license suspension.

Implied Consent Chemical Test - Other:

N/A

Criminal Sanctions Following a DWI Conviction:
Imprisonment/Fine:

Under the Influence/Illegal per se:
First offense (misdemeanor) – Not less than **\$500** or more than **\$1,000** and not more than **6 months**;
Second offense (within 10 years – felony) – Not less than **\$1,000** or more than **\$4,000** and not more than **2 years**;
Third or subsequent offense (within 10 years – felony) – Not less than **\$2,000** or more than **\$8,000** and not more than **3 years**. C.G.S.A. §§14-227a(g); 53a-25; 53a-26.

Vehicle Assault (Class D felony) – Not more than **\$5,000** and not less than **1 year** or more than **5 years**.
C.G.S.A. §§53a-35a; 53a-41; 53a-60d.

Mandatory Minimum Term/Fine:

Under the Influence/Illegal per se:
First offense – **48 consecutive hours**;
Second offense – **120 consecutive days**;
Third and subsequent offenses – **1 year**.
C.G.S.A. §14-227a(g).

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;¹⁸³
Second and subsequent offense (within 10 years) – **100**

¹⁸¹ If the person is ultimately convicted, the suspension and ignition interlock period required = the longer of the administrative term and the term required upon conviction. C.G.S.A. §14-227b(i)(1).

¹⁸² 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. C.G.S.A. §14-37a(b).

¹⁸³ Under separate provisions of law, an offender who is sentenced to probation may be required to perform community service. C.G.S.A. §53a-28(e).

Restitution:	<p>hours (mand) in addition to incarceration and as part of probation. C.G.S.A. §§14-227a(g); 14-227e. Yes. Criminal injuries compensation fund. C.G.S.A. §§54-209; 54-215. Direct Restitution: The court may order restitution be paid directly to the victim, the order of which becomes an enforceable civil judgment. C.G.S.A. §53a-28(c).</p>
Child Endangerment:	<p>Yes. Class C Felony, punishable by a term of not less than 1 years or more than 10 years and a fine of not more than \$10,000. C.G.S.A. §§53-21(a)(1); 53a-25; 53a-35a(7).</p>
Other:	<p>Special Cost: A special cost of \$15 is imposed for a DWI conviction under C.G.S.A. §14-227a. C.G.S.A. §54-143(a). Incarceration Cost: A defendant may be required to pay the cost of incarceration. C.G.S.A. §18-85a.¹⁸⁴ Ignition Interlock Cost: A defendant who has been court ordered not to operate a vehicle unless it is equipped with ignition interlock bears the costs of installing and maintaining the device. C.G.S.A. §14-227j(c).</p>
<u>Administrative Sanctions –Pre Conviction:</u> Administrative Per Se Law:	<p>Yes \geq .08 (BAC) <u>or</u> \geq .02 (BAC) for persons under 21.</p> <p><u>First action</u>¹⁸⁵ – Suspension 45 days, and 6 months of ignition interlock upon restoration.¹⁸⁶ <u>Second action</u> – Suspension 45 days, and 1 year of ignition interlock upon restoration. <u>Subsequent action</u> – Suspension 45 days, and 2 years of ignition interlock upon restoration.</p> <p><u>< 21</u> <u>First action</u>¹⁸⁷ – Suspension 45 days, and 1 year of ignition interlock upon restoration. <u>Second action</u> – Suspension 45 days, and 2 years of ignition interlock upon restoration. <u>Subsequent action</u> – Suspension 45 days, and 3 years of ignition interlock upon restoration. C.G.S.A. §§14-227a(g); 14-227b(i); 14-227g(c).</p>
Other:	<p>Under C.G.S.A. §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.</p>

¹⁸⁴ In practice, this has rarely been used.

¹⁸⁵ If the person is ultimately convicted, the suspension and ignition interlock period required = the longer of the administrative term and the term required upon conviction. C.G.S.A. §14-227b(i)(1).

¹⁸⁶ 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. C.G.S.A. §14-37a(b).

¹⁸⁷ If the person is ultimately convicted, the suspension and ignition interlock period required = the longer of the administrative term and the term required upon conviction. C.G.S.A. §14-227b(i)(1).

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Under the Influence/Illegal per se:First and second offenses– **Suspension;**Third and subsequent offense– **Revocation.**¹⁸⁸

C.G.S.A. §14-227a(g).

Vehicle Assault (OUI offense) – Suspension.

C.G.S.A. §53a-60d(a).

Term of Withdrawal:

Under the Influence/Illegal per se:First offense – **45 days**, and ignition interlock for a period of **1 year** upon restoration.Second offense – **45 days**, and ignition interlock for a period of **3 years** upon restoration, the first year of which permits only limited driving privileges.Third and subsequent offense– **Permanently.**¹⁸⁹

C.G.S.A. §14-227a(g).

Vehicle Assault (OUI offense) – 1 year, and ignition interlock for a period of **2 years** upon restoration.

C.G.S.A. §53a-60d(b).

Mandatory Minimum Term of Revocation:

Under the Influence/Illegal per se:First and second offenses – **45 days.**^{190,191}Third and subsequent offenses – **2 years.**

C.G.S.A. §14-227a(g).

Vehicle Assault (OUI offense) – 1 year.

Alcohol Education:

Yes. The court may order alcohol education.

C.G.S.A. §14-227a(j).

Substance Abuse Treatment:

Yes. The court may order alcohol treatment.

C.G.S.A. §14-227a(j).

Vehicle Impoundment/Confiscation:

Yes.

Authorized by Specific Statutory Authority:

Limited Impoundment: The vehicle driven by a person who has been arrested for driving while under the influence of intoxicating liquor or with a BAC level \geq **.08** shall be impounded for 48 hours *if the person's driving privilege was suspended or revoked at the time of the offense.*

C.G.S.A. §14-227h.

Terms Upon Which Vehicle Will Be Released:

The owner of such vehicle may reclaim the vehicle only after the expiration of 48 hours upon payment of all towing

¹⁸⁸ After two years, however, the offender can apply for reduction of the lifetime suspension and, if granted, must utilize an ignition interlock device for a minimum of 15 years. C.G.S.A. §14-111(i)(2)¹⁸⁹ However, after two years, a person may apply for a reversal or reduction of the revocation period. C.G.S.A. §14-111(i). If the reversal or reduction is granted, the person will be prohibited from operating a motor vehicle unless it is equipped with ignition interlock for 15 years to life. C.G.S.A. §14-111(i)(2).¹⁹⁰ The law does not specifically prohibit a court from reducing these suspension periods.¹⁹¹ 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. C.G.S.A. §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. C.G.S.A. §14-227a(h)(3).

Other Miscellaneous Sanctions:	and storage costs. C.G.S.A. §14-227h. Victim Impact Panel: The court may require a probationer to participate in a victim impact panel as a condition of probation. C.G.S.A. §14-227a(l).
<u>Ignition Interlock:</u> Permitted or Prohibited:	Permitted. C.G.S.A. §§14-36(g); 14-111(k)(2); 14-227a(g); 14-227j.
Type of Law (Mandatory or Permissive): Sanction (Judicial, Administrative or Hybrid) Conditions of Use:	Mandatory Administrative Ignition interlock is required as a condition for the restoration of a DUI offender’s license. C.G.S.A. §§14-36(g); 14-111(i), (j);14-227a(g); 14-227j.
Other Provisions:	
<u>Sobriety Checkpoints:</u> Permitted or Prohibited:	Permitted. <i>State v. Mikolinski</i> , 775 A.2d 274 (Conn. 2001).
<u>Homicide by Vehicle:</u> State Has Such a Law:	Yes – 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. C.G.S.A. §53a-56b.
Imprisonment/Fine:	Not less than 1 year or more than 10 years and/or a fine not to exceed \$10,000 . C.G.S.A. §§53a-35a; 53a-41.
Mandatory Minimum Term/Fine:	Not less than 1 year . C.G.S.A. §§53a-25; 53a-35a; 53a-41.
Authorized Licensing Action:	Suspension. C.G.S.A. §53a-56b.
Length of Term of Licensing Withdrawal:	1 year , followed by ignition interlock for two years upon restoration. C.G.S.A. §53a-56b.
Mandatory Minimum License Withdrawal:	The 1-year term appears to be mandatory.
Other:	Community Service: An offender who is sentenced to probation may be required to perform community service. C.G.S.A. §53a-28(e).
	Persistent Offender: A person who has been convicted of OUI manslaughter or OUI Assault and who has a previous conviction for either of these offenses or a drunk-driving violation under C.G.S.A. §14-227a within 10 years may be incarcerated at the next higher level felony offense. C.G.S.A. §53a-40f. (Class B felony- Not less than 1 year or more than 20 years and/or a fine of not more than \$15,000 . C.G.S.A. §53a-35a.)
<u>DWI Offenses and Commercial Motor Vehicles (CMV):</u>	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 a

subsequent violation or 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.

C.G.S.A. §§14-1(14), (16); 14-37a; 14-44k.¹⁹²

Driving While License Suspended for DWI

Offense:

Criminal - Fine/Imprisonment:

First offense (Misdemeanor) – Not more than **1 year** and not less than **\$500** or more than **\$1,000**.¹⁹³ C.G.S.A. §§14-215(c)(1); 53a-26(a).

Second offense (Felony) – Not more than **2 years** and not less than **\$500** or more than **\$1,000**. C.G.S.A. §14-215(c)(2).

Third or subsequent offense (Felony) – Not more than **3 years** and not less than **\$500** or more than **\$1,000**. C.G.S.A. §14-215(c)(3).

Mandatory Minimum Fine/Imprisonment Term:

First offense (Misdemeanor) - 30 consecutive days. C.G.S.A. §14-215(c)(1).

Second offense (Felony) – 120 consecutive days. C.G.S.A. §14-215(c)(2).

Third or subsequent offense (Felony) – 1 year. C.G.S.A. §14-215(c)(3).

Administrative Licensing Action Type: Withdrawal Action:

Suspension. C.G.S.A. §14-111(b).

First offense – **Not less than 1 year;**

Subsequent offense (within 10 years) – **Not less than 2 years.** C.G.S.A. §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. C.G.S.A. §14-37a. However, the licensing agency may have authority to modify or cancel a suspension or revocation. C.G.S.A. §14-111(i). An offender who is sentenced to probation may be required to perform community service. C.G.S.A. §53a-28(e).

Other:

N/A

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Other State Laws Related to Alcohol Use:

BAC Chemical Tests on Persons Killed in

Yes. C.G.S.A. §14-227c(a).

¹⁹² A person who operates a CMV after having been placed “out-of-service” is subject to the following CDL disqualification periods: first offense – not less than 180 days (mand) or more than 1 year; second offense (within 10 years) – not less than 2 years (mand) or more than 5 years; third or subsequent offense (within 10 years) – not less than 3 years (mand) or more than 5 years. If the offender was transporting passengers or hazardous materials, the disqualification periods are as follows: first offense – not less than 180 days (mand) or more than 2 years; second or subsequent offense (within 10 years) – not less than 3 years (mand) or more than 5 years. In addition, such an offender is subject to a civil penalty. C.G.S.A. §14-44k(i).

¹⁹³ 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.

Traffic Crashes - State Has Such a Law
(Yes/No):

BAC Chemical Test Given to Deceased Driver Killed in Crash: **Yes**

BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash: **No**

BAC Chemical Test Given to Deceased Pedestrian Killed in Crash: **Yes**

BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law: **Yes.** C.G.S.A. §14-227c(b).

Minimum Age (Years) for Sale/Purchase of Alcohol: **21.** C.G.S.A. §§30-1(12); 30-86(b)(3), (4). **Exceptions:** Employment, religion, or under an order of a physical or while accompanied by a parent or legal guardian who is over 21.

Minimum Age (Years) for Possession/Consumption of Alcohol: **21.** C.G.S.A. §30-89(b). This applies only to possession in a public place.

Dram Shop and Social Host Laws:

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

Yes. C.G.S.A. §30-102.

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

Yes. The 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).

Dram Shop Actions – Social Hosts:

Yes. *Ely v. Murphy*, 540 A.2d 54 (Conn. 1988). This applies to the actions of intoxicated minor guests.

Social Host – Criminal Enforcement:

Any person who gives alcoholic liquor to a minor, by any means, shall be fined not more than \$3,500 and/or imprisoned not more than 18 months. C.G.S.A. §30-86(b)(2).

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Misdemeanor. C.G.S.A. §30-86.

Imprisonment/Fine:

Not more than **1 year** and/or not more than **\$1,000**. C.G.S.A. §30-113.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Yes – Suspension or revocation. C.G.S.A. §30-55.

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Not specified in the statute.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Misdemeanor. C.G.S.A. §30-86.

Imprisonment/Fine:

Not more than **1 year** and/or not more than **\$1,000**.

C.G.S.A. §30-113.

Administrative Actions Regarding
Establishments That Serve Alcohol to Persons
Under the Legal Drinking Age:

License to Serve Alcoholic Beverages

Yes – Suspension or revocation. C.G.S.A. §30-55.

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Not specified in the statute.

Anti-Happy Hour Laws/Regulations:

No¹⁹⁴

Open Container Laws:

Open Container Law (Yes/No):

C.G.S.A. §53a-213.

Anti-Consumption Law (Yes/No):

No statutory provisions.

Alcohol Exclusion Law (UPPL):

No. C.G.S.A. §38a-498c.

¹⁹⁴ 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. C.G.S.A. §30-6a(c)(5).

STATE

General Reference:

DELAWARE

Delaware Code Annotated (Del.C.)

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC/BrAC):

Types of Drugs/Drugs and Alcohol:

Under the influence of alcohol. 21 Del.C. §4177(a)(1).
 ≥ .08.¹⁹⁵ 21 Del.C. §4177(a)(4).

None

Under the influence of any drug or a combination of alcohol and any drug, or within 4 hours of driving, the person's blood contains any amount of an illicit or recreational drug or any amount of a substance or compound that is the result of the unlawful use or consumption.¹⁹⁶ 21 Del.C. §4177(a)(2), (3), (6).

Persons Under 21 – vehicle operation while or after consuming alcoholic liquor.¹⁹⁷ 21 Del.C. §4177L(a).

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Yes.¹⁹⁸ 21 Del.C. §2741(c).

Yes. 21 Del.C. §2740.

No. Probable cause is sufficient. 21 Del.C. §§2740; 2741(b); 2742(e).

Implied Consent Law Applies to Drugs (Yes/No):

Yes. 21 Del.C. §§2740; 2741(b).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes. (Criminal and Civil Cases) 21 Del.C. §2749.

Other Information:

A person may be required to submit to a chemical test if there is probable cause of a DWI offense. However, a police officer may take reasonable steps to conduct chemical testing without relying upon implied consent. 21 Del.C. §2742(a).

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the Implied Consent Law:

Blood:

Yes. 21 Del.C. §2740.

Urine:

Yes. 21 Del.C. §2740.

Other:

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No.¹⁹⁹

¹⁹⁵ Standard: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. 21 Del.C. §§4177(c)(1); 4177L(b).

¹⁹⁶ The term “drug” includes those drugs defined in Titles 11 and 16 (see schedule of controlled substances in Title 16, Ch. 47) and any substance or preparation that releases intoxicating vapors or fumes. 21 Del.C. §4177(c)(6), (7). However, “substance or compound” as used in the statute does not include inactive ingredients or metabolites of drug. 21 Del.C. §4177(c)(9).

¹⁹⁷ An alcohol concentration of ≥ .02 is “per se evidence” of having consumed alcoholic liquor. 21 Del.C. §4177L(b).

¹⁹⁸ The law appears to indirectly authorize PBT use.

¹⁹⁹ A first offender cannot substitute the probation-before-judgment-program for the program under 21 Del.C. §4177B. 11 Del.C. §4218(b)(4). An offender is not eligible for the probation-before-judgment-program if that person has participated within a 5-year period or has other violation “enhancements” such as elevated BAC. 21 Del.C. §4177B(a); 11 Del.C. §4218(d).

Anti-Plea-Bargaining Statute (Yes/No): **No**
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes** – the court may order a PSI for any person convicted of a felony, or a misdemeanor that resulted in injury or death. 11 Del.C. §4331.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **N/A**
 Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **N/A**
 Preliminary Breath Test – Other: **N/A**

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**
 Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev): **First refusal– Revocation 1 year** (6 months mand); **Second refusal**²⁰⁰ (within 5 years) – **Revocation 18 months** (mand); **Third or subsequent refusals** (within 5 years) – **Revocation 24 months** (mand). 21 Del.C. §§2741(a)(1); 2742(b)(1); 2743(a), (g).

<21
First refusal – **Revocation 2 months**;
Second refusal – **Revocation 6 months**;
Third or subsequent refusal – **Revocation 12 months**.
 21 Del.C. §2742(b)(2).

Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine: **First offense** – Not more than **12 months** and/or not less than **\$500** or more than **\$1,500**;
Second offense²⁰¹ (within 10 years) – Not less than **60 days** or more than **18 months** and not less than **\$750** or more than **\$2,500**;
Third offense (any time after 2 prior offenses) (Class G felony) – Not less than **1 year** or more than **2 years** and not more than **\$5,000**;
Fourth offense (any time after 3 prior offenses) (Class E felony) – Not less than **2 years** or more than **5 years** and not more than **\$7,000**;
Fifth offense (any time after 4 prior offenses) (Class E felony) – Not less than **3 years** or more than **5 years** and not more than **\$10,000**;
Sixth offense (any time after 5 prior offenses) (Class D felony) – Not less than **4 years** or more than **8 years** and

²⁰⁰ 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 Del.C. §2742(b).

²⁰¹ First and second offenses are unclassified misdemeanors. 11 Del.C. §4202(b).

not more than **\$10,000**;
Seventh or subsequent offense (any time after 6 prior offenses) (Class C felony) – Not less than **5 years** or more than **15 years** and not more than **\$15,000**.

21 Del.C. §§4177(d); 4177B(e)(2).

Vehicular Assault – second degree (Class B misdemeanor):

A DWI-related injury where there has been negligent driving – Up to **6 months** incarceration and up to a **\$1,150** fine. 11 Del.C. §§628; 4206(b).

Vehicle Assault – first degree (Class F felony): A DWI-related serious injury where there has been negligent driving – Up to **3 years**’ incarceration. The court may impose a fine as it deems appropriate. 11 Del.C. §§629; 4205(b)(6), (k).

Mandatory Minimum Term/Fine:

Persons Under 21: If the person does not have a license, **\$200** for first offense; not less than **\$400** or more than **\$1,000** for each subsequent offense. 21 Del.C. §4177L(a).

First offense – **\$500** (imprisonment may be suspended);

Second offense (within 10 years) – **60 days**²⁰²/**\$750**;

Third offense (at any time after 2 prior offenses) – **3 months**;

Fourth offense– **6 months**;

Fifth offense – **3 years**;

Sixth offense – **4 years**;

Seventh and subsequent offenses – **5 years**.

21 Del.C. §4177(d).

Community Service:

Yes.²⁰³ Discretionary. 11 Del.C. §4332A.

Child Endangerment:

Yes. A person who commits DWI with a person under age 17 in the vehicle shall be sentenced to the following enhancements:

First offense – an additional minimum of **\$500** and not more than an additional **\$1,500**, and a minimum of 40 hours community service in a program benefitting children;

Subsequent offenses – an additional minimum of **\$750** and not more than an additional **\$2,500**, and a minimum of 80 hours community service in a program benefitting children.

21 Del.C. §4177(d)(10).

Restitution:

Yes. The court may order the defendant to pay compensation to a victim. 11 Del.C. §4204(c)(9).

Additionally, a victim of a DWI offense is eligible for compensation from the State’s Violent Crime Compensation Board.

11 Del.C. §9002(5)(f).

Other:

Assessment: An additional amount equal to 18% of any

²⁰² The sentencing Court may suspend the minimum sentence upon the condition that the offender successfully complete the Court of Common Pleas Driving Under the Influence Treatment Program, which includes 30 days of community service. 21 Del.C. §4177(d)(2).

²⁰³ 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 Del.C. §4332A(b).

fine (whether or not the fine is suspended) is assessed against the defendant. The assessment is deposited in the Victim compensation fund. 11 Del.C. §9016.

Administrative Sanctions – Pre-Conviction:
Administrative Per Se Law:

Yes. Based on probable cause of DWI (alcohol or drugs).²⁰⁴
First offense– **Revocation 3 months** (mand);
Second offense– **Revocation 1 year** (mand);
Third or subsequent offenses – **Revocation 18 months** (mand).²⁰⁵ 21 Del.C. §§2742(c)(1); 2743(b).

Other:

Persons Under 21 – Vehicle operation while or after consuming alcoholic liquor.²⁰⁶

First offense – **Revocation 2 months** (appears mand);
Subsequent offense – **Revocation 6-12 months** (6 months appears mandatory). 21 Del.C. §2742(c)(2).

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 Del.C. §2733(a)(1), (e).

Administrative Sanctions – Post-Conviction:
Type of Licensing Action (Susp/Rev):
Term of Withdrawal:

Revocation

First offense

(.08 - .14) – **12 months**;
(.15 - .19) – **18 months**;
(.20 or greater) – **24 months**.

Second offense

(.08 - .14) (within 5 years) – **18 months**;²⁰⁷
(.15 - .19) – **24 months**;
(.20 or greater) – **30 months**;

Third offense

(.08 - .14) – **24 months**;
(.15 - .19) – **30 months**;
(.20 or greater) – **36 months**;

Fourth or subsequent offense (regardless of BAC) – **60 months**.

21 Del.C. §4177A(a).

Vehicle Assault (second degree) – **1 year**;

Vehicle Assault (first degree) – **2 years**.

²⁰⁴ Under 21 Del.C. §2742(f)(2) with reference only to an admin. per se violation, an alcohol concentration \geq .08 or a “positive indication of drugs” is conclusive evidence of a DWI offense.

²⁰⁵ 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 Del.C. §2742(c).

²⁰⁶ For persons < 21, an alcohol concentration \geq .02 is “conclusive evidence” of vehicle operation while or after consuming alcoholic liquor. 21 Del.C. §2742(f)(3)

²⁰⁷ For persons < 18, license suspension/revocation until age 21 (6 months mand). After the mandatory period, a restricted license may be issued provided there is a “critical need” for such a license and the minor is attending an alcohol program. 1 Del.C. §302(2), (12); 10 Del.C. §§927(a)(6); 1009(f). Also, under 21 Del.C. §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.

21 Del.C. §2732(a)(2).

Persons Under 21:

First offense – **2 months**;

Subsequent offense – **6 to 12 months**.

21 Del.C. §4177L(a).

Mandatory Minimum Term of Revocation:

First offense – **6 months**. However, a person who has entered a first offense election (21 Del.C. §4177B) may be permitted to apply for an ignition interlock device license immediately. A first offender who has been sentenced under 21 Del.C. §4177(d) may be permitted to apply for an ignition interlock device license after:

30 days for BAC <.15;

45 days for BAC ≥ .15

Subsequent offense– **6 months**, with possible permission to apply for ignition interlock device license (“II license”) after:

60 days for second offender;

90 days for third offender

6 months for fourth or subsequent offender.

21 Del.C. §§4177B; 4177C

Vehicle Assault (second degree) – **1 year**.

Vehicle Assault (first degree) – **2 years**.

Persons Under 21 – Operation of Vehicle while or after consuming alcoholic liquor.

First offense– **2 months**;

Subsequent offense– **6 months**. These actions appear to be mandatory.

Alcohol Education:

Yes. 21 Del.C. §§4177(f); 4177D.

Substance Abuse Treatment:

Yes. 21 Del.C. §§4177(f); 4177D.

Vehicle Impoundment/Confiscation:

Impoundment of a vehicle or surrender of license plates/registration 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 that require mandatory license revocation. Impoundment is for 90 days for a first offense, and 1 year for a subsequent offense. 21 Del.C. §2756(c)(1).

Authorized by Specific Statutory Authority:

Yes. 21 Del.C. §2756(c)(1).

Terms Upon Which Vehicle Will Be Released:

A party with a legal or equitable interest in the vehicle may show cause why the impoundment of the vehicle should cease. 21 Del.C. §2756(c)(1).

Other Miscellaneous Sanctions:

“**House arrest**” may be used as an alternative to imprisonment. 11 Del.C. §§4332; 4347(j); 4392(c). The court may suspend any or all misdemeanor and felony sentences that have no mandatory minimum. 11 Del.C. §§4205(d), (e); 4206(d).

Ignition Interlock:

Permitted or Prohibited:
 Type of Law (Mandatory or Permissive):
 Sanction (Judicial, Administrative or Hybrid)
 Conditions of Use:

Permitted. 21 Del.C. §4177(e).

Mandatory

Hybrid

In addition to any other penalty, the court shall prohibit such person from operating any motor vehicle unless it is equipped with a functioning ignition interlock device.

First offender (under 21 Del.C. §4177B): 4 months;

First offense

(BAC < .15): 12 months have elapsed since ignition interlock device (IID) installation;

First offense (BAC ≥ .15 - .19): 17 months;

First offense (BAC ≥ .20): 23 months;

Second offense (BAC < .15): 16 months;

Second offense (BAC ≥ .15 - .19): 22 months;

Second offense (BAC ≥ .20): 28 months;

Third offense (BAC < .15): 21 months;

Third offense (BAC ≥ .15 - .19): 27 months;

Third offense (BAC ≥ .20): 33 months;

Fourth or subsequent offense: 54 months.

21 Del.C. §4177C.

Other Provisions:

Participation in the ignition interlock program is mandatory for all offenders. 21 Del.C. §4177G.

A person who commits a DWI offense while ignition interlock was mandated shall, in addition to any other penalties, pay a fine of **\$2,000** and be imprisoned for **60 days**. 21 Del.C. §4177(e).

Sobriety Checkpoints:

Permitted or Prohibited:

Permitted. See *Howard v. Voshell*, 621 A.2d 804 (Del.Super. 1992).

Homicide by Vehicle:

State Has Such a Law:

Yes

First degree (death caused by criminally negligent driving while DWI) (Class C felony). 11 Del.C. §630A.

Second degree (death caused by criminally negligent driving or negligent driving while DWI) (Class D felony).

11 Del.C. §630(a)(2).

Imprisonment/Fine:

First degree – Not less than **2 years** (18 mo. mand) or more than **15 years**;

Second degree – Not less than **1 year** or more than **8 years**.

Fines for each offense are ordered if the court deems appropriate. 11 Del.C. §§630(b); 630A(b); 4205(b)(3), (4); 4205(k).

Mandatory Minimum Term/Fine:

The terms above are mandatory.

Authorized Licensing Action:

Revocation

Length of Term of Licensing Withdrawal:

First degree – **4 years**;

Second degree – **3 years**. 21 Del.C. §2732(a).

Mandatory Minimum License Withdrawal:

The terms above are mandatory.

Other:

N/A

DWI Offenses and Commercial Motor Vehicles (CMV):

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 \geq .04; (2) is convicted of DWI; or (3) refuses to submit to a chemical test for alcohol concentration. For a subsequent violation or 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. 21 Del.C. §2612.

Special Note:

I. It is an unclassified misdemeanor to operate a CMV while either suspended, revoked, disqualified or under a CDL out-of-service order.

For a first offense, a person is subject to a fine of not less than \$200 or more than \$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 not less than \$500 or more than \$5,000. 21 Del.C. §§2607(b); 2622.

II. Under separate provisions of law, the following sanctions may be imposed for a violation of an “out-of-service” order.

First conviction: A fine of not less than \$2,500 or more than \$3,500;

Second or subsequent conviction (within 10 years): A fine of not less than \$5,000 or more than \$6,000.

21 Del.C. §2612(h)(4).

Disqualification:

First violation – not less than 180 days (mandatory) or more than 1 year;

Second violation (within 10 years) – not less than 2 years or more than 5 years (1 year mandatory);

Third or subsequent violation (within 10 years) – not less than 3 years or more than 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 – not less than 180 days (mandatory) or more than 2 years;

Second violation (within 10 years) – not less than 3 years or more than 5 years (3 years mandatory). 21 Del.C. §2612(h).

Driving While License Suspended for DWI

Offense:

Criminal - Fine/Imprisonment:

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.

Misdemeanor (Unclassified)

First offense– Not less than **30 days** or more than **6 months** and a fine of not less than **\$600** or more than **\$1,000**.

Subsequent offense (within 3 years) – Not less than **60 days** or more than **1 year** and not less than **\$1,000** or more than **\$4,000**. 21 Del.C. §2756.

First offense – **\$600**;²⁰⁸

Subsequent offense (within 3 years) – **\$1,000/60 days**. 21 Del.C. §2756.

Mandatory Minimum Fine/Imprisonment Term:

None

Administrative Licensing Action Type:

N/A

Withdrawal Action:

N/A

Mandatory Term of License Withdrawal Action:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. 21 Del.C. §§2801, *et seq.*

Grounds for Being Declared Habitual Offender:

3 or more serious violations²⁰⁹ within a 5-year period, or 10 or more minor moving violations in a 3-year period.

21 Del.C. §2802.

Term of License Revocations While on Habitual Offender Status:

Revocation for 5 years if based on serious offenses or for **3 years** if based on minor moving violations.²¹⁰

21 Del.C. §2809.

Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):

Misdemeanor (Unclassified). 11 Del.C. §§233(c); 4202(b).

First offense– Not less than **90 days** or more than **30 months** and not more than **\$1,150**;²¹¹

Subsequent offense– Not less than **180 days** or more than **5 years** and not more than **\$2,300**. 21 Del.C. §2810.

The terms above are mandatory.

Mandatory Minimum Term/Fine: Licensing Action (Specify):

None

Other State Laws Related to Alcohol Use:

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):

Yes. 21 Del.C. §2740.

BAC Chemical Test Given to Deceased Driver Killed in Crash: **Yes**

²⁰⁸ If the original revocation was based on a drunk-driving offense related to death or injury, there is a mandatory 30-day period of imprisonment and a mandatory fine of \$2,000.

²⁰⁹ These include (but are not limited to) vehicular manslaughter, DWI offense, driving on a suspended/revoked license. 21 Del.C. §2802(1).

²¹⁰ Under 21 Del.C. §2814, a person who is convicted of an offense that would make him/her a habitual offender is subject to the following additional sanctions: not less than 30 days or more than 12 months and not less than \$115 or more than \$1,150. No execution is taken to impose these additional sanctions until the person is finally adjudged a habitual offender.

²¹¹ Under 21 Del.C. §2810, the court cannot suspend an imprisonment term. This essentially makes the minimum period of incarceration mandatory.

BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	No
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	No
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes. 21 Del.C. §2740.
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. ²¹² 4 Del.C. §904(a), (b).
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. Does not apply to alcohol use in religious services or in the home. 4 Del.C. §904(f).
<u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	No
"Dram Shop Law" 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 <i>Acker v. Cantinas, Inc.</i> , 586 A.2d 1178 (Del. 1991); <i>Samson v. Smith</i> , 560 A.2d 1024 (Del. 1989).
Dram Shop Actions – Social Hosts:	No. ²¹³
Social Host – Criminal Enforcement:	Any person who gives a minor alcoholic liquor or knowingly allows a minor to consume alcoholic liquor shall be punished as follows: <u>First offense</u> – not less than \$100 or more than \$500, and may be ordered to perform 40 hours of community service and may be sentenced to not more than 30 days; <u>Subsequent offense</u> – not less than \$500 or more than \$1000, and may be ordered to perform 80 hours of community service and may be sentenced to not more than 60 days. 4 Del.C. §904 (c).
<u>Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
Type of Criminal Action:	Misdemeanor (Unclassified). 4 Del.C. §§706; 708; 11 Del.C. §§233(c); 4202(b).
Imprisonment/Fine:	Not more than \$100 . 4 Del.C. §903.
<u>Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes – Suspension. 4 Del.C. §561(b)(1).
Length of Term of License Withdrawal:	Not specified by statute.

²¹² 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 not less than \$100 or more than \$500 for a first offense, and not less than \$500 or more than \$1,000 for each subsequent offense. 4 Del.C. §904(b).

²¹³ 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).

Criminal Actions Regarding Establishments
that Serve Alcohol to Persons Under the Legal
Drinking Age:

Type of Criminal Action: **Misdemeanor** (Unclassified). 4 Del.C. §§708(a)(1);
904(a); 11 Del.C. §§233(c); 4202(b).
Imprisonment/Fine: Not less than **\$250** or more than **\$500**.²¹⁴ 4 Del.C. §904(a).

Administrative Actions Regarding
Establishments That Serve Alcohol to Persons
Under the Legal Drinking Age:

License to Serve Alcoholic Beverages **Yes – Suspension**. 4 Del.C. §561(b)(1).

Withdrawn (Yes/No):

Length of Term License Withdrawal: Not specified by statute.

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

Open Container Laws:

Open Container Law (Yes/No): **No**.

Anti-Consumption Law (Yes/No): **Yes**. 21 Del.C. §4177J.

Alcohol Exclusion Law (UPPL): **Yes**. 18 Del.C. §3325

²¹⁴ Under 4 Del.C. §902, also authorized is a fine of not less than \$500 or more than \$1,000.

DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA

General Reference:

D.C. Code

Weil's Code of D.C. Municipal Regulations (DCMR)

Basis for a DWI Charge:

Standard DWI Offense:

I. While intoxicated or under the influence. D.C. Code §50-2206.11.

II. While the person's ability to operate or be in physical control of a vehicle is impaired by the consumption of alcohol or any drug or any combination thereof. D.C. Code §50-2206.14.

Illegal Per Se Law (BAC/BrAC):

≥ **.08**.²¹⁵ D.C. Code §50-2206.01(9)

Persons Under 21 – Operating a vehicle with any measurable amount of alcohol in the blood, breath or urine. D.C. Code §50-2206.01(9).

Presumption (BAC/BrAC):

Driving under the influence or operating/in control of a vehicle while impaired by the consumption of alcohol or any drug²¹⁶ or any combination thereof. D.C. Code §50-2206.11.

Types of Drugs/Drugs and Alcohol:

A defendant whose alcohol concentration at the time of testing was less than 0.05 g/100 ml blood or per 210 L of breath, or 0.06 g/100ml urine, establishes a rebuttable presumption that the person was not, at the time, under the influence of alcohol. D.C. Code §50-2206.51(a)(1). A defendant whose alcohol concentration at the time of testing was 0.05 g/100 ml blood or per 210L of breath or 0.06 g/100 ml urine, or more, but less than 0.10g per 100ml blood, 210 liters of breath, or per 100 ml of urine, shall constitute prima facie proof that the person was at the time, under the influence of alcohol. D.C. Code §50-2206.51(a)(2). The rebuttable presumption in (a)(1) shall not apply if there is evidence that the person was impaired by a drug, was operating or in physical control of a commercial vehicle, was under the age of 21. D.C. Code §50-2206.51(b).

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

Yes.²¹⁷ D.C. Code §§50-1904.01.

Implied Consent Law:

Yes. D.C. Code §50-1904.02.

Arrest Required (Yes/No):

Yes. D.C. Code §50-1904.02.

Implied Consent Law Applies to Drugs

Yes. D.C. Code §50-1904.02.

(Yes/No):

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal and Civil Cases. D.C. Code §§50-1905(c);

²¹⁵ Standard: 100 milliliters of blood or 210 liters of breath, or 0.10 grams or more per 100 milliliters of urine. D.C. Code §50-2206.01(9).

²¹⁶ "Drug" means any chemical substance that affects the person's mind or body, including but not limited to a controlled substance and any prescription or non-prescription medication. D.C. Code §50-2206.01(6).

²¹⁷ The PBT and Implied Consent Laws also apply to persons under 21 who operate a vehicle with any measurable amount of alcohol in the blood, breath or urine.

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Other Information:

A person shall submit two specimens for chemical testing of blood, breath or urine. D.C. Code §50-1904.02.

If a person refuses to submit to a chemical test, and the person has had a prior DWI conviction, there is a rebuttable presumption that the person is under the influence of alcohol or a drug, or any combination thereof. D.C. Code §50-1905(b).

Non-Breath Chemical Tests for Alcohol Concentration Authorized Under the Implied Consent Law:

Blood:

Yes. D.C. Code §50-1904.02.

Urine:

Yes. D.C. Code §50-1904.02.

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 law must complete an alcohol/drug abuse assessment. D.C. Code §50-2206.54.

Sanctions for Refusal to Submit to a Chemical Test:

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

None

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev):

None

Preliminary Breath Test – Other:

N/A

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

If a person under arrest refuses and such person has had a prior conviction, there shall be a rebuttable presumption that such person is under the influence of alcohol, a drug or any combination thereof. D.C. Code §50-1905(b).

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):

Revocation – 12 months. D.C. Code §50-1905(a); 18 DCMR §301.1. (Mandatory – No occupational hardship license shall be issued.) 18 DCMR §310.7.

Implied Consent Chemical Test - Other:

N/A

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine:

Illegal per se/Under the Influence:

First offense – A fine of **\$1,000** and/or incarceration for not more than **180 days**;

Second offense – Not less than **\$2,500** or more than **\$5,000** and not less than **10 days** or more than **1 year**;

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Third and subsequent offenses – Not less than **\$2,500** or more than **\$10,000** and a sentence of not less than **15 days** or more than **1 year**.²¹⁸
D.C. Code §50-2206.13.

Impaired:

First offense – A fine of **\$500** and/or not more than **90 days**;

Second offense – Not less than **\$1,000** or more than **\$2,500** and/or not less than **5 days** or more than **1 year**;

Third or subsequent offense – Not less than **\$1,000** or more than **\$5,000** and a sentence of not less than **10 days** or more than **1 year**. D.C. Code §50-2206.15.

Illegal per se/Under the Influence:

First offense –

BAC \geq 0.20 but \leq 0.25 = **10 days**;

BAC > 0.25 or if blood contains a Schedule I chemical or controlled substance, PCP, cocaine, methadone or morphine = **15 days**;

BAC > 0.30 – **20 days**.

Second offense = **10 days**;

BAC \geq 0.20 but \leq 0.25 = **15 days**;

BAC > 0.25 or if blood contains a Schedule I chemical or controlled substance, PCP, cocaine, methadone or morphine = **20 days**;

BAC > 0.30 = **25 days**.

Third and subsequent offenses = **15 days**;

BAC \geq 0.20 but \leq 0.25 = **20 days**;

BAC > 0.25 or if blood contains a Schedule I chemical or controlled substance, PCP, cocaine, methadone or morphine = **25 days**;

if BAC > 0.30 = **30 days**.

D.C. Code §50-2206.13.

Impaired:

First offense – **None**;

Second offense – **5 days**;

Third or subsequent offense – **10 days**.

D.C. Code § 50-2206.15.

Mandatory Minimum Term/Fine:

Community Service:

The court may, in addition to any other sentence, require a person convicted of any offense as a condition of probation or as a sentence itself, to complete community service.

D.C. Code §16-712.

Child Endangerment:

Yes. Any person driving under the influence while transporting a person under age 18 shall be fine an additional minimum of **\$500** and not more than **\$1,000** per

²¹⁸ An additional 30-day mandatory minimum term of incarceration shall be imposed for each additional violation if the person has 3 prior offenses and is being sentenced on the current offense. D.C. Code §50-2206.13.

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Restitution:	minor and sentenced to a mandatory-minimum term of 5 days per minor who are restrained in a car seat/booster seat, and 10 days per minor if not restrained in a car seat/booster seat. D.C. Code §50-2206.18. Yes. Victim’s Compensation Fund (D.C. Code §4-501, <i>et seq.</i>) awards are limited to a maximum amount of \$25,000. D.C. Code §4-507. A defendant may be required to pay restitution to a victim. D.C. Code §16-711.
Other:	Assessments: Offenders are required to pay \$50-250 for a drunk-driving offense and \$100-5,000 for a felony offense. D.C. Code §4-516(a).
<u>Administrative Sanctions – Pre-Conviction:</u> Administrative Per Se Law:	Under the Influence of Intoxicating Liquor or Drugs: <u>First violation</u> – Revocation for 6 months; <u>Second violation</u> – Revocation for 1 year. Third violation – Revocation for 2 years. 18 DCMR §§ 301.1, 306.5
<u>Administrative Sanctions – Post-Conviction:</u> Type of Licensing Action (Susp/Rev):	Driving under the influence/illegal per se: Revocation for all offenses. D.C. Code §§50-1403.01(a); 50-1403.02; 50-2206.55; 18 DCMR §301.1. Driving while impaired: Suspension or Revocation at the discretion of D.C. officials. D.C. Code §50-1403.01. Driving under the influence/illegal per se/Driving while Impaired: <u>First offense</u> – 6 months; <u>Second offense</u> – 1 year; <u>Third and subsequent offenses</u> – 2 years. D.C. Code §§50-1403.01; 50-1403.02(a-3); 18 DCMR §§301.1; 306.5.
Term of Withdrawal:	Driving under the influence/illegal per se/Driving while Impaired: <u>First offense</u> – 6 months; <u>Second offense</u> – 1 year; <u>Third and subsequent offenses</u> – 2 years. D.C. Code §§50-1403.01; 50-1403.02(a-3); 18 DCMR §§301.1; 306.5.
Mandatory Minimum Term of Revocation:	Driving under the influence/illegal per se/Driving while Impaired: <u>First offense</u> – 6 months; <u>Second offense</u> – 1 year; <u>Third and subsequent offenses</u> – 2 years. No occupational hardship licenses shall be issued. 18 DCMR §310.7(a). A person previously convicted of a DUI offense shall receive an assessment of the person’s degree of alcohol abuse and treatment, as appropriate. D.C. Code §50-2206.54.
Alcohol Education:	As appropriate. D.C. Code §50-2206.54.
Substance Abuse Treatment:	Yes – Limited Impoundment: Under D.C. Code §50-2206.56, a vehicle driven by a person arrested for any drunk driving offense shall be impounded for a limited time period (up to 24 hours).
Vehicle Impoundment/Confiscation:	Yes. D.C. Code §50-2206.56.
Authorized by Specific Statutory Authority:	An impounded vehicle shall be released at any time to a registered owner of the vehicle (other than the arrested
Terms Upon Which Vehicle Will Be Released:	

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person), or 24 hours after the arrest to the arrested person. D.C. Code §50-2206.56.

Other Miscellaneous Sanctions:

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. However, registrations for vehicles owned by the United States government, the District of Columbia, a State, or a political subdivision of a State shall not be suspended. D.C. Code §§50-1301.37; 50-1301.38.

Ignition Interlock:

Permitted or Prohibited:

Permitted. The District of Columbia Government is authorized to establish an “ignition interlock” program for persons who have been convicted of any drunk-driving offense. D.C. Code §50-2201.05a; 18 DCMR §311.

Type of Law (Mandatory or Permissive):
Sanction (Judicial, Administrative or Hybrid)
Conditions of Use:

Permissive Administrative
A person shall remain in the ignition interlock program throughout the revocation period imposed, and for any additional time imposed by the Director, but not less than 1 year. 18 DCMR §§311.1; 311.7

Other Provisions:

No person may be accepted into the ignition interlock program if he/she has a prior conviction for causing injury or death while operating a motor vehicle in any jurisdiction, or if such person has previously participated in the program or any similar program in another jurisdiction within 5 years prior to the date of application. 18 DCMR §311.4.

Sobriety Checkpoints

Permitted or Prohibited:

Permitted. *Duncan v. U.S.*, 629 A.2d 1 (D.C. 1993).

Homicide by Vehicle:

State Has Such a Law:

Yes
Felony Negligent Homicide. D.C. Code §50-2203.02.
Manslaughter. D.C. Code §22-2105.

Imprisonment/Fine:

Negligent Homicide – Not more than **5 years** and may be fined not more than **\$12,500** D.C. Code §§50-2203.01; 22-3571.01.

Mandatory Minimum Term/Fine:

Manslaughter – Not more than **30 years** and may be fined not more than **\$75,000**. D.C. Code §§22-2105; 22-3571.01.
None

Administrative Licensing Action:

First offense – **6 months**;
Second offense – **1 year**;
Third and subsequent offenses – **2 years**. 18 DCMR §§301.1, 306.

Length of Term of Licensing Withdrawal:

Mandatory Minimum License Withdrawal:

The terms above are mandatory.

Other:

N/A

DWI Offenses and Commercial Motor Vehicles (CMV):

A person is “disqualified” from operating a CMV for 1 year (3 years if transporting hazardous material) 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 $\geq .04$. A second violation within a 10 year period results in a “disqualification period” of 10 years to life. For a third violation within 10 years, the “disqualification period” is for life.
D.C. Code §50-406; 18 DCMR 1306.1.

A CMV operator must be placed out-of-service for 24 hours if found to have consumed alcohol, to have any measurable or detectable amount of alcohol or to be under the influence of an intoxicating beverage. 18 DCMR §1319.

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) – \$1,000;

Third or subsequent violation (within 2 years) – \$1,500.
18 DCMR §1408.2(a).

Driving While License Suspended for DWI

Offense:

Criminal - Fine/Imprisonment:

Note.²¹⁹ Not more than **1 year** and/or a fine of not more than **\$2,500**. D.C. Code §50-1403.01(e); 18 DCMR §305.

None

Mandatory Minimum Fine/Imprisonment Term:

Revocation/Suspension

Extension of 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. 18 DCMR §305.5.

Administrative Licensing Action Type:

Withdrawal Action:

Licensing action is mandatory; no occupational license can be granted. 18 DCMR §310.

Mandatory Term of License Withdrawal Action:

N/A

Other:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Other State Laws Related to Alcohol Use:

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):

No

²¹⁹ 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/revoked.

BAC Chemical Test Given to Deceased Driver Killed in Crash: **No statutory provision**

BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash: **No statutory provision**

BAC Chemical Test Given to Deceased Pedestrian Killed in Crash: **No statutory provision**

BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law: **No**

Minimum Age (Years) for Sale/Purchase of Alcohol: **21**. D.C. Code §25-1002(a).

Minimum Age (Years) for Possession/Consumption of Alcohol: **21**. D.C. Code §25-1002(a).

Dram Shop and Social Host Laws:

State Has a Dram Shop Law (Yes/No): **No**
 "Dram Shop Law" Has Been Adopted Via a **No**²²⁰

Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):

Dram Shop Actions – Social Hosts: **No**²²¹
 Social Host – Criminal Enforcement:

An adult who is 4 or more years older than a minor shall not permit or allow the minor to possess or consume alcohol shall be guilty of contributing to the delinquency of a minor. This is punishable in the following manner:
First offense – not more than \$1,000 and/or not more than 6 months;
Subsequent offense – not more than \$12,500 and/or not more than 3 years.

Offenses Resulting in Serious Bodily Injury to the Minor or Another Individual – not more than \$37,500 and/or 15 years.

Offenses Resulting in Death to the Minor or Another Individual – \$25,000 and/or 10 years.
 D.C. Code §22-811.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action: **Misdemeanor** – A citation may be issued.
 D.C. Code §25-781(a)(2), (e).

Imprisonment/Fine: Not more than **1 year** and/or a fine of not more than

²²⁰ There is no “dram shop law” in the District of Columbia. Under D.C. Code §25-781, the sale or delivery of alcoholic beverages to a person under 21 or an intoxicated person, or any person who appears to be intoxicated is prohibited. Therefore, a tavern keep may be held liable for damages caused by intentional torts of an intoxicated patron. See *Jarrett v. Woodward Bros., Inc.*, 751 A.2d 972 (D.C. 2000); *Rong Yao Zhou v. Jennifer Mall Restaurant, Inc.*, 534 A.2d 1268 (D.C. 1987).

²²¹ The U.S. District Court for the District of Columbia has noted that the District of Columbia does not recognize social host liability. *Wadley v. Aspillaga*, 163 F.Supp. 2d 1 (D.D.C. 2001); *Cartwright v. Hyatt Corp.*, 460 F.Supp. 80 (D.C.D.C. 1978). But, a licensee may be liable for the injuries of death of an intoxicated minor patron. *Jarrett v. Woodward Bros., Inc.*, (D.C. 2000).

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\$2,500. D.C. Code §25-831(a).

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

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

Yes – Suspension or Revocation.

D.C. Code §25-823.

Revocation – No license shall be issued to the same person or persons for any other location for **5 years**.

D.C. Code §25-821(c).

Exception: For revocation of a manager’s license, no new manager’s license shall be issued for **2 years**.

D.C. Code §25-821(d).

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Misdemeanor. A citation may be issued. D.C. Code §§23-1110(b); 25-785.

Imprisonment/Fine:

First offense – Not more than **\$1,000** and/or up to **180 days**;

Second offense (within 2 years) – Not more than **\$2,500** and/or up to **180 days**;

Third or subsequent offense (within 2 years) – Not more than **\$5,000** and/or up to **1 year**. D.C. Code §25-785(c).

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

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

Yes – Suspension or revocation. D.C. Code §25-823.

Revocation – No license shall be issued to the same person or persons for any other location for **5 years**.

D.C. Code §25-821(c).

Exception: For revocation of a manager’s license, no new manager’s license shall be issued for **2 years**.

D.C. Code §25-821(d).

Other:

An administrative fine of **\$1,000 to \$2,000** may be issued by the Board for a first offense;

Second offense (within 2 years) – a fine between **\$2,000 - \$4,000**;

Third offense (within 3 years) – a fine between **\$4,000 - \$6,000**;

Fourth offense (within 4 years) – the ABC license shall be revoked or fined no less than **\$30,000** and suspended for **30 days**;

Fifth offense (within 4 years) – the ABC license shall be revoked. 23 DCMR §801.

Anti-Happy Hour Laws/Regulations:

No

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Open Container Laws:

Open Container Law (Yes/No):

Yes. D.C. Code §25-1001(a); 18 DCMR §2224.

Anti-Consumption Law (Yes/No):

Yes. D.C. Code §25-1001(a).

Alcohol Exclusion Law (UPPL):

No.

STATE

FLORIDA

General Reference:

Florida Statutes Annotated (F.S.A.)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of alcoholic beverages.²²²
F.S.A. §316.193(1)(a).

Illegal Per Se Law (BAC/BrAC):

≥ .08. F.S.A. §316.193(1)(b), (c).

Presumption (BAC/BrAC):

Persons under 21 = ≥ .02. F.S.A. §322.2616(1)(a).
≥ .08²²³ = prima facie evidence that the person was under the influence of alcoholic beverages to the extent that his/her normal faculties were impaired.²²⁴ F.S.A. §316.1934(2)(c).
≤ .05 = presumption that the person was not under the influence of alcohol to the extent his normal faculties were impaired. F.S.A. §316.1934(2)(a).
> .05 but < .08 = no presumption that person was or was not under the influence of alcohol to the extent his normal faculties were impaired, but may be considered with other competent evidence. F.S.A. §316.1934(2)(b).

Types of Drugs/Drugs and Alcohol:

Under the influence of a **Controlled Substance or Chemical Substance** when affected to the extent that the person's normal faculties are impaired.²²⁵ F.S.A. §§316.193(1)(a); 893.01, *et seq.*

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

Persons under 21. F.S.A. §322.2616(17).

Implied Consent Law:

Yes. F.S.A. §§316.1932(1)(a); 322.2616(1)(b).²²⁶

Arrest Required (Yes/No):

Yes. However, an arrest is not required for taking a blood sample if the driver is taken to a medical facility for treatment as a result of an accident. F.S.A. §316.1932(1)(c).

Implied Consent Law Applies to Drugs

Yes. F.S.A. §316.1932(1)(a), (c).

(Yes/No):

Refusal to Submit to Chemical Test

Yes²²⁷ – Criminal proceeding. F.S.A. §§316.1932(1)(a), (b), (e).

Admitted into Evidence:

Other Information:

A driver may be compelled to provide a blood sample for testing only if he/she has been: (1) involved in an accident resulting in either death or serious bodily injury of a human

²²² The offense of “driving under the influence” includes driving or being in actual physical control of a vehicle (1) while under the influence of alcoholic beverages, any chemical or controlled substance, when affected to the extent that the person’s normal faculties are impaired; or (2) with a blood or breath level of .08 or more. F.S.A. §316.193(1)(a), (b).

²²³ Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liter of breath. F.S.A. §§316.193(1)(b), (c); 316.1932(1)(b)(1).

²²⁴ If the implied consent law’s test procedures are not followed, the State can still introduce alcohol concentration, obtained through blood sample, into evidence. However, if this is done, the statutory “presumptions” cannot be used as they are based on alcohol concentrations obtained through the implied consent law. *State v. Miles*, 775 So.2d 950 (Fla. 2000).

²²⁵ This includes any chemical, compound or liquid used to inhale or ingest which induces a condition of intoxication or which distorts or disturbs the auditory, visual or mental processes. F.S.A. §877.111

²²⁶ Under F.S.A. §322.2616(1)(b), a person under 21 may be lawfully detained and requested to submit to a chemical test if a there is probable cause to believe that he/she was driving while under the influence of alcohol or with any alcohol level.

²²⁷ A refusal to submit to field sobriety testing is admissible into evidence at a DUI trial. *State v. Taylor*, 648 So.2d 701 (Fla. 1995).

being²²⁸ (F.S.A. §316.1933(1)) and there is reasonable cause to believe a DUI occurred; (2) the driver is at a hospital for treatment and a breath or urine test is impractical; or (3) the person is unconscious or otherwise unable to refuse. F.S.A. §316.1932(1)(c).

Non-Breath Chemical Tests for Alcohol Concentration Authorized Under the Implied Consent Law:

Blood:

Yes. A blood test, for the purposes of implied consent, may be taken only if: 1) the law enforcement has probable cause to believe that the person was DUI and caused or contributed to the death or serious bodily injury of a human being, or 2) the driver appears for treatment at a medical facility and the administration of a breath/urine test is impractical or impossible. F.S.A. §316.1932(1)(c).

Urine:

Yes. F.S.A. §316.1932(1)(a)1.b.

Other:

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

Yes. Applies to DWI, manslaughter resulting from the operation of a motor vehicle and vehicle homicide offenses. F.S.A. §316.656.

Anti-Plea-Bargaining Statute (Yes/No):

Yes. Applies to DUI where the alcohol concentration is 0.15 or more, DUI where there has been physical injury, death or property damage, DUI manslaughter related to the operation of a motor vehicle and vehicle homicide. F.S.A. §316.656(2). **Discretionary in felony cases.** F.S.A. §921.231.

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

All convicted drunk-driving offenders must undergo a “psychosocial evaluation”. F.S.A. §316.193(5).

Sanctions for Refusal to Submit to a Chemical Test:

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

None

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev):

Persons under 21: 1-year license suspension or 18 months license suspension if such person’s driving privilege has been previously suspended as a result of refusal to submit to a test. F.S.A. §322.2616(2).

Preliminary Breath Test – Other:

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

A subsequent refusal is punishable as a first degree misdemeanor, which carries a jail term of up to 1 year and/or

²²⁸ The term “serious bodily injury” means any injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ. F.S.A. §316.1933(1)(b).

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):

a fine of up to \$1,000.²²⁹ F.S.A. §§316.1932(1)(c); 316.1939; 775.082; 775.083.

First refusal – Suspension for 1 year (90 days mand.) (A hardship license is available after this mandatory period.); **Subsequent refusals – Suspension for 18 months** (mand.).²³⁰ F.S.A. §§316.1939; 322.2615(1)(b), (10); 322.271(2)(a). Under F.S.A. §322.291, an implied consent law violator is required to complete a driver-training course.

Implied Consent Chemical Test - Other:

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine:

First conviction (misdemeanor) – Not more than **6 months** and not less than **\$500** or more than **\$1,000**;
Second conviction (misdemeanor) – Not less than **10 days** or more than **9 months** and not less than **\$1,000** or more than **\$2,000**;
Third offense (within 10 years = 3rd degree felony) – Not less than **30 days** or more than **5 years** and/or not more than **\$5,000**;
Third conviction (outside of 10 years = misdemeanor) – Not more than **12 months** and not less than **\$2,000** or more than **\$5,000**;
Fourth or subsequent conviction (3rd degree felony) – Not more than **5 years** and not less than **\$2,000**.
 F.S.A. §§316.193; 775.08; 775.083.²³¹

DUI – Property Damage/Personal Injury (1st degree misdemeanor) – Not more than **1 year** and/or not more than **\$1,000**. F.S.A. §316.193.

DUI – Serious Bodily Injury (3rd degree felony) – Not more than **5 years** and/or not more than **\$5,000**. F.S.A. §316.193.

BAC/BrAC ≥ 0.15:

First conviction – Not more than **9 months** and not less than **\$1,000** or more than **\$2,000**;
Second conviction – Not more than **12 months** and not less than **\$2,000** or more than **\$4,000**;
Third or subsequent conviction – Not more than **12 months** and not less than **\$4,000**. F.S.A. §316.193(3), (4).

²²⁹ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

²³⁰ 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. F.S.A. §322.2615. 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.

²³¹ The court in its discretion may require a defendant to serve all or any part of a sentence of imprisonment for a DUI offense in an alcohol or a drug residential treatment program. F.S.A. §316.193(6)(k).

Mandatory Minimum Term/Fine:	<u>Second conviction</u> (within 5 years of a previous DWI conviction) – 10 days ; <u>Third conviction</u> (within 10 years of a previous DWI conviction) – 30 days . F.S.A. §316.193(6). The fines appear to be mandatory.
Community Service:	<u>First offense</u> – 50 hours , or if the court thinks it is 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 that is not to exceed 1 year . F.S.A. §316.193(6)(a). Additionally, the court may order a defendant (a first or sub-offender) to perform specified public service. F.S.A. §775.091.
Child Endangerment:	<u>Driving With a Passenger < 18:</u> <u>First conviction</u> – Not more than 9 months and not less than \$1,000 or more than \$2,000 ; <u>Second conviction</u> – Not more than 12 months and not less than \$2,000 or more than \$4,000 ; <u>Third or subsequent conviction</u> – Not more than 12 months and not less than \$4,000 . F.S.A. §§316.193(4); 775.082; 775.083
Restitution:	The court may order a defendant to pay restitution to a victim. F.S.A. §775.089. Additionally, the State has a victim’s compensation fund. A victim of DUI offense is eligible to receive payments from this fund. F.S.A. §960.01, <i>et seq.</i>
Other:	Mandatory Probation: First offenders must be placed on probation for 1 year. F.S.A. §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 . ²³² F.S.A. §§938.03; 938.04; 775.0835(1). 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 Operating Trust Fund of the Department of Law Enforcement; and, \$60 is deposited into the Brain and Spinal Cord Injury Rehabilitation Trust Fund. F.S.A. §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. F.S.A. §893.165. Reinstatement Fee: In addition to any other license reinstatement fee, a person, who has been either convicted of a DUI offense or found in violation of the admin. per se law,

²³² The court must find that the defendant has the present ability to pay the fine and the impact of the fine on the defendant’s dependents will not cause such dependents to become dependent upon public welfare. F.S.A. §775.0835(1).

must pay a special fee of **\$130**. This fee is paid into the Highway Safety Operating Trust Fund. F.S.A. §322.21(8). Under F.S.A. §322.291, a defendant is required to complete a driver-training course.

Release: A DUI offender cannot be released from custody until he/she is no longer under the influence of alcohol or other chemical substance, (2) his/her BAC/BrAC is < .05, or 8 hours have elapsed from the time of his/her arrest. F.S.A. §316.193(9).

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

Yes – ≥ .08 BAC/BrAC. F.S.A. §§316.193; 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 have been two or more DWI offenses – **Suspension 1 year**²³³ (mand).
 F.S.A. §§316.193; 322.2615(1)(a), (1)(b), (8)(b), (10); 322.271(2)(a).

Persons Under 21 – ≥ .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.
 F.S.A. §322.2616(1)(a), (2), (9), (11).

Under F.S.A. §§322.27; 322.28(1), a person’s license may be suspended for not more than 1 year if driver 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.

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Term of Withdrawal:

Revocation.²³⁴ F.S.A. §322.28.

First conviction – Not less than **180 days** or more than **1 year**;

Second conviction (within 5 years) – **Not less than 5 years**;

Third conviction (within 10 years) – **Not less than 10 years**;

Fourth conviction – **Permanent.** F.S.A. §322.28(2)(a), (d).

Revocation is permanent if there is an alcohol offense in connection with a vehicle manslaughter/homicide offense. F.S.A. §§322.26; 322.28(3).

²³³ The “actual” suspension period appears to be only 11 months. 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. F.S.A. §322.2615(10)(b). 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.

²³⁴ This revocation applies to both non-injury and injury-related DWI offense convictions. F.S.A. §322.28(2).

	<p>Serious bodily injury: <u>First conviction</u> – Not less than 3 years; <u>Second conviction</u> – Not less than 5 years; <u>Third conviction</u> – Not less than 10 years; <u>Fourth conviction</u> – Permanent. F.S.A. §322.28.</p>
Mandatory Minimum Term of Revocation:	<p><u>First offense</u> – 180 days; <u>Second offense</u> (within 5 years) – 12 months;^{235,236} <u>Third offense</u> (within 10 years) – 24 months; <u>Fourth offense</u> – 5 years. F.S.A. §§322.271(2)(b); 322.28.</p>
Alcohol Education:	<p>Yes. A substance abuse course/alcohol treatment program is required for a defendant convicted of any DUI offense. F.S.A. §§316.193(5); 322.291. Such a course must be successfully completed by defendants who have been convicted of two DUI offenses (within 5 years) or 3 such offenses (within 10 years) before the license can be restored. F.S.A. §322.03(2).</p>
Substance Abuse Treatment:	<p>If BAC/BrAC is > .05, drivers < 21 must complete a substance abuse course. F.S.A. §322.2616(2)(c).</p>
Vehicle Impoundment/Confiscation:	<p>Yes (Limited) – A DUI offender's vehicle is subject to forfeiture, if at the time of the DUI offense, that person was driving on a suspended or revoked license for a prior DUI driving offense.</p> <p>Impoundment or Immobilization: <u>First offense</u>– 10 days;²³⁷ <u>Second offense</u> (within 5 years) – 30 days;²³⁸ <u>Third offense</u> (within 10 years) – 90 days. F.S.A. §316.193(6). Note: The court shall dismiss the order of impoundment or immobilization if the court finds that the family of the vehicle owner “has no other public or private or public means of transportation.”</p> <p>The court may dismiss the order of impoundment or immobilization of any vehicles that are owned by the defendant but that are operated solely by the employees of the defendant or any business owned by the defendant. The court may also dismiss the order if the defendant provides satisfactory proof of ignition interlock installation. F.S.A. §316.193(6)(g), (h), (i).</p>
Authorized by Specific Statutory Authority:	F.S.A. §§316.193; 322.34(9)(a); 932.701(2)(a)(9).
Terms Upon Which Vehicle Will Be	None

²³⁵ 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. F.S.A. §322.271(2)(a).

²³⁶ 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. F.S.A. §322.271(2)(b).

²³⁷ Applies only to vehicles used in the offense or to one vehicle owned by the offender. The term is 10 days or for the unexpired term of a rental or lease agreement that expires within 10 days. This action is a condition of probation and must not occur concurrently with incarceration. F.S.A. §316.193(6)(a).

²³⁸ Applies to all vehicles owned by the offender. The term is 30 days or for the unexpired term of a rental or lease agreement that expires within 30 days. This action may not be concurrent with incarceration, but must be concurrent with the driver’s license revocation. F.S.A. §316.193(6)(b), (c).

Released:

Other Miscellaneous Sanctions:

Medical Facility Visitation Requirement: A DUI offender under 18 may be ordered by the court to visit medical facilities that treat victims of traffic accidents.

F.S.A. §322.0602.

Probation Requirements: A court, under its general probation powers, may require a person convicted of a DUI offense to place a **bumper sticker** on his vehicle that identifies him as a convicted DUI offender who is operating a motor vehicle on a restricted license, or to place, at his own expense, **an advertisement in a local newspaper** along with their photograph that identifies them as DUI offender. These probation conditions have been held to be constitutional under both the Federal and State constitutions. *Goldschmitt v. State*, 490 So.2d 123 (Fla.App.2 Dist. 1986) (upholding the use of a bumper sticker); *Lindsay v. State*, 606 So.2d 652 (Fla.App.4 Dist. 1992)(upholding the requirement to place an ad in a local newspaper). 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).

Ignition Interlock:

Permitted or Prohibited:

Type of Law (Mandatory or Permissive):

Sanction (Judicial, Administrative or Hybrid)

Conditions of Use:

Permitted. F.S.A. §§ 316.193; 322.2715.

Mandatory for Repeat Offenders

Hybrid

First offense = **If BAC ≥ 0.08, at least 6 months (discretionary);**

Second offense = **at least 1 year;**

Second offense with BAC ≥ .15 or with a minor in the vehicle = **at least 2 years;**

Third offense = **at least 2 years;**

Fourth or subsequent offense = **at least 5 years.**

F.S.A. §§ 316.193; 322.2715.

The court may order placement of an ignition interlock device for at least 6 months if, at the time of the offense, the convicted person had a BAC of ≥ .08. F.S.A.

§316.193(2)(c).

Other Provisions:

Additionally, a driver may be required to use an ignition interlock device when applying for reinstatement of his suspended/revoked license. F.S.A. §322.271(2)(e).

Sobriety Checkpoints:

Permitted or Prohibited:

Permitted. *Campbell v. State*, 679 So.2d 1168 (Fla. 1996); *State v. Jones*, 483 So.2d 433 (Fla. 1986).

Homicide by Vehicle:

State Has Such a Law:

Yes.²³⁹

²³⁹ Under F.S.A. §322.34(6), 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

DUI Manslaughter (a death related to a drunk-driving offense)²⁴⁰ = 2nd degree felony. F.S.A. §316.193(3)(c)(3); 782.071.

Vehicular Homicide²⁴¹ = 2nd degree felony. F.S.A. §782.071.²⁴²

Imprisonment/Fine:

Not more than **15 years** and/or not more than **\$10,000**. F.S.A. §§775.082(3)(c); 775.083(1)(b).

Mandatory Minimum Term/Fine:

None

Authorized Licensing Action:

Revocation. F.S.A. §322.28(2)(d), 3, (4)(a).

Length of Term of Licensing Withdrawal:

DUI Manslaughter or Vehicular Homicide– **3 years** (minimum)

Mandatory Minimum License Withdrawal:

Murder resulting from the operation of a motor vehicle – **Permanent.** F.S.A. §322.28(2)(d), (3, 4)(a).

This term appears to be mandatory.

F.S.A. §322.28(2)(d), 3, (4)(a).

Other:

I. A defendant may be required to pay restitution to a victim.

F.S.A. §775.089.

II. A defendant must complete a driver-training course or a substance abuse education course, which shall include a psychosocial evaluation and treatment if referred.

F.S.A. §322.291.

DWI Offenses and Commercial Motor Vehicles (CMV):

A person who has *any* alcohol in her/her body may not drive or be in actual physical control of a commercial motor vehicle. Such person shall be guilty of a moving violation.²⁴³ Additionally, such person shall be placed out-of-service immediately for a period of 24 hours. F.S.A. §322.62.

A person who has a BAC of **.04** or more shall be subject to the same penalties as provided in F.S.A. §316.193.

Additionally, such person shall be disqualified from operating a CMV for 1 year (3 years if carrying hazardous material) for a first offense. F.S.A. §322.61(3)(b), (4).

For a second offense, the disqualification shall be permanent. F.S.A. §322.61(5).

Any driver who violates an out-of-service order shall be disqualified for not less than 180 days or more than 1 year

revocation was: (1) a second DUI offense; (2) vehicular manslaughter; (3) vehicular homicide; or (4) a DUI offense that requires an enhanced sanction. Sanctions include incarceration for not more than 5 years and a fine of not more than \$5,000. F.S.A. §§775.082(3)(e); 775.083(1)(c).

²⁴⁰ 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. F.S.A. §782.09.

²⁴¹ The killing of a human being, or the killing of an unborn child by any injury to the mother, caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another.

²⁴² Vehicular homicide can also be a felony of the first degree, punishable as provided in F.S.A. §§775.082 and 775.083 or 775.084, if (1) at the time of the accident, the person knew or should have known, that the accident occurred; and (2) failed to give information or render aid as required by F.S.A. §316.062.

²⁴³ This does not prevent such person from being prosecuted for driving under the influence as well. F.S.A. §322.62(3).

(first violation); at least 2 years but not more than 5 years (second violation within 10 years); at least 3 years but not more than 5 years (third or subsequent violations within 10 years). F.S.A. §322.61(8).

Driving While License Suspended for DWI

Offense:

Criminal - Fine/Imprisonment:

First offense (2nd degree misdemeanor) – Not more than **60 days** and/or not more than **\$500**;

Second offense (1st degree misdemeanor) – Not more than **1 year** and/or not more than **\$1,000**;

Third or subsequent offense or driving while license permanently revoked (felony third degree) – Not more than **5 years** and/or not more than **\$5,000**.

F.S.A. §§322.34(2); 322.341; 775.082; 775.083.

None

Mandatory Minimum Fine/Imprisonment Term:

Suspension or Revocation. F.S.A. §322.28(1).

Administrative Licensing Action Type:

Suspension shall not be more than **1 year**. **Revocation** shall be for **1 year**.

Withdrawal Action:

No. A restricted hardship license may be issued.

Mandatory Term of License Withdrawal Action:

F.S.A. §322.271.

Other:

The vehicle used in the offense, if it is owned by the driver, is impounded by law enforcement officials. The vehicle remains impounded until the owner presents proof of insurance or of sale of the vehicle to another person.

F.S.A. §322.34(8), (9).

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. F.S.A. §322.264.

Grounds for Being Declared Habitual Offender:

3 serious²⁴⁴ or 15 normal moving violations within a 5-year period.

Term of License Revocations While on Habitual Offender Status:

Revocation – 5 years. F.S.A. §322.27(5). **Note:** After 12 months, the offender may have the driving privileges restored. F.S.A. §322.271(1)(b). Under F.S.A. §322.291, a driver-training course must be completed.

Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):

3rd degree felony. F.S.A. §322.34(5).

Not more than **5 years** and/or not more than **\$5,000**.

F.S.A. §§322.34; 775.082; 775.083.

Mandatory Minimum Term/Fine:

None

Licensing Action (Specify):

Revocation period is **5 years**, but a person may petition for reinstatement after 12 months. F.S.A. §§322.27(5); 322.271.

Other State Laws Related to Alcohol Use:

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):

Yes. F.S.A. §316.1933.

²⁴⁴ These violations include manslaughter resulting from the operation of a motor vehicle, DUI, driving on a revoked or suspended license, and driving a CMV while privilege is disqualified. F.S.A. §322.264(1).

BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes. F.S.A. §316.1933.
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	No ²⁴⁵
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	No
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes. F.S.A. §316.1933
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. F.S.A. §562.11(1)(a).
Minimum Age (Years) for Possession/Consumption of Alcohol:	21 – Except for employment purposes. F.S.A. §562.111.
<u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	Yes – Limited. F.S.A. §768.125. ^{246, 247, 248}
"Dram Shop Law" 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. F.S.A. §562.11 and <i>United Services Auto. Ass’n v. Butler</i> , 359 So. 2d 498 (Fla. App.4 Dist. 1978).
Social Host – Criminal Enforcement:	A court may withhold the issuance of, or suspend or revoke the driver’s license of, a social host convicted of providing alcohol to a minor. <u>First offense</u> – Not less than 3 months or more than 6 months ; <u>Subsequent offense</u> – 1 year. F.S.A. §322.057.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

²⁴⁵ However, if a health care provider providing medical care to a person in a medical facility who was injured in a motor vehicle crash becomes aware, as a result of any blood test performed in the course of medical treatment, that the person’s BAC meets or exceeds .08, the provider *may* notify any law enforcement officer. F.S.A. §316.1933(2)(a)1.

²⁴⁶ This law limits liability to damages caused by selling or furnishing alcoholic beverages to persons under the legal drinking or by knowingly serving alcoholic beverages to persons who are habitually addicted to alcohol. *Peoples Restaurant v. Sabo*, 591 So.2d 907 (Fla. 1991). Note: Regarding 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 a habitual drunkard, the injured party must prove that alcoholic beverages were only “knowingly” served by the licensee. Also, service of multiple drinks on one occasion is not sufficient to establish that a patron was a 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). Additionally, 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).

²⁴⁷ 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).

²⁴⁸ I. A patron who is a known “habitual drunkard” can hold a licensee liable, under the dram shop law, for injures he sustains 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).

Type of Criminal Action:	2nd degree misdemeanor (applies only to circumstances involving habitual drunkards). ²⁴⁹
Imprisonment/Fine:	N/A
<u>Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	No
<u>Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:</u>	
Type of Criminal Action:	<u>First violation</u> – 2nd degree misdemeanor; <u>Second or subsequent violation</u> – 1st degree misdemeanor. F.S.A. §562.11(1)(a).
Imprisonment/Fine:	<u>First violation</u> – Not more than 60 days and/or \$500 ; <u>Second or subsequent violation</u> – Not more than 1 year and/or not more than \$1,000 . F.S.A. §§775.082; 775.083.
<u>Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes – Suspension or revocation. ²⁵⁰ F.S.A. §561.29(1)(a), (b).
Length of Term License Withdrawal:	Time period is not specified in the statute.
<u>Anti-Happy Hour Laws/Regulations:</u>	No
<u>Open Container Laws:</u>	
Open Container Law (Yes/No):	Yes. F.S.A. §316.1936.
Anti-Consumption Law (Yes/No):	Yes. F.S.A. §316.1936.
<u>Alcohol Exclusion Law (UPPL):</u>	Yes. F.S.A. §627.629

²⁴⁹ However, 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 a habitual drunkard. F.S.A. §§562.50; 775.082; 775.083. A licensee is also subject to license suspension under F.S.A. §561.29(1)(a), (b).

²⁵⁰ Administrative 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. F.S.A. §561.706.

STATE

GEORGIA

General Reference:

Official Code of Georgia Annotated (OGCA)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of alcohol to the extent that it is less safe for the person to drive. OGCA §40-6-391(a)(1).

Illegal Per Se Law (BAC/BrAC):

≥ **.08**.²⁵¹ OGCA §§40-1-1(1); 40-6-391(a)(5); 40-6-392(c)(1).
Under 21– ≥ **.02**.²⁵² OGCA §§40-6-391(k)(1); 40-6-392(c)(3).

Presumption (BAC/BrAC):

≥ **.08**. If the BAC ≤ **.05**, then the judge/jury may infer the person was not under the influence of alcohol.
If the **BAC > .05 but < .08**, no inference shall be made that the person was or was not under the influence of alcohol. However, this fact may be considered by the judge/jury with any other evidence. OGCA §40-6-392(b), (c).

Types of Drugs/Drugs and Alcohol:

(1) Under the influence of any drug, to the extent that it is less safe for the person to drive, (2) under the intentional influence of any glue, aerosol, or other toxic vapor, to the extent that it is less safe for the person to drive, (3) under the combined influence of any two of the previous substances, to the extent that it is less safe for the person to drive, or (4) if there is any amount of marijuana or a controlled substance, present in the person’s blood and/or urine, including metabolites and derivatives, which renders the person incapable of driving safely. OGCA §40-6-391(a); *Love v. State*, 271 Ga. 398 (1999); *Sandlin v. State*, 307 Ga. App. 573 (2011).²⁵³

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

No.²⁵⁴

Implied Consent Law:

Yes. OGCA §40-5-55.

Arrest Required (Yes/No):

Yes.²⁵⁵ OGCA §40-5-55(a).

Implied Consent Law Applies to Drugs (Yes/No):

Yes. OGCA §40-5-55(a).

Refusal to Submit to Chemical Test

Yes²⁵⁶ – Criminal Cases. OGCA §40-6-392(d).

²⁵¹ Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. OGCA §40-1-1(1)

²⁵² Except as noted, the sanctions for this offense are the same as for any other drunk-driving offense.

²⁵³ The courts have held that OGCA §40-6-391 establishes one offense namely that of “driving under the influence.” Subsection (a)(1), the standard DWI offense, and subsequent section (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).

²⁵⁴ Law enforcement officers are using preliminary breath testing devices without express legislative authorization. However, OGCA §40-6-392(f) provides for the use of a self-authenticating certificate with regard to the inspection of a breath-test instrument. Further, the Georgia Supreme Court has held that the implied consent statute did not apply to an initial alcohol screening test used to determine probable cause to arrest drunk drivers and, thus, a law enforcement officer is not required to advise a defendant of his right to an independent alcohol level test before requiring the defendant to undergo a preliminary screening test. *Keenan v. State*, 436 S.E.2d 475 (Ga. 1993).

²⁵⁵ It appears that an arrest is not required if there are “reasonable grounds” to believe that a person was under the influence and he/she was involved in an accident that resulted in either serious injury or death. OGCA §40-5-55(a). *See also Cooper v. State*, 587 S.2d 605 (Ga. 2003) (holding that probable cause is required).

²⁵⁶ If proper and objective warnings are not given, evidence of refusal (of a chemical test) may not be admissible. *State v. Leviner*, 443 S.E.2d 688 (Ga.App. 1994).

Admitted into Evidence:

Other Information: Refusal to submit to alco-sensor (PBT) and field sobriety tests may be admitted into evidence. *Turner v. State*, 504 S.E.2d 229 (Ga.App. 1998).

Non-Breath Chemical Tests for Alcohol Concentration Authorized Under the Implied Consent Law:

Blood: **Yes.** OGCA §40-5-55(a).
 Urine: **Yes.** OGCA §40-5-55(a).
 Other: **“Other Bodily Substances.”** OGCA §40-5-55(a).

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No**²⁵⁷
 Anti-Plea-Bargaining Statute (Yes/No): **No**
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes.**
First offense (discretionary);
Second or subsequent offense (mand). OGCA §§ 40-5-63.1; 40-6-391(c).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **N/A**
 Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **N/A**
 Preliminary Breath Test – Other: **N/A**
 Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**
 Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev): **Suspension 1 year.** (mand) OGCA §40-5-67.1(b).
 Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine: First offense (within 10 years) (misdemeanor) – Not less than **10 days** or more than **12 months** and not less than **\$300** or more than **\$1,000**;
Second offense (within 10 years) (misdemeanor) – Not less than **90 days** or more than **12 months** and not less than **\$600** or more than **\$1,000**;
Third offense (within 10 years) (high and aggravated misdemeanor) – Not less than **120 days** or more than **12**

²⁵⁷ 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 OGCA §40-6-391(k), where a person under 21 was operating a motor vehicle with a BAC or BrAC ≥ .02. OGCA §§40-6-391(k)(3); 40-6-391.1(a).

months and not less than **\$1,000** or more than **\$5,000**;
Fourth or subsequent offense (within 10 years) (felony) – Not
less than **1 year** or more than **5 years** and not less than
\$1,000 or more than **\$5,000**. OGCA §40-6-391(c), (k).

Persons Under 21: Same penalties apply, but these offenders
must be kept segregated from all other offenders. OGCA
§§17-10-3.1(b); 40-6-391(k). Also, if convicted of operating
a motor vehicle with a BAC/BrAC level $\geq .02$, at the
discretion of the court, such persons may be sentenced to
serve imprisonment time either on weekends or during
nonworking hours. OGCA §17-10-3.1(a).

DUI 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 of not less than 1 year or more than 15 years.
OGCA §40-6-394.

DUI if operating a school bus – imprisonment from not less
than 1 year or more than 5 years and/or a fine of not less than
\$1,000 or more than \$5,000. OGCA §40-6-391.3.

Mandatory Minimum Term/Fine:

Note.²⁵⁸

First offense – **24 hours** if BAC/BrAC was $\geq .08$;
Second offense (within 10 years) – **72 hours**;
Third offense (within 10 years) – **15 days**;
Fourth or subsequent offense (within 10 years) – **90 days**.

The base fines are mandatory. However, if payment of the
fine will impose an economic hardship, the judge may order
the defendant to pay in installments, or may suspend up to
one-half of the fine imposed if the defendant undergoes
substance abuse treatment. OGCA §40-6-391(g).

Community Service:

First offense (misdemeanor) – Not less than **40 hours**,²⁵⁹
Second offense – Not less than **30 mandatory days**;
Third offense – Not less than **30 mandatory days**;
Fourth or subsequent offense – Not less than **60 days**, which
may be suspended if the defendant is sentenced to serve 3
years of actual imprisonment. OGCA §40-6-391(c).

Persons Under 21 with an alcohol concentration of $< .08$:
First offense – **Not less than 20 mandatory hours**;
Second or subsequent offense – **Not less than 40 mandatory
hours**. Community service must be completed within 60 days
of the sentencing date. OGCA §§40-6-391(c), (k).

Child Endangerment:

Child Endangerment: It is a separate offense to transport a
child under age 14 years while driving under the influence.

²⁵⁸ 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).

²⁵⁹ If the defendant’s BAC was less than .08, then he/she shall perform no fewer than 20 hours of community service.

The sanctions for this offense are as follows:

First or Second offense (misdemeanor) – imprisonment for **not more than 12 months** and/or a fine of **not more than \$1,000**;

Third or Subsequent offense (felony) – imprisonment for **not less than 1 year or more than 3 years** and/or a fine of **not less than \$1,000 or more than \$5,000**. OGCA §§16-12-1(d); 40-6-391(l).

Restitution:

Yes. (1) A defendant may have to pay restitution (or other relief to a victim) as a condition of probation. OGCA §17-14-1, *et seq.* (2) A victim may also receive payment from the State’s victims’ compensation fund. OGCA §17-15-1, *et seq.*

Other:

Photo, Name and Address Publication:

For a Second or subsequent offense, a defendant’s name, address and photograph shall be published in the legal organ of the county in which the defendant resides or was convicted. OGCA §40-6-391(j).

Special Fine: An additional fine equal to 5% of the original fine is imposed and deposited into the Peace Officer’s Annuity and Benefit fund. OGCA §15-21-131.

Special Penalty: An additional fine equal to 10% of the original fine is imposed and deposited into the Brain and Spinal Injury Trust fund. OGCA §§15-21-149; 15-21-150.

Assessment: A mandatory assessment penalty of \$26 or 11% of the original fine, whichever is less. This penalty is used to support the Crime Victims Emergency Fund. OGCA §15-21-112.

Probation: If jail is < 12 months, there is mandatory probation for any period of time not served in confinement. OGCA §40-6-391(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. OGCA §40-2-136.

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

Yes.²⁶⁰ **≥ .08 BAC/BrAC** (≥ .02 for persons under 21).
First action – **Suspension for 1 year**²⁶¹ (30 days mand);
Second action (within 5 years) – **Suspension for 3 years** (18 months mand);
Third or subsequent action (within 5 years) – **Suspension for 5 years** (2 years mand). OGCA §§ 40-5-67.1; 40-5-67.2(a).

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Suspension or Revocation. OGCA §§40-5-62(a)(1); 40-5-63; 40-5-64.

Term of Withdrawal:

Persons Under 21:²⁶² **Suspension or Revocation.** OGCA § 40-5-57.1(b), (c); OGCA § 40-6-391.

I. Alcohol and Non-Controlled Substance (Drug) DWI Offenses:

First offense – **Suspension 12 months,**²⁶³

Second offense (within 5 years) – **Suspension 3 years;**²⁶⁴

Third offense (within 5 years) – **Revocation 5 years.**

DWI-Serious Injury – **Suspension 3 years.**

OGCA §40-5-63(a), (d)(1).

II. Controlled Substance DWI Offenses:

First offense – **Not less than 180 days;**²⁶⁵

Second offense (within 5 years) – **3 years;**

Third or subsequent offense (within 5 years) – **5 years.**

OGCA §§40-5-63(a); 40-5-75(a).

Persons Under 21:

First offense (BAC < .08) – **6 months;**

First offense (BAC ≥ .08) – **12 months;**

Second or subsequent offense – **12 months.**

OGCA §40-5-57.1(c)(2).

Mandatory Minimum Term of Revocation:

I. Alcohol and Non-Controlled Substance (Drug) DWI Offenses:

²⁶⁰ If a person is “acquitted” of a drunk-driving offense, 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. OGCA §40-5-67.1(g)(4).

²⁶¹ However, after 30 days following the effective date of suspension, a person may apply for reinstatement conditioned upon proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and payment of a \$200-210 fee, or a \$500-510 fee if the conviction was a recidivist conviction. OGCA §40-5-67.2.

²⁶² If the vehicle operator was below the driving age (16) at the time of the DUI 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 DUI Alcohol or Drug Use Risk Reduction Program. OGCA §40-5-22.1.

²⁶³ For a first drunk-driving offense conviction, the license suspension period may be limited to only 120 days. Under OGCA §40-5-63(a)(1), a driver’s license may be reinstated after 120 days, provided the defendant has completed a DUI Alcohol or Drug Use Risk-Reduction Program. The offender must have completed this program before the license can be restored.

²⁶⁴ For a second drunk-driving offense conviction, the license suspension period may be limited to only 120 days. Under OGCA §40-5-63(a)(1), a driver’s license may be reinstated after 18 months, provided the defendant has completed a DUI Alcohol or Drug Use Risk-Reduction Program. The offender must have completed this program before the license can be restored.

²⁶⁵ Reinstatement after the suspension period for first and second offenses is contingent upon proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program.

First offense – 120 days;²⁶⁶
Second offense – 18 months;
Third offense (within 5 years) – 5 years;
DWI-Serious Injury – 3 years.
 OGCA §40-5-63.

II. Controlled Substance DUI Offenses:

First offense – 180 days;
Second offense – 1 year;
Third offense – 2 years. OGCA §40-5-63(a); 40-5-75(a).

Persons Under 21:

The terms appear to be mandatory.

Alcohol Education:

Yes

Substance Abuse Treatment:

Yes

I. For a first or second DUI 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. OGCA §§40-5-63(a)(1), (2); 40-6-391(c).

II. For second or third DUI offense convictions, a defendant must complete an “alcohol or drug use risk-reduction program” and, if an evaluation indicates that treatment is necessary, a substance treatment program before their license can be restored. OGCA §§40-5-62(b); 40-5-63(a)(2); 40-5-63.1; 40-6-391(c).

Vehicle Impoundment/Confiscation:

Yes – Forfeiture: A person’s vehicle is subject to forfeiture if convicted of a fourth DUI offense and such offense occurred while operating a vehicle in habitual offender status based on 3 prior DUI convictions. OGCA §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. **Yes.** OGCA §40-6-391.2.

Authorized by Specific Statutory Authority:
 Terms Upon Which Vehicle Will Be Released:

None

Other Miscellaneous Sanctions:

The court has the authority to order a defendant “to wear a fluorescent pink plastic bracelet imprinted with the words “D.U.I. CONVICT’....” as a condition of probation. *Ballenger v. State*, 436 S.E.2d 793, 794 (Ga.App. 1993).

Ignition Interlock:

Permitted or Prohibited:

Permitted. OGCA §§40-5-58; 40-5-63; 42-8-111; 42-8-112.

Type of Law (Mandatory or Permissive):

Mandatory

Sanction (Judicial, Administrative or Hybrid)

Judicial

Conditions of Use:

Second and subsequent offenders on probation must install

²⁶⁶ For a first DUI offense conviction, a defendant may receive limited driving privileges in cases of “extreme hardship.” 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.” OGCA §40-5-64.

ignition interlock devices on all vehicles they own and operate. This requirement becomes effective when the offender is issued limited driving privileges, and must last for 1 year. Additionally, such person shall participate in a substance abuse treatment program or a drug court program for a period not less than 120 days.

OGCA §§40-5-58; 40-5-63; 42-8-111; 42-8-112.

A habitual offender or person whose has a second or subsequent conviction of driving on a suspended license as a result of a DUI, shall not receive probationary ignition interlock license until the expiration of 2 years from the date of conviction. OGCA §42-8-112(b).

Other Provisions:

Any resident of Georgia who is ordered to use an ignition interlock device, as a condition of probation, shall complete the DUI Alcohol or Drug Use Risk Reduction Program and submit to the court or probation department a certificate of completion of the ignition interlock installation and program completion. OGCA §42-8-111.

Sobriety Checkpoints:

Permitted or Prohibited:

Permitted. *State v. Stearns*, 524 S.E.2d 554 (Ga.App. 1999).

Homicide by Vehicle:

State Has Such a Law:

Yes. Vehicular Homicide in the first degree (felony) – Death where there is no “malice aforethought” but where there is either reckless driving or a DUI offense.

Vehicular 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 DUI offense.

Vehicular 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”.

OGCA §§16-1-3(5) (defines a felony offense); 40-6-393.

Imprisonment/Fine:

First Degree – Not less than **3 years** or more than **15 years**.

OGCA §40-6-393(a)

Second Degree– Not more than **12 months** or more than **\$1,000**. OGCA §§17-10-3; 40-6-393(c).

Habitual Offender – First Degree – Not less than **5 years** or more than **20 years**. OGCA §40-6-393(d).

Mandatory Minimum Term/Fine:

Note.²⁶⁷ **Habitual Offender – First Degree – 1 year.**

OGCA §40-6-393.

Authorized Licensing Action:

Suspension/Revocation. OGCA §§40-5-54(a)(1); 40-5-58; 40-5-62; 40-5-63.

Length of Term of Licensing Withdrawal:

Suspension – 3 years (OGCA §40-5-63(d)); **Revocation – 5 years** if “Habitual Violator” (OGCA §40-5-58).

Mandatory Minimum License Withdrawal:

Suspension – 3 years (OGCA §40-5-63 (d)); **Revocation – 5 years** if “Habitual Violator” (OGCA §40-5-58(e)).

Other:

N/A

²⁶⁷ Under OGCA §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.

DWI Offenses and Commercial Motor Vehicles (CMV):

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 \geq .04 “percent by weight” of alcohol or more in the blood, breath or urine;
 (2) while under the influence of alcohol or any drug or;
 (3) or by refusing to submit to a chemical test for alcohol concentration.
 OGCA §§40-5-142(2), (13.1); 40-5-151; 40-5-153.

For a subsequent violation or 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 misdemeanor to operate a CMV with a BAC \geq .04; the only sanctions for this offense are the fines associated with DUI offense convictions. In addition, a CMV operator, who has any measurable amount of alcohol in his system, must be placed “out-of-service” for 24 hours. OGCA §§40-5-67.1(c); 40-5-151; 40-5-152; 40-5-153; 40-6-391(i); 40-6-392(c)(2).

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

First conviction – Not less than **2 days** or more than **12 months** and may be fined not less than **\$500** or more than **\$1,000**;

Second or third conviction (within 5 years) (high and aggravated misdemeanor) – Not less than **10 days** or more than **12 months** and may be fined not less than **\$1,000** or more than **\$2,500**;

Fourth or subsequent conviction (within 5 years) (felony)– Not less than **1 year** or more than **5 years** and may be fined not less than **\$2,500** or more than **\$5,000**. OGCA §40-5-121(a).

Mandatory Minimum Fine/Imprisonment Term:

The terms above appear to be mandatory.

Administrative Licensing Action Type:
 Withdrawal Action:

Suspension/Revocation. OGCA §40-5-121(b), (c).
 Original suspension or revocation period is extended **6 months**.

Mandatory Term of License Withdrawal Action:

This appears to be mandatory.

Other:

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

Habitual Traffic Offender Law:

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

Yes. OGCA §40-5-58.
 3 or more serious violations within 5 years.²⁶⁸

²⁶⁸ Serious violations include racing, reckless driving, any DWI offense, and eluding. OGCA §40-5-58(a)(1).

Term of License Revocations While on Habitual Offender Status:	Revocation – 5 years. ²⁶⁹ OGCA §40-5-62(a)(1).
Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status:	Felony. ²⁷⁰ OGCA §§16-1-3(5); 40-5-58(c)(1), (2).
Imprisonment (Term):	Not less than 1 year or more than 5 years and/or a fine of not less than \$750 , or \$1,000 (if HO status was based only on DUI offense convictions). OGCA § 40-5-58(c)(1), (2).
Mandatory Minimum Term/Fine:	None
Licensing Action (Specify):	None
<u>Other State Laws Related to Alcohol Use:</u>	
BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes. OGCA §§40-5-55; 45-16-46. ²⁷¹
BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes. OGCA § 40-5-55
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	Possible ²⁷²
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	Possible
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes , but probable cause must exist to conduct the BAC test. OGCA §40-5-55; <i>Cooper v. State</i> , 587 S.E.2d 605 (2003)
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. OGCA §3-3-23(a)(1), (2).
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. OGCA §3-3-23(a)(2), (b). Exceptions: Medical purposes, religious ceremonies, and home use with parental consent, or handling pursuant to employment.
<u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	Yes – Limited. OGCA §51-1-40(b). ^{273,274}

²⁶⁹ 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. OGCA §40-5-58(e). A probationary license is not available if: (1) the person’s regular license has been revoked for a DWI-related death; (2) the person has been convicted of any other motor vehicle-related death; or the person has been convicted of violating either the alcoholic beverage control law or the controlled substances law.

²⁷⁰ 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. OGCA §§17-10-3(a); 40-5-58(c).

²⁷¹ 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.

²⁷² OGCA §40-5-55(b) states that “[a]ny person who is dead, unconscious, or otherwise in a condition rendering such person incapable of refusal shall be deemed not to have withdrawn the consent. . . .” (Emphasis added.)

²⁷³ Also, under OGCA §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).

²⁷⁴ Action is limited to the selling, furnishing or serving of alcoholic beverages to persons under the legal drinking age (in a willful, knowing and unlawful manner) or 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. Luftran, Inc.*, 434 S.E.2d 112 (Ga.App. 1993), disapproved on other grounds, *Riley v. H & H Operations*, 436 S.E.2d 659 (Ga. 1993). A motor vehicle passenger can recover damages from a licensee for any injuries they may have sustained in

"Dram Shop Law" 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:
Social Host – Criminal Enforcement:

Yes – Limited. OGCA §51-1-40(b).

A person who contributes to the delinquency or unruliness of a minor by knowingly and willfully encouraging, causing or aiding such minor in committing a delinquent act or an act which would cause such minor to be found an unruly child shall be punished in the following manner:

First or second conviction – not more than \$1,000 and/or not more than 12 months;

Third or subsequent offense – not less than \$1,000 or more than \$5,000 and/or not less than 1 year or more than 3 years. OGCA §16-12-1(b).

However, a parent or guardian may give his/her minor alcohol and such possession is in the home of the parent/guardian and such parent/guardian is present. OGCA §3-3-23.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:
Imprisonment/Fine:

Misdemeanor. OGCA §§3-3-9; 3-3-22; 17-10-3.

Not more than **12 months** and/or not more than **\$1,000**.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

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

Yes – Suspension or cancellation.

OGCA § 3-2-3(1).

2 years

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

First offense– **Misdemeanor**;

Subsequent offenses– **Misdemeanor** of a high and aggravated nature.

OGCA §§3-3-9; 3-3-23; 3-3-23.1; 17-10-3; 17-10-4.

Imprisonment/Fine:

For first and subsequent offense – **Not more than 12 months** and/or not more than **\$1,000** (first offense) or **\$5,000** (subsequent offense). OGCA §17-10-3.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages

Yes – Suspension or cancellation. OGCA §3-2-3(1).

an accident while riding with an intoxicated driver who 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).

Withdrawn (Yes/No):
Length of Term License Withdrawal: **2 years**

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

Open Container Laws:
Open Container Law (Yes/No): **Yes. OGCA §40-6-253.**
Anti-Consumption Law (Yes/No): **Yes. OGCA §40-6-253.**

Alcohol Exclusion Law (UPPL): **Yes. OGCA §33-29-4(b)(9)**

STATE

General Reference:

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC/BrAC):

Types of Drugs/Drugs and Alcohol:

Other:

Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to Drugs

(Yes/No):

Refusal to Submit to Chemical Test Admitted
into Evidence:

Other Information:

Non-Breath Chemical Tests for AlcoholConcentration Authorized Under the ImpliedConsent Law:

Blood:

Urine:

Other:

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

Anti-Plea-Bargaining Statute (Yes/No):

Pre-Sentencing Investigation Law (PSI)

(Yes/No):

HAWAII

Hawai'i Revised Statutes Annotated (HRS)

Under the influence of an intoxicant. HRS §291E-61(a).

≥ .08.²⁷⁵ HRS §291E- 61(a)(3), (4).

≥ .08. HRS §291E-3(a).

Under the influence of any drug.²⁷⁶ HRS §291E- 61(a)(2).**Person Under 21 – ≥ .02 but < .08.**²⁷⁷ HRS §291E- 64(a).**Yes.**²⁷⁸ HRS §291E-11(f).**Yes.** HRS §291E-11(a)**Yes.** HRS §291E-11(b).**Yes.** HRS §291E-11(a)**No** – Criminal and Civil Cases. However, there is an exception for administrative hearings related to test refusals (license suspension). HRS § 291E-65; see *Freitas v. Administrative Director of Courts*, 116 P.3d 673 (Hawai'i, 2005).Note.²⁷⁹**Yes.** HRS §291E-11(a).**Yes.** HRS §291E-11(a).

N/A

No**No****Yes.** Substance abuse assessment is required.

HRS §291E-61(h).

²⁷⁵“Alcohol concentration” means grams of alcohol per 100 milliliters or cubic centimeters of blood, or grams of alcohol per 210 liters of breath. HRS §291E-1.

²⁷⁶ Under the influence of any drug that impairs the person’s ability to operate a vehicle in a careful and prudent manner. HRS §291E-61(a)(2).

²⁷⁷ The law prohibits a person < 21 from driving with any measurable amount of alcohol concentration. “Measurable amount of alcohol” is defined as an alcohol concentration equal to or greater than .02 but less than .08. HRS §§291E-1; 291E-64(a).

²⁷⁸ The law does not specifically authorize the use of PBTs, but does allow for PBT test results to “determining probable cause for the arrest.” However, the PBT is not a substitute for usual chemical tests under the implied consent law. HRS §§291E-1; 291E-11(f).

²⁷⁹ Technically in Hawaii 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. HRS §291E-21(c). However, these legislative exceptions to the search warrant requirement should be relied upon with caution in light of the United States Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): N/A
 Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): N/A
 Preliminary Breath Test – Other: N/A

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): Petty Misdemeanor - Up to **30 days** in jail.²⁸⁰ §§291E-15; 291E-68; 701-107(4); 706-663.
 Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):
First offense – **Revocation 2 years;**
Second offense (within 5 years) – **Revocation 3 years;**
Third offense (within 5 years) – **Revocation 4 years;**
Fourth or subsequent offense (within 10 years) – **Revocation 10 years.** HRS §291E-41(c).

Persons Under 21:

First alcohol enforcement contact – **Suspension – 12 months;**
Second alcohol enforcement contact – **Suspension** – Not less than **2 years** and not more than **5 years.**
 HRS §291E-65.

Implied Consent Chemical Test - Other: N/A

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine:

Note.²⁸¹
First offense – 72 hours of community service work, not less than **48 hours** or more than **5 days** of imprisonment, or not less than **\$150** or more than **\$1,000;**
Second offense (within 5 years) – 240 hours of community service work or not less than **5 days** or more than **14 days** of imprisonment, and not less than **\$500** or more than **\$1,500;**
Third offense (within 5 years) – Not less than **10 days** or more than **30 days** and not less than **\$500** or more than **\$2,500.** HRS §291E-61(b).

Mandatory Minimum Term/Fine:

Second offense (within 5 years) – **\$500;**
Third offense (within 5 years) – **\$500/10 days** (with at least 48 consecutive hours). HRS §291E-61(b).

Community Service:

First offense – **72 hours** may be imposed;
Second offense (within 5 years) – Not less than **240 hours** may be imposed;²⁸² HRS §291E-61(b).

Child Endangerment:

Offenders ≥18 who were operating a motor vehicle with a passenger < 15 at the time of the offense are subject to the

²⁸⁰ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

²⁸¹ A person must be sentenced to one of these sanctions but may be sentenced to more than one. HRS §291E-61(b)(1)(C).

²⁸² Either community service or incarceration shall be imposed, but not both. HRS §291E-61(b)(2)(B)

Restitution: following additional mandatory sanctions: (1) A mandatory fine of \$500; and (2) 48 hours 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). The revocation period shall not be less than 2 years. HRS §291E-61(b)(4).
 Other: Restitution may be ordered. HRS §351-1, *et seq.*
Surcharge: \$25 for neurotrauma special fund. Additionally, up to \$25 (first offense) or \$50 (subsequent offense) may be deposited into trauma system special fund if the court so orders. HRS §291E-61(b).
Payment of Costs: Offenders shall make restitution to the county police department or other agency for cost of blood and urine tests. HRS §291E-61(k).

Administrative Sanctions – Pre-Conviction:
 Administrative Per Se Law:

First offense – Revocation 1 year;
Second offense (within 5 years) – Revocation 18 months;
Third offense (within 5 years) – Revocation 2 years;
Fourth or subsequent offense (within 10 years) –
Revocation for a minimum of **5 years** up to a maximum of **10 years.** HRS §291E-41(b).

Administrative Sanctions – Post-Conviction:
 Type of Licensing Action (Susp/Rev):
 Term of Withdrawal:

Revocation. HRS § 291E-61(b).
First offense – Revocation 1 year;
Second offense (within 5 years) – Revocation for not less than **18 months** or more than **2 years;**
Third offense (within 5 years) – Revocation 2 years.
 HRS §291E-61(b).

Mandatory Minimum Term of Revocation:

First offense – 1 year;
Second offense (within 5 years) – 18 months;
Third offense (within 5 years) – 2 years.
 HRS §291E-61(b).

Alcohol Education:
 Substance Abuse Treatment:

Yes
First offense – 14-hour substance abuse rehabilitation program including education and counseling or other program as deemed appropriate by the court.
 All offenders are referred to the driver’s education program for an assessment. HRS §291E-61(b)(1)(A), (h).

Vehicle Impoundment/Confiscation:
 Authorized by Specific Statutory Authority:
 Terms Upon Which Vehicle Will Be Released:
 Other Miscellaneous Sanctions:

N/A
 N/A
 N/A
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: Not more than **5 years** (1 year, 8 months mand. if victim is blind, paraplegic, quadriplegic, age 60 or older, or age 8 or younger) and not more than **\$10,000.**
 II. Substantial bodily injury caused by negligent vehicle

operation (negligent injury in the 2nd degree)

Misdemeanor: Not more than **1 year** and not more than **\$2,000**.

HRS §§706-640; 706-660; 706-660.2; 706-663; 707-705; 707-706.

Persons Under 21: The following sanctions apply to persons < 21 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 hours of community service or a fine of not less than \$150 or more than \$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 hours 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 hours of community service, or a fine of not less than \$300 or more than \$1,000. HRS § 291E-64(b).

Ignition Interlock:

Permitted or Prohibited:

Type of Law (Mandatory or Permissive):

Sanction (Judicial, Administrative or Hybrid)

Conditions of Use:

Permitted

Mandatory

Judicial

The use of ignition interlocks appears to be mandatory for offenders convicted of operating under the influence of an intoxicant. Specifically, the installation of an ignition interlock device is required during the period of license revocation.

First offense = **1 year**;

Second offense (within 5 years) = not less than **18 months** or more than **2 years**;

Third offense (within 5 years) = **2 years**.

HRS §291E-61.

Other Provisions:

The court shall not issue an ignition interlock permit: (1) if an offender does not own or have the use of a vehicle in which the person can install an ignition interlock device, or is otherwise unable to drive during the revocation period; (2) to a defendant whose license is expired, suspended,

revoked as a result of another action; (3) a defendant who does not hold a valid license at the time of the offense; or (4) a defendant who holds a category 4 license or a commercial driver's license. HRS §§291E-61(b)(5), (c).

Sobriety Checkpoints:
Permitted or Prohibited:

Permitted. HRS §§291E-19; 291E-20. See also *State v. Heapy*, 151 P.3d 764 (Hawaii 2007); *State v. Claunch*, 137 P.3d 373 (Hawaii App. 2006).

Homicide by Vehicle:
State Has Such a Law:

Yes.

(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.
HRS §§706-640; 706-660; 706-663; 707-702.5; 707-703; 707-704.

Imprisonment/Fine:

Negligent homicide in the first degree – Not less than **5 years** or more than **10 years** and may be fined not more than **\$25,000**;
Negligent homicide in the second degree – Not less than **1 year** or more than **5 years** and may be fined not more than **\$10,000**;
Negligent homicide in the third degree – Not more than **1 year** or not more than **\$2,000**.

Mandatory Minimum Term/Fine:

HRS §§706-640; 706-660; 706-663
The following mandatory imprisonment sanctions apply when the person killed is 60 or older, blind, paraplegic, quadriplegic, or 8 or younger:
Negligent homicide in the first degree = 3 years, 4 months;
Negligent homicide in the second degree = 1 year, 8 months. HRS §§706-620; 706-660.2.

Authorized Licensing Action:

Negligent homicide in the first or second degrees – **Revocation**.

Length of Term of Licensing Withdrawal:

The period of revocation is discretionary and shall be determined by the court at sentencing.
However, a court shall not suspend a license for longer than 5 years. HRS §§286-124; 286-126.

Mandatory Minimum License Withdrawal:
Other:

N/A
N/A

DWI Offenses and Commercial Motor Vehicles (CMV):

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 $\geq .04$; (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 life (mand). In addition, a CMV operator who has a BAC/BrAC \geq .01 must be placed “out-of-service” for 24 hours. HRS §§286-2; 286-231; 286-240; 286-242; 286-243.

Sanctions:

Conviction for driving while having alcohol in the body = not more than **\$200**.

Conviction for driving with BAC \geq .04 = Not more than **\$500**. HRS §286-249.

Driving While License Suspended for DWI

Offense:

Criminal - Fine/Imprisonment:

First offense – Not less than **3 consecutive days** or more than **30 days** and not less than **\$250** or more than **\$1,000**;
Second offense (within 5 years) – **30 days** and **\$1,000**;
Subsequent offense (within 5 years) – **1 year** and **\$2,000**.
 HRS §291E-62(a), (b).

Mandatory Minimum Fine/Imprisonment Term:

The terms above are mandatory.

Administrative Licensing Action Type:

ALL offenses – **Revocation**. HRS §291E-62(a), (b).

Withdrawal Action:

First offense – An additional period of **1 year**;
Second offense (within 5 years) – An additional period of **2 years**;
Subsequent offense (within 5 years) – **Permanently**.
 These revocation periods are to commence after the offender has been released from imprisonment.
 HRS §291E-62.

Mandatory Term of License Withdrawal Action:

The above revocation periods are mandatory.

Other:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes – Habitually operating a vehicle under the influence of an intoxicant. HRS §291E-61.5.

Grounds for Being Declared Habitual Offender:

Convicted three or more times within 10 years²⁸³ of operating a vehicle under the influence of an intoxicant at the time the person is convicted of driving impaired offense. HRS §291E-61.5(a).

Term of License Revocations While on Habitual Offender Status:

Not less than **1 year** or more than **5 years**.
 HRS §291E-61.5(d).

²⁸³“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. See HRS §291E-61.5(b) for details.

Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):	Class C felony. HRS §291E-61.5(c). Either indeterminate term of imprisonment of 5 years , or 5 years' probation , with not less than 10 days imprisonment (48 hours served consecutively) and may be fined not more than \$10,000 . Additionally, referral to a certified substance abuse counselor shall be made. \$25 surcharge shall be paid to the neurotrauma special fund, and a surcharge of up to \$50 may be ordered for payment to the trauma system special fund. HRS §§291E-61.5(d); 706-640.
Mandatory Minimum Term/Fine:	The \$25 surcharge and 10 days imprisonment are mandatory.
Licensing Action (Specify):	Revocation for not less than 1 year or more than 5 years . HRS §291E-61.5(d)(2)(A).
<u>Other State Laws Related to Alcohol Use:</u> BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes. HRS §291E-21.
BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	Possible. HRS §§291E-21; 841-3.
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	Possible. HRS §§291E-21; 841-3.
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes. HRS §291E-21.
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. HRS §§281-78(b); 281-101.5
Minimum Age (Years) for Possession/Consumption of Alcohol:	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 petty misdemeanor, and punishable by suspension of driver's license for not less than 180 days. Except with permission from the court, the driver may operate the vehicle to and from school, to school-sponsored activities, and to employment. HRS §§281-1; 281-78; 281-101.5.
<u>Dram Shop and Social Host Laws:</u> State Has a Dram Shop Law (Yes/No):	Yes – third-party liability for damages caused by intoxication of persons under 21. HRS §281-78.
"Dram Shop Law" Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	Yes. <i>Reyes v. Kuboyama</i> , 870 P.2d 1281 (Hawaii 1994); <i>Ono v. Applegate</i> , 612 P.2d 533 (Hawaii 1980).
Dram Shop Actions – Social Hosts:	No. <i>Faulk v. Suzuki Motor Co., Ltd.</i> , 851 P.2d 332 (Hawaii

App. 1993); *Johnston v. KFC Nat. Mgmt. Co.*, 788 P.2d 159 (Hawaii 1990).

Social Host – Criminal Enforcement:

Under HRS §712-1250.5, it is a misdemeanor to promote intoxicating liquor to a minor. Sanctions include not more than 1 year in jail and /or a fine of not more than \$2,000. HRS §§706-640; 706-663.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Note.²⁸⁴ **Misdemeanor**

Imprisonment/Fine:

Not more than **6 months** and/or a fine of not more than **\$1,000**. HRS §§281-78; 281-102.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Yes – Suspension or Revocation.

Withdrawn (Yes/No):

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. HRS §§281-78; 281-91.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Misdemeanor

Imprisonment/Fine:

Not more than **6 months** and/or not more than **\$1,000**. HRS §§281-78; 281-102.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages

Yes – Suspension or Revocation.

Withdrawn (Yes/No):

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. HRS §§281-78; 281-91.

Anti-Happy Hour Laws/Regulations:

Yes. Under HRS §281-78.5(a), licensees are prohibited from engaging in practices that promote excessive consumption of alcoholic beverages. County commissions are required to promulgate regulations to prohibit practices that promote excessive consumption. HRS §281-78.5(b).

Open Container Laws:

Open Container Law (Yes/No):

Yes. HRS §291-3.1(a).

Anti-Consumption Law (Yes/No):

Yes. HRS §§291-3.1(b); 291- 3.2(b); 291-3.3.

²⁸⁴ The provision prohibiting sales or service of liquor to any intoxicated person has been struck. However, this prohibition remains in effect for person who are known to the licensee to be addicted to the excessive use of intoxicating liquor. HRS §281-78.

Alcohol Exclusion Law (UPPL):

Yes. HRS §431:10A-106(10).

STATE

General Reference:

IDAHO

Idaho Code (I.C.)

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC/BrAC):

Types of Drugs/Drugs and Alcohol:

Under the influence of alcohol. I.C. §18-8004(1)(a).

≥ **.08**.²⁸⁵ I.C. §18-8004(1)(a).**Persons Under 21 ≥ .02 but < .08**. I.C. §18-8004(1)(d).**None**

Under the influence of any drug, intoxicating substance, any narcotic drug, or a combination of any drug and alcohol.

I.C. §§18-8004(1).

Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to Drugs

(Yes/No):

Refusal to Submit to Chemical Test Admitted into Evidence:

Other Information:

No**Yes**. I.C. §18-8002.**No**.²⁸⁶**Yes**. I.C. §18-8002(1).**Yes** – Criminal Cases. See *State v. Curtis* 680 P.2d 1383 (Idaho App. 1984).Note.²⁸⁷Non-Breath Chemical Tests for AlcoholConcentration Authorized Under the ImpliedConsent Law:

Blood:

Urine:

Other:

Yes. I.C. §18-8004.**Yes**. I.C. §18-8004.**N/A**Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

Anti-Plea-Bargaining Statute (Yes/No):

Pre-Sentencing Investigation Law (PSI)

(Yes/No):

No**No****Yes** – Alcohol Evaluation Required. I.C. §§18-8005(11).Sanctions for Refusal to Submit to aChemical Test:

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

Refusal to Take a Preliminary Breath Test –

Administrative Licensing Action (Susp/Rev):

N/A**N/A**²⁸⁵ 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. I.C. §18-8004(4).²⁸⁶ The police need only “reasonable grounds” of a DWI offense before the implied consent law is applicable. I.C. §18-8002(1).²⁸⁷ Technically under I.C. §18-8002(6)(b), a law enforcement officer may order a “qualified person” to withdraw blood from a driver for evidential purposes in cases where there is probable cause to believe that such driver has committed a DWI aggravated or homicide offense. However, these legislative exceptions to the search warrant requirement should be relied upon with caution in light of the United States Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

Preliminary Breath Test – Other: N/A

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **No** – However, there is a **civil penalty** of \$250 for refusing an evidentiary test. I.C. §18-8002(4)(c).

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev): **First Refusal – Suspension for 1 year;**
Second refusal (within 10 years) – **Suspension for 2 years.** I.C. §18-8002(4).

Implied Consent Chemical Test - Other: N/A

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine:

First offense (Misdemeanor) – Not more than **6 months** and/or not more than **\$1,000**;

First offense (BAC ≥ 0.20) (Misdemeanor) – Not less than **10 days** or more than **1 year** and may be fined not more than **\$2,000**;

Second offense (within 10 years) (Misdemeanor) – Not less than **10 days** or more than **1 year** and may be fined not more than **\$2,000**;

Second or subsequent offense (BAC ≥ 0.20) (within 5 years of a previous 0.20) (Felony) – Not less than **30 days** or more than **5 years** and may be fined not more than **\$5,000**;

Third and subsequent offense (within 10 years) (Felony) – Not less than **30 days** or more than **10 years** and may be fined not more than **\$5,000**. I.C. §§18-8004C; 18-8005.

Aggravated DWI offense (bodily harm or disfigurement) (Felony) – Not less than **30 days** or more than **15 years** and may be fined not more than **\$5,000**. I.C. §18-8006.

Persons Under 21 (< .08) (Misdemeanor):

First offense - A fine of not more than **\$1,000**;

Second offense - Not less than **5 days** or more than **30 days** and not less than **\$500** or more than **\$2,000**;

Third and subsequent offense – Not less than **10 days** or more than **6 months** and not less than **\$1,000** or more than **\$2,000**. I.C. §18-8004A.

Mandatory Minimum Term/Fine:

First offense (BAC ≥ 0.20) – **10 days** (must serve 48 consecutive hours);

Second offense (within 10 years) – **5 days** (first 48 hours must be consecutive);²⁸⁸

Second or subsequent offense (BAC ≥ 0.20) – **30 days**;

Third and subsequent offense (within 10 years) – **10 days** (first 48 hours must be consecutive). I.C. §§18-8004C; 18-8005.

Aggravated DWI offense (if bodily harm/disfigurement) – **30 days** (must serve 48 consecutive hours) I.C. §18-8006.

²⁸⁸ 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)

Community Service: Child Endangerment:	<p>Persons Under 21 (< .08): <u>Second offense – 5 days;</u> <u>Third and subsequent offense – 10 days.</u> I.C. §18-8004A. N/A It is an offense for a person >18 to operate a motor vehicle in violation of the drunk-driving laws while transporting a “minor.” <u>No injury/death</u> (misdemeanor) – Not more than 6 months and may be fined not more than \$1000; <u>Injury or death</u> (felony) – Not more than 10 years (unless a more severe penalty is otherwise prescribed by law) I.C. §§18-113; 18-1501(3).</p>
Restitution:	<p>Yes. I. Under I.C. §19-5304, a person who has been convicted of any criminal offense may be ordered to pay restitution to a victim. II. Aggravated DWI offense: A defendant shall be ordered to pay restitution to a victim. I.C. §18-8006(1)(e). III. Victim’s compensation fund: A defendant shall be assessed a special fine (not less than \$75 for any felony, and \$37 for any misdemeanor) that is paid into the crime victim’s compensation fund. I.C. §72-1025.</p>
Other:	<p>Electronic Monitoring. The court may require the defendant to use an “electronic monitoring” device to record his/her movements while he/she is on probation to insure compliance with curfew hours, driving privilege restrictions, or home confinement requirements. I.C. §18-8008(3).</p>
<u>Administrative Sanctions – Pre-Conviction:</u> Administrative Per Se Law:	<p>Yes ≥ .08. (BAC/BrAC/UrAC) or under the influence of alcohol, drugs, or an intoxicating substance: <u>First violation – Suspension 90 days</u> (30 days mand followed by 60 days restricted driving privileges); <u>Second or subsequent violation</u> (within 5 years) – Suspension 1 year (mand). I.C. §18-8002A(2)(d).</p>
Other:	<p>Under I.C. §49-326(1)(a), (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).²⁸⁹ Such action may be taken <u>without</u> a preliminary hearing.</p>
<u>Administrative Sanctions – Post-Conviction:</u> Type of Licensing Action (Susp/Rev): Term of Withdrawal:	<p>Suspension <u>First offense</u>– Not less than 30 days or more than 150 days; <u>First offense (BAC ≥ 0.20)</u> – 1 year after release from confinement; <u>Second offense</u> – 1 year after release from confinement; <u>Second or subsequent offense (BAC ≥ 0.20)</u> (within 10</p>

²⁸⁹ These provisions do not apply to DWI offense convictions since such convictions result in license suspension not revocation.

years of **0.20**) – Not less than **1 year** or more than **5 years** after release from confinement;
Third and subsequent offense – Not less than **1 year** or more than **5 years** after release from confinement; I.C. §§18-8004C; 18-8005.

Aggravated DWI offense – Not less than **1 year** or more than **5 years** after release from confinement.
 I.C. §18-8006(1)(d).

Persons Under 21 < .08:

First offense – **1 year**;
Second offense – Not more than **2 years**;
Third and subsequent offense – Not less than **1 year** or until the person reaches 21 whichever is greater.
 I.C. §18-8004A.

Mandatory Minimum Term of Revocation:

First offense– **30 days**;²⁹⁰
First offense (BAC ≥ 0.20) – **1 year** after release from confinement;
Second offense – **1 year** after release from confinement;
Second or subsequent offense (BAC ≥ 0.20) (within 10 years of a previous 0.20) – **1 year** after release from confinement; Third and subsequent offense – **1 year** after release from confinement. I.C. §§18-8004C; 18-8005.
Aggravated DWI offense – **1 year** after release from confinement. I.C. §18-8006(1)(d).

Persons Under 21 < .08:

First offense– **90 days**;
Second offense – **1 year**;
Third and subsequent offense – **1 year**. I.C. §18-8004A.
 A court may require a DWI offender to participate in an alcohol treatment program. I.C. §§18-8004A; 18-8005(11), (12), (14).

Alcohol Education:

Substance Abuse Treatment:

N/A

Vehicle Impoundment/Confiscation:

Impoundment – A peace officer may impound any vehicle found upon a highway when the person driving it has been arrested. I.C. §49-662(3)(c).

Authorized by Specific Statutory Authority:
 Terms Upon Which Vehicle Will Be Released:

I.C. §49-662.

N/A

Other Miscellaneous Sanctions:

Surcharge: A mandatory **\$15** surcharge is added to all fines. Funds collected from this surcharge are deposited into a special account which is used either (1) to purchase ignition interlock or electronic monitoring devices or (2) for misdemeanor drunk- driving offense probation programs.
 I.C. §18-8010.

²⁹⁰ 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. I.C. §18-8005(1)(d).

Labor on Public Works: An offender may be required to perform labor on Federal, State or other governmental works. I.C. §20-617.

Ignition Interlock:

Permitted or Prohibited:

Permitted. I.C. §§18-8004A(2), (3); 18-8004C(2)(e); 18-8005(4)(f), (6)(e); 18-8008.

Type of Law (Mandatory or Permissive):
Sanction (Judicial, Administrative or Hybrid)
Conditions of Use:

**Permissive
Judicial**

For most drunk-driving offenses, a defendant may be required to operate a motor vehicle equipped with an ignition interlock device after any licensing action. The court shall require use of this device for a period of time not in excess of the defendant’s probation period. I.C. §§18-8004A(2)(d), (3)(e); 18-8004C(2)(e); 18-8005(4)(f), (6)(e); 18-8008.

Other Provisions:

A person who knowingly assists another person who is restricted to the use of an ignition interlock device to start and operate that vehicle in violation of a court order shall be guilty of a misdemeanor. I.C. §18-8009.

Sobriety Checkpoints:

Permitted or Prohibited:

Prohibited. *State v. Henderson*, 756 P.2d 1057 (Idaho 1988) (finding that sobriety checkpoints were not constitutional absent reasonable suspicion of criminal activity).

Homicide by Vehicle:

State Has Such a Law:
Imprisonment/Fine:

Yes. Vehicular Manslaughter. I.C. §18-4006(3)(b).
Not more than **15 years** and/or not more than **\$15,000**.
I.C. §18-4007(3)(b).

Mandatory Minimum Term/Fine:
Authorized Licensing Action:

None
Revocation (by the department) or **suspension** (by the court). I.C. §§18-4007(3)(e); 49-325(1)(a)

Length of Term of Licensing Withdrawal:

1 year revocation. I.C. §§49-325; 49-326(5).
Court Suspension. In addition, an offender’s license “may be suspended for a time determined by the court.”
I.C. §18-4007(3)(e).

Mandatory Minimum License Withdrawal:
Other:

The terms appear to be mandatory.
Note: A temporary restricted license cannot be issued following revocations based on vehicle manslaughter. I.C. §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. I.C. §18-4007(3)(d).

DWI Offenses and Commercial Motor Vehicles (CMV):

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 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. However, they are applicable for subsequent ones.

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.

I.C. §§49-335; 18-8002(3)(a); 18-8004(1)(b), (1)(c); 18-8005.

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

Note.²⁹¹

First offense – Misdemeanor – Not less than **2 days** or more than **6 months** and may be fined not more than **\$1,000**;

Second offense – Misdemeanor (within 5 years) – Not less than **20 days** or more than **1 year** and may be fined not more than **\$1,000**;

Third and subsequent offenses– Misdemeanor (within 5 years) – Not less than **30 days** or more than **1 year** and may be fined not more than **\$3,000**. I.C. §18-8001.

Mandatory Minimum Fine/Imprisonment

Term:

Administrative Licensing Action Type:

Withdrawal Action:

Mandatory Term of License Withdrawal

Action:

Suspension. I.C. §18-8001.

First offense (misdemeanor) – A period not to exceed **180 days**;

Second offense (within 5 years) – An period not to exceed **1 year**;

²⁹¹ 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 I.C. §18-8001 are in addition to any penalties imposed for an alcohol driving offense conviction. I.C. §18-8001(7).

Other:	<p><u>Third and subsequent offenses</u> (within 10 years) – An period not to exceed 2 years. I.C. §18-8001.</p> <p>N/A – suspension of driving privileges is discretionary. Additionally, an offender may request restricted driving privileges during the period of suspension if such offender shows, by a preponderance of the evidence, that driving privileges are necessary for his employment, education or for family health needs. I.C. §18-8001.</p>
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	No ²⁹²
<u>Other State Laws Related to Alcohol Use:</u>	
BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes . I.C. §49-1314.
BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	No
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	Yes
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	No
Minimum Age (Years) for Sale/Purchase of Alcohol:	21 . I.C. §§23-312; 23-603; 23-604; 23-615(1); 23-1401(2).
Minimum Age (Years) for Possession/Consumption of Alcohol:	21 . I.C. §23-949. There is an employment exemption for persons who are at least 19, along with an exemption for the home consumption of beer and wine. I.C. §§23-949; 23-1013; 23-1023; 23-1334.
<u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	Yes . This law limits liability to situations where the patron/guest was obviously intoxicated or intoxicated and under the legal drinking age. I.C. §23-808(3). <i>Alegria v. Payonk</i> , 619 P.2d 135 (Idaho 1980) provoked the enactment of I.C. §23-808 in 1986.
"Dram Shop Law" 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 . I.C. §23-808.
Social Host – Criminal Enforcement:	A person may be found guilty of encouraging violations if he/she encourages, aids or causes a juvenile to come within the jurisdiction of the juvenile court. Encouraging violations are misdemeanors, punishable by not more than 6 months and/or not more than \$1,000. However, a person may benefit

²⁹² However, under I.C. §19-2514, a person convicted for committing a third felony offense shall be deemed a “persistent violator of law,” and is subject to a term of imprisonment of 5 years to life.

from a suspended imposition of sentence if he/she complies with all conditions set by the court. I.C. §§18-113; 20-526.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Misdemeanor. I.C. §§18-113; 23-312; 23-601; 23-605; 23-615(2), (3).

Imprisonment/Fine:

I. State liquor dispensary employees (pkg. sales) – Not less than **3 months** or more than **1 year** and/or not less than **\$300** or more than **\$1,000**. I.C. §§23-312; 23-601.

II. State authorized licensees (beer, wine and liquor by the drink) – Not more than **6 months** and/or not more than **\$1,000**. I.C. §§18-113; 23-605; 23-615(2), (3).

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Suspension or Revocation.

I. State authorized licensees (beer, wine and liquor by the drink) – **Suspension or Revocation**. I.C. §§23-933; 23-1037; 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 **forfeiture** of the alcoholic beverage license or permit. I.C. §23-608.

Length of Term of License Withdrawal:

For revocations for all licensees, a suspension of not more than 6 months. I.C. §23-1037(1).²⁹³

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

I. State liquor dispensary employees (pkg. sales) – **Misdemeanor**. I.C. §§23-312; 23-601.

II. State authorized licensees (beer, wine and liquor by the drink) – Misdemeanor. I.C. §§18-112; 18-113; 23-603; 23-615(1).

Imprisonment/Fine:

I. State liquor dispensary employees (pkg. sales) – Not less than **3 months** or more than **1 year** and/or not less than **\$300** or more than **\$1,000**;

II. State authorized licensees (beer, wine and liquor by the drink) – First offense – Not more than **1 year** and/or not less than **\$500** or more than **\$1,000**;

Second or subsequent offense – **Not more than 1 year** and/or not less than **\$1,000** or more than **\$2,000**. I.C. §§18-

²⁹³ As an alternative to license suspension action, a licensee may be allowed to pay a monetary payment not to exceed \$5,000. I.C. §§23-933(2); 23-1037(2); 23-1331(2).

112; 18-113; 23-603; 23-615(1).

Administrative Actions Regarding
Establishments That Serve Alcohol to Persons

Under the 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.**²⁹⁴ I.C. §§23-603;²⁹⁵ 23-933;23-1037; 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 **forfeiture** of the alcoholic beverage license or permit. I.C. §23-608.

Length of Term License Withdrawal:

For revocations for all licensees, not more than 6 months.
I.C. §23-1037.

For retail sale of alcoholic beverages (beer, wine or liquor by the drink), a suspension of not more than 6 months.
I.C. §23-603.

Anti-Happy Hour Laws/Regulations:

No

Open Container Laws:

Open Container Law (Yes/No):

Yes. I.C. §§23-505; 23-1333.

Anti-Consumption Law (Yes/No):

Yes. I.C. §23-505.

Alcohol Exclusion Law (UPPL):

Yes. I.C. §41-2127.

²⁹⁴ As an alternative to license suspension action, a licensee may be allowed to pay a monetary payment not to exceed \$5,000. I.C. §§23-933(2); 23-1037(2); 23-1331(2).

²⁹⁵ Under I.C. §23-603, the licensee is also subject to an administrative fine. The law establishes no limits for this fine.

STATE

General Reference:

ILLINOIS

West's Smith-Hurd Illinois Compiled Statutes Annotated (ILCS)

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Under the influence of alcohol.²⁹⁶ 625 ILCS 5/11-501(a)(2).
 ≥ **.08**²⁹⁷ or any amount of a drug, substance or compound in the person's blood, breath or urine resulting from the unlawful use or consumption of cannabis, controlled substance or intoxicating compound (under the Use of Intoxicating Compounds Act²⁹⁸) or methamphetamine.
 625 ILCS 5/11-501(a)(1), (6).

Presumption (BAC/BrAC):

≥ **.08**. 625 ILCS 5/11-501.2(b)(3).

Types of Drugs/Drugs and Alcohol:

Under the influence of any drug, intoxicating compound or a combination of any drug, intoxicating compound and alcohol.
 625 ILCS 5/11-501(a)(3), (4), (5).

Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

Yes.²⁹⁹ 625 ILCS 5/11-501.5(a).

Implied Consent Law:

Yes. 625 ILCS 5/11-501.1.

Arrest Required (Yes/No):

Yes. 625 ILCS 5/11-501.1.

Implied Consent Law Applies to Drugs (Yes/No):

Yes. 625 ILCS 5/11-501.1(a).

Refusal to Submit to Chemical Test

Yes – Criminal and Civil Cases. 625 ILCS 5/11-501.2(c)(1).

Admitted into Evidence:

Other Information:

See footnote.³⁰⁰Non-Breath Chemical Tests for AlcoholConcentration Authorized Under theImplied Consent Law:

Blood:

Yes. 625 ILCS 5/11-501.1; 625 ILCS 5/11-501.8.

Urine:

Yes. 625 ILCS 5/11-501.1; 625 ILCS 5/11-501.8.

Other:

None

²⁹⁶ In Illinois, a drunk-driving offense is referred to by the acronym, "DUI." However, for uniformity, the "DWI" acronym will be used within the body of this digest.

²⁹⁷ 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); 625 ILCS 5/11-501.8(b)(v).

²⁹⁸ For a list of "intoxicating compounds," see 720 ILCS 690/1.

²⁹⁹ A law enforcement office may use a PBT to determine whether probable cause exists to arrest for committing a DUI offense. The State may not use as evidence the results of a PBT in its case-in-chief in a criminal trial, but may use the results in any administrative or criminal hearing to determine probable cause in a DUI offense. 625 ILCS 5/11-501.5; *People v. Davis*, 695 N.E.2d 1363 (Ill.App. 3 Dist. 1998).

³⁰⁰ In Illinois, a blood sample could previously be taken without consent or by force for a DUI offense (injury or non-injury related) as long as police have probable cause of such offense. See 625 ILCS 5/11-501.2(c)(2) as interpreted by *People v. Yant*, 570 N.E.2d 3 (Ill.App. 2 Dist. 1991) and *People v. Jones*, 824 N.E.2d 239 (2005). However such exception to the search warrant requirement should now be relied upon with caution in light of the United States Supreme Court's decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance) and *People v. Harrison*, ___ N.E.3d ___, 2016 IL App. (5th) 150048 (Feb. 18, 2016) (recognizing that the constitutionality of ILCS 11-501.2(c)(2) may be called into question in the wake of *Missouri v. McNeely*).

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 or drug evaluation (screening required) with appropriate treatment. 625 ILCS 5/11-501.01(a).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail):	None
Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev):	None
Preliminary Breath Test – Other:	N/A
Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	None
Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):	<u>First refusal</u> – Suspension for 12 months . A restricted driving permit is available after 30 days of the suspension. <u>Subsequent refusals</u> (within 5 years) – Suspension for 3 years . 625 ILCS 5/6-206; 625 ILCS 5/6-208.1; 625 ILCS 5/11-501.1.
Implied Consent Chemical Test - 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 for any moving violation under the vehicle code <u>and</u> the driver has been involved in an accident that has resulted in an injury ³⁰¹ or a fatality, the driver shall be deemed to have given consent to a chemical test or tests of blood, breath, other bodily substance, or urine for the purpose of determining the alcohol or drug content in such person’s blood. If a driver refuses to submit to such a test, his/her driving privileges are suspended as follows: <u>First Refusal – 12 months;</u> <u>Refusal where the driver has had a previous license suspension for DWI offense conviction or refusal/admin. per se action – 3 years.</u> These suspensions, however, are not mandatory in that a driver may request a hearing on the legality of the suspension. If the driver meets his burden of proof, the court can rescind the suspension. Additionally, the Secretary of State may modify the suspension order or issue a restricted license for employment, educational or medical purposes. 625 ILCS 5/6-208.1; 625 ILCS 5/11-501.6. A person subject to this implied consent law is still subject to the provisions of 625 ILCS 5/11-501.1.

Criminal Sanctions Following a DWI

³⁰¹ Such injury (referred to as a “type A injury”) includes severely bleeding wounds, distorted extremities, and injuries that require the injured party to be carried from the scene. 625 ILCS 5/11-501.6(g).

Conviction:

Imprisonment/Fine:

First offense (Class A misdemeanor) – Up to **1 year** and **\$2,500**;Second offense (Class A misdemeanor) – Not less than **5 days**³⁰² or more than **1 year** and not more than **\$2,500**;Third offense³⁰³ (Class 2 felony) – Probationable, or not less than **3 years** or more than **7 years**³⁰⁴ and not more than **\$25,000**;Fourth offense (Class 2 felony) (non probationable offense) – Not less than **3 years** or more than **7 years** and not more than **\$25,000**;Fifth offense (Class 1 felony) (non probationable offense) – Not less than **4 years** or more than **15 years** and not more than **\$25,000**;Sixth or subsequent offense (Class X felony) (non probationable offense) – Not less than **6 years** or more than **30 years** and not more than **\$25,000**. 625 ILCS 5/11-501(c), (d). 730 ILCS 5/5-4.5-5, *et seq.***BAC ≥ 0.16:**First offense – Not more than **1 year**, not less than **\$500** (mand) or more than **\$2,500**, and 100 hours of community serviceSecond offense (Class A misdemeanor) –Not less than **2 days** (mand) and more than **1 year** and not less than **\$1,250** (mand) or more than **\$2,500**;Third offense (Class 2 felony) – Not less than **3 years** or more than **7 years** and not less than **\$2,500** or more than **\$25,000**;Fourth offense (Class 2 felony) – Not less than **3 years** or more than **7 years** and not less than **\$5,000** or more than **\$25,000** and no probation or conditional discharge;Fifth offense (Class 1 felony) – Not less than **4 years** or more than **15 years** and not less than **\$5,000** or more than **\$25,000** and no probation or conditional discharge;Sixth or subsequent offense (Class X felony) – Not less than **6 years** or more than **30 years** and not less than **\$5,000** or

³⁰² The law provides that the sentence can be *either* 5 days of imprisonment *or* 240 hours of community service in addition to any other sanction. 625 ILCS 5/11-501(c)(2).

³⁰³ This offense is termed “aggravated driving under the influence” and includes: (1) a third or subsequent DUI violation; (2) a violation while driving a school bus with one or more passengers aboard; (3) a DUI violation causing an accident that resulted in great bodily harm or permanent disability or disfigurement to another (violation was the proximate cause of the injuries); (4) a second DUI violation where there has been a prior DUI related reckless homicide or great bodily harm or permanent disability or disfigurement; (5) a DUI violation (at any speed) in a school zone when the 20 mph limit was in effect and such person was involved in an accident causing great bodily harm or permanent disability or disfigurement; (6) a DWI which was the proximate cause of an accident that resulted in a death; (7) DWI while suspended or revoked for DWI, or without a valid driver’s license; (8) DWI while revoked for reckless homicide; (9) DWI when the person knew or should have known the vehicle driven was not covered by a liability insurance policy; (10) a DUI offense resulting in bodily harm, but not great bodily harm, to a child < 16 years of age that the person was transporting (if the DWI was the proximate cause of the injury); (11) a second DUI violation while transporting a child < 16; (12) DWI while transporting passengers in a vehicle for hire. Any of these violations is a Class 4 felony. 625 ILCS 5/11-501(d).

³⁰⁴ If probation or conditional discharge is ordered, the person must serve a mandatory 90 days and pay a minimum of \$2,500. 625 ILCS 5/11-501(d).

more than **\$25,000**. 625 ILCS 5/11-501(c), (d); 730 ILCS 5/5-4.5-5, *et seq.*

Great bodily harm or permanent disability or disfigurement (Class 4 felony) – Probationable or not less than **1 year** or more than **12 years** and not more than **\$25,000**.

625 ILCS 5/11-501(d)(1)(C), (d)(2)(F).

Bodily harm to a child < 16:

First offense (Class 4 felony) – Mandatory **\$2,500** and 25 days community service benefitting children and not less than **1 year** or more than **3 years**. 625 ILCS 5/11-501(d).

The terms above are mandatory, as listed.

Mandatory terms of community service are listed where required.

Transporting child < 16:

First offense – “Subject to” **6 months imprisonment** and a mandatory additional **\$1,000** and 25 days community service; Second offense of transporting a child < 16 (Class 2 felony) – Mandatory **\$2,500** and 25 days community service benefitting children and not less than **3 years** or more than **7 years**.

Third or subsequent offense committed while transporting a child < 16 (Class 2 felony) – mandatory **\$25,000** and 25 days community service benefitting children and not less than **3 years** or more than **7 years**. 625 ILCS 5/11-501(c), (d).

Yes. Paid directly by a defendant to a victim. 730 ICLS 5/5-5-3; 730 ILCS 5/5-5-6. There is also a victim’s compensation fund. 740 ILCS 45/1, *et seq.*

Visitation program: DWI offenders who are under 21 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.

Attendance to victim impact panel: A court may require an offender to attend a victim impact panel. 625 ILCS 5/11-501.01(b).

Additional Fees/Costs/Surcharges:

(1) A fee of up to **\$30** may be assessed against DWI offenders for court costs, or **\$100** for a second or subsequent offender. 55 ILCS 5/5-1101(a), (d).

(2) A surcharge of **\$4** for every \$40 (or fraction thereof) of the fine imposed. 625 ILCS 5/16-104a.

(3) An additional penalty of **\$15** for each \$40 (or fraction thereof) of the fine imposed. 730 ILCS 5/5-9-1(c).

(4) An additional **\$100** fee (specific to DUI offenses to be

Mandatory Minimum Term/Fine:

Community Service:

Child Endangerment:

Restitution:

Other:

- deposited into the Trauma Center Fund). 730 ILCS 5/5-9-1(c-5).
- (5) An additional **\$5** (specific to DUI offenses to be deposited into the Spinal Cord Injury fund). 730 ILCS 5/5-9-1(c-7).
- (6) A DUI analysis fee of **\$150**. 730 ILCS 5/5-9-1.9.
- (7) Special restitution to the Illinois Secretary of State for any costs incurred by that official's office in obtaining evidence associated with the DUI offense. 625 ILCS 5/2-115(b).
- (8) A **\$750** penalty (first offender) or **\$1,000** (subsequent offender) to be distributed to the law enforcement agency making the arrest and the State Treasurer. 625 ILCS 5/11-501.01(f).
- (9) A fee of up to **\$30** per month to the Secretary of State DUI Administration Fund for any second or subsequent offender each month the person uses an ignition interlock offense. 625 ILCS 5/11-501.01(e).
- (10) Emergency response restitution payable to responding law enforcement agency (including fire departments) for any violation of DWI that "proximately caused" any incident resulting in emergency response, in an amount not to exceed \$1,000. 625 ILCS 5/11-501.01(c), (i).
- (11) The offender shall be liable for the expense of a blood withdrawal, up to \$500, regardless of whether they consented to the test. 625 ILCS 5/11-501.01(j).

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

Yes – ≥ .08 (BAC/BrAC) or any amount of cannabis, controlled substance or intoxicating compound.

First action – **6 months suspension;**

Subsequent action – **1 year suspension** (mand).

625 ILCS 5/6-206(a)(31); 625 ILCS 5/6-208.1(a);

625 ILCS 5/11-501.1.

Persons Under 21: Under a separate admin per se law, persons under 21 who have BAC/BrAC > **.00 but < .08**³⁰⁵ are subject to the following sanctions:

First violation – **suspension 3 months** (restricted driving privileges may be issued after 30 days);

Subsequent violation– **suspension 1 year** (mand).

625 ILCS 5/6-208.2; 625 ILCS 5/11-501.1; 625 ILCS 5/11-501.8.

Other:

School Bus Operators: A person's privilege to operate a school bus is canceled administratively for 3 years if, while operating such a vehicle, that person refuses to submit to a chemical test for alcohol concentration following a traffic offense arrest or submits to such a test which indicates he/she

³⁰⁵ A person under 21 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)

was driving with an alcohol concentration > .00.³⁰⁶
625 ILCS 5/6-106.1a; 625 ILCS 5/6-106.1b.

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Revocation. 625 ILCS 5/6-205; 625 ILCS 5/6-208;
625 ILCS 5/11-501.

Term of Withdrawal:

First offense – **1 year**;

Second offense (within 20 years) – **5 years**;

Third offense – **10 years**;

Subsequent offense – **Permanent**.³⁰⁷ 625 ILCS 5/6-208(b).

Mandatory Minimum Term of Revocation:

First offense – **None** (A hardship license may be issued).

625 ILCS 5/6-205(c);

Second or subsequent offense – **5 years**;

625 ILCS 5/6-208(b).³⁰⁸

Alcohol Education:

Yes. 625 ILCS 5/11-501.01(a).

Substance Abuse Treatment:

Yes. 625 ILCS 5/11-501.01(a).

Vehicle Impoundment/Confiscation:

Limited Impoundment: 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).

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).

Authorized by Specific Statutory Authority:

Seizure/Forfeiture (Not Mandatory): A vehicle is subject to seizure and forfeiture if it is used with the knowledge and consent of the owner: (1) in a third or subsequent DWI offense; (2) the driver commits a DWI offense while suspended or revoked due to a DUI or without having a valid driver’s license; (3) the driver commits a violation of the implied consent law; (4) the driver is convicted of leaving the scene; or (5) the driver commits reckless homicide; (6) the driver commits a DWI and knew or should have known the vehicle was not covered by a liability insurance policy. 720 ILCS 5/36-1.

If seized for committing a third or subsequent offense or for committing DWI while suspended or revoked as described above, 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(d). The vehicle may be released sooner if permission is given to

Terms Upon Which Vehicle Will Be

³⁰⁶ 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).

³⁰⁷ 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).

³⁰⁸ A person under 21 who is convicted of a DWI offense must have his/her license revoked for a mandatory period of 1 year. After this 1-year period, such offender may obtain a restricted driving permit for at least 1 additional year. The offender may apply for full reinstatement after the one-year period of restricted privileges. 625 ILCS 5/6-205(d)(1).

Released:	another competent person & that person possesses a valid operator's license. 625 ILCS 5/4-203(e).
Other Miscellaneous Sanctions:	Under 730 ILCS 5/5-6-1 and 730 ILCS 5/5-6-3.1, 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 before. As a supervision condition, he/she may be required to only operate motor vehicles equipped with ignition interlock devices. There must be a finding of guilt prior to the disposition being entered.
<u>Ignition Interlock:</u>	
Permitted or Prohibited:	Permitted 625 ILCS 5/6-206.1; 625 ILCS 5/6-205; 625 ILCS 5/6-206.
Type of Law (Mandatory or Permissive):	Mandatory
Sanction (Judicial, Administrative or Hybrid)	Administrative
Conditions of Use:	A first-offender shall be issued a monitoring device driving permit (MDDP) and must install an ignition interlock device within 14 days issuance of the MDDP. Such person shall pay an administrative MDDP fee up to \$30 each month, installation fees and rental. There is a statutorily created indigent fund to assist those found indigent. 625 ILCS 5/6-206.1. Any second or subsequent offender shall be required to use an ignition interlock device. 625 ILCS 5/6-205; 625 ILCS 5/6-206.
Other Provisions:	Anyone who violates the requirement of the MDDP shall have his/her suspension period extended for an additional 3 months. 625 ILCS 5/6-206.1(j).
<u>Sobriety Checkpoints:</u>	
Permitted or Prohibited:	Permitted. <i>People v. Bartley</i> , 486 N.E.2d 880 (Ill. 1985).
<u>Homicide by Vehicle:</u>	
State Has Such a Law:	Yes. Aggravated DUI resulting in death. 625 ILCS 5/11-501(d)(1)(F).
Imprisonment/Fine:	Class 2 felony – Not less than 3 years or more than 14 years (for death of 1 person) or not less than 6 years or more than 28 years (for death of 2 or more persons) and not more than \$25,000 . The offender is required to serve 85% of any term of imprisonment. The court may not sentence the offender to probation unless the court finds that “extraordinary circumstances” exist requiring probation. 625 ILCS 5/11-501(d)(2)(G); 730 ILCS 5/5-4.5-50(b).
Mandatory Minimum Term/Fine:	None
Authorized Licensing Action:	Revocation. ³⁰⁹ 625 ILCS 5/6-205(a)(1).
Length of Term of Licensing Withdrawal:	<u>First offense</u> – 2 years ; <u>Second offense</u> (within 20 years) – 5 years ;

³⁰⁹ 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); 625 ILCS 5/6-208(b)(1).

Mandatory Minimum License Withdrawal:	<p><u>Third offense – 10 years;</u> <u>Fourth and subsequent offense – Permanent.</u> 625 ILCS 5/6-208(b). <u>First offense – None.</u> Under 625 ILCS 5/6-205(c), a restricted license may be issued. <u>Second or subsequent offense – 1 year.</u> 625 ILCS 5/6-205(c)(6); 625 ILCS 5/6-208(b).</p>
Other:	N/A
<u>DWI Offenses and Commercial Motor Vehicles (CMV):</u>	<p><u>First Violation</u> - A person’s privilege to operate a CMV is disqualified administratively for not less than 12 months if, while operating any vehicle, that person refuses to submit to a chemical test for alcohol or drugs under 625 ILCS 5/11-501.1 or, while operating a CMV, and under 625 ILCS 5/11-501.1, submits to such a test which indicates he/she was driving with an alcohol concentration > .04. <u>Second or Subsequent Violation:</u> 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; 625 ILCS 5/6-208.1; 625 ILCS 5/6-500; 625 ILCS 5/6-514; 625 ILCS 5/6-515; 625 ILCS 5/6-517; 625 ILCS 5/11-501.1.</p>
<u>Driving While License Suspended for DWI Offense:</u>	
Criminal - Fine/Imprisonment:	<p>Driving on suspended/revoked license (because of DUI offense): (625 ILCS 5/6-303) <u>First violation</u> (Class A misdemeanor) – Not less than 10 days³¹⁰ or 30 days of community service and up to 1 year and/or not more than \$2,500. 625 ILCS 5/6-303(c). <u>Second violation, prior non-DUI related (Class A misdemeanor) – Not less than 10 days (mand) and up to 1 year, 100 hours of community service (mand), and/or not more than \$2,500. 625 ILCS 5/6-303(c), (c-1).</u> <u>Second violation, prior DUI-related (Class 4 felony) – Not less than 30 days</u>³¹¹ or more than 3 years and not more than \$25,000. 625 ILCS 5/6-303(d). <u>Third or subsequent violation, priors non-DUI related (Class A misdemeanor) – Not less than 30 days</u> or more than 1 year and not more than \$2,500. 625 ILCS 5/6-303(d-1). <u>Third violation, priors DUI-related (Class 4 felony) – Not less than 30 days (mand) or more than 3 years and not more than \$25,000. 625 ILCS 5/6-303(d-2).</u></p>

³¹⁰ The court may impose a sentence of 30 days (240 hours) of community service in lieu of the 10 day minimum for a first violation.

³¹¹ The court may impose a sentence of 300 hours of community service in lieu of the 30 day minimum for a second violation or third violation with the prior non-DUI related violations.

Fourth-Ninth violations, priors DUI-related (Class 4 felony) – Not less than **180 days** or more than **3 years** and not more than **\$25,000**. 625 ILCS 5/6-303(d-3).

Tenth-Fourteenth violations, priors DUI-related (Class 3 felony) – Not less than **2 years** or more than **5 years** and not more than **\$25,000**. 625 ILCS 5/6-303(d-4).

Fifteenth or subsequent violation (Class 2 felony) – Not less than **3 years** or more than **7 years** and not more than **\$25,000**. 625 ILCS 5/6-303(d-5).

See also 730 ILCS 5/5-4.5-25, *et seq.*; 730 ILCS 5/5-9-1.

Other Offenses: **MDDP Violations** (Class 4 felony) – Any person convicted of 625 ILCS 5/6-303 during a period of suspension imposed pursuant to Section 11-501.1 when the person was eligible for a MDDP shall serve a minimum term of imprisonment of **30 days** in addition to any other sanctions. 625 ILCS 5/6-303(c-3).

Any person who has been issued a MDDP and who is convicted 625 ILCS 5/6-303 as a result of operating or being in actual physical control of a motor vehicle not equipped with an ignition interlock device at the time of the offense shall serve a minimum term of imprisonment of **30 days** in addition to any other sanction. 625 ILCS 5/6-303(c-4)

DUI offense while license is suspended/revoked (because of DUI offense) (Class 4 felony): Not less than **3 years** or more than **6 years** and not more than **\$25,000**. 625 ILCS 5/11-501(d); 730 ILCS 5/5-9-1.

Mandatory Minimum Fine/Imprisonment Term:

Driving on suspended/revoked license (because of DUI offense):

First violation – **10 consecutive days** or **30 days** community service;

Second violation, prior non-DUI related – **10 days** and **100 hours** community service;

Second violation, prior DUI-related – **30 days** or **300 hours** community service;

Third or subsequent violation, priors non-DUI related – **30 days**;

Third violation, priors DUI-related – **30 days**;

Fourth-Ninth violations, priors DUI-related – **180 days**;

Tenth-Fourteenth violations, priors DUI-related – **2 years**;

Fifteenth or subsequent violation – **3 years**.

625 ILCS 5/6-303.

DUI offense while license is suspended/revoked (because of DUI offense):

First or second violation – **10 days** or **480 hours** community service. 625 ILCS 5/11-501(d); 730 ILCS 5/5-9-1.

Administrative Licensing Action Type:

Suspension or **revocation**. 625 ILCS 5/6-303(b).

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 an additional year.
625 ILCS 5/6-303(b-1).

Mandatory Term of License Withdrawal Action: The terms above are mandatory.

Other: Offender's motor vehicle is subject to seizure and forfeiture.
625 ILCS 5/6-303(g).

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

Other State Laws Related to Alcohol Use:
BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No): **Yes.** 55 ILCS 5/3-3013; 625 ILCS 5/11-501.6

BAC Chemical Test Given to Deceased Driver Killed in Crash: **Yes**

BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash: **No**

BAC Chemical Test Given to Deceased Pedestrian Killed in Crash: **Yes – 16 or older.**

BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law: **Yes.** 625 ILCS 5/11-501.6.

Minimum Age (Years) for Sale/Purchase of Alcohol: **21.** 235 ILCS 5/6-16; 235 ILCS 5/6-20.

Minimum Age (Years) for Possession/Consumption of Alcohol: **21.** There are exceptions for reasons of employment, by the order of a parent, for religious ceremonies, educational or for home use. 235 ILCS 5/6-16; 235 ILCS 5/6-20.

Dram Shop and Social Host Laws:
State Has a Dram Shop Law (Yes/No): **Yes.** 235 ILCS 5/6-21.

"Dram Shop Law" 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).
Social Host – Criminal Enforcement: No person shall sell, give or deliver alcoholic liquor to another person under age 21. It is unlawful for any parent or guardian to knowingly permit his or her residence to be used by an invitee of the parent's child or the guardian's ward, if the invitee is under age 21, in a manner that constitutes a violation. It is a violation to allow a gathering of 2 or more persons at his or her residence where those persons are under 21 and the person allowing the gathering knows alcohol is possessed or consumed by those under 21.

Violation of this law is a class A misdemeanor, punishable by imprisonment for less than **1 year** and/or a fine of not less than **\$500** or more than **\$2,500**. Where the violation directly or indirectly causes great bodily harm or death to any person, it is a class 4 felony, punishable by not less than **3 years** and not more than **6 years** and not more than **\$25,000**. 235 ILCS 5/6-16(a-1), (c); 730 ILCS 5/5-4.5-45; 730 ILCS 5/5-9-1.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Class A Misdemeanor. 235 ILCS 5/6-16(a).

Imprisonment/Fine:

Less than **1 year** and/or not less than **\$500** or more than **\$2,500**. 235 ILCS 5/6-16(b).

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Suspension/Revocation.

235 ILCS 5/3-12 (State licenses); 235 ILCS 5/7-5 (local licenses).

Length of Term of License Withdrawal:

Not specified in the statute.^{312, 313}

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Class A Misdemeanor. 235 ILCS 5/6-16(a).

Imprisonment/Fine:

Less than **1 year** and/or not less than **\$500** (first offense) or not less than **\$2,000** (second or subsequent offense within 5 years of the prior violation), or more than **\$2,500**. 235 ILCS 5/6-16(a).

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Suspension/Revocation. 235 ILCS 5/3-12 (State licenses); 235 ILCS 5/7-5 (local licenses).

Length of Term License Withdrawal:

Not specified in the statute.

Anti-Happy Hour Laws/Regulations:

Yes. 235 ILCS 5/6-28.

Open Container Laws:

Open Container Law (Yes/No):

Yes. 625 ILCS 5/11-502.

Anti-Consumption Law (Yes/No):

Yes. 625 ILCS 5/11-502.

³¹² In lieu of revoking or suspending a State license, the commission may impose an administrative fine of up to \$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. In addition to revoking/suspending a local license, the licensee may be required to pay an administrative fine of \$1,000 for a first violation, \$1,500 for a second violation (within 12 months) and \$2,500 for a third or subsequent violation (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; 235 ILCS 5/7-5.

³¹³ If a license has been revoked, a new license shall not be granted for a period of 1 year. 235 ILCS 5/7-13.

Alcohol Exclusion Law (UPPL):

No. 215 ILCS 5/367k.

STATE

General Reference:

INDIANA

Indiana Code Annotated (IC)

Basis for a DWI Charge:

Standard DWI Offense:

Operating a vehicle while intoxicated (Class C Misdemeanor).
 Operating a vehicle while intoxicated and endangering a person (Class A Misdemeanor). IC §9-30-5-2.
 $\geq .08$ but $< .15$.³¹⁴ (Class C Misdemeanor).
 $\geq .15$. (Class A Misdemeanor). IC §9-30-5-1.

Illegal Per Se Law (BAC/BrAC):

Any amount of a controlled substance or its metabolite.³¹⁵
 (Class C Misdemeanor). IC §9-30-5-1(c).

Presumption (BAC/BrAC):

Persons Under 21 $\geq .02$ but $< .08$. (Class C Infraction).
 IC §9-30-5-8.5.
 $\geq .08$. IC §9-30-6-15(b)(2).

Types of Drugs/Drugs and Alcohol:

Persons Under 21 $\geq .02$. IC §9-30-6-15(c).
 Operating a vehicle while intoxicated³¹⁶ (Class A Misdemeanor). IC §§9-30-5-2; 9-13-2-86.
 Operating a vehicle with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body. IC §9-30-5-1(c).

Other:

BAC/BrAC $\geq .05$ but $< .08$ is relevant evidence of intoxication. IC §9-13-2-151.
 BAC/BrAC $\geq .08$ is also prima facie evidence of intoxication. IC §9-13-2-131.

Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

Permissible. Mandatory PBT for injury/death offenses.
 IC §§9-30-7-2; 9-30-7-3.

Implied Consent Law:

Yes. IC §9-30-6-1.

Arrest Required (Yes/No):

No. An actual arrest is not required. Nevertheless, a request for a test must still be based on probable cause. IC §9-30-6-2.

Implied Consent Law Applies to Drugs (Yes/No):

Yes. IC §9-30-6-2.

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal and Civil Cases. IC §9-30-6-3(b).

Other Information:

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. IC §35-33-1-6.

Note.³¹⁷

³¹⁴ Standards: "Alcohol Concentration Equivalent" means grams of alcohol per either 100 milliliters of blood or 210 liters of breath. IC §9-30-5-1.

³¹⁵ Exception: It is a defense to this offense if it is shown that the defendant was using a controlled substance under a valid prescription. IC §9-30-5-1(d).

³¹⁶ "Intoxicated" means under the influence of alcohol, a controlled substance, a drug other than alcohol or a controlled substance, a substance that produces toxic vapors or nitrous oxide, or any combination of the above. IC §9-13-2-86.

Non-Breath Chemical Tests for Alcohol
Concentration Authorized Under the Implied
Consent Law:

Blood: **Yes**³¹⁸
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. IC §9-30-5-15.**

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test -
Criminal Sanction (Fine/Jail): **Class C Infraction – Up to \$500.**
Class A Infraction (if offender has 1 previous DWI
conviction) – Up to **\$10,000.**
IC §§9-30-7-5(a); 34-28-5-4.

Refusal to Take a Preliminary Breath Test –
Administrative Licensing Action (Susp/Rev): **Suspension – 1 year.**
Suspension – 2 years (if offender has 1 previous DWI
conviction). IC §9-30-7-5(b).

Preliminary Breath Test – Other: **N/A**

Refusal to Take Implied Consent Chemical
Test – Criminal Sanction (Fine/Jail): **Yes – Limited.**³¹⁹

Refusal to Take Implied Consent Chemical
Test - Administrative Licensing Action
(Susp/Rev): **Suspension – 1 year.** May not be mandatory if there is a DWI
conviction. IC §9-30-6-9(a).
Suspension – 2 years (if offender has 1 previous DWI
conviction). IC §9-30-7-5(b).
A driver’s license may be reinstated if the DWI charges are
dismissed. IC §9-30-6-11(a)(1).

Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DWI
Conviction:

³¹⁷ Pursuant to the Code, a law enforcement officer may use reasonable force to assist an individual authorized (by law) to take a bodily substance sample from a person who does not consent and resists the taking of such sample. This applies in cases where there is serious bodily injury or death of another. IC §9-30-6-6(g), (h). However, such exception to the search warrant requirement should now be relied upon with caution in light of the United States Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

³¹⁸ 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. IC §§9-30-6-1; 9-30-6-6(a).

³¹⁹ 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 or Class A infraction (if one previous) with a possible fine of up to \$500. The court may impose a license suspension for one 1 year. IC §§9-27-5-4(b); 9-30-7-1, *et seq.*

Imprisonment/Fine:

Intoxicated offense (BAC \geq .08 but $<$.15 or with a schedule I or II controlled substance or metabolite):

First offense (Class C Misdemeanor) – Not more than **60 days** and may be fined not more than **\$500**;

Subsequent offense (within 5 years) (Level 6 Felony³²⁰) – A fixed term between **6 months** and **2-1/2 years** (advisory sentence = **1 year**) and may be fined not more than **\$10,000**. IC §§9-30-5-1(a), (c); 9-30-5-3; 35-50-2-7; 35-50-3-4.

Endangerment Intoxicated offense (BAC \geq .15):

First offense (Class A Misdemeanor) – Not more than **1 year** and may be fine not more than **\$5,000**;

Subsequent offense (within 5 years) (Level 6 Felony) – A fixed term between **6 months** and **2-1/2 years** (advisory sentence = **1 year**) and may be fined not more than **\$10,000**. IC §§9-30-5-1(b); 9-30-5-2; 35-50-2-7; 35-50-3-2.

Serious injury (BAC \geq .08, with a schedule I or II controlled substance or while intoxicated):

First offense (Level 6 Felony) – A fixed term between **6 months** and **2-1/2 years** (advisory sentence = **1 year**) and may be fined not more than **\$10,000**;

Subsequent offense (within 5 years) (Level 5 Felony) – A fixed term of between **1 year** and **6 years** (advisory sentence = **3 years**) and may be fined not more than **\$10,000**. IC §§9-30-5-4; 35-50-2-6; 35-50-2-7.

Persons Under 21 (BAC \geq .02 but $<$.08) (Class C Infraction) – Up to **\$500**. IC §§9-30-5-8.5; 34-28-5-4.

Mandatory Minimum Term/Fine:
Community Service:

Second offense: A person may be ordered to complete at least 180 hours of community service or be imprisoned for at least 5 days;

Third offense: A person may be ordered to complete at least 360 hours of community service or be imprisoned for at least 10 days. IC §9-30-5-15.

Child Endangerment:

A person who drives intoxicated with a passenger $<$ 18 commits a Level 6 Felony. Punishment is a fixed term between **6 months** and **2-1/2 years** (advisory sentence = **1 year**) and a possible fine not more than **\$10,000**. IC §§9-30-5-1(b); 9-30-5-2; 35-50-2-7; 35-50-3-4.

Restitution:

Yes. The court may order a defendant to pay direct compensation to a victim. IC §35-50-5-3. There is also a victims' compensation fund. IC §5-2-6.1-40.

Other:

Alcohol and Drug Countermeasures Fee: The clerk shall collect a fee of **\$200** for a conviction of a DWI offense.

³²⁰ A person convicted of a Level 6 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 and possible fine of not more than \$5,000) provided that this was the person's first felony conviction, no bodily injury was caused and at least 3 years have passed since the person completed the sentence. IC §35-50-2-7.

IC §33-37-5-10.

Emergency Medical Services Fund: The court may order a defendant to make “restitution” of not more than **\$1,000** to the emergency medical services fund for any needed services provided by emergency services personnel as a result of their actions. IC §9-30-5-17(b).

Victim Impact Program: A defendant may be ordered by the court to participate in programs with DWI offense victims. IC §9-30-14-2.

Visitation Program: A defendant may be required to visit emergency care facilities, coroner facilities or alcoholism treatment centers. IC §9-30-14-3(3).

Court Costs: Under IC §34-28-5-4, a person who commits a moving violation that is a Class C infraction may be required to pay various capped penalties in addition to court costs.

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

Yes.³²¹ Based on BAC/BrAC *prima facie* evidence \geq **.08**:
Suspension up to 180 days or until the DWI charges have been disposed of, whichever occurs first. IC §9-30-6-9(c).

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. IC §9-30-6-11.

Other:

Under IC §9-30-6-8, the court may suspend a license at the initial hearing if there is probable cause to believe that the person was driving while illegal per se or intoxicated. The initial hearing must be held within 10 days after the arrest. In lieu of suspension, the court may order installation of ignition interlock.
IC §35-33-7-1(c).

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Term of Withdrawal:

Suspension. IC §9-30-16-1(c)

Discretionary – A court may suspend the person’s driving privileges for a period up to the maximum allowable period of incarceration under the penalty for the offense.

Injury-Related offense (where a person has been operating a vehicle with a BAC \geq **.08**, with a schedule I or II controlled substance or while intoxicated) – At least **1 year**.
IC §9-30-16-2.

Persons Under 21 (BAC \geq .02 but $<$.08) – Not more than **1 year**. IC §9-30-5-8.5.

Mandatory Minimum Term of Revocation:

Injury-related offense (where a person has been operating a vehicle with a BAC \geq **.08**, with a schedule I or II controlled

³²¹ 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. IC §9-30-6-18(d).

<p>Alcohol Education: Substance Abuse Treatment: Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:</p>	<p>substance or while intoxicated) – 1 year. IC §9-30-16-2. Yes. IC § 9-30-5-15; IC § 9-30-9-3; IC § 9-30-9-6. Yes Forfeiture. Forfeiture of a motor vehicle <u>permitted</u> if driven by a person who has at least two prior DUIs within five years if that person commits additional DUI or driving with a suspended license. IC §34-24-1-1(a)(15). Vehicle is not the subject of seizure if such vehicle is operated by a person who is not the owner or the spouse of the person who owns the vehicle. IC §34-24-1-1(e). “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. IC §§35-38-1-21; 35-38-2-2.3(a)(16); 35-38-2.5-1, <i>et seq.</i>; 35-38-3-5.</p>
<p>Terms Upon Which Vehicle Will Be Released:</p>	<p>Vehicle is not the subject of seizure if such vehicle is operated by a person who is not the owner or the spouse of the person who owns the vehicle. IC §34-24-1-1(e). “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. IC §§35-38-1-21; 35-38-2-2.3(a)(16); 35-38-2.5-1, <i>et seq.</i>; 35-38-3-5.</p>
<p>Other Miscellaneous Sanctions:</p>	<p>Persons Under 21: Under separate provisions of the law, the court may suspend the driving privileges of a person under 21 if he/she has been found consuming or transporting alcohol. IC §9-24-18-12.2.</p>
<p><u>Ignition Interlock:</u> Permitted or Prohibited: Type of Law (Mandatory or Permissive): Sanction (Judicial, Administrative or Hybrid) Conditions of Use:</p>	<p>Permitted. IC §9-30-5-16. Permissive Judicial I. As a condition for obtaining probationary driving privileges, the court may require a first offender 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. IC §9-30-5-16. II. If the court enters a deferred disposition order, the court may require ignition interlock in lieu of license suspension. IC §12-23-5-5.</p>
<p>Other Provisions:</p>	<p>Permitted. <i>State v. Gerschoffer</i>, 763 N.E.2d 960 (Ind. 2002).</p>
<p><u>Sobriety Checkpoints:</u> Permitted or Prohibited:</p>	<p>Permitted. <i>State v. Gerschoffer</i>, 763 N.E.2d 960 (Ind. 2002).</p>
<p><u>Homicide by Vehicle:</u> State Has Such a Law:</p>	<p>Yes – BAC ≥ .08, with a schedule I or II controlled substance or while intoxicated: <u>First offense</u> – Level 5 Felony; <u>Subsequent offense</u> (within 5 years) – Level 4 Felony. BAC ≥ .15 or with a schedule I or II controlled substance – Level 4 Felony. IC §9-30-5-5. <u>Level 4 Felony</u> – A fixed term of between 2 years and 12 years (advisory sentence of 6 years) and may be fined not more than \$10,000; IC §35-50-2-5.</p>
<p>Imprisonment/Fine:</p>	<p><u>Level 4 Felony</u> – A fixed term of between 2 years and 12 years (advisory sentence of 6 years) and may be fined not more than \$10,000; IC §35-50-2-5.</p>

Mandatory Minimum Term/Fine:	<u>Level 5 Felony</u> – A fixed term of between 1 year and 6 years (advisory sentence of 3 years) and may be fined not more than \$10,000 . IC §35-50-2-6.
Authorized Licensing Action:	N/A Suspension – Up to the maximum allowable period of incarceration. IC §9-30-16-1.
Length of Term of Licensing Withdrawal:	Discretionary.
Mandatory Minimum License Withdrawal:	N/A
Other:	
<u>DWI Offenses and Commercial Motor Vehicles (CMV):</u>	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 a subsequent violation or a combination of two or more violations of any of the above listed items, the “disqualification” is for life. However, for a second violation only, the CDL may be reinstated after 10 years. It is a Class C Infraction for a person to operate a CMV with a BAC ≥ .04 but < .08 . This sanction is a fine of not more than \$500. IC §§9-24-6-8; 9-24-6-15.
<u>Driving While License Suspended for DWI Offense:</u>	
Criminal - Fine/Imprisonment:	I. <u>Class A Misdemeanor</u> – Not more than 1 year and may be fined not more than \$5,000 . IC §§9-24-19-3; 35-50-3-2. II. <u>Where there is Bodily Injury</u> (Level 6 Felony) – A fixed term between 6 months and 2-1/2 years (advisory sentence = 1 year) and may be fined not more than \$10,000 . III. <u>Where there is a Death</u> (Level 5 felony) – A fixed term of between 1 year and 6 years (advisory sentence of 3 years) and may be fined not more than \$10,000 . IC §§9-24-19-4; 35-50-2-6; 35-50-2-7.
Mandatory Minimum Fine/Imprisonment Term:	N/A
Administrative Licensing Action Type:	Suspension - Up to the maximum allowable period of incarceration. IC §9-30-16-1.
Withdrawal Action:	Discretionary.
Mandatory Term of License Withdrawal Action:	
Other:	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.
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	Yes . IC §9-30-10-4.

<p>Grounds for Being Declared Habitual Offender:</p>	<p>I. 2 convictions (within 10 years) for traffic law violations related to death offenses;³²²</p> <p>II. 3 convictions (within 10 years) for major offenses;³²³</p> <p>III. 10 convictions for any moving violations (within 10 years) of any traffic infraction (except parking or equipment violations) with at least one of the offenses having been a conviction listed in I or II above. IC §9-30-10-4.</p>
<p>Term of License Revocations While on Habitual Offender Status:</p>	<p>I. 10-year suspension;</p> <p>II. 10-yearsuspension;</p> <p>III. 5-year suspension.</p> <p>IC §9-30-10-5.</p> <p>Level 6 Felony. IC §9-30-10-16.</p>
<p>Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):</p>	<p>A fixed term between 6 months and 2-1/2 years (advisory sentence = 1 year) and may be fined not more than \$10,000. IC §§9-30-10-16; 35-50-2-7.</p>
<p>Mandatory Minimum Term/Fine: Licensing Action (Specify):</p>	<p>None</p> <p>Suspension – Up to the maximum allowable period of incarceration. IC §9-30-16-1.</p> <p>Life Forfeiture – If the person operated the motor vehicle after driving privileges had been revoked for life, or was a habitual traffic violator and the offense caused serious bodily injury or death. IC §9-30-10-17.</p>
<p><u>Other State Laws Related to Alcohol Use:</u> BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):</p>	<p>Yes.³²⁴ IC §9-27-5-4(a).</p>
<p>BAC Chemical Test Given to Deceased Driver Killed in Crash:</p>	<p>Yes. IC §9-27-5-4(a).</p>
<p>BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:</p>	<p>No</p>
<p>BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:</p>	<p>Yes for persons ≥ 15. IC §9-27-5-4(a).</p>
<p>BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:</p>	<p>No</p>
<p>Minimum Age (Years) for Sale/Purchase of Alcohol:</p>	<p>21. IC §§7.1-1-3-25; 7.1-5-7-7; 7.1-5-7-8.</p>
<p>Minimum Age (Years) for Possession/Consumption of Alcohol:</p>	<p>21. IC §7.1-5-7-7(a)(1), (2).</p>

³²² These include reckless homicide, voluntary or involuntary manslaughter involving operation of a motor vehicle and operation of a motor vehicle while intoxicated (resulting in death). IC §9-30-10-4(a).

³²³ These include reckless driving, drag racing, and operation of a motor vehicle while intoxicated. IC §9-30-10-4(b).

³²⁴ The State Department of Toxicology in conjunction with the office of traffic safety may require “appropriate agencies” to collect “necessary specimens” from the body of each driver or pedestrian who is at least 15 and who dies within 4 hours after involvement in an accident. IC §9-27-5-4(a).

Dram Shop and Social Host Laws:

State Has a Dram Shop Law (Yes/No):
 "Dram Shop Law" 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. IC §7.1-5-10-15.5.³²⁵

Yes. *Elder v. Fisher*, 217 N.E.2d 847 (Ind. 1966); *Parrett v. Lebamoff, Inc.*, 408 N.E.2d 1344 (Ind.App. 1980).

Dram Shop Actions – Social Hosts:

Yes. *Gariup Const. Co., Inc. v. Foster*, 519 N.E.2d 1224 (Ind. 1988); and *Ashlock v. Norris*, 475 N.E.2d 1167 (Ind.App. 3 Dist., 1985) (Cf. *Campbell v. Board of Trustees of Wabash College*, 495 N.E.2d 227 (1986)).

Social Host – Criminal Enforcement:

A person who recklessly, knowingly or intentionally provides or furnishes an alcoholic beverage to a minor is guilty of a class B misdemeanor, punishable by not more than **180 days** and a possible fine of not more than **\$1,000**. IC §§7.1-5-7-8; 7.1-5-10-15.

Criminal Actions Regarding Establishments
 that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Class B Misdemeanor. IC §§ 7.1-5-7-8; 7.1-5-10-15; 7.1-5-10-22.

Imprisonment/Fine:

Not more than **180 days** and may be fined not more than **\$1,000**. Additionally, an administrative fine of not more than **\$1,000** may be imposed. IC §§7.1-3-23-3; 35-50-3-3.

Administrative Actions Regarding
 Establishments that Serve Alcohol to
 Intoxicated Patrons:

License to Serve Alcoholic Beverages
 Withdrawn (Yes/No):

Yes.³²⁶ IC §§7.1-3-23-2; 7.1-3-23-5; 7.1-3-23-6; 7.1-3-23-7; 7.1-5-10-22.

Length of Term of License Withdrawal:

For revocations, no period is specified in the statute. IC §7.1-3-23-6.

For suspensions, not more than 30 days. IC §7.1-3-23-7.

Criminal Actions Regarding Establishments
 that Serve Alcohol to Persons Under the Legal
 Drinking Age:

Type of Criminal Action:

Class B Misdemeanor. IC §§7.1-5-7-8; 7.1-5-10-22; 35-50-3-3.

Imprisonment/Fine:

Not more than **180 days** and may be fined not more than **\$1,000**. Additionally, an administrative fine of not more than **\$1,000** may be imposed. IC §§7.1-3-23-3; 7.1-5-7-8; 35-50-

³²⁵ Under IC §7.1-5-10-15.5, a commercial server or a social host is not liable for the actions of intoxicated patrons or guests unless: (1) the commercial server/social host had "actual knowledge" that the patron/guest was visibly intoxicated at the time alcoholic beverages were "furnished"; and (2) the intoxicated person was the proximate cause of the injury or damage alleged. Also, under IC §7.1-5-7-8(c), it appears that educational institutions 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 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 & Grill, Inc.*, 741 N.E.2d 383 (Ind.App. 2000)

³²⁶ 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. IC §§7.1-3-18-9; 7.1-3-18-11. The permit may be suspended pending the disposition of the charges. IC §7.1-3-23-7(b)(2).

3-3.

Administrative Actions Regarding
Establishments That Serve Alcohol to Persons
Under the Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes. IC §§7.1-3-23-2; 7.1-3-23-5; 7.1-3-23-26.1; 7.1-5-10-22.

For revocations, no period is specified in the statute.
IC §7.1-3-23-6.

For suspensions, not more than 30 days. IC §7.1-3-23-7. The licensee may also be fined. IC §7.1-3-23-26.1.

Anti-Happy Hour Laws/Regulations:

Yes, IC §7.1-5-10-20.

Open Container Laws:

Open Container Law (Yes/No):

Yes. IC § 9-30-15-3.

Anti-Consumption Law (Yes/No):

Yes. IC §9-30-15-4.

Alcohol Exclusion Law (UPPL):

No. IC §27-8-5-3(b)(10).

STATE

General Reference:

IOWA

Iowa Code Annotated (I.C.A.)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of an alcoholic beverage.³²⁷
I.C.A. §321J.2(1)(a).

Illegal Per Se Law (BAC/BrAC):

≥ **.08**³²⁸ or any amount of a controlled substance in the blood or urine. I.C.A. §§321J.1(1); 321J.2(1)(b), (c).
≥ **.02** (persons under 21). I.C.A. §321J.2A.³²⁹

Presumption (BAC/BrAC):

None

Types of Drugs/Drugs and Alcohol:

Under the influence of any drug or any combination of drugs including an alcoholic beverage. I.C.A. §321J.2(1)(a).

Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

Yes. I.C.A. §321J.5.

Implied Consent Law:

Yes. I.C.A. §321J.6.

Arrest Required (Yes/No):

No.³³⁰ I.C.A. §321J.6(1).Implied Consent Law Applies to Drugs
(Yes/No):**Yes.** I.C.A. §321J.6.

Refusal to Submit to Chemical Test

Yes – Criminal and Civil Cases. I.C.A. § 321J.16.

Admitted into Evidence:

A person may be required to submit to a chemical test pursuant to a search warrant issued in an investigation of involuntary manslaughter (I.C.A. §707.5) or homicide/serious injury by vehicle (I.C.A. §707.6A) 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. I.C.A. §321J.10.

Other Information:

N/ANon-Breath Chemical Tests for AlcoholConcentration Authorized Under theImplied Consent Law:

Blood:

Yes. I.C.A. §321J.6(2).

Urine:

Yes. I.C.A. §321J.6(2).

Other:

N/AAdjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No. Deferred judgment may be available for first offenders who have a BAC < **.15**, and no bodily injury resulted.

³²⁷ In Iowa, a drunk-driving offense is referred to as “operating while intoxicated,” or “OWI.” However, “operating while intoxicated” is defined as operating a vehicle while under the influence of an alcoholic beverage or illegal per se. The “DWI” acronym is used within the body of this digest rather than “OWI” for uniformity.

Note: Under I.C.A. §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.”

³²⁸ 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. I.C.A. §§321.1(1A); 321J.1(1)

³²⁹ It should be noted that the sanction for such an offense is an administrative license revocation, not a criminal conviction.

³³⁰ A request to submit to a test is based on reasonable grounds of a drunk-driving offense AND any one of the following: (1) arrest; (2) accident resulting in injury or death; (3) PBT refusal; (4) PBT reading of ≥ .08 (≥ .04 for CMV operators; ≥ .02 for persons under the age of 21); or (5) reasonable grounds that the driver was under the influence of drugs or a combination of drugs and alcohol but a PBT reading is < .08. I.C.A. §321J.6(1).

Anti-Plea-Bargaining Statute (Yes/No): I.C.A. §§321J.2(b); 907.3.
 Pre-Sentencing Investigation Law (PSI) **No**
 (Yes/No): **Yes.** An offender, at his own expense, must submit to a substance abuse evaluation. I.C.A. §§321J.2(3)(e); 321J.3; 321J.17. Also, the court may order an evaluation if it thinks that the defendant “regularly abuses alcohol or other controlled substances”. I.C.A. §901.4A.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - **None**
 Criminal Sanction (Fine/Jail):

Refusal to Take a Preliminary Breath Test – **None**
 Administrative Licensing Action
 (Susp/Rev):

Preliminary Breath Test – Other: **N/A**

Refusal to Take Implied Consent Chemical **None**
 Test – Criminal Sanction (Fine/Jail):

Refusal to Take Implied Consent Chemical **Revocation**
 Test - Administrative Licensing Action **First refusal – 1 year** (90 days mand);
 (Susp/Rev): **Subsequent refusal**³³¹ – **2 years** (1 year mand). I.C.A. §321J.9.

If a defendant is under 18, the period of revocation shall be either as indicated or until the person reaches 18, whichever is the longer revocation period. I.C.A. §321J.4(7).

Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine: **First offense** (Serious misdemeanor) – Not less than **48 hours** or more than **1 year** and a fine of **\$1,250**;³³²
Second offense (aggravated misdemeanor) – Not less than **7 days** or more than **2 years** and not less than **\$1,875** or more than **\$6,250**;
Third and each subsequent offense (Class D felony) – Not less than **30 days** or more than **5 years**³³³ (or up to 1 year in the county jail if the court suspends the commitment to the custody of the director of the department of corrections) does not and not less than **\$3,125** or more than **\$9,375**.
Serious injury related to a drunk-driving offense (Class D felony) – Not more than **5 years** and not less than **\$750** or more than **\$7,500**. I.C.A. §§321J.2(2), (3); 707.6A; 902.9;

³³¹ A prior drunk-driving offense conviction or a prior administrative per se violation is considered the same as a previous refusal for license sanction enhancement purposes. I.C.A. §321J.9(1).

³³² The court may waive up to \$625 of the fine when the defendant presents to the court a restricted license after the minimum period of suspension/revocation. Additionally, the court may order the offender to perform community service as an alternative to a portion or all of the fine. I.C.A. §321J.2(3)(c).

³³³ If the court suspends the commitment of the offender to the director of the department of corrections, then the court shall order the offender to serve not less than 30 days or more than 1 year in the county jail. I.C.A. §321J.2(5)(a)).

Mandatory Minimum Term/Fine:	<p>903.1. <u>First offense – 48 hours</u>;³³⁴ <u>Second offense – 7 consecutive days</u>;³³⁵ <u>Third and each subsequent offense – 30 consecutive days (if jail); mandatory incarceration but no minimum (if prison)</u>;³³⁶ <u>Serious injury related to a drunk-driving offense – Mandatory prison, indeterminate 5 year sentence.</u> I.C.A. §§321J.2; 707.6A; 902.9; 903.1.</p>
Community Service:	<p><u>First offense</u> – Community service in lieu of part of or the entire fine. I.C.A. §321J.2(3)(c)(2). Under separate provisions, the court may order an offender to perform community service equivalent in value to any fine imposed. I.C.A. §909.3A.</p>
Child Endangerment:	<p>Yes. Any person who is the parent, guardian, or person having custody³³⁷ or control over a child/minor under age 18 with a mental or physical disability, or a person who is a member of the household in which a child/minor resides who knowingly acts in a manner that creates a substantial risk to a child/minor’s physical, mental or emotional health or safety shall be guilty of an aggravated misdemeanor, punishable of not more than 2 years imprisonment and a fine of not less than \$625 or more than \$6,250. Bodily injury = Class D felony, punishable by not more than 5 years imprisonment and not less than \$750 or more than \$7,500. Serious bodily injury = Class C felony, punishable by not more than 10 years imprisonment and a fine of not less than \$1,000 or more than \$10,000. Death = Class B felony, punishable by not more than 50 years imprisonment. I.C.A. §726.6.</p>
Restitution:	<p>Yes. A victim is eligible for restitution from the defendant as well as compensation from the State crime reparation fund. I.C.A. §§321J.2(13)(a); 915.1, <i>et seq.</i> In the event a victim receives payment from the State fund, the court must order the defendant to repay the State fund.</p>
Other:	<p>Surcharges: A surcharge of 35% of the fine actually imposed is assessed against anyone convicted of a State criminal offense <u>and</u> a drug abuse resistance education</p>

³³⁴ For a first offense, there is a mandatory imprisonment sentence of 48 hours and a fine as indicated if the offender had a BAC/BrAC > .15, refused to submit to a chemical test under implied consent law or committed a drunk-driving offense that injured another person. I.C.A. §§321J.2(3)(a); 907.3(2).

³³⁵ For second and subsequent offenders the 7-day and 30-day jail sanctions respectively must be served consecutively. I.C.A. §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 deems appropriate. I.C.A. §321J.2(3)(d).

³³⁶ An offender is subject to a 30-consecutive-day mandatory minimum incarceration sanction only if the court sentences him to county jail. However, if an offender is sentenced to the State Department of Corrections, the offender will be incarcerated in prison for an indeterminate 5-year sentence, with no mandatory minimum period of sentence; release is at the discretion of the board of parole.

³³⁷ A custodian includes a person who operates a motor vehicle with a child or minor present in the vehicle. I.C.A. §726.6(3)(c).

surcharge of \$10 must also be paid. I.C.A. §§911.1; 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. This penalty must be paid before restricted driving privileges can be granted. I.C.A. §; 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.
 I.C.A. §321J.2(13)(b).

Home Detention: Persons sentenced to the county jail may be assigned “home detention” instead of incarceration.
 I.C.A. §356.26.

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

Yes.

First violation – **Revocation for 180 days** (30 days mand; 60 days mand for persons under 21);

Second or subsequent violation – **Revocation for 1 year** (mand; 60 days mand for persons under 21).

I.C.A. §§321J.2A; 321J.12.

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Term of Withdrawal:

Revocation. I.C.A. §§321J.2(3); 321J.4; 321J.12.

First offense – **180 days up to 1 year;**

Second offense – **1 year;**

Third and subsequent offenses – **6 years;**

DWI offense involving serious injury – **1 year** (in addition to any other period of suspension or revocation).

I.C.A. §321J.4.

DWI offense involving death – **6 years;**

First offenders with deferred judgments – **90 days.**

I.C.A. §§321J.2; 321J.4; 312J.12.

Mandatory Minimum Term of Revocation:

First offense – **30 days** (60 days if the offender was < 21);

Second offense – **45 days;**

Third and subsequent offenses – **1 year.**

DWI involving death – **2 years.**

Deferred judgments – **30 days.**

I.C.A. §§321J.4; 321J.20.

Alcohol Education:

Yes. First and subsequent offenses. I.C.A. §§321J.2(3)(e); 321J.3; 321J.17(2); 321J.22.

Substance Abuse 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, which could be a condition to a suspended sentence. The time the offender spends in this inpatient treatment program is credited towards his sentence. I.C.A. §321J.3.

<p>Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:</p>	<p>II. In addition, the court may order a defendant to complete a treatment program pursuant to an evaluation for alcohol or drug abuse. I.C.A. §§901.4A; 901.5.</p> <p>Yes</p> <p>Impoundment or Immobilization. For a second or subsequent offense, the vehicle used by the defendant in the offense is subject to impoundment or may be immobilized³³⁸ for the period of the driver's license revocation or for 180 days whichever is longer. I.C.A. §321J.4B(2)(a), (5)(d). Immediate return of the vehicle (without payment of costs associated with impoundment/immobilization) shall be made to: (1) the owner of the vehicle (if the offender is <u>not</u> the co-owner); (2) a motor vehicle rental or leasing agency that owns the vehicle; or (3) a person charged but not convicted. I.C.A. §321J.4B(5)(a).</p>
<p>Terms Upon Which Vehicle Will Be Released:</p>	<p>Court-ordered visitation program: This is a "supervised educational tour" where a court may order a defendant to visit a hospital or other emergency medical facility to observe the treatment of victims of motor vehicle accidents (including DWI accidents). Additionally, a defendant may be ordered to visit a substance abuse facility or a morgue. I.C.A. §321J.24.</p>
<p>Other Miscellaneous Sanctions:</p>	
<p><u>Ignition Interlock:</u> Permitted or Prohibited: Type of Law (Mandatory or Permissive): Sanction (Judicial, Administrative or Hybrid) Conditions of Use:</p>	<p>Permitted. I.C.A. §§321J.4(1); 321J.17.</p> <p>Mandatory Administrative</p> <p>If a defendant³³⁹ seeks a temporary restricted license, he shall be ordered to install an ignition interlock device. I.C.A. § 321J.4(1); I.C.A. § 321J.17.</p> <p>For a second or subsequent offender, the department shall require certification of installation on all motor vehicles owned or operated by such person seeking reinstatement of driving privileges. The requirement for installation shall be for 1 year from the date of reinstatement. I.C.A. § 321J.17. A defendant whose BAC is $\geq .08$ shall not be eligible for any temporary restricted license for at least 30 days if a test was obtained and a crash resulting in personal injury or property damage occurred. However, there shall be no period of ineligibility if no crash occurred, or if the defendant's BAC did not exceed 0.15. The defendant shall not be required to install an ignition interlock device. I.C.A. § 321J.4(1)(a).</p>
<p>Other Provisions:</p>	
<p><u>Sobriety Checkpoints:</u> Permitted or Prohibited:</p>	<p>Prohibited – DWI roadblocks, or sobriety checkpoints, do</p>

³³⁸ "Immobilized" means the installation of a device in a motor vehicle that completely prevents a motor vehicle from being operated, or the installation of an ignition interlock device of a type approved by the commission or public safety. I.C.A. §321J.4B(1)(a).

³³⁹ A first offender with a deferred judgment, where no accident resulted and whose BAC was $< .10$, shall not be required to install an ignition interlock device if he seeks a temporary restricted license. I.C.A. §321J.4(3)(a). However, the court may order such defendant to install an ignition interlock device as a condition of that deferred judgment. I.C.A. §321J.4(8)(a).

not fall within the list of types of roadblocks permitted. I.C.A. §321K.1; see *State v. Day*, 528 N.W.2d 100 (Iowa 1995); *State v. Loyd*, 530 N.W.2d 708 (Iowa 1995); However, roadblocks are permitted under 321K for licensing, registration, and safety equipment checks (321K.1(a) (b) and (c)), and DWI arrests which occur as a result of such checks may proceed to prosecution, see *State v. Lloyd*, 530 N.W.2d 708 (Iowa 1995).

Homicide by Vehicle:

State Has Such a Law:

Imprisonment/Fine:

Mandatory Minimum Term/Fine:

Authorized Licensing Action:

Length of Term of Licensing Withdrawal:

Mandatory Minimum License Withdrawal:

Other:

Yes. I.C.A. §707.6A.

Class B felony – Not more than **25 years**.

I.C.A. §902.9. There is no fine.

If the offender failed to stop at the scene of the accident, then such offender is not eligible for parole or work release until he has served at least 7/10 of the maximum term of his sentence. I.C.A. §902.12.

Revocation. I.C.A. §§321.209(1); 321J.4(6); 707.6A(1)(a).

6 years. I.C.A. §§321J.4(6); 707.6A(1)(a).

2 years. I.C.A. §§321J.4(6); 707.6A(1)(a).

Special License Suspension: Prior to an adjudication of a person for vehicular homicide related to reckless driving or drunk driving, the license shall be suspended until the completion of the judicial proceedings. If the person is not convicted, the license shall be reinstated. I.C.A. §321.210D.

Restitution: In addition to any other pecuniary damages, an offender must pay at least \$150,000 in restitution to a victim's estate. I.C.A. §910.3B.

DWI Offenses and Commercial Motor Vehicles (CMV):

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 $\geq .04$; (2) is under the influence of alcohol, other drugs or a controlled substance or (3) refuses to submit to a chemical test for alcohol or drug concentrations. For a subsequent violation or 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 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 not less than \$2,500 (first violation) and not less than \$5,000 (for a subsequent violation within 10 years). I.C.A. §§321.1(11); 321.208; 321.208A; 321J.6; 321J.8(1)(c).

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

Serious misdemeanor. Not more than **1 year** and not less

Mandatory Minimum Fine/Imprisonment Term:	than \$315 or more than \$1,875 , with an additional assessment of \$1,000 . I.C.A. §§321J.21; 903.1(1)(b).
Administrative Licensing Action Type:	The base fine of \$315 appears to be mandatory, and the additional assessment of \$1,000 is mandatory.
Withdrawal Action:	Suspension or revocation . I.C.A. §321J.21(2). Original suspension/revocation extended an additional like period. I.C.A. §321J.21(2).
Mandatory Term of License Withdrawal Action:	None.
Other:	N/A
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	Yes . I.C.A. §321.555.
Grounds for Being Declared Habitual Offender:	Three or more serious offenses (within 6 years), or six or more minor offenses (within 2 years). ³⁴⁰ I.C.A. §321.555.
Term of License Revocations While on Habitual Offender Status:	If based on serious offenses – Not less than two years or more than six years ; ³⁴¹ If based on minor offenses – 1 year . I.C.A. §321.560.
Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):	Aggravated misdemeanor . I.C.A. §§321.561; 903.1. Not more than two years and not less than \$625 or more than \$6,250 . I.C.A. §903.1(2).
Mandatory Minimum Term/Fine: Licensing Action (Specify):	\$625 Same as for driving while revoked.
<u>Other State Laws Related to Alcohol Use:</u>	
BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	No
BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes . I.C.A. §321J.7.
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	No .
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	No .
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes . I.C.A. §321J.6.
Minimum Age (Years) for Sale/Purchase of Alcohol:	21 . I.C.A. §§123.3(24); 123.47; 123.49(2)(h).

³⁴⁰ Serious offenses include: (1) vehicular manslaughter; (2) DWI; (3) driving on a revoked/suspended license; (4) perjury to department of public safety; (5) a felony traffic offense; (6) failing to stop and render aid; (7) eluding; and (8) serious injury by vehicle. Minor offenses include moving violations but do not include parking violations, equipment violations, weights and measures violations and speeding violations of less than 15 mph over the speed limit. I.C.A. §321.555.

³⁴¹ I. If habitual offender status is based only on the operation of vehicles while the license is 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. I.C.A. §§321.215; 321.560.

Minimum Age (Years) for Possession/Consumption of Alcohol:

21. There are exemptions for medical reasons, religious reasons, employment and home use with parental consent. I.C.A. §123.47(2).

Dram Shop and Social Host Laws:

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

Yes. I.C.A. §123.92.
Yes. *Lewis v. State*, 256 N.W.2d 181 (Iowa 1977).

Dram Shop Actions – Social Hosts:
Social Host – Criminal Enforcement:

No. I.C.A. §123.49(1)(a).
A social host may be charged with contributing to delinquency, a simple misdemeanor punishable by a fine of at least \$65 but not more than \$625, and may be imprisoned for not more than 30 days. I.C.A. §§232.2(5); 709A.1; 709A.2; 903.1.
A person who is older than 21 who knowingly permits use of the host's premises for possession or consumption of alcohol by persons under the age of 18 commits:
First offense (scheduled violation) – a fine of **\$200**;
Second or subsequent offense (simple misdemeanor) – a fine of **\$500** and may be incarcerated for not more than **30 days**.
I.C.A. §§123.47(2); 805.8C(8); 903.1.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:
Imprisonment/Fine:

Simple misdemeanor. I.C.A. §§123.49; 123.50(1).
Not more than **30 days** and a fine of at least **\$65** but not more than **\$625**. I.C.A. §903.1.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

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

Yes – Suspension or revocation.³⁴² I.C.A. §§123.39; 123.40; 123.50(2).
Suspension – not more than **1 year**. I.C.A. §123.39(1)(a)
Revocation – **2 years**. I.C.A. §123.40.
CIVIL PENALTY (fine): Not more than \$1,000 per violation. I.C.A. §123.39(1)(a).

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:
Imprisonment/Fine:

Simple misdemeanor (a scheduled violation). I.C.A. §§123.49(2)(h); 123.50(1); 805.8C(2).
Licensee or Permitted – **\$1,500**; Employee – **\$500**³⁴³

³⁴² A criminal conviction for a violation of the liquor control laws is not a prerequisite to a license suspension/revocation or to a civil penalty (fine). I.C.A. §123.39(1)(c). However, a conviction is grounds for the suspension or revocation of the license or permit. I.C.A. §123.50(2).

I.C.A. §805.8C(2).

Administrative Actions Regarding
Establishments That Serve Alcohol to
Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages
Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes – Suspension or Revocation.

I.C.A. §§123.39;³⁴⁴ 123.40; 123.50(3).

First offense – **None**;

Second offense (within 2 years) – **30 days**;

Third offense (within 3 years) – **60 days**;

Fourth offense (within 3 years) – **2 years**.

I.C.A. §§123.40; 123.50(3).

Civil Penalty:

First offense - **\$500**;

Second offense (within 2 years) or third offense (within 3 years) – **\$1,500**.

I.C.A. §123.50(3)(b), (c).

Anti-Happy Hour Laws/Regulations:

No

Open Container Laws:

Open Container Law (Yes/No):

Yes. I.C.A. §321.284; I.C.A. § 321.284A.

Anti-Consumption Law (Yes/No):

Yes. I.C.A. §123.46.

Alcohol Exclusion Law (UPPL):

No. I.C.A. §514A.3(2)(k).

³⁴³ 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. I.C.A. §123.50(3)(a).

³⁴⁴ Section 123.59 also makes it illegal to sell alcoholic beverages to persons under 21. It is a serious misdemeanor (first offense) to violate §123.59 and the sanctions for this offense are a jail term of not more than 1 year and/or a fine of at least \$300 but not more than \$1,875 (§903.1(1)(b)).

STATE

General Reference:

KANSAS

Kansas Statutes Annotated (K.S.A.)

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.

K.S.A. §8-1567(a)(3).

Illegal Per Se Law (BAC/BrAC):

≥ **.08**.³⁴⁵ K.S.A. §8-1567(a)(1), (a)(2).**Persons under 21** – ≥ **.02**. K.S.A. §8-1567a.Violation of K.S.A. §8-1567a is not a criminal offense; the penalties are administrative (civil) only. *State v. Shuster*, 46 P.3d 1140 (Kan. 2002).

Presumption (BAC/BrAC):

None

Types of Drugs/Drugs and Alcohol:

Under the influence of any drug or a combination of alcohol and drugs. K.S.A. §8-1567(a)(4), (5).

Other:

A BAC/BrAC ≥ **.08** is prima facie evidence that the defendant was under the influence of alcohol. K.S.A. §8-1005(b).Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

Yes. K.S.A. §§8-1001(a); 8-1012.

Implied Consent Law:

Yes. K.S.A. §8-1001(a)

Arrest Required (Yes/No):

No. K.S.A. §§8-1001(b); 8-1012(a), (b).

Implied Consent Law Applies to Drugs

Yes. K.S.A. §8-1001(a).

(Yes/No):

Refusal to Submit to Chemical Test

Yes – Criminal Cases. K.S.A. §8-1001(n).

Admitted into Evidence:

Other Information:

N/A.Non-Breath Chemical Tests for AlcoholConcentration Authorized Under theImplied Consent Law:

Blood:

Yes. K.S.A. §8-1001(a).

Urine:

Yes. K.S.A. §8-1001(a).

Other:

Other Bodily Substances. K.S.A. §8-1001(a).Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea-Bargaining Statute (Yes/No):

Yes. K.S.A. §8-1567(m). However, certain diversion programs may be an exception.

Pre-Sentencing Investigation Law (PSI)

Yes. K.S.A. §8-1008(c), (d).

(Yes/No):

Sanctions for Refusal to Submit to aChemical Test:

Refusal to Take a Preliminary Breath Test -

Yes – Infraction: A fine of **\$105**. K.S.A. §8-2118.

³⁴⁵ Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. K.S.A. §§8-1013(a); 8-1567(o).

Criminal Sanction (Fine/Jail):	
Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev):	None
Preliminary Breath Test – Other:	N/A
Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	A person age 18 or older who has a prior refusal or prior DUI conviction on or after 7/1/2001, may be charged with a separate crime of refusing to submit to a test. Penalties ³⁴⁶ are greater than or equal to those of driving under the influence. K.S.A. §8-1001(k)(4).
Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):	<u>First or subsequent occurrence</u> – Suspension 1 year. K.S.A. §§8-1001(k)(5); 8-1014(a).
Implied Consent Chemical Test - Other:	N/A
 <u>Criminal Sanctions Following a DWI Conviction:</u>	
Imprisonment/Fine:	<u>First conviction</u> (Class B misdemeanor) – Not less than 48 consecutive hours or more than 6 months and not less than \$750 or more than \$1,000 ; <u>Second conviction</u> (Class A misdemeanor) – Not less than 90 days or more than 1 year and not less than \$1,250 or more than \$1,750 ; <u>Third conviction</u> (Class A misdemeanor) – Not less than 90 days or more than 1 year and not less than \$1,750 or more than \$2,500 ; <u>Third conviction</u> (within 10 years) (felony) – Not less than 90 days or more than 1 year and not less than \$1,750 or more than \$2,500 ; <u>Fourth or subsequent conviction</u> (felony) – Not less than 90 days or more than 1 year and \$2,500 . K.S.A. §8-1567.
Mandatory Minimum Term/Fine:	<u>First conviction</u> – None ; ³⁴⁷ <u>Second conviction</u> – 5 consecutive days (or 48 consecutive hours, then work release or house arrest); <u>Third conviction</u> (misdemeanor or felony) – 90 days (or 48 consecutive hours, then work release or house arrest); <u>Fourth or subsequent conviction</u> – 90 days (or 72 consecutive hours, then work release). K.S.A. § 8-1567.
Community Service:	<u>First offense</u> – 100 hours (in lieu of imprisonment); <u>Second and subsequent offenses</u> – may be ordered in lieu of fine. A \$5 credit is allowed on the fine for every hour of community service. K.S.A. § 8-1567(f).
Child Endangerment:	A driver who commits DUI with a child under age 14 in the

³⁴⁶ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

³⁴⁷ The court may order 48 consecutive hours or 100 hours community service, one of which the offender must complete before he is eligible for a suspended sentence, probation or reduction of sentence. K.S.A. §8-1567(b).

vehicle shall have his/her punishment enhanced by 1 month of imprisonment which is mandatory and must be served consecutively to any other mandatory minimum penalty imposed. K.S.A. § 8-1567(c).

Restitution:

Yes. Direct compensation by defendants to victims as a condition of probation or parole. K.S.A. §8-1019(c). 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. K.S.A. §§74-7302; 74-7305.

Other:

Assessment: Unless indigent, an offender must pay an assessment of **\$150**. This assessment is deposited into an alcohol and drug safety fund. K.S.A. §8-1008(e). In a municipal court charge, an offender is assessed **\$20** in addition to any fine; this assessment is used to fund various law enforcement and crime victim activities. K.S.A. §12-4117(a).

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

Yes ≥ .08. (BAC/BrAC). K.S.A. §8-1014(b).

First occurrence – Suspension **30 days** (mand) and **330 days** restricted driving privileges;

Second occurrence – suspension **1 year** (mand) followed by restricted driving privileges for 1 year;

Third occurrence – suspension for **1 year** (mand) followed by restricted driving privileges for 2 years;

Fourth occurrence – suspension for **1 year** (mand) followed by restricted driving privileges for 3 years;

Fifth or subsequent occurrence – Suspension **1 year** (mand) followed by restricted driving privileges for 10 years.

≥ .15. (BAC/BrAC). K.S.A. §8-1014(b)(2).

First occurrence – Suspension **1 year** and restricted driving privileges for 1 year;

Second occurrence – Suspension **1 year** and restricted driving privileges 2 years;

Third occurrence – Suspension **1 year** and restricted driving privileges 3 years;

Fourth occurrence – Suspension **1 year** and restricted driving privileges 4 years;

Fifth or subsequent occurrence – Suspension **1 year** and restricted driving privileges **10 years**.

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Term of Withdrawal:

Note.³⁴⁸ **Suspension.** K.S.A. §§8-1001; 8-1014(b).

≥ .08 but < .15:

First occurrence – **30 days**;

Second and subsequent occurrences – **1 year**;

³⁴⁸ An “occurrence” includes a test refusal, test failure (admin. per se violations) or a DWI offense conviction. K.S.A. §8-1013(e).

≥ .15:

First and subsequent occurrences – **1 year** and restricted driving privileges for 1 year;

Second occurrence – **1 year** and restricted driving privileges 2 years;

Third occurrence – **1 year** and restricted driving privileges 3 years;

Fourth occurrence – **1 year** and restricted driving privileges 4 years;

Fifth or subsequent occurrence – **1 year** and restricted driving privileges for **10 years**. K.S.A. §§8-1001(b); 8-1014.

Mandatory Minimum Term of Revocation:
Alcohol Education:

The terms above appear to be mandatory.

First conviction – As a condition of probation, parole, etc., a defendant must complete an alcohol education or treatment program. K.S.A. §8-1567.

Substance Abuse Treatment:

Second/Third convictions – As a condition of probation, suspended sentence or parole, an offender shall 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. K.S.A. §8-1567(b).

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority:
Terms Upon Which Vehicle Will Be Released:
Other Miscellaneous Sanctions:

No

Ignition Interlock:

Permitted or Prohibited:

Type of Law (Mandatory or Permissive):

Sanction (Judicial, Administrative or Hybrid)

Conditions of Use:

Permitted. K.S.A. §§8-1014(b); 8-1015.

Mandatory

Administrative

For any second or subsequent conviction or refusal, an ignition interlock shall be required after the period of suspension. K.S.A. §§8-1014(b); 8-1015.

Other Provisions:

A person, whose driving privileges have been suspended for 1 year because of a refusal, may apply for a restricted license after 90 days with such restriction requiring the use of an ignition interlock device. A person, whose driving privileges have been suspended for 1 year because of he/she failed the test, may apply for a restricted license after 45 days with such restriction requiring the use of an ignition interlock device. K.S.A. §8-1015.

Sobriety Checkpoints:

Permitted or Prohibited:

Permitted. *City of Overland Park v. Rhodes*, 257 P.3d 864 (Kan. Ct. App. 2011); *State v. Deskins*, 673 P.2d. 1174 (Kan. 1983).

Homicide by Vehicle:

State Has Such a Law:

Yes

Imprisonment/Fine:	<p><u>Involuntary Manslaughter while DUI</u> – An unintentional death while DUI – Severity Level 4 Person Felony. K.S.A. §21-5405.</p> <p><u>Vehicle Homicide</u> – Death caused by operation of a vehicle in a manner that causes unreasonable risk and which constitutes a material deviation from the standard of care which a reasonable person would observe under the same circumstances. Class A Personal Misdemeanor. K.S.A. §21-5406.</p> <p><u>Severity Level 4 Person Felony</u> – 38-172 months³⁴⁹ and not more than \$300,000.</p> <p><u>Class A Misdemeanor</u> – Not more than 1 year and not more than \$2,500. K.S.A. §§21-6602; 21-6611; 21-6804.</p>
Mandatory Minimum Term/Fine: Authorized Licensing Action:	<p>None</p> <p><u>Involuntary Manslaughter while DUI</u> – Suspension</p> <p><u>Vehicle Homicide</u> – Revocation. K.S.A. §§8-254; 8-1014.</p>
Length of Term of Licensing Withdrawal:	<p><u>Involuntary Manslaughter</u> – same as for DWI offenses.</p> <p><u>Vehicle Homicide</u> – 1 year K.S.A. §8-256.</p>
Mandatory Minimum License Withdrawal:	<p><u>Involuntary Manslaughter</u> – Mandatory suspensions are the same as for DWI offenses.</p> <p><u>Vehicle Homicide</u> – None – restricted driving privileges may be granted. K.S.A. §8-254(b).</p>
Other:	<p>N/A</p>

DWI Offenses and Commercial Motor Vehicles (CMV):

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 $\geq .04$; (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 a subsequent violation or 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 an alcohol concentration $\geq .04$ or while under the influence of alcohol or drugs is subject to the regular DUI criminal sanctions.

Also, a CMV operator who has any measurable (or detectable) amount of alcohol in his/her system or who refuses to take a test must be placed "out-of-service" for 24 hours.
K.S.A. §§8-2,128; 8-2,136; 8-2,137; 8-2,142; 8-2,144; 8-2,145; 8-1001(I), (o); 8-1002; 8-1567.

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

Ordinary Driving on Suspended/Revoked License:

³⁴⁹ Sentencing Guidelines: Imprisonment sanctions for felony offenses are determined by a sentencing guidelines grid and supporting statutory provisions. For a Severity Level 4 Person Felony, there is a "presumed" incarceration. The grid also provides for increased incarceration periods for subsequent felony offenses. Depending on a person’s criminal history, the range to be served is between 32-172 months. For criminal history purposes if the charge is DUI Manslaughter every DUI conviction counts as a person felony to determine sentence. http://www.sentencing.ks.gov/docs/default-source/2014-forms/2014_nondrug_and_drug_grid_quick_reference_guide.pdf?sfvrsn=2

First offense (Class B Nonperson Misdemeanor) – Not less than **5 days** or more than **6 months** and/or not less than **\$100** or more than **\$1,000**;

Second or subsequent offense (Class A Nonperson Misdemeanor) – Not less than **5 days** (mand) or more than **1 year** and/or not less than **\$100** or more than **\$2,500**;³⁵⁰

Driving on Suspended/Revoked Where Basis Was DWI Offense: Same as terms above, except **90 days** shall be mandatory and the fine shall be imposed in addition to the term of imprisonment. K.S.A. §8-262.

See section above.

Mandatory Minimum Fine/Imprisonment Term:

Administrative Licensing Action Type:

Withdrawal Action:

Suspension or revocation. K.S.A. §8-262(b).

The original suspension/revocation is extended for an additional period of **90 days**. K.S.A. §8-262(b).

Mandatory Term of License Withdrawal Action:

The term above appears to be mandatory.

Other:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. K.S.A. §§8-285; 8-286.

Grounds for Being Declared Habitual Offender:

Three serious offenses³⁵¹ within 5 years. K.S.A. §8-285(a).

Term of License Revocations While on Habitual Offender Status:

3 years.

K.S.A. §§8-286; 8-288.

Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):

Class A Misdemeanor.

K.S.A. §8-287.

Not more than **1 year** and/or not more than **\$2,500**;

Third or subsequent conviction = Not less than **90 days** and not less than **\$1,500**. K.S.A. §§8-287; 21-6602; 21-6611.

Mandatory Minimum Term/Fine: Licensing Action (Specify):

None

N/A

Other State Laws Related to Alcohol Use:

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):

No.³⁵²

BAC Chemical Test Given to Deceased Driver Killed in Crash:

No statutory provision

³⁵⁰ For a third or subsequent class A nonperson misdemeanor offense, the person shall be sentenced to not less than 90 days (mand) and not less than \$1,500 if such person's license was suspended/revoked because of: (1) refusal to submit to testing; (2) a conviction relating to vehicle liability coverage (K.S.A. §40-3104); (3) was convicted of vehicle homicide or involuntary manslaughter while driving under the influence or any other murder or manslaughter crime resulting from the operation of a motor vehicle; or (4) was convicted of being a habitual offender. K.S.A. §8-262(c)(1).

³⁵¹ These include: (1) vehicular homicide; (2) DUI offense; (3) driving while license is canceled, suspended or revoked; (4) any crime punishable as a felony if a motor vehicle was used in the perpetration of the crime; and (5) failing to stop at the scene of an accident. K.S.A. §8-285(a).

³⁵² There are no statutory provisions requiring testing on persons killed in traffic accidents. However, a dead or unconscious person is deemed not to have withdrawn consent. K.S.A. §8-1001(a).

BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	No statutory provision
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	No statutory provision
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes. K.S.A. §8-1001(b)(2). However, probable cause that the person was operating or attempting to operate a vehicle under the influence of drugs or alcohol <u>must</u> exist. A traffic infraction combined with an injury or fatality does not rise to probable cause. <i>State v. Declerck</i> , 317 P.3d 794 (Kan. Ct. App. 2014).
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. K.S.A. §§21-5607; 41-102(r); 41-715; 41-727(a); 41-2701(h).
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. K.S.A. §§41-715; 41-727(a). There is an employment exception. K.S.A. §41-2704(f).
<u>Dram Shop and Social Host Laws:</u> State Has a Dram Shop Law (Yes/No):	No. See <i>Berry v. National Medical Services, Inc.</i> , 205 P.3d 745 (Kan.App. 2009) (citing <i>Ling v. Jan's Liquors</i> , 703 P.2d 731 (Kan. 1985)).
"Dram Shop Law" 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: Social Host – Criminal Enforcement:	No. See <i>Thies v. Cooper</i> , 753 P.2d 1280 (Kan. 1988). ³⁵³ It is unlawful to intentionally or recklessly host minors consuming alcoholic liquor or cereal malt beverage. A violation is a Class A person misdemeanor, punishable by a term of not more than 1 year and/or a fine of not less than \$1,000 or more than \$2,500. K.S.A. §§21-5608(a); 21-6602; 21-6611.
<u>Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u> Type of Criminal Action: Imprisonment/Fine:	Misdemeanor. K.S.A. §41-715. Not more than 30 days and/or not less than \$100 or more than \$250 . K.S.A. §41-715.
<u>Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u> License to Serve Alcoholic Beverages Withdrawn (Yes/No): Length of Term of License Withdrawal: Other:	Yes – Revocation. K.S.A. §§41-314; 41-2611(f); 41-2626. Not specified in the statute. Civil Fine: A “civil fine” of not more than \$1,000 may also be imposed. K.S.A. §41-328(a).

³⁵³ 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.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:
Imprisonment/Fine:

Misdemeanor. K.S.A. §41-2615.
Not more than **30 days** and/or a fine of not less than **\$100** or more than **\$250**. K.S.A. §41-2615.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

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

Yes – Suspension or Revocation. K.S.A. §§41-2611(f); 41-2626; 41-2708(a)(5).
Not specified for suspensions. For revocations, the governing body may revoke or suspend a license. K.S.A. §41-2708(c).

Anti-Happy Hour Laws/Regulations:

Yes. K.S.A. §§41-2640(a); 41-2722(a).

Open Container Laws:

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

Yes. K.S.A. §8-1599.
Yes. K.S.A. §41-719(a).

Alcohol Exclusion Law (UPPL):

Yes. K.S.A. §40-2203(B)(11).

STATE

KENTUCKY

General Reference:

Kentucky Revised Statutes (KRS)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of alcohol. KRS §189A.010(1)(b).

Illegal Per Se Law (BAC/BrAC):

≥ **.08**.³⁵⁴ KRS §189A.010(1)(a).

Presumption (BAC/BrAC):

Persons Under 21 ≥ **.02**. KRS §189A.010(1)(f).

Types of Drugs/Drugs and Alcohol:

None

Under the influence of any substance or a combination of alcohol and any substance that may impair one's driving ability.

While the presence of a controlled substance is detected in the blood taken within 2 hours of cessation of operation or physical control of a motor vehicle. KRS §189A.010(1).

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

Yes. KRS §189A.100.

Implied Consent Law:

Yes. KRS §189A.103.

Arrest Required (Yes/No):

No. KRS §189A.103(1), (3). Only reasonable grounds that a drunk-driving offense has been committed are needed in order to request that a person submit to a chemical test.

Implied Consent Law Applies to Drugs (Yes/No):

Yes. KRS §189A.103(1).

Refusal to Submit to Chemical Test

Yes – Criminal Cases. KRS §189A.105(2)(a)(1).

Admitted into Evidence:

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. KRS §189A.105(2)(b).

If a person has an alcohol concentration > **.15**, that person must be detained at least 4 hours following the arrest. KRS §189A.110.

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the

Implied Consent Law:

Blood:

Yes. KRS §189A.103(1).

Urine:

Yes. KRS §189A.103(1).

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea-Bargaining Statute (Yes/No):

Yes. Plea bargaining is not permitted if any one of the following conditions exists: (1) a defendant ≥ 21 has a

³⁵⁴ Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. KRS §189A.005(1).

BAC/BrAC \geq .08; (2) a defendant < 21 has a BAC/BrAC \geq .02; or (3) a defendant refused to submit to a chemical test under the implied consent law. However, this 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. KRS §189A.120. Following a felony conviction, a court must order a presentence investigation. KRS §532.050.

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

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **None.** KRS §189A.100.

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **N/A**

Preliminary Breath Test – Other: **N/A**

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):
First offense (within 5 years) – Not less than **30 days** or more than **120 days**;
Second offense (within 5 years) – Not less than **12 months** or more than **18 months**;
Third offense (within 5 years) – Not less than **24 months** or more than **36 months**;
Fourth or subsequent offense (within 5 years) – **60 months**.

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. The court shall suspend the license of a person who refuses during the pending of the action. KRS §§189A.070(1); 189A.107(2).

Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine:
First offense (within 5 years) – Not less than **48 hours** or more than **30 days**³⁵⁵ and/or not less than **\$200** or more than **\$500**;
Second offense (within 5 years) – Not less than **7 days** or more than **6 months** and not less than **\$350** or more than **\$500**;
Third offense (within 5 years) – Not less than **30 days** or more than **12 months** and not less than **\$500** or more than **\$1,000**;
Fourth and subsequent offense (within 5 years - Class D felony) – Not less than **120 days** or more than **5 years** and

³⁵⁵ Weekend Confinement: For either a first or second offense, a defendant may be permitted to serve his term on weekends, provided he spends at least 24 hours in confinement. This does not apply to any mandatory 48-hour jail term. KRS §189A.030.

may be fined not less than **\$1,000** or more than **\$10,000**. KRS §§189A.010(5), (8); 532.020; 532.060; 534.030.

Persons Under 21 (BAC ≥ .02 but < .08) – Not less than **\$100** or more than **\$500**. KRS §189A.010(6). If BAC is ≥ **.08**, then the sanctions listed above apply. KRS §189A.010(7).

Mandatory Minimum Term/Fine:

First offense – **48 hours**,³⁵⁶
Second offense (within 5 years) – **7 days/\$350** (with 48 consecutive hours);
Third offense – **30 days/\$500** (with 48 consecutive hours);
Fourth and subsequent offenses – **120 days/\$1,000** (with 48 consecutive hours). KRS §189A.010(5), (8).

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 physical injury; (4) driving with a **BAC ≥ .15**; (5) refusing to submit to a chemical test under the implied consent law; (6) operating a motor vehicle transporting a passenger under age 12. KRS §189A.010(11).

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).

The mandatory minimum sentences imposed are:

First offense – **4 days**;
Second offense – **14 days**;
Third offense – **60 days**;
Fourth or subsequent offense – **240 days**.
 KRS §189A.010(5)(a)-(d).

Community Service:

First offense – Not less than **48 hours** or more than **30 days**;
Second offense – Not less than **10 days** or more than **6 months**;³⁵⁷
Third offense – Not less than **10 days** or more than **12 months**; KRS §189A.010(5).

Child Endangerment:

Persons Under 21 (BAC ≥ .02 but < .08) – **20 hours** in lieu of a fine. KRS §189A.010(6).
 A person who transports a child under 12 is subject to the

³⁵⁶ For a first offense, a defendant must be sentenced to at least one of the penalties listed: (1) 48 hours in jail; (2) a \$200 fine; or (3) 48 hours of community service. KRS §189A.010(5)(a), (9).

³⁵⁷ For second or third offenses not related to aggravating circumstances, the law provides for discretionary community service as a sentencing option that is in addition to incarceration. KRS §189A.010(8).

following enhanced penalties:

First offense – a mandatory minimum term of 4 days;

Second offense – a mandatory minimum term of 14 days;

Third offense – a mandatory minimum term of 60 days;

Fourth or subsequent offense – a mandatory minimum term of 240 days. KRS §189A.010(5), (11)(f).

Restitution:

Yes – Victim’s compensation board (KRS §346.010 *et seq.*).

Also, the court shall order a defendant to pay restitution directly to a victim as a condition of probation.

KRS §§532.358; 533.030(3).

Other:

Service Fee: A DWI offender must pay a **\$375** service fee in addition to any other fine. KRS §189A.050.

Administrative Sanctions – Pre-Conviction:

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. KRS §189A.200.

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

First and subsequent offenses – **Revocation.**

KRS §189A.070(1).³⁵⁸

Persons Under 21 – **Suspension.** KRS §189A.010(6).

Term of Withdrawal:

First offense (within 5 year) – Not less than **30** or more than **120 days**;

Second offense (within 5 years) – Not less than **12 months** or more than **18 months**;

Third offense (within 5 years) – Not less than **24 months** or more than **36 months**;

Fourth or subsequent offense (within 5 years) – **60 months.** KRS §189A.070(1).

Mandatory Minimum Term of Revocation:

Persons Under 21 – Not less than **30 days** or more than **6 months.** KRS §189A.010(6).

The terms above appear to be mandatory, except as discussed below for hardship driving privileges.

Hardship Driving Privileges: The court may grant hardship driving privileges for the purposes of employment, education, medical care, alcohol/substance abuse education programs or other court-ordered counseling programs. This privilege may

³⁵⁸ Under KRS §189A.070(4), a person under 18 convicted of a regular drunk-driving offense has his license revoked until 18 or as otherwise provided under KRS §189A.070, whichever sanction is longer.

be conditioned on the offender operating motor vehicles equipped with ignition interlock devices. This privilege may be granted only 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. KRS §189A.410.

Reinstatement: 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 KRS §189A.040. KRS §189A.070(3).
Yes. For a first offense, participation in an alcohol education or treatment program for 90 days is mandatory. Costs are to be paid by the offender up to his ability. KRS §189A.040(1).
 Alcohol Education: For subsequent DWI offense convictions, the defendant must be sentenced to an alcohol or substance abuse treatment program for 1 year. KRS §189A.040(2), (3).
 Substance Abuse Treatment: **Impoundment**
 Vehicle Impoundment/Confiscation: For 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. KRS §189A.085.
 Authorized by Specific Statutory Authority: A hardship exemption is available to other family members allowing only them to use the affected vehicles. KRS §189A.085.
 Terms Upon Which Vehicle Will Be Released: **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. KRS §533.030.
 Other Miscellaneous Sanctions:

Incarceration Costs: An offender may be required to reimburse the State or local government for incarceration costs. KRS §§532.352; 532.358.

Ignition Interlock:
 Permitted or Prohibited:
 Type of Law (Mandatory or Permissive):
 Sanction (Judicial, Administrative or Hybrid)
 Conditions of Use:

Permitted
Permissive for First Offense Non-Aggravated; Mandatory for Aggravated First Offense & Repeat Offenders (in lieu of license plate impoundment)
Judicial
 In lieu of license plate impoundment, 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 (non-aggravated) – None;

First offense (aggravated)– **6 months**;
Second offense (within 5 years) – **12 months**;
Third or subsequent offense (within 5 years) – **30 months**.
 KRS §189A.340.

Other Provisions:

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. KRS §189A.410.

Sobriety Checkpoints:
 Permitted or Prohibited:

Permitted. *Steinbeck v. Com.*, 862 S.W.2d 912 (Ky.App. 1993).

Homicide by Vehicle:
 State Has Such a Law:

Yes.³⁵⁹
Manslaughter in the Second Degree – when a person wantonly causes the death of another person including situations where the death results from the person’s operation of a motor vehicle. KRS §507.040; *Spring v. Com.*, 998 S.W.2d 439 (Ky. 1999).

Imprisonment/Fine:

Reckless Homicide – when a person, with recklessness causes the death of another person. KRS §507.050; *Farmer v. Com.*, 6 S.W.3d 144 (Ky.App. 1999).

Manslaughter in the Second Degree – **Class C Felony**.
Reckless Homicide – **Class D Felony**.

Class C Felony – Not less than **5 years** or more than **10 years** and may be fined not less than **\$1,000** or more than **\$10,000**.

Class D Felony – Not less than **1 year** or more than **5 years** and may be fined not less than **\$1,000** or more than **\$10,000**.
 KRS §§532.060; 534.030.

Mandatory Minimum Term/Fine:
 Authorized Licensing Action:
 Length of Term of Licensing Withdrawal:
 Mandatory Minimum License Withdrawal:
 Other:

See above.
Revocation. KRS §186.560(1), (4).
 Not less than **5 years** (mand). KRS §186.560(4).
 Not less than **5 years** (mand). KRS §186.560(4).
N/A

DWI Offenses and Commercial Motor Vehicles (CMV):

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 \geq **.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 a subsequent violation or a combination of two or more violations of any of the above-listed items, the “disqualification” is for life (10

³⁵⁹ The difference between the two manslaughter statutes lies within their degrees of culpability. Manslaughter in the second degree requires wantonness, which inherently includes recklessness. This is similar to voluntary manslaughter. Reckless homicide requires only recklessness, which is similar to involuntary manslaughter.

years mand).

A person who operates a CMV with a BAC/BrAC \geq **.04** but \leq **.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:

First refusal – the CMV privilege is suspended for one year (mand);

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 (KRS §281A.220(2)).
KRS §§281A.010; 281A.190; 281A.210; 281A.2102; 281A.220.

A person is prohibited from operating a CMV during either a CDL disqualification or a CDL out-of-service order. KRS §281A.090(2). However, neither this section nor any other provision of Chapter 281A provides a sanction for this prohibition.

Driving While License Suspended for DWI

Offense:

Criminal - Fine/Imprisonment:

First offense (within 5 years; Class B misdemeanor) – Not more than **90 days** and/or not more than **\$250**;

Also in violation of DUI laws (Class A misdemeanor) – Not more than **12 months** and/or not more than **\$500**;

Second offense (within 5 years; Class A misdemeanor) – Not more than **12 months** and/or not more than **\$500**;

Also in violation of DUI laws (Class D felony) – Not less than **1 year** or more than **5 years** and may be fined not less than **\$1,000** or more than **\$10,000**;

Third and subsequent offense (within 5 years; Class D felony) – Not less than **1 year** or more than **5 years** and may be fined not less than **\$1,000** or more than **\$10,000**.

KRS §§189A.090(2); 532.060; 532.090; 534.030; 534.040.

Mandatory Minimum Fine/Imprisonment Term:	None
Administrative Licensing Action Type:	Revocation. KRS §189A.090(2).
Withdrawal Action:	<u>First offense</u> (within 5 years) – 6 months ; <u>Also in violation of DUI laws</u> – 1 year ; <u>Second offense</u> (within 5 years) – 1 year ; <u>Also in violation of DUI laws</u> – 2 years ; <u>Third and subsequent offenses</u> (within 5 years) – 2 years ; <u>Also in violation of DUI laws</u> – 5 years . KRS § 189A.090(2).
Mandatory Term of License Withdrawal Action:	<u>First offense</u> – 6 months ; <u>Second or subsequent offense</u> – 1 year . KRS §189A.090(4).
Other:	N/A
<u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No):	No. ³⁶⁰
<u>Other State Laws Related to Alcohol Use:</u> BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes. KRS §72.025. ³⁶¹
BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes. KRS §72.025.
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	Yes. KRS §72.025.
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	Yes. KRS §72.025.
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	No
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. KRS §§244.080; 244.085.
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. There is a limited employment exemption. KRS §§244.085; 244.087.
<u>Dram Shop and Social Host Laws:</u> State Has a Dram Shop Law (Yes/No):	Yes. ³⁶² KRS §413.241.
"Dram Shop Law" Has Been Adopted Via a Change to the Common Law Rule by Action	Yes. <i>Pike v. George</i> , 434 S.W.2d 626 (Ky. 1968).

³⁶⁰ While the Kentucky statutes specifically do not contain habitual offender laws related to motor vehicles, there is a “persistent felony offender” statute that allows for sentencing enhancement based on a defendant’s prior criminal history. KRS §532.080.

³⁶¹ Coroners shall require a post-mortem examination to be performed under certain circumstances surrounding death, to include when the death appears to be the result of a motor vehicle accident and the operator of the motor vehicle has left the scene, or the body has been found in or near a roadway or railroad. Additionally, coroners are mandated to report in writing to the State Police the death of any person as a result of an accident involving a motor vehicle. KRS §189.590.

³⁶² 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.”

of the Highest Court of Record in the State
(Case Citation):

Dram Shop Actions – Social Hosts:
Social Host – Criminal Enforcement:

No

A parent, guardian or other person legally charged with the care and custody of a minor may be found guilty of endangering the welfare of a minor when he/she fails or refuses to exercise reasonable diligence in the control of such child to prevent that child from becoming a neglected, dependent or delinquent child. Endangering the welfare of a minor is a Class A misdemeanor, punishable by not more than 12 months in jail and/or a fine of not more than \$500. KRS §§530.060; 532.090; 534.040.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

First offense – **Class B Misdemeanor**;
Second or subsequent offense – **Class A Misdemeanor**.
KRS §§244.080(2); 244.990(1).

Imprisonment/Fine:

First offense– Not more than **90 days** and/or not more than **\$250**;
Second or subsequent offense– Not more than **12 months** and/or not more than **\$500**. KRS §§244.990; 532.090; 534.040.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

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

Yes – Suspension or Revocation.³⁶³ KRS §§243.480; 243.490; 243.500.
2 years. KRS §243.100(1)(e).

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

First offense – **Class B Misdemeanor**;
Second or subsequent offense – **Class A Misdemeanor**.
KRS §§241.010(2); 244.080(1);³⁶⁴ 244.990(1).

Imprisonment/Fine:

First offense – Not more than **90 days** and/or not more than **\$250**;
Second or subsequent offense – Not more than **12 months** and/or not more than **\$500**. KRS §§532.090; 534.040.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

³⁶³ For a first violation, in lieu of revocation, the State may suspend the license. The licensee, however, as an alternative to this suspension, may pay a fine. For retail licensees and all others, the fine is \$50 per day the license would have been suspended. KRS §243.480(1). For a second violation within 2 years, the license must be revoked or suspended. KRS §243.500(4).

³⁶⁴ This statute, which prohibits the sale of alcoholic beverages by “retail licensees” to persons under the legal drinking age, was also applied to an employee of a licensee who sold alcoholic beverages to such a person. *Com. v. White*, 3 S.W.3d 353 (Ky. 1999)

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License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes – Suspension or Revocation. KRS §§243.480; 243.490; 243.500.
Length of Term License Withdrawal:	2 years. KRS §243.100(1)(e).
<u>Anti-Happy Hour Laws/Regulations:</u>	No
<u>Open Container Laws:</u>	
Open Container Law (Yes/No):	Yes. KRS §189.530(2).
Anti-Consumption Law (Yes/No):	Yes. ³⁶⁵
<u>Alcohol Exclusion Law (UPPL):</u>	Yes. KRS §304.17-290.

³⁶⁵ By virtue of the open container law (excluding the exceptions mentioned above), no consumption of alcohol is permitted.

STATE	LOUISIANA
General Reference:	West's Louisiana Statutes Annotated: Revised Statutes (La. R.S.)
<u>Basis for a DWI Charge:</u>	
Standard DWI Offense:	Under the influence of alcoholic beverages. La. R.S. §14:98(A)(1)(a).
Illegal Per Se Law (BAC/BrAC):	≥ .08 . ³⁶⁶ La. R.S. §14:98(A)(1)(b) <u>Persons Under 21</u> ≥ .02 . ³⁶⁷ La. R.S. §14:98.6.
Presumption (BAC/BrAC):	≥ .08 . La. R.S. §32:662(A)(1)(c). <u>Persons Under 21</u> ≥ .02 . La. R.S. §32:662(A)(1)(d).
Types of Drugs/Drugs and Alcohol:	Under the influence of any drug. ³⁶⁸ La. R.S. §§14:98(A); 40:964.
Other:	N/A
<u>Chemical Breath Tests for Alcohol Concentration:</u>	
Preliminary Breath Test Law:	No
Implied Consent Law:	Yes . La. R.S. §32:661.
Arrest Required (Yes/No):	Yes . La. R.S. §32:661.
Implied Consent Law Applies to Drugs (Yes/No):	Yes . La. R.S. §32:661(A).
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes – Criminal cases. ³⁶⁹ La. R.S. §§32:666(A)(2)(c).
Other Information:	
<u>Non-Breath Chemical Tests for Alcohol Concentration Authorized Under the Implied Consent Law:</u>	
Blood:	Yes . La. R.S. §32:661.
Urine:	Yes . La. R.S. §32:661.
Other:	Other bodily substances . La. R.S. §32:661.
<u>Adjudication of DWI Charges:</u>	
Mandatory Adjudication Law (Yes/No):	No
Anti-Plea-Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	No . ³⁷⁰

³⁶⁶ Standard: "Percent by weight" based on grams of alcohol per 100 cubic centimeters of blood. La. R.S. §§14:98(A)(1)(b); 14:98.1(A); 32:662(A)(2).

³⁶⁷ 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..." La. R.S. §14:98.6. Note: If the person's alcohol concentration is ≥ .08, he must be charged under the regular illegal per se law. La. R.S. §14:98.6(B).

³⁶⁸ This includes under the influence of any controlled dangerous substance, a combination of alcohol and one or more drugs (obtained by prescription or over-the-counter), and one or more drugs that are not controlled dangerous substances. La. R.S. §14:98(A).

³⁶⁹ Refusal to submit to a field sobriety test can also be admitted into evidence at a drunk-driving offense trial. See *State v. Washington*, 498 So.2d 136 (La.App. 5Cir. 1986).

³⁷⁰ Rather, offenders may be required to participate in a substance abuse program after sentencing. La. R.S. §14:98(D),(E),(G). Required for persons < 21 charged with driving with an alcohol concentration ≥ .02. La. R.S. §14:98.6.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **N/A**

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **N/A**

Preliminary Breath Test – Other: **N/A**

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): Note.³⁷¹

Not less than **10 days**³⁷² or more than **6 months** and not less than **\$300** or more than **\$1,000**. La. R.S. §§14:98.7(B)(1); 32:666.

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):

First refusal – **Suspension 1 year** (90 days mand);
Second or subsequent refusal (within 10 years) – **Suspension 2 years**.

Any refusal related to either a fatality or serious bodily injury (where the trier of fact determines intoxication to be a contributing factor):

First refusal – **Suspension 1 year** (mand);

Second refusal – **Suspension 2 years** (mand).

Refusal by Persons Under 21 – **Suspension 1 year** (90 days mand). La. R.S. §§32:667(B)(2); 32:668(B)(1)(b).

Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine:

First conviction – Not less than **10 days** or more than **6 months** and not less than **\$300** or more than **\$1,000**; La. R.S. §14:98.1;

Second conviction³⁷³ – Not less than **30 days** or more than **6 months** and not less than **\$750** or more than **\$1,000**; La. R.S. §14:98.2;

Third conviction – Not less than **1 year** or more than **5 years** and a fine of **\$2,000**; La. R.S. §14:98.3;

Fourth or subsequent conviction – Not less than **10 years** or more than **30 years** and a fine of **\$5,000**. La. R.S. §14:98.4.

DWI Related Injury:

³⁷¹ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

³⁷² These terms only apply where the person has refused a test on two separate prior occasions, or in a case where a fatality has occurred or a person has sustained a serious bodily injury in a crash. Imposition or execution of sentence shall not be suspended unless: (1) the offender is placed on probation with a minimum condition that he serve 2 days in jail and participate in substance abuse and driver improvement programs; or (2) the offender is placed on probation with a minimum condition that he perform four 8-hour days of community service and participate in substance abuse and driver improvement programs. La. R.S. §14:98.7(B).

³⁷³ On a second offense where the first offense was vehicular homicide or vehicular negligent injuring the sanction is not less than 1 year or more than 5 years and a fine of \$2,000. At least 6 months must be served. La. R.S. §14:98.2(D).

Mandatory Minimum Term/Fine:	<p><u>Vehicular negligent injuring</u> – Not more than 6 months and/or a fine of not more than \$1,000;</p> <p><u>First degree vehicular negligent injuring</u> (serious bodily injury) – Not more than 5 years and/or a fine of not more than \$2,000. La. R.S. §§14:39.1; 14:39.2.</p> <p><u>First conviction</u> – 2 days or 32 hours of community service;</p> <p><u>First conviction (BAC ≥ .15)</u> – 48 hours;</p> <p><u>First conviction (BAC ≥ .20)</u> – \$750/48 hours;</p> <p><u>Second conviction</u> – 48 hours; Second conviction (arrest within 1 year of first offense) – 30 days;</p> <p><u>Second conviction (BAC ≥ .15)</u> – 96 hours;</p> <p><u>Second conviction (BAC ≥ .20)</u> – \$1,000/96 hours;</p> <p><u>Third conviction</u>³⁷⁴ – 1 year;</p> <p><u>Fourth or subsequent conviction</u> – 2 years.</p> <p>La. R.S. §14:98, <i>et seq.</i></p>
Community Service:	<p><u>First conviction</u> – 32 hours of community service may be ordered if an offender seeks a suspended imposition or execution of sentence. La. R.S. §14:98.1.</p> <p><u>Second conviction</u> – 240 hours of community service may be ordered if an offender seeks a suspended imposition or execution of sentence. La. R.S. §14:98.2.</p> <p><u>Third conviction</u> – any offender placed on probation shall perform 240 hours of community service. La. R.S. §14:98.3.</p> <p><u>Fourth or subsequent conviction</u> – any offender placed on probation shall perform 320 hours of community service. La. R.S. §14:98.4.</p>
Child Endangerment:	<p>Any person violating the DWI laws with a passenger 12 or younger, shall be subject to the mandatory minimum term without the option of a suspended minimum term. La. R.S. §14:98(B)..</p>
Restitution:	<p>An offender must pay restitution to a victim where there is “actual pecuniary loss” or where the victim has incurred costs in connection with a criminal prosecution. LSA-C.Cr.P. Art. 883.2. Additionally, crime victims’ reparation is available for victims of drunk-driving incidents. La. R.S. §46:1801, <i>et seq.</i></p>
Other:	<p>Substance Abuse Programs Costs: An offender shall pay the cost of participation unless unable to do so. La. R.S. §14:98.5(A)(1).</p>
<u>Administrative Sanctions – Pre-Conviction:</u> Administrative Per Se Law:	<p>BAC ≥ .08:</p> <p><u>First violation</u> – Suspension for 90 days (30 days mand);</p> <p><u>Second or subsequent violation</u> (within 10 years) – Suspension for 365 days (mand <u>except</u> for second offense where the use of an ignition interlock device has been authorized).</p>

³⁷⁴ Third and fourth convictions may be suspended *only* if the offender is accepted into a drug diversion probation program. If an offender, convicted of a fourth offense has previously participated in such a program, he/she shall be imprisoned for not less than 10 years or more than 30 years, with at least 3 of those years mandatory. La. R.S. §§14:983; 14:98.4.

BAC ≥ .20:

First violation – **Suspension for 2 years;**

Second or subsequent violation – **Suspension for 4 years.**

Persons Under 21 (BAC ≥ .02) – Suspension for 180 days
(30 days mand).

La. R.S. §§32:667(B)(1), (3); 32:668(B)(1)(c).

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Term of Withdrawal:

Suspension. La. R.S. §§32:414; 32:430.

First offense³⁷⁵ – **12 months;**

Second offense (within 5 years) – **24 months;**

Third or subsequent offense (within 5 years) – **36 months.**

BAC ≥ .20:

First offense – **2 years;**

Second offense – **4 years.**

Mandatory Minimum Term of Revocation:

For Persons under 21 – **180 days.** La. R.S. §32:414.

First offense – **None** (hardship/restricted driving privileges are available);

Second offense (within 5 years) – **None** (restricted driving privileges upon proof of installation of ignition interlock available);

Third and subsequent offenses (within 5 years) – **1 year** (use of an ignition interlock device required thereafter).

La. R.S. §§14:98.1; 14:98.2; 14:98.3; 32:414; 32:430.

Alcohol Education:

Yes. First and second offense. La. R.S. §§14:98.1; 14:98.2; 14:98.3; 14:98.4.

Substance Abuse Treatment:

Yes. First and subsequent offenses. La. R.S. §§14:98.1; 14:98.2; 14:98.3; 14:98.4.

Vehicle Impoundment/Confiscation:

Yes

Authorized by Specific Statutory Authority:

Third or subsequent offense, the vehicle used by the offender shall be seized, impounded and sold at auction.

La. R.S. §§14:98(F); 14:98.3(C); 14:98.4(D).

Terms Upon Which Vehicle Will Be Released:

The vehicle shall be exempt from sale if it was stolen, or if the driver at the time was not the owner and the owner did not know the driver was operating while intoxicated. The vehicle shall not be released from impoundment until towing and storage fees have been paid. La. R.S. §14:98(F).

Other Miscellaneous Sanctions:

Home Incarceration: Any person convicted of a third or subsequent DWI offense may not serve the minimum sentence on home incarceration unless such a sentence is recommended by the Department of Public Safety and Corrections or the district attorney. La. R.S. §14:98.5(B)(1).

School Bus Operators: A person who tests positive for the presence of marijuana, opioids, amphetamines, phencyclidine or other controlled dangerous substance or has an alcohol concentration ≥ **.08** must be prohibited by public education

³⁷⁵ This includes vehicular negligent injuring under La. R.S. §14:32.1.

authorities from operating a school bus. La. R.S. §17:491.2(A).

Ignition Interlock:

Permitted or Prohibited:

Type of Law (Mandatory or Permissive):

Sanction (Judicial, Administrative or Hybrid)

Conditions of Use:

Permitted. La. R.S. §§14:98(K); 32:414.

Mandatory

Hybrid

An offender whose license is suspended shall be granted a restricted license only with proof of ignition interlock. The suspension period shall be for **12 months**. Notwithstanding this provision, the following restrictions apply:

First offense with a BAC of 0.20 or more – A restricted license may be granted during the first 12 months of suspension so long as an ignition interlock device is installed and operative;

Second offense – Not less than **6 months** and during any period of suspension or additional period as determined by the court;

Second offense with a BAC of 0.20 or more – During the first 3 years of the 4-year suspension period, but a restricted license may be granted after the first 45 days for the remainder of the suspension period;

Third or subsequent offense – Until completion of substance abuse treatment and home incarceration.

La. R.S. §§14:98.1; 14:98.2; 14.98.3.

Other Provisions:

Driving on a Suspended/Revoked License – First or subsequent offenders are eligible for restricted driving for the entire suspension/revocation period, if they equip their vehicles with “ignition interlock” devices. La. R.S. §32:378.2(A).

Sobriety Checkpoints:

Permitted or Prohibited:

Permitted. *State v. Jackson*, 764 So.2d 64 (La. 2000).

Homicide by Vehicle:

State Has Such a Law:

Imprisonment/Fine:

Yes – Vehicular Homicide. La. R.S. §14:32.1.

Not less than **5 years** or more than **30 years** and not less than **\$2,000** or more than **\$15,000**. La. R.S. §14:32.1(B)

3 years.³⁷⁶

Mandatory Minimum Term/Fine:

Authorized Licensing Action:

Suspension. La. R.S. §32:414.

Length of Term of Licensing Withdrawal:

24 months

Mandatory Minimum License Withdrawal:

24 months

Other:

The offender shall be required to participate in a substance abuse and may be required to participate in a driver improvement program. La. R.S. §14:32.1(B).

If, at the time of the offense, the offender has a BAC > .20, he/she shall be sentenced as an offender convicted of a crime

³⁷⁶ If BAC ≥ .15, or this is a second/subsequent offense, then there is a mandatory minimum of 5 years. La. R.S. §14:32.1(B).

of violence. Further, if the offender proximately or directly causes the death of two or more human beings (including an unborn child), the offender shall be sentenced separately for each victim, and such sentences shall run consecutively. La. R.S. §14:32.1(C), (D).

DWI Offenses and Commercial Motor Vehicles (CMV):

A person is “disqualified” from (i.e., his 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 \geq .04; (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 a subsequent violation or 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 to operate a CMV with BAC/BrAC/UrAC \geq .04 or while under the influence of alcohol/controlled substance, or 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 not less than \$10 or more than \$500. There is also a civil penalty of not more than \$1,250. In addition, a CMV operator, who has any “measured amount of alcohol concentration” or a “detected presence” of either alcohol or controlled substance in their system, must be placed “out-of-service” for 24 hours. La. R.S. §§32:414.2; 32:427(A)(2).

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

Note.³⁷⁷

Misdemeanor – Not more than **6 months** and/or up to **\$500**.

If such violation was simultaneous with a second or subsequent DWI conviction, then the offender shall be fined not less than **\$300** or more than **\$500** and not less than **7 days** or more than **6 months**. La. R.S. §32:415.

Mandatory Minimum Fine/Imprisonment Term:

7 days/\$300 if such violation was simultaneous with a second or subsequent DWI offense conviction.

Administrative Licensing Action Type:

Suspension/Revocation. La. R.S. §32:415(B).

Withdrawal Action:

Original suspension/revocation period extended for **1 year**. La. R.S. §32:415(B).

Mandatory Term of License Withdrawal Action:

None. First offenders may apply for a hardship license. La. R.S. §32:415.1.

Other:

A civil penalty of up to **\$1,250** may be imposed. La. R.S. §32:415(C)(1).

³⁷⁷ There are no specific sanctions for driving on a suspended/revoked license where the basis was a DWI. The sanctions listed are for ordinary driving on a suspended/revoked license, unless otherwise stated.

<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	Yes. La. R.S. §32:1472.
Grounds for Being Declared Habitual Offender:	Convictions for 10 or more traffic law offenses within 3 years involving moving violations in the operation of a motor vehicle which are required to be reported to the Department of Public Safety and Corrections. La. R.S. §32:1472(A).
Term of License Revocations While on Habitual Offender Status:	3 years. La. R.S. §32:1479. Note: A first time habitual offender may apply for a hardship license under La. R.S. §32:1477(B), (C)(3).
Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status:	An offender is sentenced in the manner that the code prescribes for the specific crime committed. A person deemed a habitual offender is then subject to a portion of time added onto the base sentence. An offender can be sentenced only as a habitual offender if the requirements under La. R.S. §15:529.1 are met. Additional imprisonment depends on the number of prior felonies and types committed. Additionally, if more than 10 years have elapsed between the date of the commission of the current offense(s) and the expiration of the maximum sentence(s) of the previous conviction(s), then the current offense shall not be counted as a subsequent offense. La. R.S. §15:529.1(C).
Imprisonment (Term):	See above.
Mandatory Minimum Term/Fine:	N/A
Licensing Action (Specify):	Revocation. La. R.S. §32:1479.
<u>Other State Laws Related to Alcohol Use:</u>	
BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes. La. R.S. §32:661(A)(2)(b), (B).
BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	Yes (if a victim)
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	Yes (if a victim)
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	No
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. La. R.S. §§14:93.11; 14:93.12; 26:90(A); 26:286(A).
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. La. R.S. §§14:93.10(2) ³⁷⁸ ; 14:93.12.

³⁷⁸ The term “public possession” does not include the possession or consumption of alcoholic beverages for a religious purpose, when the person is accompanied by a parent or legal custodian who is over 21, for medical purposes or at a private residence. La. R.S. §14:93.10(2).

Dram Shop and Social Host Laws:

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

Yes – only with regard to minors. La. R.S. §9:2800.1; see *Colgate v. Mughal Bros., Inc.*, 836 So.2d 1229 (La.App. 2 Cir. 2003); *Godfrey v. Boston Old Colony Ins. Co.*, 718 So.2d 441 (La.App. 4 Cir. 1998).

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

N/A

Dram Shop Actions – Social Hosts:

Yes – limited. Social hosts are not liable for injuries sustained or caused by an intoxicated guest over the legal drinking age. La. R.S. §9:2800.1(C); *c.f.*, *Garcia on behalf of Garcia v. Jennings*, 427 So.2d 1329 (La.App. 2 Cir. 1983) (holding liable social hosts who furnished alcoholic beverages to a minor).

Social Host – Criminal Enforcement:

A parent, legal guardian or any person having custody of a minor who contributes to, aids, encourages, or permits such child (under age 17) to possess or consume alcohol may be found guilty of the following:

- (1) Contributing to the delinquency of a juvenile – not more than 6 months and/or not more than \$500;
- (2) Encouraging or contributing to child delinquency (no age limitation) – not more than 6 months and/or not more than \$1,000;
- (3) Improper supervision of a minor – not more than 30 days and/or not less than \$25 or more than \$250, and not less than 40 hours of community service and a family counseling program. La. R.S. §§14:92; 14:92.1; 14:92.2.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Alcoholic beverages with an alcohol content of more than 6 % – **Misdemeanor**. La. R.S. §§26:2(1); 26:90(A)(2).

Imprisonment/Fine:

Alcoholic beverages with an alcohol content of 0.5-6% – **Misdemeanor**. La. R.S. §§26:241(1); 26:286(A)(2).
Not less than **30 days** or more than **6 months** and/or not less than **\$100** or more than **\$500**. La. R.S. §§26:171; 26:521.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Revocation or Suspension.³⁷⁹
La. R.S. §§26:90(I); 26:286(I).³⁸⁰

³⁷⁹ 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. La. R.S. §26:935(B).

³⁸⁰ Under La. R.S. §§26:97; 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. An administrative fine may be ordered in lieu of or in addition to suspension or revocation. Those fines are: first offense – not less than \$50 or more than \$500; second offense (within 3 years) – not less than \$250 or more than \$1,000; third offense (within 3 years of the first offense) – not less than \$500 or more than \$2,500. La. R.S. §§26:96; 26:521.

Length of Term of License Withdrawal: **Not specified**

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Note.³⁸¹ Alcoholic beverages with an alcohol content of more than 6 % – **Misdemeanor**. La. R.S. §§26:2(1); 26:90(A)(2). Alcoholic beverages with an alcohol content of 0.5-6% – **Misdemeanor**. La. R.S. §§26:241(1); 26:286(A)(2).

Imprisonment/Fine:

Not less than **30 days** or more than **6 months** and/or not less than **\$100** or more than **\$500**. La. R.S. §§26:171; 26:521.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Revocation or Suspension. La. R.S. §§26:90(I); 26:286(I).

Length of Term License Withdrawal:

Not specified

Anti-Happy Hour Laws/Regulations:

Yes. La. R.S. §§26:90(A)(15); 26:286(A)(15). These sections prohibit the sale of alcoholic beverages at a fixed price on an “all you can drink” basis after 10 pm.

Open Container Laws:

Open Container Law (Yes/No):

Yes. La. R.S. §32:300.

Anti-Consumption Law (Yes/No):

Yes. La. R.S. §32:300.

Alcohol Exclusion Law (UPPL):

Yes. La. R.S. §22:975(B)(10).

³⁸¹ 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 less than 30 days or more than 6 months and/or a fine of not less than \$500 or more than \$1000. La. R.S. §14:93.11.

STATE

General Reference:

MAINE

Maine Revised Statutes Annotated (MRSA)

Basis for a DWI Charge:

Standard DWI Offense:

Note.³⁸² Under the influence of intoxicants.
29-A M.R.S.A. §2411(1-A).

Illegal Per Se Law (BAC/BrAC):

≥ .08.³⁸³ 29-A M.R.S.A. §2411(1-A).

Presumption (BAC/BrAC):

No.³⁸⁴

Types of Drugs/Drugs and Alcohol:

Under the influence of intoxicants.³⁸⁵
29-A M.R.S.A. §2411(1-A).

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

No

Implied Consent Law:

Yes. 29-A M.R.S.A. §2521

Arrest Required (Yes/No):

No – Police must have “probable cause” before a suspected drunk driver has to submit to a chemical test.
29-A M.R.S.A. §2521(1).

Implied Consent Law Applies to Drugs (Yes/No):

Yes. 29-A M.R.S.A. §2521(1).

Refusal to Submit to Chemical Test

Yes – Criminal Cases. 29-A M.R.S.A. §2521(3)(B).

Admitted into Evidence:

Other Information:

A person shall be required to submit to a chemical test if he is involved in a crash that results or may result in death of any other person. 29-A M.R.S.A. §2522.

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the

Implied Consent Law:

Blood:

Yes. 29-A M.R.S.A. §2521(1).

Urine:

Yes. 29-A M.R.S.A. §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)

No

(Yes/No):

Sanctions for Refusal to Submit to a

Chemical Test:

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

N/A

Refusal to Take a Preliminary Breath Test –

N/A

³⁸² Maine refers to the crime as an “OUI” offense (operating under the influence).

³⁸³ “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 M.R.S.A. §2401(2).

³⁸⁴ For purposes of evidence in proceedings *other than those arising under 29-A M.R.S.A. §2411 (OUI 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 M.R.S.A. §2432(3).

³⁸⁵ Tests showing a confirmed positive drug or metabolite presence in blood, urine or alcohol level at the time of the offense are admissible in evidence. 29-A M.R.S.A. §2431.

Administrative Licensing Action

(Susp/Rev):

Preliminary Breath Test – Other: N/A

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

Note.³⁸⁶³⁸⁷

First offense – Not less than **96 hours** and not less than **\$600**;
Second offense (within 10 years) – Not less than **12 days** and not less than **\$900**;

Third offense (within 10 years) – Not less than **40 days** and not less than **\$1,400**;

Fourth offense (within 10 years) – Not less than **6 months, 20 days** and not less than **\$2,500**.

29-A M.R.S.A. §2411(5).

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):

First refusal – **Suspension 275 days**;

Second refusal – **Suspension 18 months** (mandatory);

Third refusal – **Suspension 4 years** (mandatory);

Fourth refusal – **Suspension 6 years** (mandatory).

29-A M.R.S.A. §2521(6).

Implied Consent Chemical Test - Other:

Probable cause to believe that death has occurred or will occur as a result of a crash – **Suspension – 1 year**.

29-A M.R.S.A. §2522(4).

Persons Under 21: A person under 21 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**;³⁸⁸

Second or subsequent refusal – **Suspension 30 months**.

29-A M.R.S.A. §2472(4).

Refusal in negligent death case: Any person who negligently operates a motor vehicle in a manner as to cause the death of a person who subsequently fails to submit to a chemical test shall have his/her license suspended for **3 years**.

29-A M.R.S.A. §2456.

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine:

< .15:

First offense – A fine of not less than **\$500**;

Second offense (within 10 years) – Not less than **7 days** or more than **12 months** and not less than **\$700** or more than **\$2,000**;

Third offense (within 10 years) – Not less than **30 days** or more than **12 months** and not less than **\$1,100** or more than

³⁸⁶ These criminal sanctions apply when the offender is also convicted of operating the vehicle while under the influence.

³⁸⁷ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

³⁸⁸ If such person operated the motor vehicle at the time of the offense with a passenger under 21, an additional 180 days must be imposed. 29-A M.R.S.A. §2472(4).

\$2,000;
Fourth offense (within 10 years) – Not less than **6 months** or more than **5 years** and not less than **\$2,100** or more than **\$5,000**.

≥ **.15**: First offense – Not less than **48 hours** or more than **12 months** and not less than **\$600** or more than **\$2,000**.

Serious bodily injury – Not less than **6 months** or more than **5 years** and not less than **\$2,100** or more than **\$5,000**.

Prior conviction of a Class C felony crime (OUI) or prior OUI criminal homicide – Not less than **6 months** or more than **10 years** and not less than **\$2,100** or more than **\$20,000**.
 17-A M.R.S.A. §§1252; 1301; 29-A M.R.S.A. §2411.

Mandatory Minimum Term/Fine:
 Community Service:

The terms above appear to be mandatory.
 Community service may be ordered as a condition of probation. 17-A M.R.S.A. §1204(2-A)(L).

Child Endangerment:
 Restitution:

N/A
Yes. As a condition of probation or as part of the incarceration sanction, or by way of the crime victims compensation fund. 5 M.R.S.A. §3360; 17-A M.R.S.A. §§1204(2-A)(B); 1252(3); 1321.

Other:

Surcharge: A **\$30** surcharge must be charged. If, however, the conviction is for operating under the influence of drugs or a combination of liquor and drugs, the surcharge is **\$125**. 29-A M.R.S.A. § 2411(7).

State surcharges of 14% and 5% must be added to every fine, forfeiture or penalty. 4 M.R.S.A. §1057(2-A).

Administrative Sanctions – Pre-Conviction:
 Administrative Per Se Law:

BAC ≥ .08.
First offense – **Suspension 150 days;**
Second offense (within 10 years) – **Suspension 3 years;**
Third offense (within 10 years) – **Suspension 6 years;**
Fourth offense (within 10 years) – **Suspension 8 years.**

Serious bodily injury – **Suspension 6 years.**

Prior conviction of a Class C felony crime (OUI) or prior OUI criminal homicide – **Suspension 10 years.**

Child Endangerment: An offender with a passenger under age 21 shall have an additional **180 days** of suspension.

Person under 21:
First offense – **Suspension 1 year;**
Second offense – **Suspension 2 years.**
 29-A M.R.S.A. §§2411; 2453; 2472(3-A).

Other:

A person's endorsement to operate a school bus is

permanently revoked if they drive such a vehicle while OUI. A person who has a school bus endorsement and who commits a OUI 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 M.R.S.A. §2452.

Administrative Sanctions –Post-Conviction:

Type of Licensing Action (Susp/Rev):

Term of Withdrawal:

Mandatory Minimum Term of Revocation:

Alcohol Education:

Substance Abuse Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority:

Terms Upon Which Vehicle Will Be Released:

Other Miscellaneous Sanctions:

Ignition Interlock:

Permitted or Prohibited:

Type of Law (Mandatory or Permissive):

Sanction (Judicial, Administrative or Hybrid)

Conditions of Use:

Suspension.³⁸⁹

The suspension periods are the same as those under the administrative per se law, above. 29-A M.R.S.A. §§2451; 2453.

None. A work-restricted license may be issued as long as the offender’s license has not been under suspension in the past 10 years. 29-A M.R.S.A. §2503.

Yes

Yes. First and subsequent offenders must participate in and **complete** an alcohol or drug program before their driving privileges can be restored. 29-A M.R.S.A. §2504.

Second and subsequent offenders must participate in an alcohol and drug treatment program. 29-A M.R.S.A. §2411(5)(F).

Yes

29-A M.R.S.A. §§2421; 2422(1).

Forfeiture: A motor vehicle must be forfeited to the State when the defendant is the sole owner-operator of that vehicle and was convicted of OUI *and* a simultaneous offense of operating after suspension when the suspension was imposed from a prior OUI conviction.

Seizure: A motor vehicle operated by a sole owner is subject to seizure when the owner-operator operates or attempts to operate that motor vehicle under the influence or with a BAC .08 *and* that person is under suspension or revocation from a previous OUI conviction.

The motor vehicle may be released after at least an 8-hour period and payment of any towing and storage fees. 29-A M.R.S.A. §2422(3).

N/A

Permitted. 29-A M.R.S.A. §2508.

Permissive

Administrative

OUI Violation:

First offense – Reinstatement of license after 30 days if

³⁸⁹ 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 M.R.S.A. §2453(6)(c).

Other Provisions:	<p><u>device is installed for 150 days or the length of time remaining for in the suspension for the OUI:</u> <u>Second offense</u> – Reinstatement of license after 9 months if device is installed for 2 years; <u>Third offense</u> – Reinstatement of license after 3 years if device is installed for 3 years; <u>Fourth offense</u> – Reinstatement of license after 4 years if device is installed for 4 years. 29-A M.R.S.A. §2508. Driving on Suspended/Revoked Violation: The Secretary of State may require a person subject to the minimum mandatory periods of suspension to have installed an ignition interlock device for a period of up to 2 years. 29-A M.R.S.A. § 2412-A(7).</p>
<u>Sobriety Checkpoints:</u> Permitted or Prohibited:	Permitted. <i>State v. Leighton</i> , 551 A.2d 116 (Me. 1988).
<u>Homicide by Vehicle:</u> State Has Such a Law:	Yes – Class B Crime. 29-A M.R.S.A. §2411(D-2).
Imprisonment/Fine:	Not less than 6 months or more than 10 years and not less than \$2,100 or more than \$20,000 . 17-A M.R.S.A. §1252; 1301; 29-A M.R.S.A. §2411(D-2).
Mandatory Minimum Term/Fine: Authorized Licensing Action:	The terms above appear to be mandatory. Suspension/Revocation (by the court). 29-A M.R.S.A. §§2411(D-2); 2454(2).
Length of Term of Licensing Withdrawal:	Permanent revocation. However, an offender may petition for a license after 10 years . 29-A M.R.S.A. §§2411(D-2); 2454(2).
Mandatory Minimum License Withdrawal: Other:	10 years Administrative Suspension: A person who negligently causes the death of another while driving under the influence of intoxicants, with a BAC $\geq .08$ or who fails to submit to a chemical test, will have his/her license suspended for 3 years (mand) by the licensing agency. 29-A M.R.S.A. §2456.
<u>DWI Offenses and Commercial Motor Vehicles (CMV):</u>	<p>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 an after-care program prior to license restoration. 29-A M.R.S.A. §2455(3).</p> <p>Via regulations, a CDL is suspended if that person operates a CMV and has a BAC $\geq .04$ or is under the influence of a controlled substance. If the person has neither a prior OUI offense conviction nor administrative license adjudication (e.g., driving with BAC $\geq .04$) related to CMV operations, his/her CDL is suspended for 1 mandatory year (3 years if transporting hazardous materials). If that person has either a</p>

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 the presence of drug metabolite 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 M.R.S.A. §§1253; 2458(2)(M); 2523; 49 U.S.C.A § 31310.

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

First offense – **7 days** and a minimum of **\$600**;
Second offense (within 10 years) – **30 days** and a minimum of **\$1,000**;
Third offense (within 10 years) – **60 days** and a minimum of **\$2,000**;
Fourth offense (within 10 years) – **6 months** and a minimum of **\$3,000**. 29-A M.R.S.A. §2412-A.
 These terms are mandatory.

Mandatory Minimum Fine/Imprisonment Term:

Administrative Licensing Action Type:
 Withdrawal Action:

Suspension. 29-A M.R.S.A. §2412-A(3).
 Not less than **1 year** or more than **3 years** added to the original suspension or revocation.

Mandatory Term of License Withdrawal Action:

1 year.

Other:

N/A

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. 29-A M.R.S.A. §2551-A, *et seq.*

Grounds for Being Declared Habitual Offender:

Convictions of 3 serious traffic offenses³⁹⁰ within 5 years, or convictions of 10 or more moving violations within 5 years.

Term of License Revocations While on Habitual Offender Status:

Revoked – Indefinitely.
 Relief from such revocation may be granted after 3 years.³⁹¹
 29-A M.R.S.A. §§2552; 2554.

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

First offense – Class D crime;
Subsequent offense (within 10 years) – Class C crime.
 29-A M.R.S.A. §2557-A(2).

Imprisonment (Term):

Operating After Habitual Offender Revocation:

³⁹⁰“Serious traffic offenses” include homicide resulting from operation of motor vehicle, OUI conviction, driving to endanger, operating after suspension/revocation, operating without an ignition interlock device if license is reinstated based on that provision.

³⁹¹ A work-restricted license is available after 18 months. 29-A M.R.S.A. §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. Also, 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 the required license suspension periods and any alcohol or drug program. 29-A M.R.S.A. §2556(5).

First offense – Not less than **30 days** or more than **1 year** and **\$500**;

Second offense (within 10 years) – Not less than **6 months** or more than **5 years** and **\$1,000**;

Third offense (within 10 years) – Not less than **9 months** or more than **5 years** and **\$1,000**;

Fourth offense (within 10 years) – Not less than **2 years** or more than **5 years** and **\$1,000**.

Aggravated Operating After Habitual Offender Revocation:³⁹²

First offense – Not less than **6 months** or more than **12 months** and not less than **\$500** or more than **\$2,000**;

Second offense (within 10 years) – Not less than **1 year** or more than **5 years** and not less than **\$1,000** or more than **\$5,000**;

Third offense (within 10 years) – Not less than **2 years** or more than **5 years** and not less than **\$2,000** or more than **\$5,000**;

Fourth offense (within 10 years) – **5 years** and not less than **\$3,000** or more than **\$5,000**. 17-A M.R.S.A. §§1252; 1301; 29-A M.R.S.A. §§2557-A(2); 2558.

Mandatory Minimum Term/Fine:
Licensing Action (Specify):

The terms above are mandatory.
N/A

Other State Laws Related to Alcohol Use:
BAC Chemical Tests on Persons Killed in
Traffic Crashes - State Has Such a Law
(Yes/No):

No

BAC Chemical Test Given to Deceased
Driver Killed in Crash:

N/A

BAC Chemical Test Given to Deceased
Vehicle Passengers Killed in Crash:

N/A

BAC Chemical Test Given to Deceased
Pedestrian Killed in Crash:

N/A

BAC Chemical Tests on Persons Involved in
Traffic Crashes – State Has Such a Law:

No

Minimum Age (Years) for Sale/Purchase of
Alcohol:

21. 28-A M.R.S.A. §§2(20); 2051(1)(A).

Minimum Age (Years) for
Possession/Consumption of Alcohol:

21. Home and employment exemption. 28-A M.R.S.A. §2051(1)(B), (5).

³⁹² At the time of habitual traffic offender revocation, a violator commits one of the following: (1) OUI; (2) driving to endanger; (3) eluding officer; (4) passing a roadblock; (5) exceeding maximum speed limit by 30 mph or more. 29-A M.R.S.A. §2558(1).

Dram Shop and Social Host Laws:
 State Has a Dram Shop Law (Yes/No):

Yes. 28-A M.R.S.A. §2501, *et seq.* **Note:** Except for medical expenses, recovery under the dram shop act is limited to \$350,000 per single accident or occurrence.
 28-A M.R.S.A. §2509.

"Dram Shop Law" 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. Liability is limited to situations where the social host negligently served alcoholic beverages to a minor or recklessly served alcoholic beverages to a minor or a visibly intoxicated person. 28-A M.R.S.A. §§2503(5); 2505(2); 2506(1); 2507.

Social Host – Criminal Enforcement:

A person who knowingly furnishes or allows consumption or possession of liquor to/by a minor commits a Class D crime. If consumption of the liquor causes bodily injury or death to the minor or another, it is a Class C crime. 28-A M.R.S.A. §2081.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:
 Imprisonment/Fine:

Class E Crime. 28-A M.R.S.A. §§1; 354; 705(2-A).
 Not more than **6 months** and not more than **\$1,000**.
 17-A M.R.S.A. §§1252; 1301.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

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

Yes – Suspension or revocation.
 28-A M.R.S.A. §801.
Suspension/Revocation – not specified in the statute.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:
 Imprisonment/Fine:

Class E Crime. 28-A M.R.S.A. §§1; 2(20); 354; 705(2), (3).
 Not more than **6 months** and not more than **\$1,000**.
 17-A M.R.S.A. §§1252; 1301.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

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

Yes – Suspension or Revocation. 28-A M.R.S.A. §801.
Suspension/Revocation – not specified in the statute.

Anti-Happy Hour Laws/Regulations:

Yes. 28-A M.R.S.A. §709.

Open Container Laws:

Open Container Law (Yes/No):

Yes. 29-A M.R.S.A. §2112-A.

Anti-Consumption Law (Yes/No): **Yes.** 29-A M.R.S.A. §2112-A.

Alcohol Exclusion Law (UPPL): **No.** 24-A M.R.S.A. §2728.

STATE

General Reference:

MARYLAND

Annotated Code of Maryland (MD Code, Transportation)
Code of Maryland Regulations (COMAR)

Basis for a DWI Charge:

Standard DWI Offense:

I. While under the influence of alcohol.
MD Code, Transportation §21-902(a)(1).

II. While impaired by alcohol.
MD Code, Transportation §21-902(b).

Illegal Per Se Law (BAC/BrAC):

≥ **.08**.³⁹³ MD Code, Transportation §§21-902(a)(2); 11-174.1.

Presumption (BAC/BrAC):

≥ **.08**. MD Code, Courts & Judicial Proceedings §10-307.

Types of Drugs/Drugs and Alcohol:

While impaired by any drug, any combination of drugs, a combination of one or more drugs and alcohol, or any controlled substance, or while such person is impaired by any controlled dangerous substance if the person is not entitled to use the controlled dangerous substance under Maryland laws.
MD Code, Transportation §21-902(c)(1), (d).

Other:

I. An alcohol concentration ≥ **.07** but < **.08** is *prima facie* evidence of driving while impaired by alcohol.

II. Any alcohol concentration of ≥ **.02** is *prima facie* evidence that the person was driving with alcohol in the person's blood, and driving in violation of an alcohol restriction.

III. Anyone arrested for DWI may not drive for 12 hours after the arrest.

MD Code, Transportation §21-902.1; MD Code, Courts & Judicial Proceedings §10-307.

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

Yes. MD Code, Transportation §16-205.2.

Implied Consent Law:

Yes. MD Code, Transportation §16-205.1.

Arrest Required (Yes/No):

No. MD Code, Transportation §16-205.1(a)(2).

Implied Consent Law Applies to Drugs (Yes/No):

Yes. MD Code, Transportation §16-205.1.

Refusal to Submit to Chemical Test

Yes – Criminal and Civil Cases. MD Code, Courts & Judicial Proceedings §10-309(a)(2); *Wyatt v. State*, 817 A.2d 901 (Md. Ct. Spec. App. 2003).

Admitted into Evidence:

Other Information:

Except as noted above, a person cannot be compelled to submit to a chemical test.

MD Code, Courts & Judicial Proceedings §10-309(a)(1).

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the

Implied Consent Law:

Blood:

Yes.³⁹⁴ MD Code, Transportation §16-205.1.

³⁹³ Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. MD Code, Transportation §11-103.2.

³⁹⁴ Under MD Code, Courts & Judicial Proceedings §10-305(a), a test for alcoholic content of the blood cannot be administered unless: (1) the driver is unconscious or otherwise incapable of refusing a test; (2) injuries to the driver require removal 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

Urine: **No**
 Other: **Breath.** MD Code, Transportation §16-205.1(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): **Yes.** A defendant may be placed on the “stet docket” or have his case nolle prosequied. In order to take advantage of a “stet”, the defendant may be required to complete any alcohol/substance abuse programs successfully and pay any fines or courts costs. At the end of successful completion, no finding of guilt is ever made (stet) or the case is dismissed (nolle prosequied). MD Code, Criminal Procedure §6-229. Additionally, a defendant may be ordered to complete an alcohol treatment program as part of probation before the court enters any judgment (finding of guilt) against such defendant. MD Code, Criminal Procedure §6-220(b), (c).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **None**
 Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **N/A**
 Preliminary Breath Test – Other: **N/A**
 Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): Note.³⁹⁵
 Not more than **2 months** and/or not more than **\$500**.³⁹⁶
 MD Code, Transportation §27-101(x)(3).
 Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev): **First refusal – Suspension 120 days;**
Second or subsequent refusal – Suspension 1 year.
 MD Code, Transportation §16-205.1(b)(1)(i)(5).
 Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine: **Driving while impaired by drugs and/or alcohol/Driving within 12 hours after arrest**
First offense – Not more than \$500 and/or not more than 2 months.

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. Motor Vehicle Admin.*, 702 A.2d 760 (Md. 1997).

³⁹⁵ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

³⁹⁶ This applies only when the trier of fact finds beyond a reasonable doubt that the person knowingly refused to take a test arising out of the same circumstances as the violation.

Second offense – Not more than **\$500** and/or not more than **1 year**.

Third or subsequent offense – Not more than **\$3,000** and/or not more than **3 years**. MD Code, Transportation §21-902(c); 21-902.1; 27-101(c), (f), (k).

Driving while under the influence/Driving while impaired by a controlled dangerous substance/≥ .08 per se.³⁹⁷

First offense – Not more than **2 months** and/or not more than **\$500**;

Second offense – Not more than **1 year** and/or not more than **\$500**;

Third or subsequent offense – Not more than **3 years** and/or not more than **\$3,000**.

MD Code, Transportation. §§21-902(a), (d); 27-101 (k).

Life Threatening Injury:

While under the influence – Not more than **3 years** and/or not more than **\$5,000**;

While impaired by alcohol or drugs – Not more than **2 years** and/or not more than **\$3,000**;

While impaired by a controlled dangerous substance – Not more than **3 years** and/or not more than **\$5,000**.

MD Code, Criminal Law §3-211(c), (d), (e), (f).

Mandatory Minimum Term/Fine:

Driving while impaired by drugs and/or alcohol/Driving within 12 hours after arrest – None.

Driving while under the influence/Driving while impaired by a controlled dangerous substance/≥ .08 per se

First offense – **None**;

Second offense within 5 years – **5 days**;

Third or subsequent offense – **10 days**.

MD Code, Transportation §27-101(j).

Community Service:

Community service may be ordered as part of any suspended sentence or probation. MD Code, Criminal Procedure §§6-219; 6-220.

Child Endangerment:

Driving While Impaired & Transporting a Minor:³⁹⁸

First offense – Not more than **6 months** and/or not more than **\$1,000**;

Second offense – Not more than **1 year** and/or not more than **\$2,000**

Third or subsequent offense – Not more than **4 years** and/or not more than **\$4,000**. MD Code, Transportation §27-101(q)(2).

Driving Under the Influence & Transporting a Minor:

³⁹⁷ Imprisonment includes confinement in an inpatient rehabilitation or treatment center or home detention that includes electronic monitoring. MD Code, Transportation §27-101(j).

Restitution:	<p><u>First offense</u> – Not more than 2 years and/or not more than \$2,000;</p> <p><u>Second offense</u> – Not more than 3 years and/or not more than \$3,000;</p> <p><u>Third or subsequent offense</u> – Not more than 4 years and/or not more than \$4,000. MD Code, Transportation §27-101(q)(1).</p> <p>The court may order a defendant to pay restitution. MD Code, Criminal Procedure §11-603(a)(2). Also, a victim may receive payments under the Criminal Injuries Compensation Act. MD Code, Criminal Procedure §11-801, <i>et seq.</i></p>
Other:	N/A
<u>Administrative Sanctions – Pre-Conviction:</u> Administrative Per Se Law:	<p>Suspension. MD Code, Transportation §16-205.1.</p> <p>≥ .08:</p> <p><u>First offense</u> – 45 days;</p> <p><u>Second or subsequent offense</u> – 90 days.</p> <p>≥ .15:</p> <p><u>First offense</u> – 90 days;</p> <p><u>Second or subsequent offense</u> – 180 days.</p> <p>These suspensions are not mandatory, as a restricted hardship license may be issued if the offender had no violations or convictions within 5 years. MD Code, Transportation §16-205.1(b), (n), (o).</p>
<u>Administrative Sanctions – Post-Conviction:</u> Type of Licensing Action (Susp/Rev):	<p>Revocation or Suspension.³⁹⁹ MD Code, Transportation §16-205.</p>
Term of Withdrawal:	<p>DUI/Driving while impaired by controlled dangerous substance:</p> <p><u>Second or subsequent offense</u> (within 5 years) – Suspension 1 year;</p> <p>Driving while impaired (alcohol and/or drug) within a 3-year period of 2 or more previous convictions of DUI/impairment – Revocation</p> <p><u>First revocation</u> –at least 6 months;</p> <p><u>Second revocation</u> –1 year;</p> <p><u>Third revocation</u> – 18 months;</p> <p><u>Fourth or subsequent revocation</u> – 2 years.</p> <p>Driving while impaired (alcohol and/or drug) within a 3-year period of 1 previous conviction of DUI/impairment: Suspension for not more than 120 days.</p>

³⁹⁹ Any suspension shall be concurrent with any other suspension or revocation imposed by the Administration that arises out of the same circumstances of a DUI/impairment conviction. Additionally, an offender shall receive credit for any suspension period imposed. MD Code, Transportation §16-205(d-1)(2).

Driving while impaired (alcohol and/or drug): Suspension for not more than **60 days**.

Under age 21:

First conviction – **1 year**;

Second or subsequent conviction – **2 years**. MD Code, Transportation §§16-205; 16-208.

Mandatory Minimum Term of Revocation:
Alcohol Education:

It appears the terms for subsequent offenders are mandatory. **Yes**. Alcohol education/treatment is 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. MD Code, Criminal Procedure §6-219(c); MD Code, Transportation §16-212.

Substance Abuse Treatment:
Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority:

Yes

Limited impoundment

MD Code, Transportation §27-111. A vehicle may be impounded as a sentence or part of a sentence, or condition of probation for not more than 180 days if a driver was driving the vehicle while his licenses was suspended or revoked for any DUI/impairment offense.

Terms Upon Which Vehicle Will Be Released:

Upon a showing of bona fide sale, gift or transfer to another person prior to the date of the hearing. Additionally, the court shall take into consideration whether the vehicle is the primary means of transportation available for the use of the individual's immediate family. MD Code, Transportation §27-111(c).

Other Miscellaneous Sanctions:

License Restrictions: The Administration shall impose an alcohol restriction that prohibits a person from driving or attempting to drive with alcohol in his blood, when such person has been convicted of any combination of two or more drunk-driving offenses within 5 years. The restriction shall be imposed for 3 years. MD Code, Transportation §16-113(g)(1).

Ignition Interlock:

Permitted or Prohibited:

Permitted. MD Code, Transportation §§16-404.1; 27-107.

Type of Law (Mandatory or Permissive):

Both

Sanction (Judicial, Administrative or Hybrid)

Hybrid

Conditions of Use:

Under the influence/impaired/transporting minor:

First offense – **6 months**;

Second offense – **1 year**;

Third or subsequent offense – **3 years**.

MD Code, Transportation §16-404.1(d)(3).

BAC ≥ .15 – ignition interlock must be installed for at least one year, and such individual's license shall be suspended until successful completion of the program.

Second or subsequent conviction – DUI – unless the requirement was waived at a hearing, ignition interlock for

not less than 3 months or more than 1 year, after the expiration of the 1-year suspension.

If ignition interlock is required, proof of installation and periodic reporting by the defendant is required.
MD Code, Transportation §§16-404.1; 27-107.

Other Provisions:

If an individual fails to participate in the program or does not successfully complete the program, the Administration shall suspend the individual's license for 1 year.

Sobriety Checkpoints:
Permitted or Prohibited:

Permitted. *Little v. State*, 479 A.2d 903 (Md. 1984).

Homicide by Vehicle:
State Has Such a Law:

Yes.
Homicide while DUI⁴⁰⁰ – MD Code, Criminal Law §2-503;
Homicide while impaired (alcohol) – MD Code, Criminal Law §2-504;
Homicide while impaired (drugs) – MD Code, Criminal Law §2-505;

Imprisonment/Fine:

Homicide while impaired (dangerous controlled substances) – MD Code, Criminal Law §2-506.
Homicide while DUI – Not more than **5 years** and/or not more than **\$5,000**.
Homicide while impaired (alcohol) – Not more than **3 years** and/or not more than **\$5,000**.
Homicide while impaired (drugs) – Not more than **3 years** and/or not more than **\$5,000**.
Homicide while impaired (dangerous controlled substances) – Not more than **3 years** and/or not more than **\$5,000**.

Mandatory Minimum Term/Fine:
Authorized Licensing Action:
Length of Term of Licensing Withdrawal:

None
Revocation. MD Code, Transportation §16-205(b).
First revocation – **6 months**;
Second revocation – **1 year**;
Third revocation – **18 months**;
Fourth or subsequent revocation – **2 years**.

Mandatory Minimum License Withdrawal:

None. A revocation may be denied, canceled or modified if a defendant needs to operate a motor vehicle for employment purposes. MD Code, Transportation §16-405(a).

Other:

N/A

DWI Offenses and Commercial Motor Vehicles (CMV):

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 has a BAC/BrAC ≥ **.04** has violated MD Code, Transportation § 21-902 or a similar Federal law or refuses to submit to a chemical test for alcohol concentration. For a subsequent violation or a combination of

⁴⁰⁰“Under the influence of alcohol per se” is defined as a BAC/BrAC ≥ .08 at the time of testing. MD Code, Criminal Law § 2-501.

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 his regular driving privileges. Additionally, a CMV operator, who has any “detectable” amount of alcohol in the system, must be placed “out-of-service” for 24 hours. MD Code, Courts & Judicial Proceedings §10-307(a); MD Code, Transportation §§11-103.1; 11-103.2; 11-109; 11-111.1; 16-205.1(b)(1)(iii); 16-208.1; 16-812; 16-813.

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

Misdemeanor. 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 suspended or revoked. MD Code, Transportation §16-303.

First offense – Not more than **1 year** and/or not more than **\$1,000**;

Subsequent offense – Not more than **2 years** and/or not more than **\$1,000**. MD Code, Transportation §§16-303; 27-101.

None

Mandatory Minimum Fine/Imprisonment Term:

Revocation

Administrative Licensing Action Type:

A revocation may be canceled or modified if employment or opportunity for employment would be adversely affected. MD Code, Transportation §16-405.

Withdrawal Action:

I. If a person drives a motor vehicle with a suspended or revoked license (for alcohol offense), the registration of the motor vehicle may be suspended for not more than 120 days. MD Code, Transportation §13-705.1.

Mandatory Term of License Withdrawal Action:

II. 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 impounded or immobilized for not more than 180 days. MD Code, Transportation §27-111(c).

Other:

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

Yes. MD Code, Transportation §§16-404(c)(2); 16-404.1(i).

A person is deemed a habitual offender if he has four or more convictions of driving impaired by alcohol or driving impaired by any drug, combination of drugs or drugs and alcohol. Such person’s license shall be suspended for 24 months.

Other State Laws Related to Alcohol Use:
BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):

No

BAC Chemical Test Given to Deceased Driver Killed in Crash:	N/A
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	N/A
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	N/A
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes. MD Code, Transportation §16-205.1(c)(1).
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. MD Code, Art. 2B §12-108(a); MD Code, Criminal Law §10-117.
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. There is an employment exception. However, a person under 18 “may not be engaged in the sale of alcoholic beverages.” Additionally, an exception for religious ceremonies or private residence with family members exists. MD Code, Art. 2B §§12-108(d); 12-301(a)(1); MD Code, Criminal Law §§10-114; 10-117.
<u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	No. <i>Felder v. Butler</i> , 438 A.2d 494 (Md. 1981); <i>Wright v. Sue & Charles, Inc.</i> , 749 A.2d 241 (Md.App. 2000).
"Dram Shop Law" Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	N/A
Dram Shop Actions – Social Hosts:	No. <i>Kuykendall v. Top Notch Laminates, Inc.</i> , 520 A.2d 1115 (Md.App. 1987).
Social Host – Criminal Enforcement:	It is a civil offense and a citation shall be issued to any adult who knowingly and willfully allows an individual under age 21 to possess or consume an alcoholic beverage at a residence that the adult owns or leases and in which the adult resides. However, an adult who willfully contributes to, encourages, causes or tends to cause any act, omission or condition that results in a violation may be punished by not more than 3 years and/or not more than \$2,500. MD Code, Courts & Judicial Proceedings §3-8A-30; MD Code, Criminal Law §§10-117; 10-119. The distinction may be in the age of the minor (under 18 versus under 21).
<u>Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
Type of Criminal Action:	Note. ⁴⁰¹ Misdemeanor . MD Code, Art. 2B §§12-108; 12-110.
Imprisonment/Fine:	Not more than \$50 ;

⁴⁰¹ The law also prohibits sales to habitual drunkards or to anyone whose family member has provided notice of intemperate habits. MD Code, Art. 2B §12-110.

Subsequent offense (if habitual drunkard) – Not more than **30 days** and/or not more than **\$100**.
MD Code, Art. 2B §§12-108; 12-110.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Suspension or revocation. MD Code, 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. MD Code, 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. MD Code, Art. 2B §10-404.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:
Imprisonment/Fine:

Misdemeanor. MD Code, Art. 2B §12-108.
Not more than **\$50**. MD Code, Art. 2B §12-108.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Suspension or revocation. MD Code, 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. MD Code, 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. MD Code, Art. 2B §10-404.

Anti-Happy Hour Laws/Regulations:

No

Open Container Laws:

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

Yes. MD Code, Criminal Law §10-125(a).
Yes. MD Code, Criminal Law §10-125(b); MD Code, Transportation §21-903(c).

Alcohol Exclusion Law (UPPL):

No. COMAR 31.10.28.03(C).

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General Reference:

Massachusetts General Laws Annotated (M.G.L.A.)
Code of Massachusetts Regulations (CMR)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor.

M.G.L.A. 90 §24(1)(a)(l).

Illegal Per Se Law (BAC/BrAC):

≥ **.08**. M.G.L.A. 90 §24(1)(a)(1).

Presumption (BAC/BrAC):

≤ **.05** = permissible inference of not under the influence;

> **.05** - < **.08** = no permissible inference

M.G.L.A. 90 §24(1)(f).

Types of Drugs/Drugs and Alcohol:

Under the influence of marijuana, narcotic drugs, depressants
or stimulant substances or vapors of glue.

M.G.L.A. 90 §24(1)(a)(l).⁴⁰²

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

No

Implied Consent Law:

Yes. M.G.L.A. 90 §24(1)(f).

Arrest Required (Yes/No):

Yes

Implied Consent Law Applies to Drugs
(Yes/No):

No. The code provision only refers to driving under the
influence of intoxicating liquor.

Refusal to Submit to Chemical Test

No. Prohibited by statute in both criminal and civil cases

Admitted into Evidence:

except that the registrar may use evidence in an
administrative proceeding to suspend the driving license.

M.G.L.A. 90 §24(1)(e).

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the

Implied Consent Law:

Blood:

Yes. M.G.L.A. 90 §24(1)(f).

Urine:

N/A

Other:

N/A

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

Yes.⁴⁰³ M.G.L.A. 90 §24(3).

Anti-Plea-Bargaining Statute (Yes/No):

No

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

Yes. Alcohol screening is required for a first offense.
M.G.L.A. 90 §24(1)(a)(4).

Sanctions for Refusal to Submit to a

Chemical Test:

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

N/A

Refusal to Take a Preliminary Breath Test –

N/A

⁴⁰² A “narcotic drug” includes opium and opiate, opium poppy and opium straw, coca leaves and any of their derivatives, salts, compounds or isomers. M.G.L.A. 94C §1.

⁴⁰³ The prosecution of any subsequent DUI offense shall not be placed on file or disposed of in any manner except trial, judgment and sentencing. If the interests of justice require an alternative disposition, then it must be done upon motion in writing stating specifically the reasons. M.G.L.A. 90 §24(3).

Administrative Licensing Action
(Susp/Rev):
Preliminary Breath Test – Other:

N/A

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

N/A

Note.⁴⁰⁴

Suspension – 180 days;
Second refusal or refusal by someone under 21 – **suspension 3 years;**
Third refusal – **suspension 5 years;**
Fourth refusal – **lifetime suspension;**
Refusal with prior conviction of DUI-serious bodily injury – **suspension 10 years;**
Refusal with a prior conviction of DUI-homicide – **lifetime suspension.**

Implied Consent Chemical Test - Other:

M.G.L.A. 90 §24(1)(f)(1).

Impoundment: The officer shall impound the vehicle driven by the operator for 12 hours after the operator’s refusal.
M.G.L.A. 90 §24(1)(f)(1)(iii).

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine:

First offense – Not more than **2½ years** and/or not less than **\$500** or more than **\$5,000;**
Second offense – Not less than **60 days** or more than **2½ years** and not less than **\$600** or more than **\$10,000;**
Third offense – Not less than **180 days** or more than **2½ years** (or not less than **2½ years** or more than **5 years** in State prison) and not less than **\$1,000** or more than **\$15,000;**
Fourth offense – Not less than **2 years** or more than **2½ years** (or not less than **2½ years** or more than **5 years** in State prison) and not less than **\$1,500** or more than **\$25,000;**
Fifth or subsequent offense – **2½ years** (or not less than **2½ years** or more than **5 years** in State prison) and not less than **\$2,000** or more than **\$50,000.**

Recklessly and negligently causing serious bodily injury – Not less than **2½ years** or more than **10 years** (or not less than **6 months** or more than **2½ years** in a jail/house of correction) and not more than **\$5,000.**

Causing serious bodily injury – Not more than **2½ years** and/or not less than **\$3,000.** M.G.L.A. 90 §§24(1)(a)(1); 24L; M.G.L.A. 274 §1.

Mandatory Minimum Term/Fine:

First offense – **None;**
Second offense – **30 days/\$600;**
Third offense – **150 days/\$1,000;**
Fourth offense – **12 months/\$1,500;**

⁴⁰⁴ Suspension for refusal shall run consecutively to any other suspension. M.G.L.A. 90 §24(1)(f)(1).

Fifth and subsequent offense – **24 months/\$2,000.**

M.G.L.A. 90 §24(1);

Serious bodily injury – **6 months.** M.G.L.A. 90 §24L.

Assessment: \$250 and \$50 shall be assessed to any person who is convicted of, placed on probation for, or is granted a continuance without a finding for, or otherwise pleads guilty to or admits to a finding of sufficient facts of DUI.

M.G.L.A. 90 §24(a)(1).

Community Service:

The court may order a defendant to serve a minimum of **30 hours** of community service as a condition of probation.

M.G.L.A. 90 §24D.

Child Endangerment:

Any person who violates the DUI laws with a child age 14 or younger in the vehicle shall be sentenced to an *enhanced* penalty of imprisonment and fine.⁴⁰⁵

First offense – Not less than **90 days** or more than **2½ years** and not less than **\$1,000** or more than **\$5,000**;

Subsequent offense – Not less than **6 months** (mand) or more than **2½ years** (or not less than **3 years** or more than **5 years** in State prison) and not less than **\$5,000** or more than **\$10,000**.

There is a mandatory minimum term of 6 months.

M.G.L.A. 90 §24V.

License Suspension:

First offense – **Suspension 1 year;**

Subsequent offense – **Suspension 3 years.**

M.G.L.A. 90 §24V.

Restitution:

Yes. As a condition of probation. M.G.L.A. 276 §92.

By a compensation fund. M.G.L.A. 258C §2.

Other:

A first offender may receive an alternative sentence of 2 years' probation with an alcohol education program and a 45-90 day loss of license. M.G.L.A. 90 § 24D.

A second offender may receive a suspended imposition of sentence and be placed on probation for not more than 2 years with the condition that he be confined for no less than 14 days in a residential alcohol treatment program. Failure to complete all probation obligations in a timely manner shall result in a sentence of not less than 2 days and a second chance at completing the residential and any other alcohol programs. Failure to complete that shall result in a sentence of not less than 30 days. M.G.L.A. 90 §24(1)(a)(4).

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

Yes.

Suspension until the DUI charges are disposed of but not more than **30 days.** M.G.L.A. 90 §24(1)(f)(2).

Persons Under 21: The following suspensions apply

⁴⁰⁵ This sentence shall run consecutively to the predication violation (DUI). M.G.L.A. 90 §24V.

notwithstanding the finding concerning any DUI offense:
Person < 21 but ≥ 18 (BAC ≥ .02): 180 days. If the person is a first offender, the suspension may be waived if he/she participates in an alcohol education or treatment program.
Person < 18 (BAC ≥ .02): 1 year. However, for a first violation, there is only a 180-day mandatory suspension if the person participates in an alcohol education or treatment program. M.G.L.A. 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 30 days), provided the State establishes a *prima facie* showing that the defendant was operating a motor vehicle with a BAC ≥ .08 (persons under 21 BAC ≥ .02). M.G.L.A. 90 §24N.

II. A person’s license may be suspended or revoked for not more than 30 days without a hearing if he/she has “committed” a violation of the motor vehicle laws that “constitute an immediate threat to the public safety.” M.G.L.A. 90 §22(a).

Administrative Sanctions – Post-Conviction:

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

Probation//Revocation. M.G.L.A. 90 §§24(1)(b); 24D.

First offense⁴⁰⁶ – **1 year**;

Second offense – **2 years**;

Third offense – **8 years**;

Fourth offense – **10 years**;

Fifth and subsequent offenses – **Life.**

Any subsequent offender who is assigned to an alcohol/controlled substance education, treatment or rehabilitation program and who violates a DUI law shall have his license revoked for life.

Mandatory Minimum Term of Revocation:

Serious bodily injury: Revocation 2 years.

First offense – **3 months**;

Second offense – **1 year**;

Third offense – **2 years**;

Fourth offense – **5 years**;

Fifth and subsequent offenses – **Life.** M.G.L.A. 90 §24(1)(c).

Alcohol Education:

Yes. See Substance Abuse Treatment.

Substance Abuse Treatment:

Yes.

First offense – A first offender who has not caused major injury or death may be placed on probation for not more than 2 years. M.G.L.A. 90 §24D.

Individuals shall be placed on probation for not more than

⁴⁰⁶ A first offender who is placed on a 2-year probation without a disposition shall have his license suspended for not less than 45 days or more than 90 days. A first offender under 21, in the same category, shall have his license suspended for 210 days. M.G.L.A. 90 §24D.

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two years and shall, as a condition of probation, be assigned to a driver alcohol education program and, if deemed necessary by the court, to an alcohol or controlled substance abuse treatment or rehabilitation program or to both, and such person's license or right to operate shall be suspended for a period of no less than forty-five nor more than ninety days; provided, however, that if such person was under age 21 when the offense was committed, the person's license or right to operate shall be suspended for two hundred and ten days, and such person shall be assigned to a program specifically designed by the department of public health for the education and treatment of drivers who operates a motor vehicle after or while consuming alcohol, controlled substances or the vapors of glue, except for a person aged 17 to 21, inclusive, whose blood alcohol percentage, by weight, was not less than .20, in which case such person shall be assigned to a driver alcohol treatment and rehabilitation program known as the "14-day second offender in-home program."

Second or subsequent offense – In lieu of imprisonment, defendant may serve all or part of the mandatory imprisonment term in a residential alcohol treatment program for not less than 14 days and participate in an outpatient counseling program. M.G.L.A. 90 §24(1)(a)(1).

BAC 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. M.G.L.A. 90 §24Q.

Forfeiture

Fourth conviction – If the vehicle is owned by the operator, it may be forfeited. M.G.L.A. 90 §24W.

If the vehicle is jointly owned (before the second DUI conviction) by a parent, spouse, child, grandparent, brother, sister, or parent of the spouse living in the defendant's household, the court may consider releasing such vehicle if such family member shows he/she is dependent upon the vehicle for livelihood or maintenance of family.

M.G.L.A. 90 §24W.

Alcoholic Beverage Licensee Reporting: The court shall inquire of a DUI offender, prior to sentencing, as to whether he was served alcoholic beverages at a licensed establishment. Any information obtained is to be transmitted to law enforcement authorities. M.G.L.A. 90 §24J.

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority:

Terms Upon Which Vehicle Will Be Released:

Other Miscellaneous Sanctions:

Ignition Interlock:

Permitted or Prohibited:

Type of Law (Mandatory or Permissive):

Sanction (Judicial, Administrative or Hybrid)

Conditions of Use:

Permitted. M.G.L.A. 90 §24 ½.

Mandatory

Administrative

Second or subsequent offenders – Before a new license is issued, or right to operate restored an ignition interlock device shall be installed in each vehicle owned for a period of 2 years. M.G.L.A. 90 §24 ½.

Other Provisions: Whoever knowingly permits a motor vehicle owned by him or under his control, which is not equipped with a functioning ignition interlock device, to be operated by a person who has an ignition interlock restricted license shall be punished by 1 year in the house of correction and a fine of not more than \$500 for a 1st offense, or for a second or subsequent offense, a fine of not more than \$1,000 and/or imprisonment for not more than 2 ½ years. M.G.L.A. 90 §12.

Sobriety Checkpoints:
Permitted or Prohibited:

Permitted. *Commonwealth v. Shields*, 521 N.E.2d 987 (Mass. 1988).

Homicide by Vehicle:
State Has Such a Law:

Yes.⁴⁰⁷ **Homicide by motor vehicle.** M.G.L.A. 90 §24G.
Manslaughter while operating a motor vehicle.
M.G.L.A. 265 §13 ½.

Imprisonment/Fine:

Homicide:
Negligently or recklessly – Not less than **2½ years** or more than **15 years** (or not less than **1 year** or more than **2½ years** in jail or house of correction) and not more than **\$5,000**;
No negligence or recklessness – Not less than **30 days** or more than **2½ years** and/or not less than **\$300** or more than **\$3,000**. M.G.L.A. 90 §24G.

Mandatory Minimum Term/Fine:

Manslaughter – Not less than **5 years** or more than **20 years** and not more than **\$25,000**. M.G.L.A. 265 §13 ½.
Homicide: Negligently or recklessly – **1 year**;
No negligence or recklessness – **None**.
Manslaughter – **5 years**. M.G.L.A. 265 §13 ½.

Authorized Licensing Action:
Length of Term of Licensing Withdrawal:

Revocation
First offense – **15 years**;
Subsequent offense – **life**.
M.G.L.A. 90 §24G; M.G.L.A. 265 §13 1/2.

Mandatory Minimum License Withdrawal:
Other:

The terms above are mandatory.
N/A

DWI Offenses and Commercial Motor Vehicles (CMV):

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 has a BAC/BrAC ≥ **.04** or is under the influence of alcohol or a controlled substance, or refused to submit to a chemical test. For a subsequent violation or a combination of two or more violations of any of the above listed items, the “disqualification” is for life. M.G.L.A. 90F §§9; 11.

A CMV operator who has any alcohol in the system must be

⁴⁰⁷ The State has the discretion to charge an offender with either manslaughter or homicide involving DUI, but it cannot charge both if the act is based on DUI only. The purpose of proscribing homicide by motor vehicle was to provide a middle ground between the felony of manslaughter and misdemeanor of driving so as to endanger. Vehicular homicide is not a lesser-included of manslaughter. See *Commonwealth v. Jones*, 416 N.E.2d 502 (Mass. 1981) for further explanation.

placed “out-of-service” for 24 hours. A violation of the out-of-service order shall result in disqualification for not less than 90 days (first violation); not less than 1 year (second violation within 10 years); not less than 3 years (third or subsequent violation within 10 years). Additionally, the driver is subject to a civil penalty of not less than \$1,100 or more than \$2,750. M.G.L.A. 90F §9(E 1/2); 10.

Driving While License Suspended for DWI

Offense:

Criminal - Fine/Imprisonment:

Not less than **60 days** or more than **2½ years** and not less than **\$1,000** or more than **\$10,000**.

If a person commits a DUI offense and his license is revoked or suspended, punishment is not less than **1 year** or more than **2½ years** and not less than **\$2,500** or more than **\$10,000**. M.G.L.A. 90 §23.

Mandatory Minimum Fine/Imprisonment Term:

60 days/\$1,000;

Administrative Licensing Action Type:

While violating DUI offense – **1 year/\$2,500.**

Withdrawal Action:

Suspension/Revocation. M.G.L.A. 90 §23.

Suspension/revocation is extended for an additional period of **1 year**. M.G.L.A. 90 §23.

Mandatory Term of License Withdrawal Action:

The term appears to be mandatory.

Other:

N/A

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. M.G.L.A. 90 §22F.

Grounds for Being Declared Habitual Offender:

Any combination of three or more serious traffic offenses⁴⁰⁸ within 5 years, or 12 convictions within 5 years for traffic offenses.⁴⁰⁹

Term of License Revocations While on Habitual Offender Status:

4 years. M.G.L.A. 90 §22F.

Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):

Misdemeanor. M.G.L.A. 274 §1.

Not more than **2 years** and/or not less than **\$500** or more than **\$5,000**. M.G.L.A. 90 §23.

Mandatory Minimum Term/Fine: Licensing Action (Specify):

None

None

Other State Laws Related to Alcohol Use:

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):

Yes – limited. M.G.L.A. 38 §4A.

BAC Chemical Test Given to Deceased

Yes.⁴¹⁰

⁴⁰⁸ These include DUI, negligent/reckless endangerment, hit and run and driving on a suspended/revoked license.

⁴⁰⁹ These are offenses that required the suspension or revocation of license for 30 days or more, including serious traffic offenses.

Driver Killed in Crash:	
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	No
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	No
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	No
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. M.G.L.A. 138 §§34; 34A.
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. There is an exemption for persons ages 18-21 for employment purposes. M.G.L.A. 138 §34C.
<u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	No. ⁴¹¹
"Dram Shop Law" Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	Yes. <i>Adamain v. Three Sons</i> , 233 N.E.2d 18 (Mass. 1968); <i>Cimino v. The Milford Keg, Inc.</i> , 431 N.E.2d 920 (Mass. 1982).
Dram Shop Actions – Social Hosts:	Yes. <i>McGuiggan v. New England Tel. & Tel Co.</i> , 496 N.E.2d 141 (Mass. 1986).
Social Host – Criminal Enforcement:	A person who furnishes or supplies alcohol to a minor may be found guilty of: Furnishing Alcohol to a Minor – punishable by not more than 1 year and/or not more than \$2,000; or Contributing to the Delinquency of a Minor – punishable by not more than 1 year and/or not more than \$500. M.G.L.A. 119 §63; M.G.L.A. 138 §34; see e.g. <i>Commonwealth v. Militello</i> , 848 N.E.2d 406 (Mass.App.Ct. 2006).
<u>Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
Type of Criminal Action:	Misdemeanor.
Imprisonment/Fine:	Not less than 1 month and not more than 1 year and/or not less than \$50 and not more than \$500 . M.G.L.A. 138 §§62; 69.
<u>Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes – Suspension, revocation or cancellation. M.G.L.A. 138 §64.
Length of Term of License Withdrawal:	If revocation is imposed, a licensee is disqualified from

⁴¹⁰ 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, the driver was the only occupant of the vehicle and no other individuals were involved. M.G.L.A. 38 §4A.

⁴¹¹ However, liability may be placed on one who sells alcoholic beverages to an already intoxicated person or a minor, through a negligence action if the sale was the proximate cause of an injury to a third person. See *Adamian v. Three Sons, Inc.*, 233 N.E.2d 18 (Mass. 1968).

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 Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:
Imprisonment/Fine:

Misdemeanor
Not more than **1 year** and/or not more than **\$2,000**.
M.G.L.A. 138 §34.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

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

Yes – Suspension, revocation or cancellation.
M.G.L.A. 138 §64.
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. M.G.L.A. 138 §64.
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. M.G.L.A. 138 §§64A; 67.

Anti-Happy Hour Laws/Regulations:

Yes. 204 CMR 4.03.

Open Container Laws:

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

Yes. M.G.L.A. 90 §24I.
There is no specific statutory provision for consumption by a passenger. However, since open containers are prohibited, prohibition of consumption necessarily follows.

Alcohol Exclusion Law (UPPL):

No. M.G.L.A. 175 §108.⁴¹²

⁴¹² In 1971, former subsection (11) was stricken by the Massachusetts legislature.

STATE

General Reference:

MICHIGAN

Michigan Compiled Laws Annotated (M.C.L.A.)

Michigan Administrative Code (Mich. Admin. Code R)

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

1. Operating while intoxicated.⁴¹³ M.C.L.A. §257.625(1)(a).
 ≥ .08.⁴¹⁴ M.C.L.A. §257.625(1)(b).

Persons Under 21: Any Bodily Alcohol Content (meaning 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.” M.C.L.A. §257.625(6).

Presumption (BAC/BrAC):

None. However, a BAC of .08 falls within the definition of “operating while intoxicated.” M.C.L.A. § 257.625.

Types of Drugs/Drugs and Alcohol:

Under the influence of or visibly impaired by an alcoholic liquor, a controlled substance, other intoxicating substance, or a combination of alcoholic liquor and a controlled substance or other intoxicating substance. M.C.L.A. § 257.625(1)(a), (3).

A person shall not operate a vehicle if the person has in his or her body any amount of a controlled substance listed in Schedule I of M.C.L.A. §333.7212, or a rule promulgated under that section, or a controlled substance described in M.C.L.A. §333.7214(a)(iv).⁴¹⁵
 M.C.L.A. §257.625(8).

Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

Yes. M.C.L.A. §257.625a(2).

Implied Consent Law:

Yes. M.C.L.A. §257.625c.

Arrest Required (Yes/No):

Yes. M.C.L.A. §257.625c(1)(a).

Implied Consent Law Applies to Drugs (Yes/No):

Yes. M.C.L.A. §257.625c(1).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes (limited) – In a criminal case a person’s refusal to submit to a chemical test is admissible only to show that a test was offered to the defendant, but not as evidence in determining the defendant’s innocence or guilt. M.C.L.A. §257.625a(9).
 Following a refusal to submit to a chemical test under the implied consent law, a law enforcement officer can seek a court order for such test. M.C.L.A. §§257.625a(6)(b)(iv);

Other Information:

⁴¹³“Operating while intoxicated” means under the influence of alcoholic liquor, a controlled substance, other intoxicating substance, or a combination of such substances. Additionally, it means a person’s ability to operate a vehicle is visibly impaired. M.C.L.A. §257.625(1)(a), (c). Note: In Michigan, a drunk-driving offense is referred to by the acronym “OWI.” However, for uniformity the “DWI” acronym will be used within the body of this digest.

⁴¹⁴ 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. M.C.L.A. §257.625(1)(b), (6)(a).

⁴¹⁵ However, see *People v. Koon*, 832 N.W.2d (Mich. 2013) (holding that a registered medical marijuana patient must be under the influence of THC at the time he/she operates a motor vehicle).

257.625d(1).

Non-Breath Chemical Tests for Alcohol Concentration Authorized Under theImplied Consent Law:

Blood:

Yes. M.C.L.A. §257.625c(1).

Urine:

Yes. M.C.L.A. §257.625c(1).

Other:

NoneAdjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No.

Anti-Plea-Bargaining Statute (Yes/No):

Limited. A person who is charged with operating while under the influence, operating while visibly impaired or illegal per se offenses cannot enter a plea of guilty or *nolo contendere* to operating with “any bodily alcohol content” in exchange for dismissal of the original charge. However, the court, upon the prosecuting attorney’s motion, may dismiss the charge. M.C.L.A. §257.625(16).Pre-Sentencing Investigation Law (PSI)
(Yes/No):**Yes.** M.C.L.A. §257.625b(5).Sanctions for Refusal to Submit to a Chemical Test:Refusal to Take a Preliminary Breath Test -
Criminal Sanction (Fine/Jail):**None**Refusal to Take a Preliminary Breath Test –
Administrative Licensing Action
(Susp/Rev):**None**

Preliminary Breath Test – Other:

Civil infraction – A fine of not more than **\$100** plus court costs. M.C.L.A. §§257.625a(2)(d); 257.907. It is a misdemeanor for a CMV operator to refuse to submit to a PBT. M.C.L.A. §§257.319d; 257.625a(4).Refusal to Take Implied Consent Chemical
Test – Criminal Sanction (Fine/Jail):**None**Refusal to Take Implied Consent Chemical
Test - Administrative Licensing Action
(Susp/Rev):First refusal – **1 year suspension** (a restricted/hardship license may be issued);
Second or subsequent refusal (within 7 years) – **2 years mandatory suspension.** M.C.L.A. §§257.323c; 257.625f.

Implied Consent Chemical Test - Other:

N/ACriminal Sanctions Following a DWIConviction:

Imprisonment/Fine:

Operating while under the influence/Per Se:First offense – Not more than **93 days** and/or community service for not more than **360 hours** and/or a fine of not less than **\$100** or more than **\$500**;First offense (BAC ≥ .17) – Not more than **180 days** and/or community service for not more than **360 hours** and/or a fine of not less than **\$200** or more than **\$700**;

Second offense (within 7 years) – Not less than **\$200** or more than **\$1,000** and not less than **5 days** or more than **1 year** and/or not less than **30 days** or more than **90 days** of community service;

Third or subsequent offense (felony) – Not less **\$500** or more than **\$5,000** and either of the following:

- not less than **1 year** or more than **5 years**; 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**.

M.C.L.A. §257.625(9).

Operating while visibly impaired:

First offense – Not more than **93 days** and/or not more than **\$300** and/or not more than **360 hours** of community service;

Second offense (within 7 years) – Not less than **\$200** or more than **\$1,000** and not less than **5 days** or more than **1 year** and/or not less than **30 days** or more than **90 days** of community service;

Third or subsequent offense (felony) – Not less than **\$500** or more than **\$5,000** and either of the following:

- not less than **1 year** or more than **5 years**; 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**.

M.C.L.A. §257.625(11).

Serious impairment of bodily function (felony):

Not more than **5 years** and/or not less than **\$1,000** or more than **\$5,000**;

(With BAC ≥ .17 and within 7 years of prior conviction) – not more than **10 years** and/or not less than **\$1,000** or more than **\$5,000**. M.C.L.A. §257.625(5);

Persons under 21 (misdemeanor):

First offense– Not more than **\$250** and/or not more than **360 hours** of community service;

Second or subsequent offense (within 7 years) – Not more than **93 days** and/or not more than **\$500** and/or not more than **60 days** of community service. M.C.L.A. §257.625(12).

Operating while under the influence/Per Se:

First offense – **None**;

Second offense – **5 days** (with **48 consecutive hours**)/**\$200**;

Third or subsequent offense – either **1 year** (if imprisoned with department of corrections) or **30 days** (with **48 consecutive hours**) (if probation with imprisonment in the county jail)/**\$500**. M.C.L.A. §257.625(9)(d).

Driving while visibly impaired:

First offense – **None**;

Mandatory Minimum Term/Fine:

Second offense – **5 days** (with **48 consecutive hours**)/\$200;
Third or subsequent offense – either **1 year** (if imprisoned with department of corrections) or **30 days** (with **48 consecutive hours**) (if probation with imprisonment in the county jail)/\$500. M.C.L.A. §257.625(11)(d).

Serious impairment of bodily function – **\$1,000**.
M.C.L.A. §257.625(5).

Persons under 21 – **None**.

See Imprisonment/Fine.

Operating with a minor under age 16:

First offense (misdemeanor) – Not less than **\$200** or more than **\$1,000** and either of the following:

- not less than **5 days** or more than **1 year**; or
- not less than **30 days** or more than **90 days** of community service.

Second offense (within 7 years) or subsequent offense (felony) – Not less than **\$500** or more than **\$5,000** and to either of the following:

- not less than **1 year** or more than **5 years**; 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**.

Mandatory Minimum:

First offense - **\$200**;

Second or subsequent offense - either **1 year** (if imprisoned with department of corrections) or **30 days** (with **48 consecutive hours**) (if probation with imprisonment in the county jail)/\$500. M.C.L.A. §257.625(7)(a).

Person under 21 with minor under 16 (misdemeanor):

First offense – Not more than **\$500** or not more than **93 days** or not more than **60 days** community service;

Second offense (within 7 years) or subsequent offense – Not less than **\$200** or more than **\$1,000** and:

- not less than **5 days** or more than **1 year** and/or
- not less than **30 days** or more than **90 days** of community service.

Mandatory Minimum:

First offense – **None**;

Second or subsequent offense – **\$200**.

M.C.L.A. §257.625(7)(b).

Yes. Restitution is ordered by the court and may also be a condition of probation. M.C.L.A. §§771.3(1)(e); 780.766.

Assessments: A person convicted of a crime must pay the following assessments. Felony – **\$130**; Misdemeanor – **\$75**. Juveniles pay an assessment of **\$25**.

Community Service:
Child Endangerment:

Restitution:

Other:

M.C.L.A. §780.905(1), (3).

Costs of Prosecution: For any drunk-driving offense listed above, an offender may be required to pay the costs of prosecution. M.C.L.A. §§257.625(13); 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 local government as a result of such offense. M.C.L.A. §769.1f(1), (3).

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

Other:

None

Under M.C.L.A. §257.625g, if a driver refuses to submit to a chemical test or submits to such test that indicates an “unlawful alcohol content,”⁴¹⁶ the license is 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.

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Term of Withdrawal:

Suspension or Revocation.

Operating while under the influence/Per Se:

First offense (within 7 years) – **Suspension 180 days;**

Second or subsequent offense (within 7 years) – **Revocation not less than 1 year;**

Subsequent offense (after revocation) – **Revocation not less than 5 years.**

Operating while visibly impaired:

First offense (within 7 years) – **Suspension 90 days (180 days** if the offense involved operating while impaired by a controlled substance or a controlled substance and alcohol);

Second or subsequent offense (within 7 years) – **Revocation not less than 1 year;**

Subsequent offense (after revocation) – **Revocation not less than 5 years.**

Serious impairment of bodily function;

First offense – **Revocation not less than 1 year;**

Any subsequent offense – **Revocation not less than 5 years.**

Persons under 21:

First offense (within 7 years) – **Suspension 30 days;**

Second offense (within 7 years) – **Suspension 90 days;**

Third or subsequent offense (within 10 years) – **Revocation not less than 1 year;**

Subsequent offense (after revocation) – **Revocation not less than 1 year.**

⁴¹⁶ An “unlawful alcohol content” means a BAC/BrAC/UrAC of: (1) $\geq .02$ for a person under age 21; (2) $\geq .04$ for a person with a CDL operating a CMV; or (3) $\geq .08$ for a person operating any motor vehicle. M.C.L.A. §257.625g(4).

Mandatory Minimum Term of Revocation:	<p>Operating with a minor under age 16: <u>First offense (within 7 years) – Suspension 180 days.</u> M.C.L.A. §§257.303(2), (4); 257.319(8).</p> <p>Operating while under the influence/Per Se: <u>First offense – 30 days;</u> <u>First offense or not more than 2 convictions w/in 10 years (BAC ≥ .17) – 45 days.</u></p> <p>Operating while visibly impaired: None.</p> <p>Serious impairment of bodily function: Terms listed appear mandatory.</p> <p>Persons under 21: <u>Suspension</u> – None; <u>Revocation</u> – Terms listed appear mandatory</p>
Alcohol Education:	<p>Operating with a minor under age 16: <u>First offense – 90 days.</u> M.C.L.A. §257.303(2), (4); M.C.L.A. § 257.319(8).</p>
Substance Abuse Treatment:	<p>Yes. M.C.L.A. §§257.625b(5); 771.3(2)(i).</p>
Vehicle Impoundment/Confiscation:	<p>Yes. M.C.L.A. §§257.625b(5); 771.3(2)(g).</p>
Authorized by Specific Statutory Authority:	<p>Vehicle Immobilization⁴¹⁷/Forfeiture</p> <p>Immobilization:</p> <p>I. For any convictions for DWI (alcohol & controlled substance), visible impairment, & driving with a minor < 16, the court <u>may</u> order vehicle immobilization for not more than 180 days.</p> <p>II. For any convictions for serious impairment of bodily function and death resulting from DWI/visible impairment, the court <u>shall</u> order vehicle immobilization for not more than 180 days.</p> <p>III. For any second DWI-related convictions (except persons under 21) within 7 years, the court <u>shall</u> order vehicle immobilization for not less than 90 days or more than 180 days.</p> <p>IV. For any third DWI-related convictions (except persons under 21) within 10 years, the court <u>shall</u> order vehicle immobilization for not less than 1 year or more than 3 years. M.C.L.A. §257.904d.</p> <p>Forfeiture: The court may impose vehicle forfeiture as a sanction for convictions of: (1) DWI/impairment resulting in death; (2) DWI/impairment resulting in serious impairment of bodily function; (3) second or subsequent convictions of DWI (alcohol & controlled substance), impairment and operating with a minor < 16. If forfeiture is not ordered in these instances, then immobilization may/shall be order according to the terms above. M.C.L.A. §257.625n.</p>

⁴¹⁷“Vehicle immobilization” means requiring the motor vehicle involved in the violation immobilized in a manner that locks the ignition, wheels or steering wheel, or otherwise prevents any person from operating the vehicle. M.C.L.A. §257.904d(8)(b).

Terms Upon Which Vehicle Will Be Released: The court may order the offender to pay the costs associated with immobilization and storage. M.C.L.A. §257.904e(1).
 Other Miscellaneous Sanctions: The court may order such vehicle immobilized to be stored at a location approved by the court. M.C.L.A. § 257.904e(1).

Ignition Interlock:

Permitted or Prohibited:
 Type of Law (Mandatory or Permissive):
 Sanction (Judicial, Administrative or Hybrid)
 Conditions of Use:

Permitted
Mandatory for Offenders With BAC ≥ 0.17 and Repeat Offenders

Administrative
 A driver who has been granted a restricted license must install an ignition interlock device. The initial period for the use of such device is 1 year. M.C.L.A. §257.322(6), (7), (8), (9).

A person convicted of DWI with a BAC ≥ .17 shall be ordered not to operate a vehicle under a restricted license unless such vehicle is equipped with an ignition interlock device. M.C.L.A. §257.319(8)(h).

Other Provisions:

Removal is authorized only upon verification that the person has operated the vehicle with no instances of reaching or exceeding a BAC of .025 grams per 210 liters of breath. M.C.L.A. § 257.319(8)(h).

Sobriety Checkpoints:

Permitted or Prohibited:

Prohibited. *Sitz v. Department of State Police*, 506 N.W.2d 209 (Mich. 1993).⁴¹⁸

Homicide by Vehicle:

State Has Such a Law:
 Imprisonment/Fine:

Yes – DWI – Death (felony). M.C.L.A. §257.625(4).
 I. Not more than **15 years** and/or not less than **\$2,500** or more than **\$10,000**. M.C.L.A. §257.625(4)(a).
 II. (With BAC ≥ .17 and within 7 years of a prior conviction)
 – Not more than **20 years** and/or not less than **\$2,500** or more than **\$10,000**. M.C.L.A. §257.625(4)(b).
 III. If a driver fails to exhibit due care and caution when approaching and passing a stationary authorized emergency vehicle giving visual signal and causes the death of a police officer, firefighter or other emergency response personnel, punishment is: not more than **20 years** and/or a fine of not less than **\$2,500** or more than **\$10,000**. M.C.L.A. §257.625(4)(c).

Mandatory Minimum Term/Fine:

Note.⁴¹⁹
 I. No law enforcement officer: **\$2,500**.
 II. Law enforcement officer: **12 years/\$2,500**.

⁴¹⁸ In *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444 (1990), the United States Supreme Court held that the use of sobriety checkpoints did not violate the Fourth Amendment. The Court reversed the Michigan Court of Appeals and remanded the case back to that court. On remand, the Michigan Court of Appeals held that, despite the U.S. Supreme Court's ruling, the use of sobriety checkpoints violated the Michigan State Constitution. This was affirmed by the Michigan Supreme Court.

⁴¹⁹ Michigan follows sentencing guidelines that lay out minimum sentence ranges (actual time to serve). The range is determined, however, by variables such as the offender's prior criminal record. These ranges do not change the overall sentencing range permitted by law. M.C.L.A. §777.61, *et seq.* The terms listed assume no prior criminal record.

Authorized Licensing Action: M.C.L.A. §§257.625(4); 777.63; 777.64.
 Length of Term of Licensing Withdrawal: **Revocation.** M.C.L.A. §257.303(2).
First offense – Not less than **1 year**;
Second or subsequent offense (within 7 years) – Not less than **5 years.** M.C.L.A. §257.303(4)(a).
 Mandatory Minimum License Withdrawal: First offense – **1 year**;
Second or subsequent offense (within 7 years) – **5 years.**
 M.C.L.A. §257.322(6).
 Other: If the vehicle is not ordered forfeited, then the court shall order vehicle immobilization in the judgment of the sentence. M.C.L.A. §§257.625(4)(a); 257.625n; 257.904d.

DWI Offenses and Commercial Motor Vehicles (CMV):

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 \geq **.04**; has violated the provisions of the drunk driving law; or (3) has refused to submit to a chemical test for alcohol concentration or the presence of controlled substances. For a subsequent violation or a combination of two or more violations of any of the above listed items, a revocation for not less than 10 years. M.C.L.A. §257.625f (1)(b), (c).

A person who operates a CMV with a BAC/BrAC/UrAC \geq .04 but $<$.08 commits a criminal offense:
First offense (misdemeanor) – Not more than 93 days and/or not more than \$300 and license suspension for 1 year (a restricted license is available for all of this period);
Second offense (within 7 years) (misdemeanor) – Not more than 1 year and/or not more than \$1,000 and license revocation for life;
Third offense (within 10 years) (felony) – Not less than \$500 or more than \$5,000 and either: not less than 1 year or more than 5 years; or probation with imprisonment in the county jail for not less than 30 days or more than 1 year (with 48 consecutive hours) and not less than 60 days or more than 180 days of community service; and license revocation for life. M.C.L.A. §§257.319b; 257.625a; 257.625m.

A CMV operator who has a BAC/BrAC/UrAC \geq **.015** must be placed “out of service” for 24 hours. M.C.L.A. §257.319d(3).

It is a misdemeanor for a person to refuse to submit to a PBT while operating a CMV. Sanctions are not more than 93 days and/or not more than \$100, with a 24-hour out-of-service order. M.C.L.A. §257.625a(4), (5).

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment: There are not statutory provisions specifically addressing this

category. The provisions below address basic driving on suspended/revoked license.

First offense (misdemeanor) – Not more than **93 days** and/or not more than **\$500**;

Second and subsequent offenses (misdemeanor) – Not more than **1 year** and/or not more than **\$1,000**.

M.C.L.A. §257.904(1), (3).

If the offense resulted in **death** of another person - Not more than **15 years** and/or not less than **\$2,500** or more than **\$10,000**. M.C.L.A. §257.904(4).

If the offense resulted in **serious impairment of a body function** (felony) – Not more than **5 years** and/or not less than **\$1,000** or more than **\$5,000**. M.C.L.A. §257.904(5).
None

Mandatory Minimum Fine/Imprisonment Term:

Administrative Licensing Action Type:
Withdrawal Action:

Suspension or **revocation**. M.C.L.A. §257.904(10).

The original license suspension or revocation is extended for a like period. M.C.L.A. §257.904(12).

Mandatory Term of License Withdrawal Action:

The new term appears to be mandatory.

Other:

For death or serious impairment, the court may order forfeiture of the vehicle. If the vehicle is not forfeited, then the court shall order immobilization. M.C.L.A. §257.904(6).

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Grounds for Being Declared Habitual Offender:

Yes

I. 2 convictions of reckless driving within 7 years.

II. 2 or more convictions within 7 years of crimes including, but not limited to felony in which motor vehicle was used and vehicular homicide.

III. 2 convictions, or a combination of 1 conviction for DUI (under 21) and 1 conviction within 7 years of crimes including DWI.⁴²⁰

IV. 3 convictions, or a combination of 2 convictions for DUI (under 21) and 1 conviction within 7 years of crimes including DWI. M.C.L.A. §257.303.

Term of License Revocations While on Habitual Offender Status:

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

None. Habitual Offender status, criminally speaking, applies to DWI 3rd and provides for sentencing enhancement only.

Therefore, if subsequent felony is punishable by a term less than life, the court may place the offender on probation or sentence the person to imprisonment for the maximum term that is not more than 1½ times the longest term prescribed for a first conviction of that offense or for a lesser term.

M.C.L.A. §769.10.

Imprisonment (Term):

N/A

⁴²⁰ See M.C.L.A. §257.303(c), (g) for a list of crimes other than DWI.

Mandatory Minimum Term/Fine:
Licensing Action (Specify): **N/A**
Revocation/Denial. The secretary of State shall not issue a license to anyone deemed a habitual offender unless that person rebuts by clear and convincing evidence the presumption resulting from prima facie evidence of habitual offender status. M.C.L.A. §257.303(4)(b).

Other State Laws Related to Alcohol Use:
BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No): **Yes.** M.C.L.A. §257.625a(6)(f).

BAC Chemical Test Given to Deceased Driver Killed in Crash: **Yes.** M.C.L.A. §257.625a(6)(f).
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash: **No**
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash: **No**

BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law: **Yes.** M.C.L.A. §257.625a(1)(a).

Minimum Age (Years) for Sale/Purchase of Alcohol: **21.** M.C.L.A. §§436.1701(1); 436.1703(1); 436.1801(2).

Minimum Age (Years) for Possession/Consumption of Alcohol: **21.** Employment exemption.⁴²¹ M.C.L.A. §436.1703.

Dram Shop and Social Host Laws:
State Has a Dram Shop Law (Yes/No): **Yes.** M.C.L.A. §436.1801(3), (10).

"Dram Shop Law" 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 – Limited to minors’ actions.** See M.C.L.A. §436.1701; see also *Longstreth v. Gensel*, 377 N.W.2d 804 (Mich. 1985); *Traxler v. Koposky*, 384 N.W.2d 819 (Mich.App. 1986).

Social Host – Criminal Enforcement: I. A person who furnishes alcoholic liquor to a minor shall be guilty of a misdemeanor and punished in the following manner:
First offense – Not more than **60 days** and not more than **\$1,000**;
Second offense – Not more than **90 days** and not more than **\$2,500**. Community service may be ordered.
M.C.L.A. §436.1701(1).

If **death** results, such person who furnished the alcoholic liquor shall be guilty of a felony and punished by

⁴²¹ Additionally, a person < 21 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. M.C.L.A. §436.1703(11), (12).

imprisonment for not more than **10 years** and/or a fine of not more than **\$5,000**. M.C.L.A. §436.1701(2).

II. A person having control over any premises, residence or other real property shall not knowingly allow a minor to consume or possess an alcoholic beverage at a social gathering on or within that premises, residence or real property. Violation of this law is a misdemeanor and punishable by imprisonment for not more than **30 days** and/or not more than **\$1,000**, for a first offense. For a second or subsequent offense, a violation is punishable by not more than **90 days** and/or not more than **\$1,000**.
M.C.L.A. §750.141a(2).

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action: **Misdemeanor**. M.C.L.A. §§436.1707; 436.1801(2); 436.1909.
Imprisonment/Fine: Not more than **6 months** and/or not more than **\$500**.
M.C.L.A. §436.1909.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes – Suspension or Revocation**. M.C.L.A. §§436.1903(1); 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**.
M.C.L.A. §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.
M.C.L.A. §436.1903(1).

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action: **Misdemeanor**.⁴²² M.C.L.A. §§436.1701; 436.1801(2); 436.1909(2).
Imprisonment/Fine: Not more than **6 months** and/or not more than **\$500**.
M.C.L.A. §436.1909.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages **Yes – Suspension or Revocation**. M.C.L.A. §§436.1903(1);

⁴²² The State/local police cannot charge a licensee with violating the law prohibiting the sale of alcoholic beverages to persons under 21, 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. M.C.L.A. §436.1701(4).

Withdrawn (Yes/No):	436.1907(3).
Length of Term License Withdrawal:	Period of license suspension is not specified in the statute. Period of license revocation is at least 2 years . M.C.L.A. §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. M.C.L.A. §436.1903(1).
<u>Anti-Happy Hour Laws/Regulations:</u>	Yes. Mich. Admin. Code R 436.1438.
<u>Open Container Laws:</u>	
Open Container Law (Yes/No):	Yes. M.C.L.A. §257.624a.
Anti-Consumption Law (Yes/No):	Yes. M.C.L.A. §436.1915(1).
<u>Alcohol Exclusion Law (UPPL):</u>	Yes. No statutory provisions. See e.g., <i>Bruce v. Cuna Mut. Ins. Soc.</i> , 555 N.W.2d 718 (Mich.App., 1996)

STATE

General Reference:

MINNESOTA

Minnesota Statutes Annotated (M.S.A.)

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC/BrAC):

Types of Drugs/Drugs and Alcohol:

Driving while impaired. M.S.A. §169A.20, subd. 1.

≥ **.08**.⁴²³ M.S.A. §169A.20, subd. 1(5).**None**

Under the influence of a controlled substance, a listed hazardous substance, or a combination of alcohol, a controlled substance or a listed hazardous substance, or if the person's body contains any amount of a controlled substance other than marijuana or tetrahydrocannabinols (THC).

M.S.A. §169A.20, subd. 1(2), (3), (4), (7).

Other:

An alcohol concentration ≥ **.04** is relevant evidence that a person was under the influence of alcohol.

M.S.A. §169A.45, subd. 2.

Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

Yes. M.S.A. §169A.41.

Implied Consent Law:

Yes. M.S.A. §169A.51.

Arrest Required (Yes/No):

No

Implied Consent Law Applies to Drugs (Yes/No):

Yes – controlled substances⁴²⁴ and their metabolites, or hazardous substances.

M.S.A. §169A.51, subd. 1.

Refusal to Submit to Chemical Test

Admitted into Evidence:

No.⁴²⁵

Other Information:

Note.⁴²⁶

I.

Non-Breath Chemical Tests for AlcoholConcentration Authorized Under theImplied Consent Law:

Blood:

Yes. M.S.A. §169A.51, subd. 1.⁴²⁷⁴²³ 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. M.S.A. §169A.03, subd. 2.⁴²⁴ Applies to controlled substances listed in Schedules I and II except marijuana or tetrahydrocannabinols. M.S.A. §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. M.S.A. §169A.46, subd. 2.⁴²⁵ Previously, a person's refusal to submit to a chemical test (including a preliminary breath test) was penalized by admitting such a fact in to evidence. M.S.A. §§169A.41; 169A.45, subd 3. However, in *State v. Thompson*, 873 N.W. 2d 873 (Minn. App. 2015), the Minnesota Court of Appeals deemed warrantless blood and urine testing, as well as penalizing a person's refusal to submit to a chemical breath test unconstitutional. At the time of publication, this decision was currently under review.⁴²⁶ In Minnesota, technically 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. M.S.A. §§169A.51, sub. 2(3); 169A.52, subd 1. Additionally, 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. See *State v. Lee*, 585 N.W.2d 378 (Minn. 1998). However, such exception to the search warrant requirement should now be relied upon with caution in light of the United States Supreme Court's decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

Urine: **Yes.** M.S.A. §169A.51, subd. 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.** M.S.A. §§169A.70; 609.115.

Sanctions for Refusal to Submit to a

Chemical Test:

Refusal to Take a Preliminary Breath Test - **None**
 Criminal Sanction (Fine/Jail):
 Refusal to Take a Preliminary Breath Test – **N/A**
 Administrative Licensing Action
 (Susp/Rev):
 Preliminary Breath Test – Other: **N/A**

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None.**⁴²⁸ See DWI Criminal Sanctions. M.S.A. §169A.20, subd. 2.

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):

Implied Consent Chemical Test - Other:

School or Head Start Bus Operators:

I. It is a misdemeanor to operate a school or Head Start bus with any alcohol in the body. Sanctions: jail for not more than 90 days and/or a fine of not more than \$1,000.

II. It is a gross misdemeanor if the offense occurred within 5 years of a prior DWI offense or the offense occurred while the driver was transporting a child < 16 who was 36 months younger than the driver; the sanctions for this offense are jail for not more than 1 year and/or a fine of not more than

⁴²⁷ 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 that is not subject to testing by a breath test. Previously, action could “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.” M.S.A. §169A.51, subds. 3, 4. However in *State v. Thompson*, 873 N.W. 2d 873 (Minn. App. 2015), the Minnesota Court of Appeals deemed warrantless blood and urine testing, as well as penalizing a person’s refusal to submit to a chemical breath test unconstitutional. At the time of publication, this decision was currently under review. However criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

⁴²⁸ Under the Code, a person’s refusal to submit to a chemical test is penalized as follows:

First refusal – Revocation not less than 90 days;

Refusal occurring within 10 years of a prior impaired driving – Revocation not less than 1 year and until the court has certified that treatment or rehabilitation has been successfully completed;

Second refusal (within 10 years of first) – Revocation not less than 2 years and denial of license until rehabilitation has been established;

Third refusal (within 10 years of first) – Revocation not less than 3 years and denial of license until rehabilitation has been established;

Fourth refusal (within 10 years of first) – Revocation for not less than 4 years;

Fifth or subsequent refusal – Revocation for not less than 6 years. M.S.A. §§169A.52; 169A.54 subds. 1, 6.

However, in *State v. Thompson*, 873 N.W. 2d 873 (Minn. App. 2015), the Minnesota Court of Appeals deemed the legislative penalization of a person’s refusal to submit to a chemical breath test unconstitutional. At the time of publication, this decision was currently under review.

\$3,000. M.S.A. §§169A.31; 609.03.

Conditional Release:

I. Unless maximum bail is imposed, a person charged with a drunk driving offense may be released from detention only if such person agrees to abstain from alcohol and submit to electronic monitoring, involving at least daily measurements of the person's alcohol concentration, pending resolution of the charged offense. M.S.A. §169A.44.

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine:

- (1) **Fourth Degree DWI** (no aggravating factors⁴²⁹) (misdemeanor) – Not more than **90 days** and/or not more than **\$1,000**; M.S.A. §169A.27.
- (2) **Third Degree DWI** (1 aggravating factor) (gross misdemeanor) – Not more than **1 year** and/or not more than **\$3,000**; M.S.A. §169A.26.
- (3) **Second Degree DWI** (2 or more aggravating factors) (gross misdemeanor) – Not more than **1 year** and/or not more than **\$3,000**; M.S.A. §169A.25.
- (4) **First Degree DWI** (felony) – within 10 years of the first 3 or more prior DWI incidents; or previously convicted of felony DWI; or previously convicted of DWI homicide – Not more than **7 years** and/or not more than **\$14,000**. M.S.A. §169A.24.

Criminal Vehicular Injury:⁴³⁰

- (1) **Bodily Harm** – Not more than **1 year** and/or not more than **\$3,000**;
- (2) **Substantial Bodily Harm** – Not more than **3 years** and/or not more than **\$10,000**;
- (3) **Great Bodily Harm** – Not more than **5 years** and/or not more than **\$10,000**. M.S.A. § 609.2113.

Note.⁴³¹

First offense – **None**;

Second offense (within 10 years) – **30 days with 48 consecutive hours**;⁴³²

Mandatory Minimum Term/Fine:

⁴²⁹“Aggravating factor” means: (1) qualified prior DWI incidents within 10 years of the current offense; (2) having BAC of $\geq .20$ at the time or within 2 hours of the offense; or (3) having a child < 16 in the motor vehicle at the time of the offense and such child is more than 36 months younger than the offender. M.S.A. §169A.03.

⁴³⁰ The elements of this crime include: (1) operating a motor vehicle in a grossly negligent manner; (2) in a negligent manner while under the influence of alcohol, a controlled substance or any combination; (3) while having a BAC of $\geq .08$; (4) while having a BAC of $\geq .08$ within 2 hours of driving; (5) in a negligent manner while knowingly under the influence of a hazardous substance; or (6) in a negligent manner while any amount of a controlled schedule I or II substance (other than marijuana or tetrahydrocannabinols) is present in the body. M.S.A. §609.2113.

⁴³¹ For felony offenses, mandatory fines are based on 30% of the maximum statutory fine. For a gross misdemeanor or misdemeanor, mandatory fines are based on 30% of the maximum statutory fine *or* on 30% of the maximum fine for such offenses in the uniform fine schedule (which is lower than the statutory fine). Additionally, if the court finds that imposition of a fine would create an undue hardship for the convicted person or that person's immediate family, the court may reduce the fine amount to not less than \$50. M.S.A. §609.101.

Third offense (within 10 years) –

(1) **90 days** with **30 consecutive days** (not more than 60 days may be served on home detention or intensive probation⁴³³);

or

(2) **6 days** of incarceration followed by intensive probation.

Fourth offense (within 10 years) –

(1) Not less than **3 years** (if first degree DWI); or

(2) **180 days** with **30 consecutive days** (not more than 150 days may be served on home detention or intensive

probation); or

(3) **6 days** of incarceration followed by intensive probation.

Fifth or subsequent offense (within 10 years) –

(1) Not less than **3 years** (if first degree DWI); or

(2) A minimum of **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

(3) **6 days** of incarceration followed by intensive probation.

M.S.A. §§169A.74; 169A.275; 169A.276.

Community Service:

First offense– 8 hours of community service for each day less than 30 of incarceration as an alternative to mandatory jail.

M.S.A. §169A.275, subd. 1(a)(2). The court may permit an offender to perform community service in lieu of a fine.

M.S.A. §609.101, subd. 5.

Child Endangerment:

Driving with a child under age 16, with such child being more than 36 months younger than the driver is an

“aggravating factor.” This may increase the crime to a gross misdemeanor. See Criminal Sanctions, above.

Restitution:

Yes. Victim’s fund⁴³⁴ and direct payment by the defendant to a victim. M.S.A. §§611A.04; 611A.54; 609.10; 609.125.

Other:

Surcharge: For alcohol screening, there is a surcharge of \$25 (additional \$5 if there has been a prior conviction within 5 years). M.S.A. §169A.284, subd. 1.

The court shall impose a \$75 surcharge on every person convicted of any felony, gross misdemeanor, misdemeanor or petty misdemeanor offense. M.S.A. §357.021, subd. 6.

Penalty Assessment: In addition to any other fine or assessment, a person who has been convicted of DWI with an alcohol concentration ≥ 0.16 may be required to pay an

⁴³² Based on mitigating circumstances, the court may sentence a person without regard to the mandatory sanctions. However, any sanction that is imposed must include not less than 48 hours of consecutive incarceration or at least 80 hours of community service. M.S.A. §169A.275, subd. 1(d). Additionally, a judge is not required to sentence a person under the mandatory sentence provision if the judge requires the person as a condition of probation to drive only motor vehicles equipped with an ignition interlock device. M.S.A. §169A.275, subd. 7.

⁴³³ Intensive Probation (Supervision) 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. M.S.A. §169A.74.

⁴³⁴ Payments to all claimants as to the injury or death of one victim shall not exceed \$50,000. M.S.A. §611A.54.

assessment of up to \$1,000. M.S.A. §169A.285, subd. 1.

Administrative Sanctions – Pre-Conviction:
Administrative Per Se Law:

Yes \geq .08. (or the presence of a controlled substance).

First violation – **Revocation 90 days** (15 days mand);

First violation (BAC twice legal limit) – **Revocation not less than 1 year;**

Second or subsequent violation (within 10 years) –

Revocation not less than 1 year (15 days mand);

Second violation (BAC twice legal limit) - Revocation not less than 2 years;

Third violation (within 10 years) – **Revocation not less than 3 years;**

Fourth violation – **Revocation not less than 4 years;**

Fifth violation – **Revocation for not less than 6 years.**

For person < 21 – **Revocation not less than 180 days;**

For person < 21 (BAC twice legal limit) – **Revocation not less than 1 year.**

A limited license is available after the minimum mandatory revocation (or “waiting”) period, except in the case of a person whose driver’s license has been suspended or revoked due to DWI bodily harm, substantial harm, or great bodily harm. M.S.A. §§169A.52, subd. 4; 171.30, subds. 2, 2a.

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Term of Withdrawal:

Revocation. M.S.A. §§169A.54, subd. 1; 171.17.

First offense – Not less than **30 days** (not less than **180 days** for a person under age 21);

Second offense (within 10 years) – Not less than **1 year** and until treatment/rehabilitation has been completed;

Third offense (within 10 years) – Not less than **3 years** and until rehabilitation has been established;

Fourth offense – Not less than **4 years** and until rehabilitation has been established;

Fifth or subsequent offense – Not less than **6 years** and until rehabilitation has been established.

Great bodily harm or death:

Third offense (within 10 years), or fourth offense – Not less than **10 years;**

Second offense (within 10 years) – Not less than **8 years;**

First offense – Not less than **6 years.**

Bodily harm or substantial bodily harm:

Third offense (within 10 years), or fourth offense – Not less than **6 years;**

Second offense (within 10 years) – Not less than **4 years;**

First offense – Not less than **2 years.**

Personal Injury – At least an additional **90 days** is added to the base periods listed above.

BAC twice the legal limit or more – not less than **1 year** so long as the person has no qualified prior impaired driving incidents within the past 10 years. M.S.A. §169A.54.

Mandatory Minimum Term of Revocation:

First offense – **15 days**;⁴³⁵

Second or subsequent offense – **15 days**;

Personal Injury – **1 year**; M.S.A. §171.30.

Alcohol Education:

Yes. M.S.A. §169A.275, subd 5.

Substance Abuse Treatment:

Yes. M.S.A. §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 by the assessment report under M.S.A. §169A.70 or as otherwise determined by the court. M.S.A. §169A.283.

Vehicle Impoundment/Confiscation:

Vehicle Impoundment; Vehicle Forfeiture

Authorized by Specific Statutory Authority:

Vehicle Impoundment: A law enforcement officer may impound a vehicle following the arrest or taking into custody of the driver for a DWI violation. M.S.A. §169A.42, subd. 2.
Vehicle Forfeiture (Administrative or Judicial): A vehicle is subject to forfeiture if it was used in the commission of a designated offense or was used in conduct resulting in a designated license revocation.

Designated offense – DWI (first or second degree); DWI where operator’s license was cancelled or operator received a restricted license with conditions that he/she may not consume any amount of alcohol or a controlled substance.

Designated license revocation – Revocation for third test failure or test refusal within 10 years of the first of two; license disqualification (CDL) resulting from third test failure or test refusal within 10 years of the first of two.

M.S.A. §169A.63, subd. 1(d), (e), subd. 7.

Terms Upon Which Vehicle Will Be Released:

Vehicle Impoundment: The vehicle must be released only: (1) if the registered owner or lien holder provides proof of ownership, valid Minnesota driving privileges and proof of insurance; (2) if the vehicle is subject to a rental or lease agreement, to a renter/lessee with valid Minnesota driving privileges who provides a copy of the rental/lease agreement and proof of insurance; or (3) to an agent of a towing company authorized by the registered owner if the owner provides proof of ownership and insurance. M.S.A. §169A.42, subd. 2.

Vehicle Forfeiture: A vehicle will be released only if the owner can show by clear and convincing evidence that he/she

⁴³⁵ Under M.S.A. §171.30, after the minimum mandatory revocation (or “waiting”) period, a limited license may be issued for: (1) employment purposes; (2) attendance at an alcohol treatment program; or (3) the needs of a homemaker in order to prevent the substantial disruption of the educational, medical or nutritional needs of the family.

did not have knowledge that the vehicle was used contrary to law or that the owner took reasonable steps to prevent its use by the offender. However, if the offender is a family or household member and has 3 or more prior DWI convictions, then the owner is presumed to know of any vehicle use. M.S.A. §169A.63, subd. 7(d).

Other Miscellaneous Sanctions:

N/A

Ignition Interlock:

Permitted or Prohibited:

Permitted. M.S.A. §§169A.55; 169A.275, subd. 7.

Type of Law (Mandatory or Permissive):

Mandatory for Offenders With BAC ≥ 0.16 and Repeat Offenders, with Restricted License

Sanction (Judicial, Administrative or Hybrid)

Hybrid

Conditions of Use:

A person whose driver's license has been canceled or denied as a result of 3 or more qualified impaired driving incidents shall not be eligible for reinstatement of driving privileges without an ignition interlock restriction, until the person has completed rehabilitation and submitted verification of abstinence for a prescribed period. M.S.A. §169A.55.

A program participant whose license has been revoked because of DWI convictions or refusal convictions may apply for a conditional reinstatement of the driver's license, subject to ignition interlock restriction. M.S.A. §171.306.

A judge is not required to sentence a person as required to incarceration, etc., if the judge requires the person as a condition of probation to drive only motor vehicle equipped with an ignition interlock device. M.S.A. §169A.275, subd. 7. The commissioner has the authority to and shall determine the appropriate period for which a person participating in the ignition interlock program shall be subject to the program. M.S.A. §171.306, subd. 3.

Other Provisions:

Sobriety Checkpoints:

Permitted or Prohibited:

Prohibited. *Ascher v. Commissioner of Public Safety*, 519 N.W.2d 183 (Minn. 1994).

Homicide by Vehicle:

State Has Such a Law:

Yes. Death as a result of operating a motor vehicle: (1) in a grossly negligent manner; (2) in a negligent manner while under the influence of alcohol/controlled substance or combination of the two; (3) with a BAC ≥ .08; (4) with a BAC ≥ .08 within 2 hours of the time of driving; (5) in a negligent manner while knowingly under the influence of a hazardous substance; or (6) with any amount of controlled substance in the body. M.S.A. §609.2112.

Imprisonment/Fine:

Not more than **10 years** and/or not more than **\$20,000**. M.S.A. §609.2112.

Mandatory Minimum Term/Fine:

None

Authorized Licensing Action:

Revocation. M.S.A. §171.17.

Length of Term of Licensing Withdrawal:	<p><u>First offense</u> – Not less than 6 years; <u>Second offense</u> (within 10 years)⁴³⁶ – Not less than 8 years; <u>Third offense</u> (within 10 years) – Not less than 10 years. Currently, no time period is specified, however, no person shall be issued another license unless and until that person successfully passes an examination by the licensing agency, and in any event, it shall not be less than 1 year. If the court has denied an offender’s petition for reinstatement of the license, the offender must wait 1 year before re-petitioning. M.S.A. §§171.19; 171.30.</p>
Mandatory Minimum License Withdrawal:	<p>1 year. M.S.A. §171.30; A limited license may be issued after this period. M.S.A. §171.30, subd. 2a.</p>
Other:	<p>N/A</p>
<u>DWI Offenses and Commercial Motor Vehicles (CMV):</u>	<p>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 has a BAC/BrAC/UrAC ≥ .04, is under the influence of alcohol or a controlled substance or refuses to submit to a chemical test for the presence of alcohol. For a subsequent violation or 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 hours if any alcohol is in the system. A person commits a DWI offense if he operates a CMV with a BAC/BrAC/UrAC ≥ .04; the sanctions for this offense are the same as for any DWI offense. M.S.A. §§169A.20, sub. 1(1), (6); 169A.51, subd. 1(c); 169A.52; 169A.54, subd. 1, 7; 171.165.</p>
<u>Driving While License Suspended for DWI Offense:</u>	
Criminal - Fine/Imprisonment:	<p>No specific statutory provision on this subject. Sanctions given are for the general offense of operating a motor vehicle while driving privileges are suspended, revoked, cancelled, or disqualified. M.S.A. §171.24. Misdemeanor – Not more than 90 days and/or not more than \$1,000. M.S.A. §§171.24; 609.03(3). Gross misdemeanor (if license was originally cancelled or denied because the commissioner found good cause to believe operation of a motor vehicle would be inimical to public safety or welfare) – Not more than 1 year and/or not more than \$3,000. M.S.A. §§171.24, subd. 5; 609.03.</p>
Mandatory Minimum Fine/Imprisonment Term:	<p>None</p>
Administrative Licensing Action Type:	<p>There is no statutory provision for licensing action. However,</p>

⁴³⁶ Second and subsequent offenses include qualifying prior impaired driving incidents, as defined in M.S.A. §169A.03, subd. 22. M.S.A. §171.17, subd. 4.

when a person is convicted for driving after his license has been suspended, revoked or cancelled, the court shall require the registration plates of the motor vehicle or those registered in the person's name to be surrendered to the court. M.S.A. §168.041, subd. 1.

Withdrawal Action:

Mandatory Term of License Withdrawal Action:

None listed.

Other:

N/A

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Other State Laws Related to Alcohol Use:

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):

Yes. M.S.A. §169.09, subd. 11.

BAC Chemical Test Given to Deceased Driver Killed in Crash:

Yes. M.S.A. §169.09, subd. 11.

BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:

No

BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:

Yes. Age 16 or older.

BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:

Yes. M.S.A. §169A.51, subd. 1.

Minimum Age (Years) for Sale/Purchase of Alcohol:

21.⁴³⁷ M.S.A. §340A.503, subd. 2(1), (2).

Minimum Age (Years) for Possession/Consumption of Alcohol:

21. Exemption for home possession with parental consent. M.S.A. §340A.503, subs. 1(2), 3.

Dram Shop and Social Host Laws:

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

Yes. M.S.A. §340A.801.

"Dram Shop Law" 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 – Limited.

Social hosts ≥ 21 who serve or provide alcoholic beverages that result in the intoxication of persons < 21 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. M.S.A. §340A.90.

Social Host – Criminal Enforcement:

I. No person shall furnish or give alcohol to a person under

⁴³⁷ A person under 21 may purchase alcoholic beverages if under the supervision of a person over 21 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.” M.S.A. §340A.503, subd. 2.

21. Such person may be found guilty of a gross misdemeanor, punishable by not more than **1 year** and/or not more than **\$3,000**. M.S.A. §§340A.503; 340A.702; 609.03.

II. Any person who by act, word or omission encourages, causes or contributes to delinquency of a child or to a child's status as a juvenile petty offender is guilty of a gross misdemeanor, punishable by not more than **1 year** and/or not more than **\$3,000**. M.S.A. §§260B.425; 609.03.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Gross Misdemeanor. M.S.A. §§340A.502; 340A.702(7); 609.03.

Imprisonment/Fine:

Not more than **1 year** and/or not more than **\$3,000**. M.S.A. §609.03.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes. M.S.A. §340A.415.

Length of Term of License Withdrawal:

Revocation (no specified time); **Suspension** for up to **60 days**; **Civil Penalty** of up to **\$2,000**; or a combination of the above. M.S.A. §340A.415.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Gross Misdemeanor.⁴³⁸ M.S.A. §§340A.503, subd. 2(1); 340A.702(8); 609.03.

Imprisonment/Fine:

Not more than **1 year** and/or not more than **\$3,000**.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes. M.S.A. §340A.415.

Length of Term License Withdrawal:

Revocation (no specified time); **Suspension** for up to **60 days**; **Civil Penalty** of up to **\$2,000**; or a combination of the above. M.S.A. §340A.415.

Anti-Happy Hour Laws/Regulations:

No

Open Container Laws:

Open Container Law (Yes/No):

Yes. M.S.A. §169A.35, subds. 3, 4.

Anti-Consumption Law (Yes/No):

Yes. M.S.A. §169A.35, subd. 2.

Alcohol Exclusion Law (UPPL):

Yes –M.S.A. 62A.04, subd. 3(11) (non-prescription narcotics)

⁴³⁸ Employers cannot be held criminally liable for the acts of their employees who illegally sell/serve alcoholic beverages to persons under the legal drinking age. M.S.A. §340A.501; see also *State v. Guminga*, 395 N.W.2d 344 (Minn. 1986).

MINNESOTA

and *Thompson v. Bankers' Mut. Cas. Ins. Co.*, 151 N.W.180 (1915) (alcohol).⁴³⁹

⁴³⁹ By interpretation, this case upholds an insurer's alcohol exclusion provision. The issue in this case was whether the insurer met its burden to prove intoxication.

STATE

General Reference:

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC/BrAC):

Types of Drugs/Drugs and Alcohol:

Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to Drugs
(Yes/No):Refusal to Submit to Chemical Test
Admitted into Evidence:Non-Breath Chemical Tests for AlcoholConcentration Authorized Under theImplied Consent Law:

Blood:

Urine:

Other:

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

Anti-Plea-Bargaining Statute (Yes/No):

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

MISSISSIPPI

Mississippi Code Annotated (Miss. Code Ann.)

Under the influence of intoxicating liquor.

Miss. Code Ann. §63-11-30(1).

≥ **.08**.⁴⁴⁰ Miss. Code Ann. §63-11-30(1)(d).Persons Under 21 = ≥ **.02** Miss. Code Ann. §63-11-30(1)(d).**None**

Under the influence of any substance or illegal drug which has impaired driving ability, or under the influence of any drug or controlled substance, the possession of which is unlawful. Miss. Code Ann. §63-11-30(1).

No**Yes.** Miss. Code Ann. §63-11-5.**No.** However, a request to submit to a test is based on reasonable grounds and probable cause of DUI.

Miss. Code Ann. §63-11-5(1).

No. Miss. Code Ann. §63-11-5(1).**Yes** – Criminal cases. Miss. Code Ann. §63-11-41.**Yes.** Miss. Code Ann. §63-11-5.**Yes.** Miss. Code Ann. §63-11-5.**None****No.**⁴⁴¹**Yes.** A DUI charge cannot be reduced. Miss. Code Ann. §63-11-39. For subsequent offenses, mandatory sanctions cannot be suspended or reduced through a plea agreement.⁴⁴²

Miss. Code Ann. §63-11-30(2)(b), (c).

No

⁴⁴⁰ Standard: Alcohol concentration in the person's blood is based upon grams of alcohol per one hundred (100) milliliters of blood, or grams of alcohol per two hundred ten (210) liters of breath. Miss. Code Ann. §63-11-30(1)(d).

⁴⁴¹ A DUI offense cannot be dismissed upon the completion of court imposed conditions. Miss. Code Ann. §99-15-26(1); see e.g., MS AG Op. Atty. Gen. No. 93-0889 (Stephens, January 12, 1994) (1994 WL 32564).

⁴⁴² A case may be deferred at any stage of the proceedings before conviction in the discretion of the court; the court may withhold adjudication of guilt, defer sentencing, and enter an order imposing requirements on the offender pursuant to the conditions of Miss. Code Ann. §63-11-30(14)(c)(1).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): N/A

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): N/A

Preliminary Breath Test – Other: N/A

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): Note.⁴⁴³

First refusal – Not less than **\$250** or more than **\$1,000** and/or not more than **48 hours** in jail;

Second refusal (within 5 years) – Not less than **\$600** or more than **\$1,500** and not less than **5 days** (mand) or more than **1 year**;

Third or subsequent refusal (within 5 years) (Felony) – Not less than **\$2,000** or more than **\$5,000** and not less than **1 year** or more than **5 years**. Miss. Code Ann. §§63-11-21; 63-11-30(2).

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):

First refusal – **Suspension** for not less than **90 days** and until such person attends and successfully completes an alcohol safety education program;

Second or subsequent refusal – **Suspension 1 year** (mand). Miss. Code Ann. §§63-11-5(2).

Implied Consent Chemical Test - Other:

A trial *de novo* may be held following administrative hearings on these suspensions. Miss. Code Ann. §63-11-25.

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine:

First offense – Not less than **\$250** or more than **\$1,000** and/or not more than **48 hours**⁴⁴⁴ in jail;

Second offense (within 5 years) – Not less than **\$600** or more than **\$1,500** and not less than **5 days** (mand) or more than **1 year**;

Third or subsequent offense (within 5 years) – Not less than **\$2,000** or more than **\$5,000** and not less than **1 year** or more than **5 years**.

Under 21:

First offense – **\$250**;

Second offense (within 5 years) – Not more than **\$500**;

Third or subsequent offense (within 5 years) – Not more than **\$1,000**.

DUI w/death or mutilation/injury:

⁴⁴³ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

⁴⁴⁴ Attendance at a victim impact panel may be ordered in lieu of 48 hours in jail. Miss. Code Ann. §63-11-30(2).

Mandatory Minimum Term/Fine:	<p><u>First offense</u> – Not less than 5 years or more than 25 years and may be fined not more than \$10,000;⁴⁴⁵ Miss. Code Ann. §63-11-30. <u>First offense</u> – \$250;⁴⁴⁶ <u>Second offense</u> – 5 days/\$600; <u>Third or subsequent offense</u> – 1 year/\$2,000. Miss. Code Ann. §63-11-30(2)(b), (c).</p> <p>Under 21 – None.⁴⁴⁷ Miss. Code Ann. §63-11-30(3).</p>
Community Service:	<p>DUI with death or mutilation/injury – 5 years. Miss. Code Ann. §63-11-30(5). <u>Second offense</u> – Not less than 10 days or more than 1 year. Miss. Code Ann. §63-11-30(2)(b).</p>
Child Endangerment:	<p>A person who transports a child under age 16 shall be punished as follows: <u>First conviction (no serious injury or death) (misdemeanor)</u> - Not more than \$1,000 and/or not more than 12 months; <u>Second conviction (no serious injury or death) (misdemeanor)</u> - Not less than \$1,000 or more than \$5,000 and/or 1 year; <u>Third or subsequent conviction (no serious injury or death) (felony)</u> - Not less than \$10,000 and/or not less than 1 year or more than 5 years; <u>Causes serious injury or death (felony)</u> - Not less than \$10,000 and not less than 5 years or more than 25 years. Miss. Code Ann. §63-11-30(12).</p>
Restitution:	<p>A defendant may be ordered by the court to make direct restitution to a victim, but not more than \$5,000. Miss. Code Ann. §99-37-3. A victim may also obtain limited compensation from the State Crimes Victims’ Compensation Fund. Miss. Code Ann. §99-41-1, <i>et seq.</i></p>
Other:	<p>Implied Consent Violation Assessment: \$243.50 in addition to any other fine or penalty. Miss. Code Ann. §99-19-73(2).</p>

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

This law encourages DWI offenders who have a BAC/BrAC $\geq .08$ (for persons $< 21 \geq .02$), 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. Miss. Code Ann. §63-11-23(2).

⁴⁴⁵ For a second or subsequent conviction, the sentence may run consecutive to or concurrent with the first. Miss. Code Ann. §63-11-30(5).

⁴⁴⁶ An offender may attend a victim impact panel in lieu of 48 hours of incarceration. Miss. Code Ann. §63-11-30(2)(a)

⁴⁴⁷ For persons under age 21, the court shall have the discretion to rule that a first offense shall be non-adjudicated. Miss. Code Ann. §63-11-30(3), (14).

Important: If temporary driving privileges expire without a trial having been requested by the offender, the license suspension periods for implied consent violations apply. Miss. Code Ann. §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). Such action may be taken without a preliminary hearing. The time period for this suspension is not specified. Such action could occur prior to a conviction. Miss. Code Ann. §63-1-53(2)(a).

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Term of Withdrawal:

Suspension.⁴⁴⁸ Miss. Code Ann. §63-11-30.

First offense – Not less than **90 days** and until such person attends and successfully completes an alcohol safety education program;

Second offense (within 5 years) – **1 year**;

Third or subsequent offense (within 5 years) – **3 years**.

Under 21:

First offense – **90 days**;

Second offense – **1 year**;

Third or subsequent offense – **2 years** or until 21st birthday, whichever is longer. Miss. Code Ann. §63-11-30.

Mandatory Minimum Term of Revocation:

First offense– **30 days**;

Second offense (within 5 years) – **1 year**;⁴⁴⁹

Third or subsequent offense (within 5 years) – **3 years**.⁴⁵⁰

Under 21:

First offense – **30 days**;

Second offense – **6 months**;

Third or subsequent offense – **1 year**.

Miss. Code Ann. §63-11-30.

Notwithstanding Miss. Code Ann. §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. Miss. Code Ann. §63-1-71(1).

Alcohol Education:

First offense (required before license can be reinstated). Miss. Code Ann. §§63-11-30(2)(a); 63-11-32.

Substance Abuse Treatment:

Second & third offenses. Miss. Code Ann. §63-11-30(2)(d), (e).

Vehicle Impoundment/Confiscation:

Impoundment/Immobilization; Forfeiture.

Authorized by Specific Statutory Authority:

Impoundment/Immobilization: For second or subsequent

⁴⁴⁸ Suspension of driving privileges shall run consecutively. Miss. Code Ann. §63-11-30(10).

⁴⁴⁹ For a second conviction, the suspension period may be reduced to 1 year provided the defendant is diagnosed as needing alcohol/drug abuse treatment and successfully completes such treatment. Miss. Code Ann. §63-11-30(2)(d).

⁴⁵⁰ 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. Miss. Code Ann. §63-11-30(2)(e).

offenses, **all** vehicles owned by the offender must be impounded/immobilized for the length of the license suspension. Miss. Code Ann. §§63-11-30(2)(b); 63-11-49(1).

Forfeiture: For a second offense (within 5 years), the vehicle used in the offense **may** be forfeited.

For third or subsequent offenses, the 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. Miss. Code Ann. §§63-11-30(2)(b), (c); 63-11-49.

Terms Upon Which Vehicle Will Be Released:

Upon a showing by the spouse that the seized vehicle is the only source of transportation, the chief law enforcement officer shall declare the vehicle is forfeited to such spouse. This applies only to one forfeiture per vehicle. Miss. Code Ann. §63-11-49.

Other Miscellaneous Sanctions:

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. Miss. Code Ann. §§21-27-137; 21-27-155.

Ignition Interlock:

Permitted or Prohibited:

Type of Law (Mandatory or Permissive):
Sanction (Judicial, Administrative or Hybrid)
Conditions of Use:

Permitted. Miss. Code Ann. §§63-11-30; 63-11-31.

**Mandatory
Judicial**

The court shall order the use of an ignition interlock device on all vehicles of an offender convicted and/or operated by the offender following license reinstatement. Where impoundment or immobilization interferes with a spouse's use a vehicle subject to impoundment or immobilization, the court may order the installation of an ignition interlock system for a minimum of 6 months in lieu of impoundment/immobilization. Miss. Code Ann. §§63-11-30(11); 63-11-31.

Other Provisions:

The court shall order proof of installation and periodic reporting by the person for proper verification of the device, and require the person to have the system monitored for proper use and accuracy at least semiannually. Miss. Code Ann. §63-11-31.

Sobriety Checkpoints:

Permitted or Prohibited:

Permitted. See e.g. *Graham v. State*, 878 So.2d 162 (Miss.App. 2004).

Homicide by Vehicle:

State Has Such a Law:
Imprisonment/Fine:

Yes – Felony. Miss. Code Ann. §63-11-30(5).

Not less than **5 years** or more than **25 years** and may be fined not more than **\$10,000**. Miss. Code Ann. §§63-11-30(5); 99-19-32.

Mandatory Minimum Term/Fine:

None

Authorized Licensing Action:
 Length of Term of Licensing Withdrawal:
 Mandatory Minimum License Withdrawal:
 Other:

Revocation. Miss. Code Ann. §63-1-51(1)(a).
1 year. Miss. Code Ann. §63-1-51(1)(a).
1 year. Miss. Code Ann. §63-1-51(1).

DWI Offenses and Commercial Motor Vehicles (CMV):

A person's privilege to operate a CMV is "suspended" for 1 mandatory year (3 years if transporting hazardous materials) if the person's license or permit to drive has been administratively suspended or, while driving a CMV, that person: (1) has a BAC/BrAC/UrAC \geq .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 a subsequent violation or 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.
 Miss. Code Ann. §§63-1-216; 63-11-30(1)(d).

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

Misdemeanor. Miss. Code Ann. §63-11-40.
 Not less than **48 hours** or more than **6 months** and not less than **\$200** or more than **\$500**. Miss. Code Ann. §63-11-40.
48 hours

Mandatory Minimum Fine/Imprisonment Term:

Administrative Licensing Action Type:
 Withdrawal Action:

Suspension
6-month suspension added to the original suspension period.
 Miss. Code Ann. §63-11-40.
 This term is mandatory.

Mandatory Term of License Withdrawal Action:

Other:

N/A

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Other State Laws Related to Alcohol Use:

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):

Yes. Miss. Code Ann. §63-11-7.

BAC Chemical Test Given to Deceased Driver Killed in Crash:

Yes

BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:

No

BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:

No

BAC Chemical Tests on Persons Involved in

No

Traffic Crashes – State Has Such a Law:

Minimum Age (Years) for Sale/Purchase of Alcohol:

21. Miss. Code Ann. §§67-1-81; 67-3-53(b); 67-3-70(1).

Minimum Age (Years) for Possession/Consumption of Alcohol:

21. There is an employment exemption and an exception for persons 18 or older who: (1) are in the military and possess/consume light wine or beer on military property; and (2) possess/consume light wine or beer with the consent of and in the presence of his/her spouse or legal guardian. Miss. Code Ann. §67-1-81; 67-3-54.

Dram Shop and Social Host Laws:

State Has a Dram Shop Law (Yes/No):
"Dram Shop Law" 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. Miss. Code Ann. §§67-3-53(b); 67-3-73(2), (4).
Yes. *Munford, Inc. v. Peterson*, 368 So.2d 213 (Miss. 1979).

Dram Shop Actions – Social Hosts:

Yes – Limited. A social host cannot be held liable if he provides alcoholic beverages to a person who may lawfully consume such beverages. Miss. Code Ann. §67-3-73(3). Any person who gives or furnishes alcohol to a minor or visibly or noticeably intoxicated person or habitual drunkard shall be guilty of a misdemeanor and punished by a fine of not more than \$500 and/or imprisonment for not more than 6 months. This does not include a spouse or legal guardian who is present when the person (18 or older) possesses or consumes light wine or beer, or if such person is in the military and on military property. Miss. Code Ann. §§67-3-54; 67-3-69.

Social Host – Criminal Enforcement:

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Misdemeanor. Miss. Code Ann. §§67-1-83; 67-3-53(b); 67-3-69.

Imprisonment/Fine:

Not more than **6 months** and/or not more than **\$500**.
Miss. Code Ann. §67-1-83.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Revocation or suspension. Miss. Code Ann. §§67-1-83; 67-3-69.

Length of Term of License Withdrawal:

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Misdemeanor. Miss. Code Ann. §§67-1-81; 67-3-53.
Alcoholic beverages (4 percent or more alcohol by weight):
First offense – Not less than **\$500** or more than **\$1,000**;
Second or subsequent offense – Not more than **1 year** and/or

Imprisonment/Fine:

not less than **\$1,000** or more than **\$2,000**. Miss. Code Ann. § 67-1-81.

Beer and light wine – Not more than **6 months** and/or not more than **\$500**. Miss. Code Ann. §§67-1-81; 67-3-53; 67-3-69.

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

Yes – Revocation or suspension.

Note.⁴⁵¹

Alcoholic beverages (4 percent or more alcohol by weight):
First offense – **Revocation** (no time period specified);
Second or subsequent offense – **Permanent revocation**.
Miss. Code Ann. §§67-1-71; 67-1-81.

Beer and light wine: Holder of permit/employee of holder of permit:

First offense – A fine of not less than **\$500** or more than **\$1,000** and/or **suspension** for not more than **3 months**;

Second offense (within 12 months) – Not less than **\$500** or more than **\$2,000** and/or **suspension** for not more than **6 months**;

Third offense (within 12 months of the first) – Not less than **\$2,000** or more than **\$5,000** and/or **suspension or revocation** of the permit to sell beer or light wine. Miss. Code Ann. §67-3-69(3).

Holder of permit (brewpub):

First offense – Not more than **\$500**;

Second offense (within 12 months) – Not more than **\$1,000**;

Third offense (within 12 months of the first) – Not more than **\$5,000** and **suspension** for **30 days**. Miss. Code Ann. §67-3-69(5).

Anti-Happy Hour Laws/Regulations:

No

Open Container Laws:

Open Container Law (Yes/No):

No.⁴⁵²

Anti-Consumption Law (Yes/No):

No

Alcohol Exclusion Law (UPPL):

Yes. Miss. Code Ann. §83-9-5(2)(h)

⁴⁵¹ These terms are in addition to any other provision provided by law. Conceivably, a holder/employee of the permit holder may be jailed/imprisoned, fined twice and have his license suspended or revoked.

⁴⁵² However, under Miss. Code Ann. §67-3-65, a local government may regulate or prohibit the possession of open containers of beer or light wine by an individual while operating or riding in a motor vehicle. See MS AG Op. Atty. Gen. No. 1999-0264 (Phillips, July 2, 1999) (1999 WL 791692).

STATE

MISSOURI⁴⁵³

General Reference:

Missouri Statutes Annotated (V.A.M.S.)

Basis for a DWI Charge:

Standard DWI Offense:

Driving while intoxicated. V.A.M.S. §577.010.

Driving with excessive blood alcohol content.

V.A.M.S. §577.012.

Illegal Per Se Law (BAC/BrAC):

≥ .08.⁴⁵⁴ V.A.M.S. §577.012.

Presumption (BAC/BrAC):

.08 is *prima facie* evidence of intoxication V.A.M.S. §577.037.

For “driving while intoxicated” the person need only operate a motor vehicle in an “intoxicated or drugged condition.”

V.A.M.S. §577.010.

Types of Drugs/Drugs and Alcohol:

Drugged Condition. V.A.M.S. §577.010.

Other:

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

Yes. V.A.M.S. §577.021.3.

Implied Consent Law:

Yes. V.A.M.S. §577.020.1

Arrest Required (Yes/No):

Yes. V.A.M.S. §577.020.1(1).

Exceptions⁴⁵⁵: (1) Reasonable grounds for belief is sufficient for persons under age 21; (2) A person was involved in a motor vehicle collision which resulted in a fatality, a readily apparent serious physical injury, or serious physical injury.

V.A.M.S. §577.020.1.

Implied Consent Law Applies to Drugs

Yes. V.A.M.S. §577.020.1.

(Yes/No):

Refusal to Submit to Chemical Test

Yes. V.A.M.S. §577.041.1 (Criminal cases).

Admitted into Evidence:

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the

Implied Consent Law:

Blood:

Yes. V.A.M.S. §577.020.1.

Urine:

Yes. V.A.M.S. §577.020.1.

Other:

Saliva. V.A.M.S. §577.020.1.

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea-Bargaining Statute (Yes/No):

No

⁴⁵³ Effective January 1, 2017 a majority of the applicable Missouri code sections will be amended or merged with existing code sections and/or re-numbered.

⁴⁵⁴ 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. V.A.M.S. §§577.012.1,2; 577.037.2.

⁴⁵⁵ However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

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

Sanctions for Refusal to Submit to a

Chemical Test:

Refusal to Take a Preliminary Breath Test - **N/A**
Criminal Sanction (Fine/Jail):

Refusal to Take a Preliminary Breath Test – **N/A**
Administrative Licensing Action
(Susp/Rev):

Preliminary Breath Test – Other:

Refusal to Take Implied Consent Chemical **None**
Test – Criminal Sanction (Fine/Jail):

Refusal to Take Implied Consent Chemical
Test - Administrative Licensing Action
(Susp/Rev):

Implied Consent Chemical Test - Other:

First Refusal – Revocation 1 year (90 days mand);
Second or subsequent refusal (within 5 years) – **Revocation 1 year** (mand). V.A.M.S. §§302.309.3(6)(e), (f); 577.041.
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 $\geq .15$, or the person is determined to be a prior or persistent offender. V.A.M.S. §577.041.7.
If a person has had a prior alcohol related offense ignition interlock must be installed as a condition of license reinstatement and maintained thereafter for a period of not less than 6 months. V.A.M.S. §577.041.11.

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine:

First offense (Class B Misdemeanor) – Not more than **6 months** and/or not more than **\$500**;
Prior offender⁴⁵⁶ (Class A Misdemeanor) – Not more than **1 year** and/or not more than **\$1,000**;
Persistent offender (Class D Felony) – Not more than **4 years** or not more than **1 year** in the county jail and/or not more than **\$5,000**;
Aggravated offender (Class C Felony) – Not more than **7 years** or not more than **1 year** in the county jail and/or not more than **\$5,000**;
Chronic offender (Class B Felony) – Not less than **5 years** or more than **15 years**.
V.A.M.S. §§557.011; 558.011; 560.011; 560.016; 577.010; 577.012; 577.023.
Assault in 2nd degree (Class C Felony) – Not more than **7**

⁴⁵⁶ A “prior offender” means a person who has had one previous alcohol related driving offense conviction within 5 years of the presently charged offense. A “persistent offender” means a person who has had two or more alcohol related driving offense convictions or a vehicular homicide/assault conviction. An “aggravated offender” means a person who has had three or more alcohol related driving offense convictions or one or more vehicular homicide/assault convictions where alcohol was involved. A “chronic offender” means a person who has had: (1) four or more alcohol related driving offense convictions; (2) two or more vehicular homicide/assault convictions where alcohol was involved; or (3) two or more alcohol related driving offense convictions and any vehicular homicide/assault conviction. V.A.M.S. §577.023.1.

Mandatory Minimum Term/Fine:	<p>years or not more than 1 year in the county jail and/or not more than \$5,000. V.A.M.S. §565.060.1(4). <u>First offense</u> – None; <u>First offense BAC ≥ .15 to .20</u> – 48 hours; <u>First offense BAC > .20</u> – 5 days; <u>Prior offender</u> – 10 days; <u>Persistent offender</u> – 30 days; <u>Aggravated offender</u> – 60 days; <u>Chronic offender</u> – 2 years. V.A.M.S. §§558.011; 560.011; 577.023.6; §577.010</p>
Community Service:	<p>The court may order 30 days involving at least 240 hours for a “prior offender” or 60 days involving at least 480 hours for a “persistent offender.” If ordered, community service must be a condition of parole or probation. V.A.M.S. §577.023.6.</p>
Child Endangerment:	<p>It is a class A misdemeanor to drive under the influence with a child under age 17. Punishment is not more than 1 year and/or not more than \$1,000. V.A.M.S. §§568.050; 558.011; 560.016.</p>
Restitution:	<p>A victim's compensation fund is available. Additionally, a court may order direct compensation by defendants to victims. V.A.M.S. §§559.100; 595.010, <i>et seq</i>; 595.200.</p>
Other:	<p>A first offender may be granted a suspended imposition of sentence so long as that person is placed on probation for a minimum of 2 years. However, no person with a BAC ≥ .15 shall be granted a suspended imposition of sentence unless the person participates and successfully completes a DWI court or other court-ordered treatment. V.A.M.S. §577.010.2, 3</p>

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:	<p>Yes, ≥ .08; ≥ .02 (persons under 21). V.A.M.S. §§302.309.3(5); 302.505. <u>First Violation</u> – Suspension 30 days ⁴⁵⁷ with a limited license for an additional 60 days provided there has been no prior “alcohol related enforcement contact”⁴⁵⁸ within 5 years. <i>However</i>, if such person files proof of ignition interlock installation, there shall be no suspension period, but such person shall complete a 90-day period of restricted driving; <u>Subsequent Violation</u> (within 5 years) – Revocation 1 year (mand). Restricted driving privileges may be granted pending the outcome of a trial de novo in the courts on an admin. per se action. V.A.M.S. §§302.309.3(5); 302.525.2(1); 302.535.</p>
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Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):	Suspension or Revocation. V.A.M.S. §§302.060; 302.302;
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⁴⁵⁷ Any period of administrative 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. The total license suspension/revocation period shall not exceed the longer of the two periods. V.A.M.S. §302.525.4.

⁴⁵⁸ The term “alcohol-related enforcement contact” shall include suspension or revocation under an admin per se action, any suspension/revocation for a refusal to submit to a chemical test under the implied consent law; and any conviction for the offense of driving with an unlawful alcohol concentration. V.A.M.S. §302.525.3.

Term of Withdrawal: 302.304.
First offense – **Suspension 30 days** (plus 60 days restricted driving privileges),⁴⁵⁹ unless such person files proof of ignition interlock installation, then there shall be **no** suspension period, but a **90-day** period of restricted driving. V.A.M.S. §302.304.5;
Second offense (within 5 years) of violating the laws related to driving while intoxicated – **5 years**; V.A.M.S. §302.060.1(10).
Third or subsequent offense – **10 years**. V.A.M.S. § 302.060.1(9).

Mandatory Minimum Term of Revocation: **Persons Under 21:**
First offense – **Suspension 90 days**;
Second or subsequent offense – **Revocation 1 year**. V.A.M.S. §§577.500.6; 577.510.
First offense – **30 days** (or **no suspension** if ignition interlock);
Second offense (within 5 years) – **2 years**;
Third or subsequent offense – **10 years**. 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. V.A.M.S. §§302.060.9; 302.304.5; 302.309.9.

Alcohol Education: **Yes**. Required for persons under 21 who have committed an alcohol offense. V.A.M.S. §577.525.

Upon a plea of guilty or finding of guilt for a DWI, the court shall order the person to participate in and successfully complete a substance abuse traffic offender program. V.A.M.S. §577.049.1.

Substance Abuse Treatment: **Yes**
 Vehicle Impoundment/Confiscation: **Impoundment/Forfeiture:** Under V.A.M.S. §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 the driver has had one or more intoxicated related traffic offense convictions (including illegal per se) and 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 has a BAC/BrAC ≥ .08 (≥ .02 if < 21) or refuses to submit to chemical test under

⁴⁵⁹ Under V.A.M.S. §302.304.5, 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 V.A.M.S. §302.309.3(2), a court or the licensing agency may grant limited driving privileges for employment, educational or medical reasons after the 30-day mandatory period.

Authorized by Specific Statutory Authority:
Terms Upon Which Vehicle Will Be Released:

the implied consent law.
III. The above actions apply to the vehicle operated by the offender irrespective of its ownership. V.A.M.S. §82.1000
Yes

When a non-operator owner/co-owner (not previously been the operator or owner of a motor vehicle subject to forfeiture) pays all associated costs of towing, storage and impoundment, the vehicle may be released, upon execution of a written agreement stipulating and consenting to the seizure and forfeiture of such vehicle if it is subsequently operated by the same operator under circumstances which would allow forfeiture. V.A.M.S. §82.1000.5.

Other Miscellaneous Sanctions:

DWI Enforcement Cost: A court may require a person convicted of a DWI offense to reimburse the State or local governments for the costs associated with the person's DWI arrest. V.A.M.S. §488.5334.

Ignition Interlock:

Permitted or Prohibited:

Type of Law (Mandatory or Permissive):
Sanction (Judicial, Administrative or Hybrid)

Conditions of Use:

Permitted. V.A.M.S. §§577.041.10; 577.604.

Mandatory

Hybrid

Second or subsequent offender – The court must require such person to only operate motor vehicles equipped with an ignition interlock device for not less than 6 months following license reinstatement. V.A.M.S. §577.041.10.

The court shall require the use of an ignition interlock device during the period of probation if the person is permitted to operate a motor vehicle, whether the privilege to operate a motor vehicle is restricted or not, as determined by the court. V.A.M.S. §577.604.

Other Provisions:

Such a requirement is mandatory as a condition for granting limited (hardship) driving privileges under V.A.M.S. §302.309 for subsequent offenders. V.A.M.S. §577.600.

Sobriety Checkpoints:

Permitted or Prohibited

Permitted. *State v. Welch*, 755 S.W.2d 624 (Mo.App. W.D. 1988).

Homicide by Vehicle:

State Has Such a Law:

Yes.

Death to any person – **Class C felony.**

V.A.M.S. §565.024.1(2), .2;

Death to any person not a passenger, to two or more persons, or while BAC is at least 0.18 – **Class B felony.**

V.A.M.S. §565.024.1(3).

Imprisonment/Fine:

Class B felony – Not less than **5 years** or more than **15 years.**

Class C felony – Not more than **7 years** and/or not more than **\$5,000.** V.A.M.S. §§558.011.1(2); 560.011.1(1).

Mandatory Minimum Term/Fine:

Class B felony – **5 years.**

Authorized Licensing Action:
 Length of Term of Licensing Withdrawal:
 Mandatory Minimum License Withdrawal:
 Other:

Revocation. V.A.M.S. §302.060.1(10).
5 years. V.A.M.S. §302.060.1(10).
5 years. V.A.M.S. §302.060.1(10).
N/A

DWI Offenses and Commercial Motor Vehicles (CMV):

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 a subsequent violation or a combination of two or more violations of any of the above listed items, the “disqualification” is for life (10 years mand). V.A.M.S. §§302.750.2; 302.755.

In addition, a CMV operator who has any “measurable” amount of alcohol in the system must be placed “out-of-service” for 24 hours. V.A.M.S. §302.750.2

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. V.A.M.S. §302.780.1(2), (3). The sanctions for this offense are imprisonment for not more than 6 months and/or a fine of not more than \$500. V.A.M.S. §§558.011; 560.016.

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

First offense (misdemeanor) – Fine not more than \$300;
Second or third offense – Not more than **1 year** and/or fine not more than **\$1000**;
Fourth or subsequent offense (with prior alcohol-related enforcement contact or without alcohol related enforcement contact) (within 10 years) (Class D felony) – Not more than **4 years** or not more than **1 year** in the county jail and/or not more than **\$5,000**. V.A.M.S. §§302.321.2; 558.011; 560.011.

Mandatory Minimum Fine/Imprisonment Term:

48 consecutive hours (In lieu of imprisonment, the defendant may perform at least 10 days involving at least 40 hours of community service.) V.A.M.S. §302.321.

Administrative Licensing Action Type:

Revocation. Under the point system – 12 points. V.A.M.S. §302.302.1(6).

Withdrawal Action:

1 year. V.A.M.S. §302.304.7.

Mandatory Term of License Withdrawal Action:

None

Other:

Restricted hardship driving privileges may be granted. V.A.M.S. §302.309.3.

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

No

Other State Laws Related to Alcohol Use:

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No): **Yes.** V.A.M.S. §58.445.

BAC Chemical Test Given to Deceased Driver Killed in Crash: **Yes** V.A.M.S. §58.445.

BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash: **Yes** V.A.M.S. §58.445.

BAC Chemical Test Given to Deceased Pedestrian Killed in Crash: **Yes** V.A.M.S. §58.445.

BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law: Yes, if the crash resulted in a fatality or serious physical injury. V.A.M.S. §577.021.2.

Minimum Age (Years) for Sale/Purchase of Alcohol: **21.** V.A.M.S. §§311.310; 311.325.

Minimum Age (Years) for Possession/Consumption of Alcohol: **21.** Exceptions to culinary students 18 or older, or persons 18 or older employed and handling beer or liquor. V.A.M.S. §§311.310; 311.325.

Dram Shop and Social Host Laws:

State Has a Dram Shop Law (Yes/No): **Yes** – limited to persons who knowingly sell alcohol to underage minors or persons visibly intoxicated. V.A.M.S. §537.053.

"Dram Shop Law" 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.** *Andres v. Alpha Kappa Lambda Fraternity*, 730 S.W.2d 547 (Mo. 1987).

Social Host – Criminal Enforcement: Any owner, occupant or person or legal entity with lawful right to exclusive use and enjoyment of any property who knowingly allows a person under 21 to drink or possess intoxicating liquor in any quantity, or knowingly fails to stop such underage person from drinking or possessing intoxicating liquor on that property, unless such person is his or her parent or guardian, is guilty of a class B misdemeanor, punishable by imprisonment not to exceed 6 months and/or a fine not to exceed \$500. A second or subsequent violation constitutes a class A misdemeanor, punishable by imprisonment not to exceed 1 year and/or a fine not to exceed \$1,000. V.A.M.S. §§311.310.2; 558.011; 560.016.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action: **Misdemeanor.** V.A.M.S. §§311.310.1.

Imprisonment/Fine: Not more than **1 year** and/or not less than **\$50** or more than **\$1,000.** V.A.M.S. §311.880.

Administrative Actions Regarding

Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Revocation. V.A.M.S. §311.720.

Length of Term of License Withdrawal:

Alcoholic beverages over 0.5 percent alcohol by weight:
Length of revocation is not specified in the statute.
V.A.M.S. §§311.720; 311.020.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under theLegal Drinking Age:

Type of Criminal Action:

Misdemeanor. V.A.M.S. §§311.310.

Imprisonment/Fine:

Not more than **1 year** and/or not less than **\$50** or more than **\$1,000**.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Revocation. V.A.M.S. §311.720.

Length of Term License Withdrawal:

Alcoholic beverages over 0.5 percent alcohol by weight:
Length of revocation is not specified in the statute.
V.A.M.S. §§311.720; 311.020.

Anti-Happy Hour Laws/Regulations:

No

Open Container Laws:

Open Container Law (Yes/No):

No statutory provisions.⁴⁶⁰

Anti-Consumption Law (Yes/No):

Yes. No person shall consume alcohol while operating a motor vehicle. V.A.M.S. §577.017.

Alcohol Exclusion Law (UPPL):

Yes. V.A.M.S. §376.777.2(11).

⁴⁶⁰ However, the majority of localities have enacted ordinances that prohibit drinking in public. In addition, by virtue of the anti-consumption law, the open container law would likely be in existence to some extent. See e.g., V.A.M.S. §311.101 (discussing the circumstances under which an open bottle of wine from a restaurant would not be unlawful in a vehicle).

STATE

General Reference:

MONTANA

Montana Code Annotated (MCA)

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC/BrAC):

Types of Drugs/Drugs and Alcohol:

Under the influence of alcohol⁴⁶¹. MCA §61-8-401(1)(a).
 ≥ **.08**.⁴⁶² MCA §61-8-406(1)(a).

Persons Under 21 – ≥ .02. MCA §61-8-410.

≥ **.08** – A rebuttable inference. MCA §61-8-401(4)(c).

Under the influence of alcohol, any drug, a dangerous drug, or alcohol and any dangerous or other drug. MCA §61-8-401(1).

While the person's delta-9-tetrahydrocannabinol level is 5 Ng/mL or more as shown by blood level analysis. MCA §61-8-411.

Other:

BAC > **.04** to < **.08** – no inference, but may be considered as evidence. MCA §61-8-401(4)(b).

< **.04** – inference that the person was not under the influence of alcohol. MCA §61-8-401(4)(a).

Chemical Breath Tests AlcoholConcentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Yes.⁴⁶³ MCA §61-8-409.

Yes. MCA §61-8-402.

Yes. MCA §61-8-402(2)(a)(i).

Exceptions⁴⁶⁴: the officer has probable cause to believe (1) the person has been involved in a motor vehicle accident or collision resulting in property damage; (2) involved in a motor vehicle accident or collision resulting in serious bodily injury or death; or (3) the person has committed aggravated DUI as defined in MCA § 61–8–465. MCA § 61–8–401(2)(a)(iii).

Implied Consent Law Applies to Drugs

(Yes/No):

Refusal to Submit to Chemical Test Admitted into Evidence:

Other Information:

Yes. MCA §61-8-402(1).

Yes – Criminal Cases. MCA §61-8-404(2).

The standard for a PBT test is “particularized suspicion.” MCA §61-8-409.

Non-Breath Chemical Tests for Alcohol

⁴⁶¹ “Under the influence” means “that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.” MCA §61-8-401(3)(a).

⁴⁶² The standards for “alcohol concentration” are grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. MCA §61-8-407.

⁴⁶³ The results of a PBT test may be used as evidence in a DUI trial. MCA §61-8-404(1).

⁴⁶⁴ However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court's decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

Concentration Authorized Under the Implied Consent Law:

Blood: **Yes.** MCA §61-8-402(1).
 Urine: **No**
 Other: **None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No** – But a DWI offender is not eligible for pretrial diversion. MCA §46-16-130(4).
 Anti-Plea-Bargaining Statute (Yes/No): **No**
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes** – discretionary. But for any crime carrying a sentence of incarceration for more than 1 year, a pre-sentence investigation shall be completed. MCA §§61-8-732(2); 46-18-111(2).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **No**
 Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **Suspension up to 1 year.** MCA §61-8-409(3).
 Preliminary Breath Test – Other: **N/A**
 Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**
 Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev): **First refusal– Suspension 6 months** (mand) MCA §61-8-402(8)(a)(i).;
Second or subsequent refusal (within 5 years) – **Revocation 1 year** (mand). MCA §61-8-402(8)(a)(ii).
 Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine: **DUI** (misdemeanor):
First conviction– Not less than **24 consecutive hours** or more than **6 months** and not less than **\$600** or more than **\$1,000**;
Second conviction – Not less than **7 days** or more than **1 year** and not less than **\$1,200** or more than **\$2,000**;
Third conviction – Not less than **30 days** or more than **1 year** and not less than **\$2,500** or more than **\$5,000**;
Fourth or subsequent conviction (felony) – Not less than **13 months or more than 2 years** and not less than **\$5,000** or more than **\$10,000**.
 MCA §61-8-714(1)(a), (2)(a), (3)(a), (4); 61-8-731.

Excessive BAC/delta-9-tetrahydrocannabinol level (misdemeanor):

First conviction – Not more than **6 months** and not less than **\$1,200** or more than **\$2,000**;
Second conviction – Not less than **5 days** or more than **1**

year and not less than **\$1,200** or more than **\$2,000**;
Third conviction– Not less than **30 days**⁴⁶⁵ or more than **1 year** and not less than **\$2,500** or more than **\$5,000**;
Fourth or subsequent conviction (felony) – Not less than **13 months** or more than **5 years** and not less than **\$5,000** or more than **\$10,000**. MCA §§61-8-722(1), (2)(a), (3)(a), (4); 61-8-731(3).

Negligent Vehicle Assault (misdemeanor):⁴⁶⁶ Not more than **1 year** and/or not more than **\$1,000**. MCA §45-5-205(2).

Negligent Vehicle Assault (felony) – Not more than **10 years** and/or not more than **\$10,000**. MCA §45-5-205(3).

Mandatory Minimum Term/Fine:

DUI:

First conviction – **24 consecutive hours**;

Second conviction – **5 days**;

Third conviction – **10 days**;

Fourth or subsequent conviction – **13 months**.

MCA §§61-8-714; 61-8-731.

Excessive BAC/delta-9-tetrahydrocannabinol:

First conviction – **None**;

Second conviction – **5 days**;

Third conviction – **30 days**;

Fourth or subsequent conviction – **13 months**.

MCA §§61-8-722; 61-8-731.

DUI - Person < 21 (BAC ≥ .02):

First conviction – Not less than **\$100** or more than **\$500**;

Second conviction – Not less than **\$200** or more than **\$500**

and not more than **10 days** (if offender > 18);

Third or subsequent conviction – Not less than \$300 or more than \$500 and not less than 24 hours or more than 60 days (if offender > 18). MCA §§61-8-410(2)-(4).

Yes – Imposed as part of deferred sentencing.

MCA §46-18-201(4)(j).

Community Service:

DUI with Passenger < 16:

First conviction – Not less than **48 consecutive hours** or more than **1 year** and not less than **\$1,200** or more than **\$2,000**.

Second conviction – Not less than **14 days** or more than **1 year** and not less than **\$2,400** or more than **\$4,000**;

Third conviction – Not less than **60 days** or more than **1**

Child Endangerment:

⁴⁶⁵ For a second or third offense, the mandatory minimum shall be served in the county jail and not on home arrest. This may not be suspended unless a judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being. The remainder of the sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependence program. MCA §61-8-722(2), (3).

⁴⁶⁶ 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; a person commits a felony by causing serious bodily injury.

year and not less than **\$5,000** or more than **\$10,000**.
MCA §§61-8-714(1)(a), (2)(a), (3)(a).

Excessive BAC/delta-9-tetrahydrocannabinol with Passenger < 16:

First conviction – Not more than **6 months** and not less than **\$1200** or more than **\$2,000**;

Second conviction – Not less than **10 days** or more than **1 year** and not less than **\$2,400** or more than **\$4,000**;

Third conviction – Not less than **60 days** or more than **1 year** and not less than **\$5,000** or more than **\$10,000**.

MCA §61-8-722(1), (2)(a), (3)(a);61-8-714.

Restitution:

Yes.

I. 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 financially unable to pay restitution. MCA §§46-18-201(5); 46-18-241(1), (3).

II. A victim also can receive compensation from the State's Victims' Compensation Fund. MCA §53-9-101, *et seq.*

III. Persons convicted of serious bodily negligent vehicle assault shall be ordered to pay restitution. MCA §§45-5-205(3); 46-18-241.

Other:

Surcharges: **\$15** for any misdemeanor offense; **\$20** or 10% of the fine imposed, whichever is greater, for any felony offense; and **\$50** for any DUI/Excessive BAC offense. These surcharges are in addition to any fine sanction. MCA §46-18-236(1), (3).

When deferring imposition of sentence or suspending all or a portion of execution of sentence, the judge may require participation in the sobriety program for a second or subsequent violation. MCA §46-18-201(4)(o).

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

The law only provides for administrative sanctions after a refusal or conviction.

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Suspension or **Revocation**. MCA §§61-5-205(4)(b); 61-5-208.

Term of Withdrawal:

DUI/Excessive BAC/delta-9-tetrahydrocannabinol:

First offense – Suspension **6 months**;

Second offense (within 10 years) – Suspension **1 year**;

Third or subsequent offense – Suspension **1 year**.

MCA §§61-5-208(2)(b)(i)(iii); 61-8-734(1)(b).

Negligent Vehicle Assault – Revocation **1 year**.

MCA §§61-5-205(1)(f), (3).

Person < 21:

First offense – Suspension **90 days**;
Second offense – Suspension **6 months**;
Third offense – Suspension **1 year**.
MCA §61-8-410(5)(a), (b).

Mandatory Minimum Term of Revocation:

DUI/Excessive BAC/delta-9-tetrahydrocannabinol:
First offense – None;
Second offense (within 10 years) – 1 year unless the offender completes at least 45 days of the suspension & the report of conviction includes a recommendation by the court that a probationary driver’s license be issued;
Third or subsequent offense– 1 year unless the offender completes at least 90 days of the suspension & the report of conviction includes a recommendation by the court that a probationary driver’s license be issued. MCA §§61-5-205(3); 61-5-208(2)(b)(i)-(iii).

Negligent Vehicle Assault – 1 year. MCA §§61-5-205(1)(f), (3).

Person < 21: The periods of suspension shall last until the offender pays a reinstatement fee. If, however the offender is < 18, 30 days of the suspension are mandatory. MCA §61-8-410(5)(b).

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

Yes. MCA §61-8-714(1)(c).
Yes. MCA §61-8-732(1)(a)-(c).
Vehicle Seizure/Forfeiture. MCA §61-8-733(1)(c).
For a second or subsequent **DUI/BAC/delta-9-tetrahydrocannabinol** conviction or a suspension because of refusal, the court shall order that each motor vehicle owned by the person at the time of the offense be seized and subject to forfeiture. MCA §61-8-733(1)(c).
If the court grants a probationary license, then the vehicle seized shall be equipped with an ignition interlock device, but shall not be forfeited. MCA §61-8-733(1)(a).

Terms Upon Which Vehicle Will Be Released:

Other Miscellaneous Sanctions:

Ignition Interlock:
Permitted or Prohibited:
Type of Law (Mandatory or Permissive):
Sanction (Judicial, Administrative or Hybrid)
Conditions of Use:

Permitted. MCA §§61-8-442; 61-8-731.
Both
Hybrid
First conviction – If a probationary license is granted, a court may restrict the person to drive only a motor vehicle equipped with an ignition interlock device;
Second or subsequent conviction – If a probationary license is granted the court shall restrict the person to drive only a motor vehicle equipped with an ignition interlock device. MCA §§61-8-442(1)(a), (2)(a); 61-8-731(4)(h).
The administration shall determine the length of time in which the ignition interlock device shall be installed. MCA §61-8-442(4).

Other Provisions:

Sobriety Checkpoints:

Permitted or Prohibited:

Prohibited. MCA §46-5-502. The specificity of this statute indicates sobriety checkpoints are not permitted. However, it permits the establishment of temporary roadblocks for the purpose of apprehending persons wanted for violations of the law, identifying drivers, checking for driver's licenses, vehicle registration, and insurance.

Homicide by Vehicle:

State Has Such a Law:

Yes. Vehicular homicide while under the influence.
MCA §45-5-106.

Imprisonment/Fine:

Not more than **30 years** and/or not more than **\$50,000**.

Mandatory Minimum Term/Fine:

There is a mandatory term, as the imposition of the sentence cannot be deferred. The specific term, however, is not listed.
MCA §45-5-106(3).

Authorized Licensing Action:

Revocation. MCA §61-5-205(1)(a).

Length of Term of Licensing Withdrawal:

1 year MCA §61-5-205(3).

Mandatory Minimum License Withdrawal:

1 year MCA §61-5-205(3).

Other:

DWI Offenses and Commercial Motor Vehicles (CMV):

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: (1) has an alcohol concentration $\geq .04$; (2) is convicted of violating the drunk driving laws (MCA §§61-8-401; 61-8-406); or (3) refuses to submit to a chemical test for an alcohol concentration.
MCA §§61-5-208(4); 61-8-802(1)(a); 61-8-805(1)(a); 61-8-806(5)(a), (b).

For a subsequent violation of operating a CMV with an alcohol concentration $\geq .04$, the "suspension" is for life with 10 years mandatory as may be allowed by Federal regulations. MCA §61-8-805(1)(b).

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. MCA §61-8-806(5)(b).

For a second DUI offense conviction associated with operating a CMV, the suspension is for life with 10 years mandatory, except as allowed by Federal regulations. MCA §61-8-802(1)(b).

A person who operates a CMV with any measurable amount or detected presence of alcohol must be placed out-of-service for 24 hours. MCA §61-8-805(2).

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

Misdemeanor. Not less than **2 days** or more than **6 months**

Mandatory Minimum Fine/Imprisonment Term:	and/or not more than \$2,000 . MCA §61-5-212(b)(ii). 2 days
Administrative Licensing Action Type:	Suspension or revocation.
Withdrawal Action:	Suspension/revocation extended for an additional year. MCA §61-5-212(2)(a).
Mandatory Term of License Withdrawal Action:	
Other:	I. The court may order an offender to perform up to 40 hours of community service. MCA §61-5-212(1)(b)(ii). II. The vehicle must be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for 30 days. MCA §61-5-212(3).
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	Yes. MCA §61-11-201, <i>et seq.</i>
Grounds for Being Declared Habitual Offender:	Accumulation of 30 or more conviction points ⁴⁶⁷ in a 3-year period. MCA §61-11-203(1)(b).
Term of License Revocations While on Habitual Offender Status:	Revocation 3 years. MCA §§61-11-211; 61-11-212.
Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status:	Misdemeanor. MCA §61-11-213.
Imprisonment (Term):	Not less than 14 days nor more than 1 year and/or not more than \$1,000 . MCA §61-11-213.
Mandatory Minimum Term/Fine: Licensing Action (Specify):	It appears that the 14 days is mandatory. Revocation extended for an additional period of 1 year . MCA §61-11-213.
<u>Other State Laws Related to Alcohol Use:</u>	
BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	No
BAC Chemical Test Given to Deceased Driver Killed in Crash:	N/A
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	N/A
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	N/A
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes. MCA §61-8-402(2)(a)(iii)(B).
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. MCA §§16-3-301(4)(a), (5); 16-6-305(1).
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. MCA §45-5-624(1).
<u>Dram Shop and Social Host Laws:</u>	

⁴⁶⁷ See MCA §61-11-203(2) for a list of point accumulations.

State Has a Dram Shop Law (Yes/No): **Yes.** Limited to persons under the legal drinking age, those who are visibly intoxicated, and forced or coerced consumption or trickery. MCA §27-1-710(3)(a)-(c).

"Dram Shop Law" 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.** *Rohlfs v. Klemenhausen, LLC*, 227 P.3d 42 (Mont. 2009).

Dram Shop Actions – Social Hosts: **Yes.** Limited to situations where the consumer was under the legal age or the furnishing of alcohol was accomplished by force, coercion or trickery. MCA §27-1-710(5)(a), (b).

Social Host – Criminal Enforcement: A parent, guardian or any person age 18 or older who knowingly contributes to the delinquency of a child by supplying or encouraging the use of an intoxicating substance by a child (under age 18) may be found guilty of endangering the welfare of a child, punishable by not more than \$500 and/or jail for not more than 6 months for a first offense. A second conviction results in a fine of not more than \$1,000 and/or imprisonment for not more than 6 months. MCA §45-5-622(2)(a)(i), (5)(a).

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action: **Misdemeanor.** MCA §§16-3-301(4)(b); 16-6-304; 16-6-314; 46-18-212.

Imprisonment/Fine: Not more than **6 months** and/or not more than **\$500**.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes – Suspension or revocation.** MCA §16-4-406.

Length of Term of License Withdrawal: **Suspension** – Not more than **3 months**; **Revocation** – Period of revocation is not specified. MCA §16-4-406. A civil penalty not to exceed **\$1,500** may be imposed. MCA §16-4-406(2)(c), (2)(e).

Other:

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action: **Misdemeanor.** MCA §§16-3-301(4)(a); 16-6-305; 16-6-314.

Imprisonment/Fine: Not more than **6 months** and/or not more than **\$500**. MCA §46-18-212.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes – Suspension or revocation.** MCA §§16-4-406; 16-6-314(2).

Length of Term License Withdrawal: **Suspension** – Not more than **3 months**; **Revocation** – Not specified. MCA §16-4-406.

Other: A civil penalty not to exceed **\$1,500** may be imposed.

MCA §16-4-406(2)(c), (2)(e).

Anti-Happy Hour Laws/Regulations:

No

Open Container Laws:

Open Container Law (Yes/No):

Yes. MCA §61-8-460.

Anti-Consumption Law (Yes/No):

Yes. MCA §61-8-460.

Alcohol Exclusion Law (UPPL):

Yes. MCA §33-22-231.

STATE

General Reference:

NEBRASKA

Revised Statutes of Nebraska (Neb.Rev.St.)

Nebraska Administrative Code (Neb. Admin. R. & Regs.)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of alcoholic liquor. Neb.Rev.St. §60-6,196(1)(a).

Illegal Per Se Law (BAC/BrAC):

≥ **.08**.⁴⁶⁸ Neb.Rev.St. §60-6,196(1)(b), (c).**Persons Under 21** – BAC/BrAC ≥ **.02 but < .08**.

Neb.Rev.St. §60-6,211.01.

Presumption (BAC/BrAC):

None

Types of Drugs/Drugs and Alcohol:

Under the influence of any drug. Neb.Rev.St. §60-6,196(1)(a).

Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

Yes. Neb.Rev.St. §§60-6,197.04; 60-6,211.02(2).

Implied Consent Law:

Yes. Neb.Rev.St. §§60-6,197.

Arrest Required (Yes/No):

Yes.⁴⁶⁹ Neb.Rev.St. §60-6,197(2).

Implied Consent Law Applies to Drugs (Yes/No):

Yes. Neb.Rev.St. 60-6,197(1).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal Cases. Neb.Rev.St. §60-6,197(6).Non-Breath Chemical Tests for AlcoholConcentration Authorized Under theImplied Consent Law:

Blood:

Yes. Neb.Rev.St. §60-6,197(1).

Urine:

Yes. Neb.Rev.St. §60-6,197(1).

Other:

NoneAdjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No. Pretrial diversion of DWI cases is prohibited. Neb.Rev.St. §29-3604.

Anti-Plea-Bargaining Statute (Yes/No):

No

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

Yes. Any person shall submit to and participate in an alcohol assessment during a presentence evaluation. Neb.Rev.St. §60-6,197.08.Sanctions for Refusal to Submit to a Chemical Test:

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

Class V Misdemeanor: A maximum of **\$100 fine**. Neb.Rev.St. §§28-106; 60-6,197(3); 60-6,197.04.

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev):

Revocation 1 year. Neb.Rev.St. §60-498.02.⁴⁶⁸ Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. Neb.Rev.St. §§60-6,196(1); 60-6,211.01.⁴⁶⁹ Probable cause (not an arrest) is needed prior to requesting a person under 21 to submit to a chemical test. Neb.Rev.St. §60-6,211.02(2).

Preliminary Breath Test – Other:	<u>Persons Under 21</u> : A person under 21 who refuses to submit to a preliminary breath test to determine if he/she was driving with a BAC/BrAC \geq .02 may be arrested. Neb.Rev.St. §60-6,211.02(2).
Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	See Sanctions Following a Conviction for a DWI Offense, below. ⁴⁷⁰
Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):	Revocation 1 year. Neb.Rev.St. §60-498.02.
Implied Consent Chemical Test - Other:	Persons Under 21 : A person under 21 who refuses to submit to a chemical test to determine if he/she has BAC/BrAC \geq .02 but $<$.08 commits a Traffic Infraction. Neb.Rev.St. §60-6,211.02(3) Sanctions: <u>First offense</u> – Not more than \$100 ; <u>Second offense</u> (within 1 year) – Not more than \$200 ; <u>Third or subsequent offense</u> (within 1 year) – Not more than \$300 . Neb.Rev.St. §§60-6,211.02(3); 60-689. Admin. Action: 90 days license "impoundment". Restricted driving privileges for employment are available. The driver licensing record for this administrative action must be expunged after 120 days. Neb.Rev.St. §§6,211.02(3); 60-6,211.03
 <u>Criminal Sanctions Following a DWI Conviction:</u>	
Imprisonment/Fine:	<u>First offense</u> (Class W misdemeanor) – Not more than 60 days and not more than \$500 ; <u>Second offense</u> (within 15 years) (Class W misdemeanor) – Not more than 6 months and not more than \$500 ; <u>Third offense</u> (within 15 years) (Class W misdemeanor) – Not more than 1 year and not more than \$1,000 ; <u>Fourth offense</u> (within 15 years) (Class IIIA felony) – Not less than 180 days or more than 3 years and/or not more than \$10,000 ; <u>Fifth or subsequent offense</u> (within 15 years) (Class IIA felony) – Not less than 2 years or more than 20 years and/or not more than \$25,000 ; Neb.Rev.St. §§60-6,197.03; 28-105; 28-106. BAC \geq .15: <u>First offense</u> (Class W misdemeanor) – Not more than 60 days and not more than \$500 ; <u>Second offense</u> (Class I misdemeanor) – Not more than 1 year and/or not more than \$1,000 ;

⁴⁷⁰ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

Third offense (Class IIIA felony) – Not less than **180 days** or more than **3 years** and/or not more than **\$10,000**;

Fourth offense (Class IIA felony) – Not more than **20 years**;

Fifth or subsequent offense (Class IIA felony) – Not more than **20 years**.

Neb.Rev.St. §§28-105; 28-106; 60-6,197.02; 60-6,197.03.

DUI Serious Bodily Injury (Class IIIA Felony) – Not more than **3 years** and/or not more than **\$10,000**.

Neb.Rev.St. §§60-6,198; 28-106.

Persons under 21:

First offense – Not more than **\$100**;

Second offense (within 1 year) – Not more than **\$200**;

Third or subsequent offense (within 1 year) – Not more than **\$300**. Neb.Rev.St. §§60-6,211.02; 60-6,211.03.

Mandatory Sanctions:

Probation/suspension of sentence not granted:

First offense – **\$500/7 days**;

Second offense – **\$500/30 days**;

≥ .15 – **90 days**;

Third offense – **\$1000/90 days**;

≥ .15 – **180 days**. Neb.Rev.St. §§28-106; 60-6,197(4).

Probation/suspension of sentence granted:

First offense – **\$500**;

≥ .15 – **\$500/2 days** or not less than **120 hours** community service;

Second offense – **\$500/5 days** or not less than **240 hours** of community service;

≥ .15 – **\$1,000/30 days**;

Third offense – **\$1,000/30 days**;

≥ .15 – **\$1,000/60 days**;

Fourth offense (within 15 years) – **\$2,000/90 days**;

≥ .15 – **\$2,000/120 days**;

Fifth or subsequent offense – **\$2,000/180 days**;

≥ .15 – **\$2,000/2 years**.

Neb.Rev.St. §§28-106; 60-6,197.03.

Mandatory Minimum Term/Fine:

Community Service:

Except when the violation requires a mandatory minimum sentence, community service may be ordered as an alternative to a fine, in lieu of incarceration, as a condition of probation or in addition to another sentence. Neb.Rev.St. §29-2278. See Neb.Rev.St. §29-2279 for a list of community service period that may be ordered by the court.

Child Endangerment:

N/A

Restitution:

I. A defendant may be ordered to pay restitution to a victim. Neb.Rev.St. §29-2280.

II. Victims' Compensation Fund is available.

Neb.Rev.St. §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. Neb.Rev.St. §60-4,183.

Administrative Sanctions – Pre-Conviction:
Administrative Per Se Law:

Revocation. Neb.Rev.St. §60-498.02.
≥ **.08**.

First violation = **180 days** (mand);
Subsequent violation (within 15 years) = **1 year** (mand).
Neb.Rev.St. §60-498.02.

Administrative Sanctions – Post-Conviction:
Type of Licensing Action (Susp/Rev):
Term of Withdrawal:

Revocation. Neb.Rev.St. §§60-498; 60-6,197.03.

Probation/suspension of sentence not granted:

First offense = 6 months (30 days mand.);
≥ .15 = 1 year (60 days mand.);
Second offense = 18 months (45 days mand.);
≥ .15 = at least 18 months but not more than 15 years (45 days mand.);
Third offense = 15 years;
≥ .15 = 15 years;
Fourth offense = 15 years;
≥ .15 = 15 years;
Fifth or subsequent offense = 15 years;
≥ .15 = 15 years

Probation/suspension of sentence granted:

First offense = 60 days;
≥ .15 = 1 year (unless ignition interlock authorized);
Second offense = 18 months (45 days mand.) (unless ignition interlock authorized);
≥ .15 = at least 18 months but not more than 15 years (45 days mand.) (unless ignition interlock authorized);
Third offense = at least 2 years but not more than 15 years (unless ignition interlock authorized);
≥ .15 = at least 5 years but not more than 15 years (unless ignition interlock authorized);
Fourth offense = 15 years (unless ignition interlock authorized);
≥ .15 = 15 years (unless ignition interlock authorized);
Fifth or subsequent offense = 15 years (unless ignition interlock authorized);
≥ .15 = 15 years (45 days mand.) (unless ignition interlock authorized). Neb.Rev.St. §60-6,197.03.

DUI Serious Bodily Injury: at least 60 days but not more than 15 years. Neb.Rev.St. 60-6,198(1).

Persons under 21: 30 days.
Neb.Rev.St. §§60-6,211.02; 60-6,211.03.

Mandatory Minimum Term of Revocation:
Alcohol Education:

The terms above are mandatory.
Yes. Neb.Rev.St. §60-6,197.08.

<p>Substance Abuse Treatment: Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:</p>	<p>Yes Impoundment; Immobilization. Neb.Rev.St. §60-4,110. Neb.Rev.St. §60-6,197.01(1)(a), (b).</p>
<p>Terms Upon Which Vehicle Will Be Released:</p>	<p>Impoundment: Any motor vehicle impounded shall be released to the holder of a bona fide lien, the title owner when such owner is the lessor, or to the registered owner, registered co-owner, or his spouse upon good cause shown by affidavit that the impounded motor vehicle is essential to the livelihood of such person. Neb.Rev.St. §60-4,110(2)(a)-(c).</p> <p>Immobilization: A co-owner of the vehicle may have the vehicle released to him or her if there is a need to use such vehicle to continue employment or for the well-being of the co-owner’s children or parents. Neb.Rev.St. §60-6,197.01(1)(a)(ii).</p>
<p>Other Miscellaneous Sanctions:</p>	<p>Impoundment: Every motor vehicle, regardless of the registered owner, being operated by a person whose license has been suspended, revoked or impounded because of DUI convictions is declared to be a “public nuisance.” Upon arrest, the motor vehicle shall be impounded for not less than 10 days or more than 30 days. Neb.Rev.St. §60-4,110.</p> <p>Immobilization: A person who has been convicted of either a second or subsequent drunk-driving/implied consent refusal offense must have all of the motor vehicles that person owns “immobilized” for not less than 5 days nor more than 8 months. Neb.Rev.St. §60-6,197.01(1).</p>
<p><u>Ignition Interlock:</u> Permitted or Prohibited:</p>	<p>Permitted. Neb.Rev.St. §§60-6,211.05; 60-6,209; 83-1,127.02; 60-6,197.01(1)(b).</p>
<p>Type of Law (Mandatory or Permissive): Sanction (Judicial, Administrative or Hybrid) Conditions of Use:</p>	<p>Both Judicial If an order of probation is granted after a DUI conviction or admin per se violation, the court may order such defendant to install an ignition interlock device. The court may determine the period of time in which the device shall be used, but shall not exceed the maximum term of revocation that the court could have imposed. Neb.Rev.St. § 60-6,211.05(1), (4)(b).</p> <p>Any person whose license has been revoked for a 3rd or subsequent DUI violation within 15 years may apply for reinstatement of his/her eligibility for license. If such reinstatement is granted, the Board of Pardons may order such person to obtain an ignition interlock device and operate only motor vehicles equipped with such devices. Neb.Rev.St. §§60-6,209(1), (5); 83-1,127.02.</p> <p>The court may order a person who has been convicted of a second or subsequent DUI/implied consent refusal offense, as</p>

an alternative to vehicle immobilization, to have all of the vehicles owned equipped with ignition interlock devices. This requirement must last for not less than **1 year**. One year of the license revocation period must be completed before any ignition interlock devices can be installed.

Other Provisions:

Neb.Rev.St. §60-6,197.01(1)(b).

It appears from Neb.Rev.St. §60-6,197.03 that ignition interlock is mandatory for anyone convicted of DUI/implied consent refusal offense.

Sobriety Checkpoints:

Permitted or Prohibited:

Permitted. See *State v. McCleery*, 560 N.W.2d 789 (Neb. 1997).⁴⁷¹

Homicide by Vehicle:

State Has Such a Law:

Yes. Unintentionally causing death while engaged in the operation of a motor vehicle where the proximate cause of death of another is the operation of a motor vehicle in violation of a DUI law is a Class IIA felony. Neb.Rev.St. §28-306(3)(b), (c).

Imprisonment/Fine:

Class II felony If the defendant has a prior DUI conviction or driving on a revoked license where DUI was the cause for revocation it is a Class II felony. Neb.Rev.St. §28-105.

Class IIA felony – Not more than **20 years**;

Class II felony – Not less than **1 year** or more than **50 years**. Neb.Rev.St. §28-105.

Mandatory Minimum Term/Fine:

1 year for Class II felony.

Authorized Licensing Action:

Revocation.

Length of Term of Licensing Withdrawal:

Class IIA felony – Revocation for at least **1 year** and not more than **15 years**;

Class II felony – Revocation for **15 years**.

Neb.Rev.St. §28-306(3)(b), (c).

Mandatory Minimum License Withdrawal:

The terms appear to be mandatory.

Other:

For each, the court shall order the person not to drive any motor vehicle for any purpose for the period of time specific above, in addition to revocation of the person's operator's license. Neb.Rev.St. §28-306.

DWI Offenses and Commercial Motor Vehicles (CMV):

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 $\geq .04$; (2) is under the influence of alcohol or a controlled substance; or (3) refuses to submit to a chemical test for alcohol concentration. For a subsequent violation or a combination of two or more violations of any of the above-listed items, the disqualification is for life (mand). Neb.Rev.St. §60-4,168.

⁴⁷¹ The issue in this case was whether avoiding a sobriety checkpoint was justification for an investigatory stop. However, the ruling in this case infers that the use of sobriety checkpoints is lawful.

In addition, CMV operators who have any detectable amount of alcohol in their system must be placed out-of-service for 24 hours. Neb.Rev.St. §60-4,163.

Any CMV operator who refuses to submit to a preliminary breath test shall be guilty of a Class V misdemeanor, punishable by a fine of \$400. Neb.Rev.St. §§28-106; 60-4,164(3);

Driving While License Suspended for DWI

Offense:

Criminal - Fine/Imprisonment:

There are no specific sanctions where the basis of suspension/revocation was a DUI offense.
 Driving While Revoked – Class II misdemeanor;
 Driving While Suspended – Class III misdemeanor;
 Driving While Revoked (4th or subsequent offense) – Class I misdemeanor. Neb.Rev.St. §§60-4,108; 60-4,109.

Class I misdemeanor – Not more than **1 year** and/or not more than **\$1,000**;

Class II misdemeanor – Not more than **6 months** and/or not more than **\$1,000**;

Class III misdemeanor – Not more than **3 months** and/or not more than **\$500**. Neb.Rev.St. §28-106.

Mandatory Minimum Fine/Imprisonment

None

Term:

Administrative Licensing Action Type:

Revocation.

Withdrawal Action:

Driving While Revoked:

First offense – **1 year**;

Subsequent offense – **2 years**. Neb.Rev.St. §60-4,109(1).

Driving While Suspended – **1 year**.⁴⁷² Neb.Rev.St. §60-4,109(2).

Mandatory Term of License Withdrawal

The terms appear to be mandatory

Action:

Other:

In each of the offenses above, the court shall also order such person not to operate any motor vehicle for any purpose.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No.

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):

Yes. Neb.Rev.St. §60-6,102.

BAC Chemical Test Given to Deceased Driver Killed in Crash:

Yes. If dead within 4 hours of the accident.

⁴⁷² If such person provides proof of reinstatement of suspended license, proof of issuance of a new license, or proof of a return of the impounded license, then the court shall only order a fine not more than **\$100**. Neb.Rev.St. §60-4,109(2).

BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	No.
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	Yes. If at least age 16 and dead within 4 hours of accident.
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	No
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. Neb.Rev.St. §§53-180; 53-180.02.
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. There are exemptions for possession in a “permanent place of residence,” for religious purposes, and for certain employment purposes by those ≥ 16. Neb.Rev.St. §§53-168.06; 53-180.02.
<u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	No
"Dram Shop Law" Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	N/A
Dram Shop Actions – Social Hosts:	Yes – limited to minors. Neb.Rev.St. §53-404.
Social Host – Criminal Enforcement:	I. A person providing alcohol to a minor may be found guilty of contributing to the delinquency of a child, a Class I misdemeanor, punishable by not more than 1 year imprisonment and/or not more than \$1,000 . Neb.Rev.St. §§28-106; 28-709. II. Any person age 21 and over who gives alcoholic liquor to a minor may be found guilty of a Class I misdemeanor punishable by imprisonment for not more than 1 year and/or a fine of not more than \$1,000. Neb.Rev.St. §§53-180.05(1); 28-106. Any person who knowingly and intentionally gives alcoholic liquor to a minor, where serious bodily injury or death resulted and was proximately caused by the minor’s consumption, shall be guilty of a Class IIIA felony punishable by imprisonment for not more than 3 years and/or not more than \$10,000. Neb.Rev.St. §§53-180.05(2); 28-105. Any person older than 18 but younger than 21 who gives alcoholic liquor to a minor may be found guilty of a Class III misdemeanor punishable by imprisonment for not more than 3 months and/or a fine of not more than \$500. Neb.Rev.St. §§28-106;53-180.05(4)(a).
<u>Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
Type of Criminal Action:	Class I Misdemeanor. Neb.Rev.St. §§28-106; 53-180; 53-180.05;

Imprisonment/Fine: Neb. Admin. R. & Regs. Tit. 237, Ch. 6 §019.01N.
Not more than **1 year** and/or not more than **\$1,000**.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes – Suspension, cancellation or revocation.

Neb.Rev.St. §§53-116.02; 53-1,104.

First offense – A licensee may pay a cash penalty for each of the suspension, in lieu of suspension, which is \$50/day;
Second or subsequent offense - A licensee may pay a cash penalty for each of the suspension, in lieu of suspension, which is \$100/day;

Second offense (within 4 years) – Suspension for not more than 48 hours.

Third or subsequent offense (within 4 years of the first suspension) – Suspension for not more than 15 days.

Neb.Rev.St. §53-1,104.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Imprisonment/Fine:

Class I Misdemeanor.

Neb.Rev.St. §§28-106; 53-180; 53-180.05.

Not more than **1 year** and/or not more than **\$1,000**.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes – Suspension, cancellation or revocation.

Neb.Rev.St. §§53-116.02; 53-1,104.

First offense – A licensee may pay a cash penalty for each of the suspension, in lieu of suspension, which is \$50/day;

Second offense (within 4 years) – Not more than 48 hours;

Third or subsequent offense (within 4 years of the first suspension) – Not more than 15 days. Neb.Rev.St. §53-1,104.

Anti-Happy Hour Laws/Regulations:

Yes. Neb. Admin. R. & Regs. Tit. 237, Ch. 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.

Open Container Laws:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes. Neb.Rev.St. §60-6,211.08(2).

Yes. Neb.Rev.St. §60-6,211.08(3).

Alcohol Exclusion Law (UPPL):

Yes. Neb.Rev.St. §44-710.04(11).

STATE

General Reference:

NEVADA

Nevada Revised Statutes (N.R.S.)

Nevada Administrative Code (NAC)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor

N.R.S. §484C.110(1)(a).

Illegal Per Se Law (BAC/BrAC):

I. $\geq .08$.⁴⁷³ N.R.S. §§484C.020; 484C.110(1)(b), (c).II. Certain amounts of prohibited substances in the blood or urine.⁴⁷⁴ N.R.S. §484C.110(3).

Presumption (BAC/BrAC):

None

Types of Drugs/Drugs and Alcohol:

I. Under the influence of a controlled substance or a combination of intoxicating liquor and a controlled substance. N.R.S. §484C.110(2)(a), (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 that renders him incapable of safely driving. N.R.S. §484C.110(2) (c).

III. It is unlawful for any person to drive or be in actual physical control of a vehicle with an amount of a prohibited substance in his/her blood or urine that is greater than or equal to the amounts listed in N.R.S. §484C.110(3).

Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

Yes. N.R.S. §484C.150(1).

Implied Consent Law:

Yes. N.R.S. §484C.160(1).

Arrest Required (Yes/No):

No. N.R.S. §484C.160(1).

Implied Consent Law Applies to Drugs (Yes/No):

Yes. N.R.S. § 484C.160(1).

Refusal to Submit to Chemical Test

Yes – Criminal Cases and Admin Actions.

Admitted into Evidence:

N.R.S. §484C.240. If a person fails to submit to a test, a blood sample may be obtained without consent and by the use of reasonable force if there are “reasonable grounds to believe” that the driver has been driving under the influence of alcohol or a controlled substance. N.R.S. §484C.160(8).

Non-Breath Chemical Tests for AlcoholConcentration Authorized Under theImplied Consent Law:

Blood:

Yes.⁴⁷⁵ N.R.S. §484C.160(1).

Urine:

Yes – Limited.⁴⁷⁶ N.R.S. §484C.160(1).

⁴⁷³ Standards; “Concentration of alcohol” is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. N.R.S. §§483.045; 484C.020.

⁴⁷⁴ See N.R.S. §484C.110(3) for a list of prohibited substances and corresponding amounts in blood or urine. These substances include cocaine, marijuana, heroin, amphetamine, methamphetamine, lysergic acid diethylamid (LSD) and phencyclidine (PCP).

⁴⁷⁵ A person may be directed to submit to a blood test to determine the presence of controlled substances. N.R.S. §484C.160(5). Additionally, a law enforcement officer may direct a person to submit to a blood test if there are reasonable grounds to believe the person, while operating a vehicle caused death or serious injury while under the influence of intoxicating liquor or a controlled substance, or has been stopped for a subsequent DUI offense within 7 years. N.R.S. §484C.160(4).

Other:	Other bodily substance (unspecified) N.R.S. §484C.160(1).
<u>Adjudication of DWI Charges:</u>	
Mandatory Adjudication Law (Yes/No):	No
Anti-Plea-Bargaining Statute (Yes/No):	Yes. A DUI charge cannot be reduced for a lesser charge in exchange for a plea, or dismissed unless there is no evidence to support probable cause, or such charge cannot be proven at trial. N.R.S. §484C.420(1).
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes. I. An alcohol or drug evaluation must be administered to third or subsequent offenders. N.R.S. §§176.135; 484C.300. II. A first offender who registers a BAC/BrAC $\geq .18$, or <u>any</u> second offender (within 7 years) must be administered an evaluation to determine if that person is an abuser of alcohol or drugs. N.R.S. §484C.350(1). III. A first offender who is < 21 must be administered an evaluation to determine if that person is an abuser of alcohol or drugs. N.R.S. §484C.350(2).
<u>Sanctions for Refusal to Submit to a Chemical Test:</u>	
Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail):	None
Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev):	None
Preliminary Breath Test – Other:	If a person refuses to submit to a preliminary breath test where there are “reasonable grounds to believe” that person has committed a DUI 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 N.R.S. §§484C.160; 484C.150(2).
Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	None
Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):	Revocation for a period of 1 year or if a prior revocation within 7 years than revocation for a period of 3 years. N.R.S. §§484C.210(1)(a), (b); 484C.220(1); 484C.160.2.
Implied Consent Chemical Test - Other:	N/A
<u>Criminal Sanctions Following a DWI Conviction:</u>	
Imprisonment/Fine:	First offense (within 7 years) (misdemeanor) – Not less than 2 days or more than 6 months and not less than \$400 or more than \$1,000 ;

⁴⁷⁶ A urine test can be requested only under two conditions: (1) a driver is afflicted with hemophilia or a heart condition requiring the use of anticoagulants, which would exempt him/her from any blood test; or (2) a driver has been stopped for driving under the influence of a controlled substance. N.R.S. §484C.160(4), (6).

Second offense (within 7 years) (misdemeanor) – Not less than **10 days** or more than **6 months** and not less than **\$750** or more than **\$1,000**;

Third offense (within 7 years) (category B felony) – Not less than **1 year** or more than **6 years** and not less than **\$2,000** or more than **\$5,000**; N.R.S. §484C.400(1)(a)-(c).

Subsequent offense⁴⁷⁷ (within 7 years) (category B felony) – Not less than **2 years** or more than **15 years** and not less than **\$2,000** or more than **\$5,000**. N.R.S. §484C.410(1).

DUI with Substantial Bodily Harm (category B felony) – Not less than **2 years** or more than **20 years** and not less than **\$2,000** or more than **\$5,000**. N.R.S. §484C.430(1).

Mandatory Minimum Term/Fine:

First offense – **2 days/\$400**;

Second offense – **10 days** (with at least **48 consecutive hours**)/**\$750**;

Third offense – **1 year/\$2,000**(with at least **48 consecutive hours**); N.R.S. §484C.400(1)(a)-(c).

Subsequent offense – **2 years/\$2,000**. N.R.S. §484C.410(1).

DUI with Substantial Bodily Harm – 2 years/\$2,000.

N.R.S. §484C.430(1).

Community Service:

Community service may be ordered as an alternative sanction, or as a condition of any suspended sentence. N.R.S. §§4.373; 5.055; 484C.320(1)(c); 484C.330(1)(c); 484C.400(1)(a)(2), (1)(b)(2).

Child Endangerment:

If a child less than 15 was a passenger in the vehicle at the time of the offense, such fact shall be considered an aggravating factor when determining sentence.

N.R.S. §§484C.410(5); 484C.430(5).

Restitution:

Yes.

I. As a condition for a suspended sentence, the court may order a defendant to pay compensation to a victim.

N.R.S. §§4.373; 5.055.

II. Through a victims' compensation fund.

N.R.S. §217.010, *et seq.*

Other:

Offenders under N.R.S. §484C.320 Disposition: This allows offenders, except those with > 0.18, to undergo a substance abuse or alcohol treatment program, where the offender is diagnosed as an alcoholic or abuser of drugs, the offender must serve some jail time and/or perform community service, and pay a fine. The court shall sentence the defendant to an all-suspended sentence upon condition of successful or satisfactory completion. The following terms apply:

First offense – At least 1 days in jail, or not less than 24 hours of community service, with a suspended sentence of not more than 3 years;

⁴⁷⁷ This applies to a person who has been previously convicted of a felony DUI offense, DUI death/serious bodily injury, or vehicular homicide stemming from DUI or a DUI offense that was reduced from a felony. N.R.S. §484C.400.

Second offense – 5 days in jail and may be ordered to serve not less than ½ of the hours of community service and a suspended sentence of not more than 3 years;

Third offense – Probation for not more than 5 years conditioned upon acceptance into a treatment facility for not less than 6 months. Under this disposition, sentence shall not be deferred and conviction shall not be set aside. N.R.S. §§484C.320; 484C.330; 484C.340.

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. N.R.S. §§4.3762; 5.076.

A Civil Fine of **\$35** must be imposed. This fine is paid into a victims' compensation fund. N.R.S. §484C.500.

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. N.R.S. §484C.510.

Administrative Assessment: DUI misdemeanor offenders are subject to administrative assessments in addition to any fine that is imposed. These assessments may range from **\$30 - \$120** depending upon the size of the fine that is imposed. N.R.S. §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**. N.R.S. §484C.350(7).

Impact Meeting: An offender shall be ordered to attend in person a live meeting (if available) with victims of DUI offenses in order to discuss the impact of the offense on such victims. N.R.S. §484C.530.

Taxicab Drivers: It is illegal 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.” N.R.S. §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 - 5 days**;

Second offense (within 12 months) – A fine of not more than **\$300** and/or driver's license suspension from **6 - 20 days**;

Third offense (within 12 months) – A fine of not more than **\$500**. In addition to these sanctions, a driver's license may be

revoked and possible revocation of license. N.R.S. §706.8849(2). **Note:** The law does not provide a revocation period.

Work Zone: In addition to the primary penalty attributed to a DUI offense, any person violating a DUI law within a work zone is subject to an additional penalty equal to the original, not to exceed \$1,000, 6 months' imprisonment or 120 hours of community service. N.R.S. §484B.130.

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

Yes ≥ **.08** (BAC/BrAC) or a detectable amount of a prohibited substance in the blood or urine – **Revocation 90 days**. N.R.S. §§484C.160; 484C.210(2); 484C.220.

Other:

Persons Under 21 (≥ **.02** but < **.10** BAC/BrAC) – **Suspension 90 days**. N.R.S. §§483.461;

Persons Under 21 (≥ .02 but < .08 BAC/BrAC) Suspension for an unspecified period of time. N.R.S. §483.462(1)(b), (2) Under N.R.S. §483.470, a person's license may be suspended if that person has "committed" an offense that usually requires license revocation (e.g., DUI). Such action may be taken without a preliminary hearing. The length of the revocation period is unclear.

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Term of Withdrawal:

Revocation. N.R.S. §483.460.

First offense – **90 days** (45 days mand.);⁴⁷⁸

Second offense (within 7 years) – **1 year**;

Third and subsequent offense (within 7 years) – **3 years**.

N.R.S. §483.460(1)(a)-(c).

Mandatory Minimum Term of Revocation:

First offense – **45 days**;

Second offense (within 7 years) – **1 year**;

Third and subsequent offenses (within 7 years) – **1½ years**.

After a 1- year mandatory revocation, a restricted license may be issued if the person is allowed to use an ignition interlock.

Yes. N.R.S. §484C.400.

Alcohol Education:

Substance Abuse Treatment:

Yes

Vehicle Impoundment/Confiscation:

N/A

Authorized by Specific Statutory Authority:

Vehicle Registration Suspension: For a second or subsequent drunk-driving/drunken-driving related vehicle homicide 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. N.R.S. §§482.451; 484C.520(1), (3)(a)-(b).

Terms Upon Which Vehicle Will Be

⁴⁷⁸ After half of the revocation period has passed and the DUI offender has completed treatment in a treatment program, a restricted license may be issued. N.R.S. §§483.460(3); 483.490(1).

Released:

Other Miscellaneous Sanctions:

Ignition Interlock:

Permitted or Prohibited:

Permitted. N.R.S. §484C.460.

Type of Law (Mandatory or Permissive):

Both

Sanction (Judicial, Administrative or Hybrid)

Judicial

Conditions of Use:

Permissive

The court may order a defendant convicted of DUI (< .18) to install an ignition interlock device as a condition for restricted driving privileges for not less than **3 months** or more than **6 months**. N.R.S. §484C.460(1)(a).

Mandatory

Third or subsequent offense/DUI > .18 – Not less than **12 months** or more than **36 months**. N.R.S. §484C.460(1)(b).

Other Provisions:

Any person with a device must provide proof of compliance before receiving a restricted license, and proof of inspection at least once every 90 days. N.R.S. §484C.460(3), (4).

If a person is required to operate a motor vehicle in the course and scope of his employment and the motor vehicle is owned by the employer, the person may operate such vehicle without the installation of an ignition interlock if: (1) the person notifies his employer that his driving privileges have been so restricted; and (2) the employee has proof of that notification in his possession, or such notice is with the vehicle. N.R.S. §484C.460(5).

Sobriety Checkpoints:

Permitted or Prohibited:

Permitted. N.R.S. §484B.570.

Homicide by Vehicle:

State Has Such a Law:

Yes – Vehicular homicide (DUI-death with 3 prior like offenses) – **Category A felony**. N.R.S. §§484C.430(1); 484C.130(1).

DUI-death – Category B felony.

N.R.S. §484C.440.

Imprisonment/Fine:

Vehicular Homicide – Imprisonment for **life** with parole eligibility after **10 years**, or a definite term of **25 years**; N.R.S. §484C.440;

DUI-death – Not less than **2 years** or more than **20 years** and not less than **\$2,000** or more than **\$5,000**.

N.R.S. §484C.430.

Mandatory Minimum Term/Fine:

Vehicular Homicide – 10 years;⁴⁷⁹

DUI-death – 2 years/\$2,000.

Authorized Licensing Action:

Revocation

Length of Term of Licensing Withdrawal:

3 years.⁴⁸⁰ N.R.S. §483.460(1)(a).

⁴⁷⁹ This minimum sanction may not be suspended nor may probation be granted. N.R.S. §484C.430.

⁴⁸⁰ This period is set aside during any period of imprisonment. N.R.S. §483.460(1)(a).

Mandatory Minimum License Withdrawal:
Other:

This term appears to be mandatory.

DWI Offenses and Commercial Motor
Vehicles (CMV):

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. N.R.S. §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 has a BAC/BrAC \geq **.04** or is under the influence of alcohol or a controlled substance. For a subsequent violation or a combination of two or more violations of any of the above-listed items, the “disqualification” is for life.

If there are “reasonable grounds to believe” that a CMV operator is under the influence of intoxicating liquor or a controlled substance, or 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.

Under 49 CFR §392.5, a CMV operator who has used alcohol, is under the influence of alcohol within 4 hours before going on duty, or any has any measured alcohol concentration or detective presence of alcohol must be placed “out-of-service” for 24 hours.

It is a 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. N.R.S. §§483.904; 483.908; 706.173; 706.756; 706.771; NAC §706.247; 49 USCA 31301, *et seq.*

Driving While License Suspended for DWI
Offense:

Criminal - Fine/Imprisonment:

Misdemeanor. Not less than **30 days** or more than **6 months**⁴⁸¹ and not less than **\$500** or more than **\$1,000**. N.R.S. §483.560(2).

Mandatory Minimum Fine/Imprisonment
Term:

30 days/\$500.

Administrative Licensing Action Type:
Withdrawal Action:

Suspension or **revocation.** N.R.S. §483.560(5).
The original suspension period is extended for a like period.
The original revocation is extended 1 year.
N.R.S. §483.560(5)(a)-(d).

⁴⁸¹ Or, in residential confinement for not less than 60 days or more than 6 months.

Mandatory Term of License Withdrawal Action: Other:	The terms above are mandatory.
<u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No):	No
<u>Other State Laws Related to Alcohol Use:</u> BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes. N.R.S. §484C.170.
BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes. N.R.S. §484C.170.
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	Yes. N.R.S. §484C.170.
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	Yes. N.R.S. §484C.170.
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	No
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. N.R.S. §202.020(1).
Minimum Age (Years) for Possession/Consumption of Alcohol:	21 Applies to possession in a public place. N.R.S. §202.020(2). There are exceptions with regard to religious purposes, employment, medical prescriptions, and possession in the presence of parents or guardians. N.R.S. §202.020(5).
<u>Dram Shop and Social Host Laws:</u> State Has a Dram Shop Law (Yes/No):	Yes – limited to persons under 21. N.R.S. §41.1305.
"Dram Shop Law" 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:	Possibly limited to persons under 21. N.R.S. §41.1305.
Social Host – Criminal Enforcement:	I. Any person furnishing alcohol to a minor may be found guilty of a misdemeanor ⁴⁸² and punished by not more than 6 months and/or not more than \$1,000, or not more than 200 hours of community service. N.R.S. §§176.087(4)(a)(1); 193.150; 202.055(1). II. Any person who commits any act, causes or encourages a minor to consume alcohol may be found guilty of contributing to the delinquency of a minor, a misdemeanor, punishable by not more than 6 months and/or not more than \$1,000, or not more than 200 hours of community service.

⁴⁸² This provision does not apply to a parent, guardian or physician of the person under 21 years of age. N.R.S. §202.055(2).

N.R.S. §§176.087(4)(a)(1); 193.150; 201.110(1).

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action: **N/A**
Imprisonment/Fine: **N/A**

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **N/A**

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action: **Misdemeanor.** N.R.S. §§193.150; 202.055.
Imprisonment/Fine: Not more than **6 months** and/or not more than **\$1,000.**⁴⁸³
N.R.S. §193.150.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): No statutory provisions

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

Open Container Laws:

Open Container Law (Yes/No): **Yes.** N.R.S. §484B.150(2).
Anti-Consumption Law (Yes/No): **Yes.** N.R.S. §484B.150.

Alcohol Exclusion Law (UPPL): **No.** N.R.S. §689A.280 was repealed on 7/1/2006.

⁴⁸³ A person may be permitted to perform not more than 200 hours of community service in lieu of all or part of his sentence. N.R.S. §§176.087; 193.150.

STATE

NEW HAMPSHIRE

General Reference:

New Hampshire Revised Statutes Annotated (N.H. Rev. Stat.)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor.⁴⁸⁴

N.H. Rev. Stat. §265-A:2.

Illegal Per Se Law (BAC/BrAC):

≥ .08.⁴⁸⁵ N.H. Rev. Stat. §265-A:2(I)(b).

Persons Under 21 – ≥ .02. N.H. Rev. Stat. §265-A:2(I)(b).

Presumption (BAC/BrAC):

≥ .08 is *prima facie* evidence of intoxication.

N.H. Rev. Stat. §265-A:11(I).

Types of Drugs/Drugs and Alcohol:

Under the influence of any controlled drug⁴⁸⁶ or any combination of intoxicating liquor and controlled drugs.

N.H. Rev. Stat. §265:A2(I)(a)

Other:

≤ .03 BAC is *prima facie* evidence that defendant was not intoxicated

> .03 but < .08 is relevant evidence that defendant was under the influence. N.H. Rev. Stat. §265-A:11(I).

Aggravated Driving While Intoxicated Offense:

(1) Driving under the influence of intoxicating liquor or any controlled drug, prescription drug, over-the-counter drug or any other chemical substance (natural/synthetic) or any combination of intoxicating liquor and a controlled drug, etc., or with a BAC/BrAC ≥.08 (≥ .02 for person under 21) and one of the following: (a) exceeding the *prima facie* speed limit by more than 30 MPH; (b) causing a collision that results in a serious bodily injury to another person; or (c) attempting to elude a law enforcement officer; or (d) carrying a passenger under age 16; or (2) Driving with a BAC/BrAC ≥ .16. N.H. Rev. Stat. §265-A:3.

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

Yes. N.H. Rev. Stat. §265-A:15(I).

Implied Consent Law:

Yes. N.H. Rev. Stat. §265-A:4.

Arrest Required (Yes/No):

Yes. N.H. Rev. Stat. §265-A:4.

Implied Consent Law Applies to Drugs

Yes. N.H. Rev. Stat. §265-A:4.

(Yes/No):

Refusal to Submit to Chemical Test

Yes – Criminal and Civil Cases. N.H. Rev. Stat. §265-A:10.

Admitted into Evidence:

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the

Implied Consent Law:

⁴⁸⁴ The term “intoxicating liquor” is defined to include all alcohol beverages containing more than one per cent alcohol by volume. N.H. Rev. Stat. §21:33.

⁴⁸⁵ 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. N.H. Rev. Stat. §259:3-b.

⁴⁸⁶ Or any prescription drug, over-the-counter drug, or any other chemical substance, natural or synthetic, which impairs a person’s ability to drive. N.H. Rev. Stat. §265-A:2.

Blood: **Yes.** N.H. Rev. Stat. §265-A:5.
 Urine: **Yes.** N.H. Rev. Stat. §265-A:5.
 Other: **None**

Adjudication of DWI Charges:

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

No
No. The law requires filing of reports of plea-bargaining agreements. These reports are public records, and are available for public inspection. N.H. Rev. Stat. §265-A:21(II).

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

The court may order a presentence investigation report for any person convicted of a felony or misdemeanor. However, the court shall order such report where the felony or misdemeanor was violent and the court has reason to believe that the defendant committed a similar act within the past year. N.H. Rev. Stat. §651:4.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail):
 Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev):
 Preliminary Breath Test – Other:

None - but evidence of refusal is admissible only to show probable cause for the arrest. N.H. Rev. Stat. §265-A:15.
None
N/A

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

None
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).
 These revocations are not to run concurrently with any other suspension or revocation. N.H. Rev. Stat. §265-A:14.
N/A

Implied Consent Chemical Test - Other:

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine:

First conviction (Class B misdemeanor) – Not less than **\$500** or more than **\$1,200**;
Second conviction (Class A misdemeanor) – Not less than **\$750** or more than **\$2,000** and not less than **60 days** (if within 2 years) or **17 days** (if > 2 years but < 10 years), or more than **1 year**;
Third conviction (Class A misdemeanor) – Not less than **\$750** or more than **\$2,000** and not less than **180 days** or more than **1 year**;
Fourth or subsequent conviction (felony) – Not less than **\$750** or more than **\$4,000** and not less than **180 days** or more than **1 year**.
Aggravated DWI (Class A misdemeanor) – Not less than

\$750 or more than **\$2,000** and not less than **17 days** or more than **1 year**. N.H. Rev. Stat. §§265-A:18(I), (IV); 651:2.

Aggravated DWI with Serious Bodily Injury (Class B felony) – Not less than **\$1,000** or more than **\$4,000** and not less than **35 consecutive days** or more than **7 years**.
N.H. Rev. Stat. §§265-A:18(I)(c); 651:2.

Mandatory Minimum Term/Fine:

Second conviction (within 2 years) – **30 days**;
Second conviction – **5 days**;
Third conviction – **30 days**;
Aggravated DWI – **5 days**;
Aggravated DWI with Serious Bodily Injury – **14 days**.

Community Service:

A court may sentence a defendant to community service as a condition of a suspended sentence or probation.

N.H. Rev. Stat. §651:68.

Child Endangerment:

Any person convicted of DWI while transporting a person under age 16 shall have the driver’s license or privilege to drive revoked for the maximum time period and not restored until the offender has completed an impaired driver care management program within 14 days of conviction. Additionally, such driver shall undergo a substance abuse disorder evaluation if testing suggests a disorder.

N.H. Rev. Stat. §265-A:18(VIII).

Restitution:

I. Payment by the defendant to the victim. N.H. Rev. Stat. §651:63.

II. A victim may receive compensation for damages from a State fund. N.H. Rev. Stat. §21-M:8-h, *et seq.*

Other:

Penalty Assessment: An offender must pay an assessment of \$2 or 24% of the fine imposed, whichever is greater. N.H. Rev. Stat. §188-F:31.

Liability for Response: A DWI offender may be liable to reimburse a public agency for up to \$10,000 of the cost incurred in responding to an incident involving the negligent use of a vehicle while under the influence of alcohol.
N.H. Rev. Stat. §153-A:24.

Multiple DWI Offender Intervention Detention Center Program: A court shall refer a person convicted of DWI to attend an impaired driver care management program.
N.H. Rev. Stat. §§265-A:18; 265-A:40.

Administrative Sanctions – Pre-Conviction:
Administrative Per Se Law:

Yes ≥ .08 (≥ .02 for persons under 21):

First violation – **Suspension 6 months**;

Subsequent violation – **Suspension 2 years**. A subsequent administrative per se violation also includes a prior refusal or DWI offense. N.H. Rev. Stat. §265-A:30(2)(b).

Other:

Under N.H. Rev. Stat. §263:56(I)(a), (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.

Administrative Sanctions – Post-Conviction:

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

Revocation. N.H. Rev. Stat. §265-A:18.
First conviction – Not less than **9 months** or more than **2 years**;
Second conviction – Not less than **3 years**;
Third conviction – **Indefinitely** but not less than **5 years**;
Third or subsequent conviction (where prior is negligent homicide) – **Indefinitely** but not less than **10 years**;
Fourth or subsequent conviction – **Indefinitely** but not less than **7 years**. N.H. Rev. Stat. §265-A:18(I)(a)(6), (IV)(a)(4), (IV)(b)(1), (d), (c).

Mandatory Minimum Term of Revocation:

Aggravated DWI (including serious bodily injury) – Not less than **18 months** or more than **2 years**.
N.H. Rev. Stat. §265-A:18(I)(b)(5)(a).
First conviction – **3 months**;
Second conviction – **12 months**;
Third conviction – **5 years**;
Third or subsequent conviction (where prior is negligent homicide) – **10 years**;
Fourth or subsequent conviction – **7 years**.
N.H. Rev. Stat. §265-A:18(I)(a)(6), (IV)(a)(4), (IV)(b)(1), (d), (c).

Alcohol Education:
Substance Abuse Treatment:
Vehicle Impoundment/Confiscation:

Aggravated DWI (including serious bodily injury) – **6 months**. N.H. Rev. Stat. §265-A:18.
Yes. N.H. Rev. Stat. §265-A:18.
Yes. N.H. Rev. Stat. §265-A:18.
Vehicle Registration Revocation:⁴⁸⁷ For a second or subsequent DWI offense conviction or an aggravated DWI offense conviction, the driver's vehicle's registration must be revoked for the same period of time as the driver's license suspension/revocation.
N.H. Rev. Stat. §261:180.

Authorized by Specific Statutory Authority:
Terms Upon Which Vehicle Will Be Released:
Other Miscellaneous Sanctions:

At-Risk Driver (Probationary License): Any person who shall apply for re-issuance of the license following a DWI conviction is an “at-risk” driver and whose license shall be probationary for 5 years. Such probationary license may be suspended for not less than **90** or more than **180 days** if the driver operates a motor vehicle with a BAC/BrAC \geq **.03**.
N.H. Rev. Stat. §265-A:35.
Impaired Driver Education Program: For any alcohol-

⁴⁸⁷ Under N.H. Rev. Stat. §261:180(IV), hardship registrations for the vehicles involved are available for those convicted of negligent homicide, vehicular manslaughter, any DWI subsequent offense conviction, aggravated DWI, or those certified as a habitual offender. 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 a family or an individual. N.H. Code Admin. R. Saf-C 3001.01; 3003.01; 3003.03.

related offense, a defendant shall attend an impaired driver education program, if ordered by the court.
N.H. Rev. Stat. §§265-A:18; 265-A:39; 265-A:40.

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. N.H. Rev. Stat. §179:4.

Ignition Interlock:

Permitted or Prohibited:
Type of Law (Mandatory or Permissive):
Sanction (Judicial, Administrative or Hybrid)
Conditions of Use:

Permitted. N.H. Rev. Stat. §265-A:36.

Mandatory

Judicial

Aggravated DWI or subsequent DWI offenders shall be required to install an ignition interlock device on the vehicles owned or regularly used for not less than 12 months or more than 2 years following license reinstatement.

Any person convicted of driving on a suspended/revoked license resulting from a DWI offense shall be required to use an ignition interlock device for the remaining period of suspension/revocation plus an additional period not less than 12 months or more than 2 years.

A person under age 21, after the period of revocation or suspension, may be required to install an ignition interlock device, until age 21 or for not less than 12 months, whichever is longer. N.H. Rev. Stat. §265-A:36(I), (I)(a), (III).

Anyone who violates the court's order with regard to installation of an ignition interlock device could be found in contempt and sentenced up to 6 months in jail and be subject to license suspension or revocation for a period of not more than 12 months. N.H. Rev. Stat. §265-A:38.

Other Provisions:

Sobriety Checkpoints:

Permitted or Prohibited:

Permitted (must be court-authorized). N.H. Rev. Stat. §265:1-a.

Homicide by Vehicle:

State Has Such a Law:

Negligent Homicide – **Class A felony**

N.H. Rev. Stat. §630:3(II).

Imprisonment/Fine:

Not more than **15 years** and may be fined not more than **\$4,000**. N.H. Rev. Stat. §651:2(II)(a), (IV)(a).

Mandatory Minimum Term/Fine:

None

Authorized Licensing Action:

Revocation. N.H. Rev. Stat. §§263:56(I); 630:3(III).

Length of Term of Licensing Withdrawal:

Indefinitely, but not less than **7 years**. N.H. Rev. Stat. §630:3(III).

Mandatory Minimum License Withdrawal:

7 years. The use of an ignition interlock device may also be required for not more than 5 years following license reinstatement. N.H. Rev. Stat. §630:3(III).

Other:

Vehicle Registration Revocation: The driver's vehicle's

registration must be revoked for the same period of time as the driver's license suspension/revocation. N.H. Rev. Stat. §261:180(III).

DWI Offenses and Commercial Motor Vehicles (CMV):

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 is under the influence of alcohol with an alcohol concentration (BAC/BrAC/UrAC) ≥ .04, or is under the influence of a controlled substance. For a subsequent violation or 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 life, with an opportunity to review after 10 years.

In addition, a CMV operator who has any alcohol in the system must be placed "out-of-service" for 24 hours. N.H. Rev. Stat. §§265-A:23; 263:94; 265-A:25(III)(a), (b), 265-A:24.;

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

Misdemeanor. Not more than **1 year** and not more than **\$1,000**.

Mandatory Minimum Fine/Imprisonment Term:

N.H. Rev. Stat. §§263:64; 625:9(IV)(a); 651:2(II).

Administrative Licensing Action Type:

7 consecutive 24-hour periods. N.H. Rev. Stat. §263:64(IV).

Withdrawal Action:

Revocation. N.H. Rev. Stat. §263:64(IV).

Mandatory Term of License Withdrawal Action:

May extend for an additional period of the same duration as the original suspension, not to exceed **1 year**. N.H. Rev. Stat. §263:64-a.

Other:

This term is mandatory. N.H. Rev. Stat. §263:64-a.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. N.H. Rev. Stat. §259:39.

Grounds for Being Declared 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 (within 5 years).

Term of License Revocations While on Habitual Offender Status:

Revocation at least **7 years**.⁴⁸⁸ N.H. Rev. Stat. §262.19(IV). A habitual offender may have to successfully complete a "Driver Attitude Program" before the license is reinstated.

⁴⁸⁸ A person whose license was revoked prior to July 17, 1987, may petition the director after a minimum of 1 year for restoration of driving privileges. N.H. Rev. Stat. §262:19(VI).

N.H. Rev. Stat. §263:56-e.

Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):

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. N.H. Rev. Stat. §261:180(III).

Felony. N.H. Rev. Stat. §262:23(I).

Not less than **1 year** or more than **5 years** and not more than **\$4,000**. N.H. Rev. Stat. §§262:23(I); 625:9(III). A person may also be sentenced to home confinement as a condition of probation. N.H. Rev. Stat. §651:2(V)(b).

Mandatory Minimum Term/Fine: Licensing Action (Specify):

1 year. N.H. Rev. Stat. §262:23.

N/A

Other State Laws Related to Alcohol Use:
BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):

Yes – Required. N.H. Rev. Stat. §265-A:16.

BAC Chemical Test Given to Deceased Driver Killed in Crash:

Yes. N.H. Rev. Stat. §265-A:16.

BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:

Yes. N.H. Rev. Stat. §265-A:16.

BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:

Yes. N.H. Rev. Stat. §265-A:16.

BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:

No

Minimum Age (Years) for Sale/Purchase of Alcohol:

21.⁴⁸⁹ N.H. Rev. Stat. §§175:1; 179:5; 179:6.

Minimum Age (Years) for Possession/Consumption of Alcohol:

21. There are employment exemptions. N.H. Rev. Stat. §179:10; 179:23.

Dram Shop and Social Host Laws:

State Has a Dram Shop Law (Yes/No):
"Dram Shop Law" 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. N.H. Rev. Stat. §507-F:4.

No

Dram Shop Actions – Social Hosts:
Social Host – Criminal Enforcement:

Yes. N.H. Rev. Stat. §507-F:5.

Any person who serves a minor alcohol may be found guilty of a misdemeanor, punishable by not more than **1 year** and/or not more than **\$2,000**. N.H. Rev. Stat. §§179:5; 179:58; 651:2.

Criminal Actions Regarding Establishments

⁴⁸⁹ 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. N.H. Rev. Stat. §179:9(I).

that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Misdemeanor. N.H. Rev. Stat. §§179:5; 179:58(I)

Imprisonment/Fine:

Not more than **1 year** and not more than **\$2,000**.

N.H. Rev. Stat. §651:2(I).

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Yes – Suspension/Revocation. N.H. Rev. Stat. §179:57.

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Time period is not specified in the statute for either suspension or revocation. Administrative fine of not less than \$100 or more than \$5,000 in lieu of a suspension/revocation. N.H. Rev. Stat. §179:57(I).

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Misdemeanor. N.H. Rev. Stat. §§179:5; 179:6; 179:58(I).

Imprisonment/Fine:

Not more than **1 year** and/or not more than **\$2,000**.

N.H. Rev. Stat. §651:2(I).

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages

Yes – Suspension/Revocation. N.H. Rev. Stat. §179:57.

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Time period is not specified in the statute for either suspension or revocation. Administrative fine of not less than \$100 or more than \$5,000 in lieu of a suspension/revocation. N.H. Rev. Stat. §179:57(I).

Anti-Happy Hour Laws/Regulations:

No.⁴⁹⁰

Open Container Laws:

Open Container Law (Yes/No):

Yes. N.H. Rev. Stat. §265-A:44.

Anti-Consumption Law (Yes/No):

Yes – by implication. N.H. Rev. Stat. §265-A:44.

Alcohol Exclusion Law (UPPL):

Yes. Croteau v. John Hancock Mut. Life Ins. Co., 461 A.2d 111 (1983).

⁴⁹⁰ However, the service of “free drinks” is prohibited except for wine-tasting purposes. N.H. Rev. Stat. §179:44.

STATE

General Reference:

NEW JERSEY

New Jersey Statutes Annotated (N.J.S.A.)

New Jersey Administrative Code

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor

N.J.S.A. §39:4-50(a).

Illegal Per Se Law (BAC/BrAC):

≥ .08.⁴⁹¹ N.J.S.A. §39:4-50(a).**Persons Under 21** - ≥ .01. N.J.S.A. §39:4-50.14.

Presumption (BAC/BrAC):

None

Types of Drugs/Drugs and Alcohol:

Under the influence of a narcotic, a hallucinogenic drug or a habit producing drug. N.J.S.A. §39:4-50(a).⁴⁹²Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

No

Implied Consent Law:

Yes. N.J.S.A. §39:4-50.2(a)

Arrest Required (Yes/No):

Yes. N.J.S.A. §39:4-50.2(a).Implied Consent Law Applies to Drugs
(Yes/No):**Yes.** N.J.S.A. §39:4-50.2(a).

Refusal to Submit to Chemical Test

Yes – Criminal Cases. *State v. Stever*, 527 A.2d 408 (N.J.

Admitted into Evidence:

1987) (*cert. denied* 484 U.S. 954 (1987)).Non-Breath Chemical Tests for AlcoholConcentration Authorized Under theImplied Consent Law:

Blood:

No

Urine:

No

Other:

NoneAdjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea-Bargaining Statute (Yes/No):

No. However, a victim who sustains bodily injury or serious bodily injury shall be provided with the opportunity to consult with the prosecutor prior to dismissal of the case or the filing of a proposed plea negotiation with the court. N.J.S.A. §39:4-50.12.⁴⁹³⁴⁹¹ Standard: "Percent by weight" of alcohol in the blood. N.J.S.A. §§39:4-50(a); 39:4-50.14.⁴⁹² As used in this section, the phrase "narcotic, 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. N.J.S.A. 39:4-50(a). "Under the influence" of a narcotic includes a drug that produces a narcotic effect. *State v. DiCarlo*, 67 N.J. 321 (1975); *State v. Tamburro*, 68 N.J. 414 (1975).⁴⁹³ The Appendix to Part VII of the New Jersey Court Rules provides "Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey." Guideline 4 provides: "No plea agreements whatsoever will be allowed in drunken driving or certain drug offenses. Those offenses are: A) Driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50) and B) Being under the influence of a controlled dangerous substance or its analog (N.J.S.A. 2C:35-10b); In DWI cases where the defendant has a BAC of 0.10% or higher, the defendant cannot plead guilty and be sentenced to the lower sentence of a first offense with a BAC between .08% and 0.10%. A refusal charge in connection with a 1st DWI offense shall not be dismissed by a plea agreement, but a plea to a concurrent sentence for such charges is permissible. A refusal charge in connection with a 2nd or subsequent DWI offense that arises out of the same factual transaction, the judge, on recommendation of the prosecutor, may dismiss the refusal charge if the defendant pleads guilty to the DWI offense. If a defendant is charged with DWI and the separate

Pre-Sentencing Investigation Law (PSI) No⁴⁹⁴
(Yes/No):

Sanctions for Refusal to Submit to a

Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): N/A

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): N/A

Preliminary Breath Test – Other: N/A

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

First offense – Not less than **\$300** or more than **\$500**;
Second offense – Not less than **\$500** or more than **\$1,000**;
Third or subsequent offense – **\$1,000**.
N.J.S.A. §39:4-50.4a(a).

On school property/through school crossing:

First offense – Not less than **\$600** or more than **\$1,000**;
Second offense – Not less than **\$1,000** or more than **\$2,000**;
Third or subsequent offense – **\$2,000**.
N.J.S.A. §39:4-50.4a(b).

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):

Revocation:⁴⁹⁵
First Refusal – Not less than **7 months** or more than **1 year**;
Second refusal – **2 years**;
Subsequent refusal – **10 years**. N.J.S.A. §39:4-50.4a(a).

On school property/through school crossing – Suspension:

First offense – Not less than **1 year** or more than **2 years**;
Second offense – **4 years**;
Third or subsequent offense – **20 years**.
N.J.S.A. §39:4-50.4a(b).

Implied Consent Chemical Test - Other:

A surcharge of **\$100**. N.J.S.A. §39:4-50.8.

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine:

First offense:
DUI with no BAC - Not less than **12 hours** or more than **48 hours**⁴⁹⁶ and not less than **\$250** or more than **\$400** and may be sentenced to not more than **30 days**;

offense of DWI in a school zone, the judge may dismiss the school zone charge on the recommendation of the prosecutor, except in cases involving an accident or occur when school properties are being utilized.

⁴⁹⁴ However, N.J.S.A. 2C:44-6 applies to cases of death by motor vehicle and assault by motor vehicle that involve a DWI, as well as N.J.S.A. 2C:40-26, driving while under license suspension if (1) the suspension was for a 1st violation of either DWI or refusal and the person had previously been convicted of the motor vehicle offense of driving while suspended during the same suspension period, or (2) the suspension was for a 2nd or subsequent violation of either DWI or refusal.

⁴⁹⁵ For a first offense, the revocation may run concurrent with or consecutive to any revocation imposed for a DUI conviction, arising out of the same incident. But for a second or subsequent offense, the revocation shall be consecutive to any revocation imposed.

BAC ≥ .08 – < .10 – Not less than **12 hours** or more than **48 hours**⁴⁹⁷ and not less than **\$250** or more than **\$400** and may be sentenced to not more than **30 days**;

BAC ≥ .10 – Not less than **12 hours** or more than **48 hours** and not less than **\$300** or more than **\$500** and may be sentenced to not more than **30 days**;

School property/crossing – Not less than **\$500** or more than **\$800** and not more than **60 days**.

Second offense (within 10 years) – Not less than **48 consecutive hours** or more than **90 days** and not less than **\$500** or more than **\$1,000**;

School property/crossing – Not less than **\$1,000** or more than **\$2,000** and not less than **96 hours** or more than **180 days**.

Third or subsequent offense (within 10 years of a 2nd offense) – Not less than **180 days** and **\$1,000**.

School property/crossing – **\$2,000** and **180 days**.
N.J.S.A. §39:4-50(a), (g).

Bodily Injury (crime of the 4th degree) – Not more than **18 months** and/or not more than **\$10,000**.

Serious Bodily Injury (crime of the 3rd degree) – Between **3-5 years** and/or not more than **\$15,000**.

School Property/Crossing:

Bodily Injury (crime of the 3rd degree) – Between **3-5 years** and/or not more than **\$15,000**;

Serious Bodily Injury (crime of the 2nd degree) – Between **5-10 years** and/or not more than **\$150,000**.

N.J.S.A. §§2C:12-1(c); 2C:43-3(a); 2C:43-6(a).

First offense – **12 hours detention/\$250** (or **\$300** if BAC ≥ .10);

Second offense – **48 consecutive hours/\$500**;

Third and subsequent offenses – **90 days**⁴⁹⁸/**\$1,000**.

Mandatory Minimum Term/Fine:

Community Service:

A court may order a person to perform community service. However, the community service of **30 days** shall be ordered for a second offense. N.J.S.A. §39:4-50.

Child Endangerment:

Persons Under 21 – Not less than **15 days** or more than **30 days** community service. N.J.S.A. §39:4-50.14.

In addition to any other sanctions for a drunk-driving offense, a person who commits such an offense while transporting a passenger under 17 is guilty of a “disorderly persons offense”. Additionally, such person shall be ordered to perform not more than **5 days** of community service, and shall have his license suspended for not more than **6 months**.

⁴⁹⁶ A defendant shall be required to serve this as prescribed by the program requirements of the Intoxicated Driver Resource Centers, which is a community-based treatment program. N.J.S.A. §39:4-50(f).

⁴⁹⁷ A defendant shall be required to serve this as prescribed by the program requirements of the Intoxicated Driver Resource Centers, which is a community-based treatment program. N.J.S.A. §39:4-50(f).

⁴⁹⁸ The law provides that the court may substitute no more than 90 days of the 180 days jail term to be served participating in a drug or alcohol inpatient rehabilitation program approved by the Intoxicated Driver Resource Center. N.J.S.A. §39:4-50(a)(3), (f).

N.J.S.A. §39:4-50.15.
 Restitution: **Yes.** (1) Paid by the defendant to a victim. N.J.S.A. §§2C:43-2; 2C:43-3; 2C:44-2. (2) A victim is also eligible to receive payment from the State's Violent Crimes Compensation Board. N.J.S.A. §52:4B-11.
 Other: **Additional Fees and Surcharges:** A **\$100** fee is imposed for the Alcohol Education, Rehabilitation, and Enforcement Fund. N.J.S.A. §39:4-50(b). A \$125 DUI surcharge is imposed. N.J.S.A. 39:4-50(i). A **\$100** surcharge is imposed for the Drunk-Driving Enforcement Fund. N.J.S.A. §39:4-50.8. One dollar (\$1) is added to any fine for the Body Armor Replacement Fund, \$1 added for the N.J. Spinal Cord Research Fund, \$1 is added for the Autism Medical Research and Treatment Fund, \$2 is added for the Forensic DNA Lab Fund, and \$1 is added for the Brain Injury Research Fund. N.J.S.A. §39:5-41(d)-(h).

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

None.

Other:

For an alleged DUI-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. N.J.S.A. §§39:5-30(e); 39:5-31.

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Revocation.⁴⁹⁹

Term of Withdrawal:

Note.⁵⁰⁰

First offense:

BAC ≥ .08 – < .10 – 3 months;

BAC ≥ .10 – Not less than 7 months or more than 1 year;

School property/crossing – Not less than 1 year or more than 2 years.

Second offense – 2 years;

School property/crossing – 4 years.

Third or subsequent offense – 10 years.

School property/crossing – 20 years. N.J.S.A. §39:4-50(g).

Under 21 (BAC ≥ .01 but < .08) – Not less than 30 days or more than 90 days. N.J.S.A. §39:4-50.14.

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. N.J.S.A. § 39:5-30(a).

Mandatory Minimum Term of Revocation:

The terms above appear to be mandatory.

⁴⁹⁹ The statute uses the terminology “forfeit his right to operate a motor vehicle.” N.J.S.A. §§39:4-50; 39:4-50.14.

⁵⁰⁰ For offenders < 17, license forfeiture is through their 17th birthday plus the regular forfeiture period. N.J.S.A. §39:4-50.

<p>Alcohol Education: Substance Abuse Treatment:</p>	<p><u>Under 21 – 30 days.</u> N.J.S.A. §39:4-50.14. Yes for persons under 21. N.J.S.A. §39:4-50.14. Yes. The court shall order an offender to serve time in an Intoxicated Driver Resource Center. For a third or subsequent offender, the court may substitute up to 90 days of jail time to be served in an inpatient rehabilitation facility. N.J.S.A. §39:4-50.</p>
<p>Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:</p>	<p>Impoundment. The arresting law enforcement agency shall impound the vehicle that the person was operating, for violations of DUI law or refusal. Impoundment shall be for 12 hours after the time of arrest and when: (1) the offender presents valid operator’s license, proof of ownership and valid insurance; (2) the offender is able to operate the vehicle in a safe manner; and (3) the offender meets any other conditions for release established by the law enforcement agency. N.J.S.A. §39:4-50.23.</p>
<p>Terms Upon Which Vehicle Will Be Released:</p>	<p>A vehicle may be released prior to the impoundment period only if the vehicle is not owned or leased by the person under arrest and the person who owns/leases the vehicle claims it and presents valid registration, proof of ownership and valid insurance. N.J.S.A. §39:4-50.23(c).</p>
<p>Other Miscellaneous Sanctions:</p>	<p>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. N.J.S.A. §2C:43-3.1(c). A \$75 assessment is imposed for the Safe Neighborhoods Services Fund. N.J.S.A.2C:43-3.2. Insurance Surcharges: A DWI offender <u>must</u> pay the following insurance surcharges: <u>First and second offenses</u> – \$1,000 per year for 3 years for a total surcharge of \$3,000 for each conviction; and <u>Third offense</u> (within 3 years) – \$1,500 per year for 3 years for a total surcharge of \$4,500. N.J.S.A. §17:29A-35(b)(2). Per Diem Fees: DWI offenders who are incarcerated in an Intoxicated Driver Resource Center must pay the following <i>per diem</i> fees: <u>First offense</u> – \$75; <u>Second offense</u> – \$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. N.J.S.A. §39:4-50(f). Visitation Program: 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. N.J.S.A. §39:4-50(h).</p>
<p><u>Ignition Interlock:</u> Permitted or Prohibited: Type of Law (Mandatory or Permissive): Sanction (Judicial, Administrative or Hybrid) Conditions of Use:</p>	<p>Permitted. N.J.S.A. §§39:4-50(a); 39:4-50.17. Both Judicial After the license suspension period has been completed, a</p>

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) – Not less than **6 months** or more than **1 year**;

First offense – BAC \geq .15 (mandatory) – for the period of license suspension imposed, plus an additional period of not less than **6 months** or more than **1 year**;

Second or subsequent offense – mandatory ignition usage for not less than **1 year** or more than **3 years** or mandatory vehicle registration revocation.

N.J.S.A. §§39:4-50(a); 39:4-50.17.

Ignition interlock use is mandatory for refusal convictions.

N.J.S.A. §§39:4-50; 39:4-50.4a.

Other Provisions:

Sobriety Checkpoints:

Permitted or Prohibited:

Permitted. *State v. Kirk*, 493 A.2d 1271 (N.J. 1985); *State v. Mazurek*, 567 A.2d 277 (N.J. Super. A.D. 1989).

Homicide by Vehicle:

State Has Such a Law:

Imprisonment/Fine:

Yes. Crime of the second degree.⁵⁰¹ N.J.S.A. §2C:11-5.

Not less than **5 years** or more than **10 years** and/or not more than **\$150,000**. N.J.S.A. §§2C:43-3(a)(2); 2C:43-6(a)(2).

3 years.⁵⁰² N.J.S.A. §2C:11-5(b)(1).

Mandatory Minimum Term/Fine:

Authorized Licensing Action:

I. If the offense was related to DWI/Refusal – **Suspension**.

N.J.S.A. §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. N.J.S.A. §39:5-30(a).

Length of Term of Licensing Withdrawal:

I. If the offense was related to DWI/Refusal – **Suspension between 5 years and life**. N.J.S.A. §2C:11-5(b)(4).

Mandatory Minimum License Withdrawal:

5 years

Other:

School Property/Crossing: Crime in the first degree – Not less than **10 years** or more than **20 years** and/or not more than **\$200,000**. N.J.S.A. §§2C:11-5; 2C:43-3(a)(1); 2C:43-6(a)(1).

DWI Offenses and Commercial Motor Vehicles (CMV):

A person's privilege to operate a CMV is “suspended” for not less than 1 mandatory year nor more than 3 years if transporting hazardous materials if, while operating a CMV, that person: (1) has a BAC/BrAC \geq **.04** (Standards: Grams of alc. per 100 milliliters of blood or grams of alc. per 210 liters of breath.); (2) is under the influence of intoxicating liquor or a controlled substance; or (3) violates the drunk-driving law.

⁵⁰¹ This offense is not specifically classified as a “felony” or a “misdemeanor” because the Criminal Code (Title 2C) does not define these terms. To cope with the lack of definition, 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).

⁵⁰² The minimum sentence is either between one-third and one-half of the sentence imposed or 3 years whichever is greater.

A CMV operator who refuses to submit to a chemical test shall have his license revoked for 6 months (first offense) or 2 years (subsequent offense), in addition to the sanctions listed in N.J.S.A. §39:4-50.4a.

For a subsequent violation or a combination of two or more violations of any of the above listed items, the privilege to operate a CMV is revoked 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 or more than \$500. N.J.S.A. §§39:3-10.13; 39:3-10.24(f); 39:3-10.27.

Driving While License Suspended for DWI

Offense:

Criminal - Fine/Imprisonment:

First offense – **\$500**

Second offense –\$750/not less than 1 day nor more than 5 days;

Third or subsequent offense –\$1,000/10 days.

N.J.S.A. §39:3-40(a)-(c).⁵⁰³

Mandatory Minimum Fine/Imprisonment Term:

First offense – **\$500**

Second offense –\$750/1 day;

Third or subsequent offense –\$1,000/10 days.

N.J.S.A. §39:3-40(a)-(c).

Administrative Licensing Action Type:
Withdrawal Action:

Suspension. N.J.S.A. §39:3-40(f).

An additional period of not less than **1 year** or more than **2 years.** N.J.S.A. §39:3-40(f)(2).

Mandatory Term of License Withdrawal Action:
Other:

1 year

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. N.J.S.A. §39:5-30a.⁵⁰⁴

Grounds for Being Declared Habitual Offender:

3 license suspensions for traffic offenses within 3 years.
N.J.S.A. §39:5-30a.

Term of License Revocations While on Habitual Offender Status:

Suspension for not more than **3 years.** N.J.S.A. §39:5-30b.
This suspension is not to run concurrently with any other suspension. N.J.S.A. §39:5-30d.

Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status:
Imprisonment (Term):

Not specified.

A fine of **\$1,000** and may be imprisoned for **30 days** or not less than **45 days** if the offense resulted in bodily injury.
N.J.S.A. §39:5-30e.

Mandatory Minimum Term/Fine:

45 days if the offense resulted in bodily injury.
N.J.S.A. §39:5-30e.

⁵⁰³ Operating a motor vehicle during a period of license suspension is a 4th degree crime if: (1) the person's license was suspended or revoked for a 1st violation of DWI or Refusal and the person had previously been convicted of violating N.J.S.A. 39:3-40 while under suspension for that first offense; or (2) the person's license was suspended or revoked for a 2nd or subsequent violation of DWI or Refusal. N.J.S.A. 2C:40-26.

⁵⁰⁴ N.J.S.A. §39:5-30.5 also grants Director of MVC authority to adopt penalty point system for motor vehicle offenses. N.J.A.C. §13:19-10.1 contains the Point System. N.J.S.A. §39:5-30.8 provides for license suspension for the accumulation of points.

Licensing Action (Specify):	N/A
<u>Other State Laws Related to Alcohol Use:</u> BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes. N.J.S.A. §26:2B-24.
BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	No
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	Yes
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes – on a driver involved in a crash fatal to another. N.J.S.A. §26:2B-24.
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. N.J.S.A. §§33:1-77; 33:1-81.
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. N.J.S.A. §2C:33-15. There is an exemption for employment, religious observances, ceremonies or rites. N.J.S.A. §§2C:33-17(b)(3); 9:17B-1; 33:1-81(b).
<u>Dram Shop and Social Host Laws:</u> State Has a Dram Shop Law (Yes/No):	Yes. N.J.S.A. §2A:22A-5. In order to be held liable, it must be shown that the licensee served alcoholic beverages to either a minor or a visibly intoxicated person.
"Dram Shop Law" 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. N.J.S.A. §2A:15-5.5. These provisions provide the exclusive civil remedy against a social host who has provided alcoholic beverages to an injury-causing guest where: (1) the guest is over the legal drinking age and is visibly intoxicated; and (2) the injuries are the result of negligent operation of a vehicle by the guest. N.J.S.A. §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. <i>Dower v. Gamba</i> , 647 A.2d 1364 (N.J.Super. A.D. 1994).
Social Host – Criminal Enforcement:	I. Any person who knowingly offers or serves or makes available an alcoholic beverage to a person under the legal age, or entices or encourages such person is a “disorderly person.” N.J.S.A. §2C:33-17. II. A parent, guardian or other person having legal custody of a person under 18 who fails or neglects to exercise reasonable supervision or control over such person who illegally possesses or consumes alcohol shall be subject to a fine of

\$500, if the parent, guardian or other person having legal custody was previously notified in writing of the young person's violation. N.J.S.A. §33:1-81.1a.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:
Imprisonment/Fine

A **violation**. N.J.S.A. §33:1-12.37.
Not less than **\$50** or more than **\$250**. N.J.S.A. §33:1-12.37.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

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

Yes – Suspension or Revocation. N.J.S.A. §33:1-31;
N.J.A.C. 13:2-19.11; 13:2-23.1b.

Suspension:
First offense – 15 days;
Second offense – 30 days.
N.J.A.C. 13:2-19.11.

Revocation:
First offense – 2 years;
Subsequent offense – Permanent revocation.

A sum of money may be paid in lieu of a suspension in the discretion of the Direction of the Alcoholic Beverage Control Commission. N.J.S.A. §33:1-31.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:
Imprisonment/Fine:

Disorderly Person Offense. N.J.S.A. §§2C:33-17; 2C:43-3(c);
2C:43-8; 33:1-77; N.J.A.C. 13:2-23.1.
Not more than **6 months** and not more than **\$1,000**.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

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

Yes – Suspension or Revocation.
N.J.S.A. §§33:1-31; N.J.A.C. 13:2-19.11; 13:2-23.1a.

Suspension:
Sale to minor (over age 18):
First offense – 15 days;
Second offense – 30 days;
Third offense-45 days;
Fourth offense: revocation.

Sale to minor (under age 18):
First offense – 30 days;
Second offense – 60 days;
Third offense-90 days;
Fourth offense: revocation. N.J.A.C 13:2-19.11.

Revocation:

First offense – **2 years;**

Subsequent offense – **Permanent revocation.**

A compromise sum of money may be paid in lieu of a suspension. N.J.S.A. §33:1-31.

Anti-Happy Hour Laws/Regulations:

N.J.A.C. 13:2-23.16. 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, except for private parties or New Year’s Eve, or the charging of one price for two or more drinks.

Open Container Laws:

Open Container Law (Yes/No):

Yes. N.J.S.A. §39:4-51a.

Anti-Consumption Law (Yes/No):

Yes. N.J.S.A. §39:4-51a.

Alcohol Exclusion Law (UPPL):

Yes. N.J.S.A. §17B:26-27.

STATE

General Reference:

NEW MEXICO

New Mexico Statutes Annotated (NMSA)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor.
NMSA §66-8-102(A).

Illegal Per Se Law (BAC/BrAC):

≥ **.08**.⁵⁰⁵ NMSA §66-8-102(C)(1).

Presumption (BAC/BrAC):

None

Types of Drugs/Drugs and Alcohol:

Under the influence of any drug. NMSA §66-8-102(B).

Other:

I. 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.
NMSA §66-8-102(D) .II. A person with a BAC < .04 is presumed not to be intoxicated. For a person with a BAC ≥ **.04 but < .08**, there is no presumption that such person is or is not under the influence of intoxicating liquor, but such level may be competent evidence in determining whether such person was under the influence. NMSA §66-8-110(B).Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

No

Implied Consent Law:

Yes. NMSA §66-8-107.

Arrest Required (Yes/No):

Yes. NMSA §66-8-107.Implied Consent Law Applies to Drugs
(Yes/No):**Yes.** NMSA §66-8-107.Refusal to Submit to Chemical Test
Admitted into Evidence:**Yes** – Criminal and Civil Actions. NMSA §66-8-110(A).

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.
NMSA §66-8-111(A).Non-Breath Chemical Tests for AlcoholConcentration Authorized Under theImplied Consent Law:

Blood:

Yes. NMSA §66-8-107.

Urine:

No

Other:

None

⁵⁰⁵ Standard: Alcohol concentration is based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. NMSA §66-8-110(F).

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No** – However, a driver must be charged with a DWI offense if he/she has an alcohol concentration \geq **.08**.
 NMSA §66-8-110(C).
 Anti-Plea-Bargaining Statute (Yes/No): **Yes**. NMSA §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 \geq .08.
 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 Sanction (Fine/Jail): **N/A**
 Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **N/A**
 Preliminary Breath Test – Other:
 Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**
 Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev): **Revocation 1 year** (mand). NMSA §§66-5-35(A)(2); 66-8-111(B).
 Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine: **DWI/Aggravated DUI Offenses:**
First conviction – Not more than **90 days** and/or not more than **\$500**;
Second or third conviction – Not more than **364 days** and/or not more than **\$1,000**;
Fourth conviction (4th degree felony) – Not less than **1** or more than **2 years** and may be fined not more than **\$5,000**;
Fifth conviction (4th degree felony) – **2 years** and may be fined not more than **\$5,000**;
Sixth conviction (3rd degree felony) – **30 months** and may be fined not more than **\$5,000**;
Seventh or subsequent conviction (3rd degree felony) – **3 years** and may be fined not more than **\$5,000**.
 NMSA §§31-18-15; 66-8-102.

DWI – Great Bodily Injury (3rd degree felony): **3 years** and may be fined not more than **\$5,000**. NMSA §§31-18-15; 66-8-101(C).
 Mandatory Minimum Term/Fine: **DWI Offenses:**
First conviction – **\$300**;
Second conviction – **96 hours/\$500**;
Third conviction – **30 days/\$750**;
Fourth conviction – **6 months**;

Fifth conviction – 1 year;
Sixth conviction – 18 months;
Seventh or subsequent conviction – 2 years.

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). NMSA §§31-18-15; 66-8-102.

DUI – Great Bodily Injury: 2 years. NMSA §66-8-101.

First offense – Not less than 24 hours;
Second offense – Not less than 48 hours;
Third offense – Not less than 96 hours. NMSA §66-8-102.

N/A

Yes. NMSA §31-17-1. Restitution is to be paid by the defendant.

BAC Test Fee: A fee of \$85 is assessed against each defendant to defray the costs of chemical tests for DWI. NMSA §31-12-7(A).

DWI Program Fee: A fee of \$75 is assessed to fund comprehensive DWI community programs. NMSA §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. NMSA §66-8-102(S).

Community Service:

Child Endangerment:

Restitution:

Other:

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

First offense – **Revocation 6 months (1 year if < 21 yrs. old);**
Second offense – **Revocation 1 year.** NMSA §66-8-111(c)(1)-(3).

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Term of Withdrawal:

Revocation. NMSA §66-5-29.

First conviction – 1 year;

Second conviction – 2 years;

Third conviction – 3 years;

Fourth or subsequent conviction – **life**, subject to a 5-year review. NMSA §66-5-29(C).

DUI – Great Bodily Injury – life, subject to a 10-year review. NMSA §66-5-29(D).

Mandatory Minimum Term of Revocation:

No mandatory periods are listed. However, when a person applies for reinstatement of driver's license, he must show a minimum of 6 months of driving with an ignition interlock device with no attempts to circumvent or tamper with the

Alcohol Education:	device. NMSA §66-5-33.1(B). Alcohol education and/or screening is ordered. NMSA §66-8-102.
Substance Abuse Treatment:	Alcohol treatment is ordered for subsequent offenders, which may include a 28-day inpatient, residential or in-custody substance abuse treatment program, a 90-day outpatient treatment program, a drug court program or any other substance abuse treatment program. For a person convicted of a DWI felony, the department of corrections shall provide substance abuse counseling and treatment while the offender is in custody. NMSA §66-8-102(L), (M).
Vehicle Impoundment/Confiscation:	Special Note: Municipal ordinances may provide for civil vehicle forfeiture. See <i>City of Albuquerque v. One 1984 Chevy Ut., VIN 1G8CS18BXE8176575, New Mexico License No. 335-KRH</i> , 46 P.3d 94 (N.M. 2002).
Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority: Terms Upon Which Vehicle Will Be Released: Other Miscellaneous Sanctions:	Driving Safety Course: A DWI offender may be required to take a driving safety course. NMSA §66-10-11.
<u>Ignition Interlock:</u> Permitted or Prohibited: Type of Law (Mandatory or Permissive): Sanction (Judicial, Administrative or Hybrid) Conditions of Use:	Permitted. NMSA §§66-8-102; 66-5-503(C). Mandatory Administrative <u>First conviction – 1 year;</u> <u>Second conviction – 2 years;</u> <u>Third conviction – 3 years;</u> <u>Fourth or subsequent conviction – reminder of the offender’s life.</u> ⁵⁰⁶
	Unless determined to be indigent, an offender shall pay the costs associated with having an ignition interlock device installed. NMSA §66-8-102(N).
	After 6 months of driving with an ignition interlock device and showing no attempts to circumvent or tamper with the device, an offender may apply for reinstatement of license. NMSA §66-5-33.1(B).
	A person convicted of DWI vehicular homicide or causing great bodily injury shall not be issued an ignition interlock license unless that person has completed serving sentence for the crime, including any period of probation or parole. NMSA §66-5-503(C).
Other Provisions:	An offender who obtains an ignition interlock license and

⁵⁰⁶ However, 5 years from the date of conviction and every 5 years thereafter, such offender may apply to a district court for removal of the ignition interlock device requirement. A court may remove the device for good cause shown. NMSA § 66-8-102(O).

installs the device prior to conviction shall be given credit at sentencing for the time period the device has been in use. NMSA §66-8-102(P).

Sobriety Checkpoints:

Permitted or Prohibited:

Permitted. *City of Las Cruces v. Betancourt*, 735 P.2d 1161 (N.M.App. 1987).

Homicide by Vehicle:

State Has Such a Law:

Yes. 3rd Degree Felony NMSA §66-8-101.

Imprisonment/Fine:

6 years and may be fined not more than **\$5,000**. NMSA §31-18-15.

Mandatory Minimum Term/Fine:

None

Authorized Licensing Action:

Suspension/Revocation. NMSA §§66-5-29; 66-5-30(A).

Length of Term of Licensing Withdrawal:

1 year

Mandatory Minimum License Withdrawal:

1 year. No restricted driving privileges may be granted. NMSA §66-5-35(A)(5).

Other:

A person who commits DWI vehicular homicide and who has incurred a prior DWI conviction within 10 years shall have his basic sentence increased by **4 years** for each prior DWI conviction. NMSA §66-8-101(D).

DWI Offenses and Commercial Motor Vehicles (CMV):

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 a BAC \geq .04 while operating a commercial vehicle; (2) has a BAC.08 or greater while driving a vehicle; (3) is less than 21 years of age and has a BAC .02 or greater (4) is convicted of a DWI offense while operating a CMV; or (5) refuses to submit to a chemical test for either alcohol or drug concentrations. NMSA §66-5-68(B)(1)-(5), (C).

For a subsequent violation or a combination of two or more violations of any of the above-listed items, the disqualification is for life (10 years mand). NMSA §66-5-68(D).⁵⁰⁷

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

Misdemeanor. A definite term of less than **4 days** or more than **364 days** and/or not more than **\$1,000**. NMSA §§31-19-1(A); 66-5-39(A).

Mandatory Minimum Fine/Imprisonment Term:

4 days. NMSA §66-5-39(A).

Administrative Licensing Action Type:

Suspension. NMSA §66-5-39(C).

Withdrawal Action:

The suspension period shall be extended for an additional

⁵⁰⁷ It is unlawful for a person to drive a commercial motor vehicle if the person has an alcohol concentration of .04 or more in the person's blood or breath within 3 hours of driving the commercial motor vehicle and the alcohol concentration results from alcohol consumed before or while driving the vehicle. A person is presumed to be intoxicated if operating a commercial vehicle with an alcohol concentration of .04 or more. NMSA §§66-8-102(C)(2); 66-8-110(B)(3).

Mandatory Term of License Withdrawal Action:	like period. NMSA §66-5-39(C). The above suspension period appears to be mandatory.
Other:	A person who drives on a revoked license shall have the vehicle immobilized for 30 days, unless immobilization poses an imminent danger to the health, safety or employment of the convicted person's immediate family or the family of the owner of the vehicle. NMSA §66-5-39(B).
<u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No):	No
<u>Other State Laws Related to Alcohol Use:</u> BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes. ⁵⁰⁸ NMSA §24-11-6(B).
BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	Yes
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	Yes
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	No
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. NMSA §§60-3A-3(R); 60-7B-1(C).
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. There is an exemption when the minor is on real property (not a licensed premises) under the control of a parent or guardian, or when the alcohol beverages are used in the practice of religious beliefs. NMSA §60-7B-1(B).
<u>Dram Shop and Social Host Laws:</u> State Has a Dram Shop Law (Yes/No):	Yes. NMSA §41-11-1.
"Dram Shop Law" 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. NMSA §41-11-1(E). Liability is based upon the host providing alcoholic beverages to the guest in reckless disregard of the rights of others including the guest.
Social Host – Criminal Enforcement:	I. A person who serves or delivers alcohol to a minor may be found guilty of a fourth degree felony, punishable by 18 months and a possible fine of not more than \$5,000. NMSA §§60-7B-1(F); 31-18-15. II. Any person committing any act or omitting the

⁵⁰⁸ 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. NMSA §24-11-6(B).

performance of any duty, which causes or encourages the delinquency of any person under the age of 18, may be found guilty of a 4th degree felony, punishable by 18 months and a possible fine of not more than \$5,000. NMSA §30-6-3.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Misdemeanor. NMSA §§31-19-1; 60-7A-16; 60-7A-25.

Imprisonment/Fine:

Less than **1 year** and/or not more than **\$1,000**.

NMSA §31-19-1.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Yes – Suspension/Revocation/Fine.⁵⁰⁹

Withdrawn (Yes/No):

NMSA §60-6C-1.

Length of Term of License Withdrawal:

2 years. First offense is permissive, the second is mandatory. NMSA §60-6C-8. Also, a fine of not more than \$10,000 may also be imposed. NMSA §60-6C-1(A), (B).

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

4th Degree Felony. NMSA §60-7B-1(F).

Imprisonment/Fine:

18 months and may be fined not more than **\$5,000**.

NMSA §31-18-15.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages

Yes – Suspension/Revocation/Fine. NMSA §60-6C-1.

Withdrawn (Yes/No):

Length of Term License Withdrawal:

2 years. First offense is permissive the second is mandatory. NMSA §60-6C-8. Also, a fine of not more than \$10,000 may also be imposed. NMSA §60-6C-1(A), (B).

Anti-Happy Hour Laws/Regulations:

No

Open Container Laws:

Open Container Law (Yes/No):

Yes. NMSA §66-8-138(B), (C).

Anti-Consumption Law (Yes/No):

Yes. NMSA §66-8-138(A).

Alcohol Exclusion Law (UPPL):

Yes.⁵¹⁰

⁵⁰⁹ Licensed Servers who serve alcoholic beverages must each be licensed to serve these beverages. If such a person serves alcohol to an intoxicated person or to a person under the legal drinking age, he/she is subject to the following administrative sanctions, in addition to any criminal liability imposed: 1st offense – administrative fine of not more than \$500 and/or server permit suspended for 30 days; 2nd offense – server permit suspended for 1 year; 3rd offense – server permit permanently revoked. NMSA §60-6E-8.

⁵¹⁰ No explicit statutes are in place. But case law supports an insurer's right to contract with the insured as to what risks it will or will not assume, as long as neither statute law nor public policy is violated. Courts will give force and effect to policy provisions that clearly express conditions precedent or exclusions to coverage. See *Rummel v. Lexington Ins. Co.*, 945 P.2d 970 (N.M. 1997).

STATE

General Reference:

NEW YORK

McKinney's Consolidated Laws of New York
New York Code Rules and Regulations (NYCRR)Basis for a DWI Charge:

Standard DWI Offense:

Driving while ability impaired;
Driving while intoxicated;
Driving while having consumed alcohol (< 21).
Veh & Traf §§ 1192(1), (3); 1192-a.

Illegal Per Se Law (BAC/BrAC):

≥ **.08**.⁵¹¹ Veh & Traf § 1192(2).

Presumption (BAC/BrAC):

BAC > .05 but ≤ **.07** is *prima facie* evidence that such person was not in an intoxicated condition, but is “relevant evidence” regarding impairment. Veh & Traf § 1195(2)(b).
BAC > .07 but < **.08** is *prima facie* evidence that such person was not in an intoxicated condition, but such evidence shall be given “prima facie” effect. Veh & Traf § 1195(2)(c).
BAC ≥ 0.18 – “Aggravated Driving While Intoxicated”:
Veh & Traf § 1192(2-a)(a).

Types of Drugs/Drugs and Alcohol:

Driving while impaired by drugs or driving while impaired by the combined influence of drugs or of alcohol and any drug or drugs. Veh & Traf § 1192(4), (4-a).

Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

Yes. Veh & Traf § 1194(1)(b). The law allows for field testing, which includes a breath test for every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any traffic law.

Implied Consent Law:

Yes. Veh & Traf § 1194(2).

Arrest Required (Yes/No):

Yes.⁵¹² Veh & Traf § 1194(2).

Implied Consent Law Applies to Drugs

Yes. Veh & Traf § 1194(2)(a).

(Yes/No):

Refusal to Submit to Chemical Test

Yes – Criminal and Civil Cases.

Admitted into Evidence:

Veh & Traf § 1194(2)(f).

Other Information:

Under Veh & Traf § 1194(3), a driver may be compelled by court order to submit to a chemical test of his blood for either alcoholic or drug content if he 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.

Non-Breath Chemical Tests for AlcoholConcentration Authorized Under theImplied Consent Law:

⁵¹¹ Standard: “Per centum by weight” of alcohol in the blood. Veh & Traf § 1192(2). Per centum by weight of alcohol in the blood may be expressed as grams of alcohol per 100 milliliters of blood. 10 NYCRR 59.1(b)

⁵¹² Applies to persons 21 and older. A person under 21 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. Veh & Traf § 1194(2)(a)(4).

Blood: **Yes.** Veh & Traf §1194(2)(a).
 Urine: **Yes.** Veh & Traf §1194(2)(a).
 Other: **Saliva.** Veh & Traf §1194(2)(a).

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No**, but unconditional discharge for a DWI violation is prohibited. Veh & Traf §1193(1)(e).
 Anti-Plea-Bargaining Statute (Yes/No): **Yes.** Unless available evidence determines otherwise, plea-bargaining is allowed only to another DWI offense. Veh & Traf §1192(10)(a).
 Pre-Sentencing Investigation Law (PSI) (Yes/No): A pre-sentencing investigation is mandatory in any felony case or any misdemeanor case where the sentence may be more than 180 days. Criminal Procedure Law (CPL) §390.20.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **N/A**

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **N/A**

Preliminary Breath Test – Other: **N/A**

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev): **First refusal – Revocation 1 year;**
Second refusal⁵¹³ (within 5 years) – **Revocation 18 months;**

Under 21:

First refusal – Revocation 1 year;
Subsequent refusal (within 5 years) – **Revocation 1 year** or until **age 21**, whichever is the greater period of time.
 Veh & Traf §1194(2)(d)(1)(a), (b), (d).

These revocation terms are mandatory.
 Veh & Traf §1194(2)(d)(3).

Implied Consent Chemical Test - Other:

Civil Penalty:
First revocation – \$500;
Second or subsequent revocation (within 5 years) – **\$750.**
 Veh & Traf §1194(2)(d)(2).

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine:

Driving while ability impaired
First conviction (traffic infraction) – Not more than **15 days** and/or not less than **\$300** or more than **\$500;**

Second conviction (within 5 years) (traffic infraction) – Not

⁵¹³ A subsequent offense considers a prior revocation resulting from refusal or conviction/finding of violation of any DWI offense. Veh & Traf §1194(2)(d)(1)(a).

more than **30 days** and/or not less than **\$500** or more than **\$750**;

Third or subsequent conviction (within 10 years) (misdemeanor) – Not more than **180 days** and/or not less than **\$750** or more than **\$1,500**. Veh & Traf §1193(1)(a).

Driving while intoxicated/ability impaired by drugs/combination:

First conviction (misdemeanor) – Not more than **1 year** and/or not less than **\$500** or more than **\$1,000**;

Second conviction (Class E felony) (within 10 years) – Not more than **4 years** and/or not less than **\$1,000** or more than **\$5,000**;

Third conviction (Class D felony) (within 10 years) – Not more than **7 years** and/or not less than **\$2,000** or more than **\$10,000**;

Fourth conviction (Class D felony) (within 15 years) – Not more than **7 years** and/or not less than **\$2,000** or more than **\$10,000**. Veh & Traf §1193(1)(c); Penal Law §70.00(2)(d), (e).

Aggravated DWI (BAC ≥ .18/with child under age 15):

First offense (misdemeanor) – Not more than **1 year** and/or not less than **\$1,000** or more than **\$2,500**;

Second offense (Class E felony) – Not more than **4 years** and/or not less than **\$1,000** or more than **\$5,000**.

Third offense (Class D felony) (within 10 years) – Not more than **7 years** and/or between **\$2,000** and **\$10,000**;

Fourth offense (Class D felony) (within 15 years) – Not more than **7 years** and/or between **\$2,000** and **\$10,000**. Veh & Traf §1193(1)(c); Penal Law §70.00(2)(d), (e).

DWI Felony:⁵¹⁴

Class E Felony – Not more than **4 years** and/or not less than **\$1,000** or more than **\$5,000**;

Class D Felony – Not more than **7 years** and/or not less than **\$2,000** or more than **\$10,000**.

Veh & Traf §1193(1)(c); Penal Law §70.00(2).

Driving while ability impaired School bus (with at least 1 student passenger) (misdemeanor):

Not more than **1 year** and/or between **\$500** and **\$1,500**. Veh & Traf §§1193(1)(d)(1-a);

DWI School bus (with at least 1 passenger) (Class E felony) – Not more than **4 years** and/or between **\$1,000** and **\$5,000**.

⁵¹⁴ Class E Felony: It becomes a Class D felony offense when the offender operates a motor vehicle in violation of DWI (per se; alcohol; drugs; combination) and has been convicted previously of: (1) a DWI or of 1st/2nd degree vehicular assault and aggravated vehicular assault; or (2) 1st/2nd degree vehicular manslaughter and vehicular homicide, within 10 years. Class D Felony: It becomes a Class D felony offense under the conditions above if it is a subsequent offense within 10 years, or fourth offense within 15 years. Veh & Traf §1193(1)(c).

Mandatory Minimum Term/Fine: Veh & Traf §1193(1)(d)(4-a); Penal Law §70.00.
DWI/Per Se 2nd (within 5 years) – **5 days** or **30 days** community service;
DWI/Per Se 3rd (within 5 years) – **10 days** or **60 days** community service. Veh & Traf §1193(1-a),(b).
 Community Service: Fine is not mandatory when imprisonment is given
DWI/Per Se 2nd – **30 days** (if no jail time)
DWI/Per Se 3rd – **60 days** (if no jail time)
 Veh & Traf §1193(1-a)(a)&(b).

Child Endangerment: Additionally, as a condition of probation, a court may order an offender to complete community service.
 Restitution: Penal Law §65.10(2)(h).
 Considered an aggravated DWI, listed above.
 The court may require restitution by a defendant to a victim.
 Penal Law §§60.27; 65.10(2)(g).

Other: A person may also receive compensation from the State's victims' compensation fund. Executive Law §620, *et seq.*
Surcharges and fees:
Infraction – \$5 fee and \$25 surcharge;
Misdemeanor – \$25 fee and \$175 surcharge;
Felony – \$25 fee and \$300 surcharge.
 Veh & Traf §1809(b)(i)-(ii).

There are additional surcharges of \$25 and \$170. Veh & Traf §§1809-c; 1809-e(2).

In addition to any other fines, fees, penalties and surcharges, any person convicted of a DWI offense must pay a driver responsibility assessment of \$250 per year for three years to DMV. Veh & Traf § 1199.

Administrative Sanctions – Pre-Conviction:
 Administrative Per Se Law:

Persons Under 21: Operating a motor vehicle “**after having consumed alcohol.**” A person under age 21 is only considered to have consumed alcohol if his **BAC is ≥ .02 but < .07**. Veh & Traf §1192-a.
First action – **Suspension 6 months;**
Subsequent action – **Revocation 1 year** or until such person reaches age 21, whichever is the greater period (mand).
 Veh & Traf §1193(2)(a), (b)(7).

Administrative Sanctions – Post-Conviction:
 Type of Licensing Action (Susp/Rev):
 Term of Withdrawal:

Suspension/Revocation. Veh & Traf §1193(2).
Driving while ability impaired:
First offense – **Suspension 90 days;**
Subsequent offense (1 prior within 5 years/2 priors in 10 years) – **Revocation 6 months**

DWI/Per Se:

First offense – **Revocation 6 months;**
Second or subsequent offense (within 10 years) – **Revocation 1 year**

Aggravated DWI:
First offense – **Revocation 1 year;**
Subsequent offense (within 10 years) – **Revocation 18 months.**

DWI School bus:
First offense – **Revocation 1 year;**
Subsequent offense (within 10 years) – **Revocation 3 years.**

Persons under 21:
First offense – **Revocation 1 year;**
Subsequent offense – **Revocation 1 year or until age 21 (whichever is greater).**

Permanent Revocation – this applies to a third or subsequent conviction within 4 years, or a fourth conviction within 8 years of any DWI or implied consent offense.

DWI Injury: Permanent revocation if two DWI offenses with physical injury.
 Veh & Traf §1193(2).

Mandatory Minimum Term of Revocation:

Driving while ability impaired: Subsequent offense – 6 months;
DWI/Per Se: Second/subsequent offense – 1 year
Aggravated DWI – 18 months.⁵¹⁵

Alcohol Education:

Yes. Veh & Traf §1196.

Substance Abuse Treatment:

Yes. Veh & Traf §1196.

Vehicle Impoundment/Confiscation:

Forfeiture. Civil Practice Law & Rules (CPLR) §§1310(5); 1311(1)(a).

Authorized by Specific Statutory Authority:

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.

Terms Upon Which Vehicle Will Be Released:

The court may grant relief if such relief is warranted by the existence of some compelling factor, consideration or circumstance demonstrating that forfeiture would not serve the ends of justice. CPLR §1311(4)(d).

Other Miscellaneous Sanctions:

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.
 Veh & Traf §1193(1)(f).

⁵¹⁵ 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 the person has participated in such a program within a five-year period; or (2) 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. Veh & Traf §1196(7).

Civil Penalty: A person < 21 who has had a license suspension/revocation for driving “after having consumed alcohol” is liable for a civil penalty of **\$125**. Veh & Traf §1194-a (2).

Probation: A defendant may be placed on probation with conditions related to the offender’s rehabilitation. Penal Law §65.10(2)(1). Conditional discharge or probation must be accompanied by a sentence or a fine. Veh & Traf §1193(1)(e).

Ignition Interlock:

Permitted or Prohibited:

Type of Law (Mandatory or Permissive):

Sanction (Judicial, Administrative or Hybrid)

Conditions of Use:

Permitted. Penal Law §65.10(2)(k-1); Veh & Traf §1193(1-a)(c).

Mandatory

Hybrid

Judicial:

I. The use of an “ignition interlock” may be a condition of probation for an illegal per se/intoxicated offense conviction or Aggravated Driving While Intoxicated. Penal Law §65.10(2)(k-1).

II. Following conviction for DWI, or aggravated DWI, the court shall sentence the offender to a term of probation or conditional discharge with the condition that an ignition interlock device be installed for at least 12 months (6 months mand.). Veh & Traf §1193(b)(ii).

Administrative:

For an offender with three or four alcohol/drug-related prior convictions within 25 years, the Commissioner shall impose ignition interlock restriction if he/she approves an application for a restricted license. Such ignition interlock term shall be for a period of 5 years. 15 NYCRR 136.5(b)(3).

Other Provisions:

For any individual subject to a sentence of probation, installation and maintenance of an ignition interlock device shall be a condition of probation. Veh & Traf §1198(2).

Sobriety Checkpoints:

Permitted or Prohibited:

Permitted. *People v. Scott*, 473 N.E.2d 1 (N.Y. 1984); *People v. Gavenda*, 88 A.D.3d 1295 (N.Y. 2011).

Homicide by Vehicle:

State Has Such a Law:

Vehicular manslaughter in the 2nd degree – Class D felony.

Penal Law §125.12

Vehicular manslaughter in the 1st degree (BAC ≥ 0.18) – Class C felony. Penal Law §125.13.

Imprisonment/Fine:

2nd Degree – Not more than **7 years** and/or not more than **\$5,000**; **1st Degree** – Not more than **15 years** and/or not

Mandatory Minimum Term/Fine: more than **\$5,000**. Penal Law §§70.00; 80.00.
 Authorized Licensing Action: **1 year**. Penal Law §70.00.
 Length of Term of Licensing Withdrawal: **Revocation**. Veh & Traf §510(2)(a)(i).
 Mandatory Minimum License Withdrawal: **6 months**. Veh & Traf §510(6).
 Other: **6 months**. Veh & Traf §510(6).

DWI Offenses and Commercial Motor Vehicles (CMV):

A person will have his privilege to operate a CMV “revoked” for one mandatory year (three years mandatory if transporting hazardous materials) if, while operating a CMV he: (1) had a BAC \geq .04 (amount of alcohol in the blood); (2) violated any provision of the DWI law; or (3) refused to submit to a chemical test for alcoholic/drug content. For a second violation or a combination of two violations of any of the above-listed items, there is a “disqualification” for at least 10 years, and a fine of \$750. For a third violation or a combination of three violations of any of the above listed items, there is a mandatory permanent “disqualification”. Veh & Traf §§510-a; 530(5); 1193(2); 1194(2)(d)(1)(c), (d); 1196(5).

Criminal Sanctions:

Infraction: A person commits an “infraction” if he operates a CMV with a BAC \geq **.04 but < .06**. 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 \geq **.06 but < .08**.

For a first Per Se Level II Offense, the sanctions are a fine of not less than \$500 or more than \$1,500 and/or a jail term of not more than 180 days.

For a subsequent Per Se Level II Offense (within five years) or for a first offense where there has been a previous DWI offense conviction (within five years), the sanctions are a fine of not less than \$500 or more than \$1,500 and/or a jail term of not more than one year.

A person commits a misdemeanor if he operates a CMV and violates the regular provisions of the DWI law. The sanctions for this offense are a fine of not less than \$500 or more than \$1,500 and/or a jail term or not more than 1 year.

Felony: A person commits a Class E felony if he is convicted of a Per Se Level II offense and has been convicted 2 or 3 times within 5 years of a Per Se Level II offense or any DWI offense (one of these must be a misdemeanor.)

A person commits a Class D felony if he is convicted of a Per Se Level II offense and has been convicted 4 or more times

within 5 years of a Per Se Level II offense or any DWI offense (One of these must be a misdemeanor.)

Class E felony sanctions: A fine of not less than \$1,000 or more than \$5,000 and/or a term of imprisonment of not more than 4 years.

Class D felony sanctions: A fine of not less than \$2,000 or more than \$10,000 and/or a term of imprisonment of not more than 7 years.

Veh & Traf §1193(1)(d)(1), (2), (3), (4); Penal Law §§55.10(1), (2); 70.00; 70.15(1)(a).

DWI Offenses Involving Other Motor Vehicles Used In

Commerce: The following sanctions apply to persons who operate taxicabs, liveries or a trunk weighing more than 18,000 lbs. but less than 26,000 lbs. while in violation of the regular provisions of the DWI law.

First offense (misdemeanor) – Not more than 1 year and/or not less than \$500 or more than \$1,500; license revoked 1 year;

Second offense (within 10 years) (class E felony) – Not more than 4 years and/or not less than \$1,000 or more than \$5,000; disqualification from operating a CMV;

Third offense (within 10 years) (class D felony) – Not more than 7 years and/or not less than \$2,000 or more than \$10,000; disqualification from operating a CMV. Veh & Traf §1193(1)(d).

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

Aggravated unlicensed operation of a motor vehicle in the 3rd degree (Misdemeanor) – punishable by not more than **30 days** and/or not less than **\$200** or more than **\$500**;

Aggravated unlicensed operation of a motor vehicle in the 2nd degree (Misdemeanor) – punishable by not more than **180 days** and/or not less than **\$500**;

Aggravated unlicensed operation of a motor vehicle in the 1st degree (Class E Felony) – punishable by not more than **4 years** or a term of probation, either or both, and not less than **\$500** or more than **\$5,000**.

Veh & Traf §511; Penal §§70.00; 80.00

Mandatory Minimum Fine/Imprisonment Term:

3rd Degree – Less than 30 days/\$200

2nd Degree – 7 days or probation/condition/\$500;

1st Degree – 1 year or probation/condition/\$500.

(Unclear from the statute)

Administrative Licensing Action Type:

Withdrawal Action:

Mandatory Term of License Withdrawal

Action:

Seizure: Any vehicle used in a 1st degree aggravated unlicensed operation of a motor vehicle may be seized.

Veh & Traf §511-c(2).

Other:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No): **No**

Other State Laws Related to Alcohol Use:

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No): **Yes.** County Law §674(3)(b).⁵¹⁶

BAC Chemical Test Given to Deceased Driver Killed in Crash: **Yes**

BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash: **No**

BAC Chemical Test Given to Deceased Pedestrian Killed in Crash: **Yes** – If 16 years or older.

BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law: **No**

Minimum Age (Years) for Sale/Purchase of Alcohol: **21.** Alcohol Beverage Control Law (ABC) §§65; 65-b; 82.

Minimum Age (Years) for Possession/Consumption of Alcohol: **21**

Dram Shop and Social Host Laws:

State Has a Dram Shop Law (Yes/No): **Yes.** General Obligation Law §§11-100; 11-101.

"Dram Shop Law" 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: **Limited** to minors (< 21) only. General Obligation Law §11-100; see *Cole v. O'Tooles of Utica, Inc.*, 643 N.Y.S.2d 283 (N.Y.A.D. 4 Dept. 1996).⁵¹⁷

Social Host – Criminal Enforcement: I. Any person who gives or serves alcohol to a minor may be found guilty of a misdemeanor, punishable by not more than 1 year and/or not more than \$1,000.
II. Any person who acts in a manner likely to be injurious to the physical, mental or moral welfare of a child < 17 or any parent, guardian or other person legally charged with the care or custody of a child < 18 who fails or refuses to exercise reasonable diligence in the control of such child may be found guilty of child endangerment, a class A misdemeanor, punishable by not more than 1 year and/or not more than \$1,000. Penal Law §260.10(1).

⁵¹⁶ 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. County Law §674(3)(b).

⁵¹⁷ 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 (N.Y.A.D. 3 Dept. 1987).

III. Any person who gives or sells or causes to be given/sold any alcoholic beverage to a person < 21 may be found guilty of unlawfully dealing with a child in the 1st degree, a class A misdemeanor, punishable by not more than 1 year and/or not more than \$1,000. Penal Law §260.20.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Class A Misdemeanor.

ABC §§65; 130(5); Penal Law §§55.10(2)(b); 70.15(1); 80.05(1).

Imprisonment/Fine:

Not more than **1 year** and/or not more than **\$1,000**.

ABC §130.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Suspension, cancellation, revocation, and/or a civil penalty. ABC §§65(6); 118.

Length of Term of License Withdrawal:

Not specified in the statute, however upon a second or subsequent conviction, a licensee shall be fined a civil penalty, in addition to suspension, cancellation or revocation, not more than **\$500**. ABC §119(5).

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Class A Misdemeanor.

ABC §§65; 130; Penal Law §§ 55.10(2)(b); 70.15(1); 80.05; 80.10(1)(b), (c); 260.20.

Imprisonment/Fine:

Not more than **1 year** and/or not more than **\$1,000**.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Suspension, cancellation, revocation, and/or a civil penalty. ABC §§65(6); 118.

Length of Term License Withdrawal:

Not specified in the statute, however upon a second or subsequent conviction, a licensee shall be fined a civil penalty, in addition to suspension, cancellation or revocation, not more than **\$500**. ABC §119.

Anti-Happy Hour Laws/Regulations:

Yes. ABC §117-a.

Open Container Laws:

Open Container Law (Yes/No):

Yes.⁵¹⁸ Veh & Traf §1227.

Anti-Consumption Law (Yes/No):

Yes. Veh & Traf §1227.

⁵¹⁸ This does not apply to vehicles operating under certain certificates or permits issued by the U.S. Department of Transportation. Veh & Traf §1227.

Alcohol Exclusion Law (UPPL):

Yes. Insurance Law §3216(d)(2)(K)

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General Reference:

North Carolina General Statutes (N.C.G.S.)
North Carolina Administrative Code (NCAC)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of an impairing substance.⁵¹⁹
N.C.G.S. §§ 20-4.01(14a); 20-138.1(a)(1).

Illegal Per Se Law (BAC/BrAC):

≥ **.08**.⁵²⁰ N.C.G.S. §20-138.1(a)(2).

Persons Under 21: Any alcohol or controlled substance in the body. N.C.G.S. §20-138.3.

Presumption (BAC/BrAC):

None

Types of Drugs/Drugs and Alcohol:

Under the influence of any impairing substance or with any amount of a Schedule I controlled substance (as listed in N.C.G.S. §90-89) or its metabolites.⁵²¹ N.C.G.S. §§20-4.01(14a); 20-138.1(a)(3).

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

Yes. N.C.G.S. §20-16.3(a).

Implied Consent Law:

Yes. N.C.G.S. §20-16.2.

Arrest Required (Yes/No):

Yes for a chemical test.⁵²² N.C.G.S. §20-16.2(a). A person need not be arrested for a preliminary breath test. N.C.G.S. §20-16.3(a).

Implied Consent Law Applies to Drugs (Yes/No):

Yes.⁵²³ N.C.G.S. §§20-16.2(a), (a1); 20-139.1.⁵²⁴

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal, civil or administrative hearings. N.C.G.S. §§20-16.2(a)(3); 20-16.3(d); 20-139.1(f).

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the

Implied Consent Law:

Blood:

Yes – unconscious persons. N.C.G.S. §20-16.2(b).

Urine:

Yes. N.C.G.S. §§20-139.1(c); 20-16.2(b).

Other:

Other bodily fluid or substance. N.C.G.S. §20-4.01(3a).

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No.

Anti-Plea-Bargaining Statute (Yes/No):

No.⁵²⁵ However, the law does require the prosecutor to explain a reduction or dismissal of a DWI charge in writing and in open court. N.C.G.S. §20-138.4.

⁵¹⁹“Impairing substance” means alcohol, a controlled substance, any other drug or psychoactive substance capable of impairing a person’s physical or mental faculties, or any combination of these substances. N.C.G.S. §20-4.01(14a).

⁵²⁰ Alcohol concentration means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. N.C.G.S. §20-4.01(1b).

⁵²¹ The fact that a person is legally entitled to use alcohol or a drug is not a defense. N.C.G.S. §20-138.1(b).

⁵²² A person is charged with an implied consent offense if he has been arrested or if criminal process for the offense has been issued. N.C.G.S. §20-16.2(a1).

⁵²³ A law enforcement officer shall “designate the type of chemical analysis to be administered.” N.C.G.S. §20-16.2(b), (c).

⁵²⁴ N.C.G.S. §20-139.1 only applies to procedures governing chemical tests for alcohol concentration.

Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes.** A judge may order a presentence investigation. N.C.G.S. §20-179.1.

Sanctions for Refusal to Submit to a

Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **N/A**

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **N/A**

Preliminary Breath Test – Other: The fact that a person refused to submit to a PBT may be used by the officer, is admissible in court, or may be used by an administrative agency in determining whether there are reasonable grounds for believing that the driver committed an implied consent offense and that the driver had consumed alcohol and had in his body previously consumed alcohol. N.C.G.S. §20-16.3(d).

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **N/A**

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):

Implied Consent Chemical Test - Other: **Revocation 12 months** (6 months mand⁵²⁶). N.C.G.S. §20-16.2(d). If a driver appears before a judicial official⁵²⁷ the revocation period is 30 days (mand) if there are no pending offenses for which the person’s license had been or is revoked. This period may be increased to 45 days if the person does not appear before the judicial official. N.C.G.S. §20-16.5(f).

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine: **Misdemeanor.**⁵²⁸

⁵²⁵ Although New Jersey has not specifically enacted an anti-plea-bargaining statute, the Appendix to Part VII of the New Jersey Court Rules provides “Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey.” These rules significantly limit plea bargaining in the context of DWI cases. The full text of the Appendix can be accessed at: <http://www.judiciary.state.nj.us/rules/plea.pdf>.

⁵²⁶ A limited license may be issued after 6 months of the revocation period to a driver if: (1) at the time of the refusal the person held a valid driver’s license or one that had been expired less than one year; (2) at the time of the refusal, the person had not within 7 years been convicted of impaired driving; (3) at the time of the refusal, the person had not within 7 year willfully refused to submit to a chemical analysis; (4) the implied consent offense did not involve death or critical injury; (5) the underlying charge for which the person was requested to submit to chemical analysis has been disposed of other than by conviction, or by conviction at a punishment level authorizing limited license and the defendant has complied with at least one of the mandatory conditions of probation; (6) subsequent to the refusal, the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving; (7) the person’s license has been revoked for at least 6 months for the refusal; and (8) the person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program. N.C.G.S. §20-16.2(e1).

⁵²⁷ A judicial official means a magistrate, clerk, judge or justice. N.C.G.S. §§15A-101(5); 20-16.5.

⁵²⁸ After hearing mitigating and aggravating factors, a court determines which level punishment to impose. Mitigating factors include slight impairment, driving record, medical condition, voluntary submission to a mental health facility, and completion of substance abuse treatment, to name a few. Aggravating factors include high BAC, negligent or reckless driving, prior driving record, driving while license revoked, etc. N.C.G.S. §20-179.

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Level 1 A Punishment- not less than **12 months** or more than **36 months** or **120 days** in prison and **120 days** of continuous alcohol monitoring and may be fined up to **\$10,000**;

Level 1 Punishment – Not less than **30 days** or more than **24 months** and may be fined up to **\$4,000**;

Level 2 Punishment – Not less than **7 days** or more than **12 months** and may be fined up to **\$2,000**;

Level 3 Punishment – Not less than **72 hours** or more than **6 months** and may be fined up to **\$1,000**;

Level 4 Punishment – Not less than **48 hours** or more than **120 days** and may be fined up to **\$500**;

Level 5 Punishment – Not less than **24 hours** or more than **60 days** and may be fined up to **\$200**.

N.C.G.S. §20-179(f3), (g) (h),(i),(j),(k).

Serious injury by vehicle (Class F felony⁵²⁹): Sentence is **10-59 months** depending on the person's criminal history. N.C.G.S. §§15A-1340.17; 20-141.4(a3).

Aggravated⁵³⁰ serious injury by vehicle (Class E felony): Sentence is **15-98 months** depending on the person's criminal history. N.C.G.S. §§15A-1340.17; 20-141.4(a4).

Persons under 21 (Class 2 misdemeanor) (any alcohol or controlled substance) – Not less than **1 day** or more than **60 days** and/or not more than **\$1,000**. N.C.G.S. §§15A-1340.23; 20-138.3; 20-176.

Operating school bus after consuming alcohol:

First offense (class 3 misdemeanor) – **\$100**;

Second or subsequent offense (misdemeanor) – punishable in the same manner above (punishment levels).

N.C.G.S. §20-138.2B(c).

Mandatory Minimum Term/Fine:

Level 1 Punishment – **30 days** (or not less than **10 days** if placed in an abstinence program and monitored for not less than 120 days);

Level 2 Punishment – **7 days** (or none if abstention from alcohol and monitored for at least 90 days);

Level 3 Punishment – **None**;

Level 4 Punishment – **None**;

Level 5 Punishment – **None**. N.C.G.S. §20-179(f3), (g)-(k).

Community Service:

Level 2 Punishment – **240 hours** if the judge suspends all active terms of imprisonment and imposes abstention from alcohol and monitoring;

Level 3 Punishment – **72 hours** within 90 days (or 72 hours

⁵²⁹ North Carolina follows a sentencing grid that provides presumptive, mitigated and aggravated sentencing ranges for each class offense and prior record level. See N.C.G.S. §15A-1340.17.

⁵³⁰ The crime becomes aggravated when the person has a previous impaired driving within 7 years of the instant offense. N.C.G.S. §20-141.4(a4).

Child Endangerment:	in jail, or both); <u>Level 4 Punishment</u> – 48 hours within 60 days (or 48 hours in jail, or both); <u>Level 5 Punishment</u> – 24 hours within 30 days (or 24 hours in jail, or both). N.C.G.S. §20-179(f3), (g)-(k). Driving while a child under age 18 is in the vehicle is considered a grossly aggravating factor, and is to be considered during sentencing. N.C.G.S. §20-179(c).
Restitution:	Direct compensation by the defendant to a victim. N.C.G.S. §15B-24.
Other:	Continuous alcohol monitoring system: As a condition of probation for defendants subject to Level 1 or 2 punishment, the judge may order a defendant to abstain from alcohol consumption to a minimum of 30 days to a maximum of the term of probation, as verified by a continuous alcohol monitoring system. N.C.G.S. §20-179(h1).
<u>Administrative Sanctions – Pre-Conviction:</u> Administrative Per Se Law:	≥ .08 (> .00 for persons under 21; ≥ .04 for CMV operators). Revocation 30 days. N.C.G.S.. §20-16.5(b), (b1), (e), (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. N.C.G.S. §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. N.C.G.S. §20-16.5(e), (f).
<u>Administrative Sanctions – Post-Conviction:</u> Type of Licensing Action (Susp/Rev):	Revocation. N.C.G.S. §§20-17; 20-17.6; 20-19; 20-179; 20-138.5.
Term of Withdrawal:	<u>First offense</u> – 1 year ; <u>Subsequent offense</u> (not within 3 years) – 1 year ; <u>Second offense</u> (within 3 years) – 4 years ; <u>Third offense</u> (where the second offense was within 5 years of the third) – Permanent . N.C.G.S. §§20-17; 20-19(c1), (d), (e).
Mandatory Minimum Term of Revocation:	Persons under 21: Revocation 1 year. N.C.G.S. §20-13.2(d). Serious/aggravated injury by vehicle: Permanent. N.C.G.S. §§20-17(a)(9); 20-141.4; 20-19(e).
Alcohol Education:	<u>First offense</u> – None ;
Substance Abuse Treatment:	<u>Second offense</u> – 2 years ; <u>Third offense</u> – 3 years. N.C.G.S. §20-19(d), (e). Yes. N.C.G.S. §20-179. Yes. N.C.G.S. §20-179. Under N.C.G.S. §20-179.1, treatment may be ordered by the court as a condition of

<p>Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:</p>	<p>probation. Under N.C.G.S. §20-179(k1), the court may order that a term of imprisonment imposed as a condition of probation be served in an inpatient alcohol treatment facility.</p>
<p>Terms Upon Which Vehicle Will Be Released:</p>	<p>Forfeiture. Driving while impaired while revoked for a previous impaired driving revocation. N.C.G.S. §20-28.2. For a <u>fourth or subsequent offense</u> (within 10 years), the motor vehicle driven by the offender is subject to seizure and forfeiture. N.C.G.S. §20-138.5(e). Certain innocent parties who have an ownership interest in the vehicle, or a lien holder, may have the vehicle released to them. N.C.G.S. §§ 20-28.2; 20-138.5(e).</p>
<p>Other Miscellaneous Sanctions:</p>	
<p><u>Ignition Interlock:</u> Permitted or Prohibited: Type of Law (Mandatory or Permissive): Sanction (Judicial, Administrative or Hybrid) Conditions of Use:</p>	<p>Permitted. Both. Hybrid. I. Persons eligible for limited driving privileges <u>may</u> be required to operate motor vehicles equipped with an ignition interlock device. N.C.G.S. §20-179.3(g3) and if person eligible for a limited driving privilege has a BAC of 0.15 or more, they are required to have ignition interlock. N.C.G.S. §20-179.3(g5). Limited driving privilege effective for 1 year. II. If BAC was <u>≥ .15</u> or if person is a second or subsequent offender (within 7 years), ignition interlock is required.⁵³¹ III. Length of requirement – If original revocation period was: One year = 1 year from date of restoration; Four years = 3 years from date of restoration; Permanent = 7 years from date of restoration. N.C.G.S. §20-17.8. Credit is given for time driver had ignition interlock with limited driving privilege. N.C.G.S. §20-17.8(d) A person subject to ignition interlock who violates any of the restrictions, but is not charged or convicted of driving while license is revoked shall have his/her person’s license revoked for 1 year. N.C.G.S. §20-17.8(g). A person who violates any provision of license restrictions commits the offense of driving while license is revoked. N.C.G.S. §20-17.8(j).</p>
<p>Other Provisions:</p>	
<p><u>Sobriety Checkpoints:</u> Permitted or Prohibited:</p>	<p>Permitted. N.C.G.S. §20-16.3A.</p>

⁵³¹ 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. N.C.G.S. §20-17.8(c). II. The following BAC requirements also apply while using an ignition interlock device: (1) If BAC was ≥ .15, the person may not drive with a BAC ≥ .04; and, for a second or subsequent DWI offense, DWI in a CMV, DWI < 21 after consuming alcohol/drugs or any vehicle homicide offense, the person may not drive with a BAC > .00. N.C.G.S. §20-17.8(b)(3).

Homicide by Vehicle:
State Has Such a Law:

Felony Death by Vehicle (Class E felony);
Aggravated Felony Death by Vehicle (Class D felony);
Repeat Felony Death by Vehicle Offender (Class B2 felony). N.C.G.S. §§15A-1340.17; 20-141.4(a1), (a5), (a6), (b).

Imprisonment/Fine:

Felony Death by Vehicle (Class E felony) - Sentence is **15-98 months** depending on the person's criminal history and aggravating/mitigating factors.

Aggravated Felony Death by Vehicle (Class D felony) – Sentence is **38 - 229 months** depending on the person's criminal history and aggravating/mitigating factors.

Repeat Felony Death by Vehicle Offender (Class B2 felony) – Sentence is **94-480 months** depending on the person's criminal history and aggravating/mitigating factors.

Fine amounts are discretionary with the court.
N.C.G.S. §§15A-1340.17; 20-141.4.

Mandatory Minimum Term/Fine:

None

Authorized Licensing Action:

Revocation. N.C.G.S. §§20-17(a)(9); 20-19(d).

Length of Term of Licensing Withdrawal:

4 years.

Mandatory Minimum License Withdrawal:

2 years.

Other:

DWI Offenses and Commercial Motor Vehicles (CMV):

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 \geq **.04**; (2) is under the influence of an impairing substance, or has any amount of a controlled substance or its metabolites in blood or urine; or (3) refuses to submit to a chemical test for an alcohol concentration. For a subsequent violation or 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 while under the influence of an impairing substance or with a BAC/BrAC \geq **.04**. The sanctions for this offense are the same as for a regular drunk-driving offense N.C.G.S. §§20-138.2(a)(1)-(3); 20-179.

III. The State has adopted by reference the out-of-service provisions of 49 CFR §§392.5; 395.13. These provisions provide, among other things, that a CMV operator be placed out-of-service for 24 hours, if by general appearance or conduct, it appears the operator has consumed intoxicating beverages with the preceding 4 hours.

IV. Driving a CMV while consuming alcohol or while

alcohol remains in the body:

First offense (Class 3 misdemeanor) – A \$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.

Fourth offense, disqualification is for life (mand).

Note: The preliminary breath test and implied consent laws also apply to this offense. N.C.G.S. §§20-17.4(a), (a1), (b), (b1); 20-17.6; 20-19(f); 20-37.12; 20-138.2; 20-138.2A; 20-179.

Driving While License Suspended for DWI

Offense:

Criminal - Fine/Imprisonment:

Class 1 misdemeanor. N.C.G.S. §20-28(a1).

A sentence of **1-120 days** depending on the person’s criminal record. A fine is discretionary by the court. N.C.G.S. §§20-28(a1); 15A-1340.23.

None.

Mandatory Minimum Fine/Imprisonment

Term:

Administrative Licensing Action Type:

Withdrawal Action:

Revocation

First offense – **1 additional year** added to original revocation period;

Second offense – **2 additional years** added to original revocation period;

Third offense – **Permanent** revocation.

N.C.G.S. §20-28(a1), (c).

Mandatory Term of License Withdrawal

Action:

First offense – **90 days**;

Second offense – **1 year**;

Third offense – **3 years**.

The driver shall obtain a substance abuse assessment prior to issuance of a license, show proof of financial responsibility and complete education or treatment if necessary. If the assessment determines the person abuses alcohol, then such person shall install an ignition interlock for the period of time the conditional restoration is active. N.C.G.S. §20-28(c4).

Other:

I. Vehicle “subject to” impoundment and forfeiture if driving while impaired while revoked for an impaired driving revocation. N.C.G.S. §20-28.2.

II. 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. N.C.G.S. §20-179(c)(2).

III. The court may order as a condition of probation that the offender abstain from alcohol consumption and verify compliance by use of a monitor for a minimum period of 90 days. N.C.G.S. §20-28(a1).

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	Yes. Habitual Impaired Driving.
Grounds for Being Declared Habitual Offender:	3 or more impaired driving offenses within 10 years. N.C.G.S. §20-138.5.
Term of License Revocations While on Habitual Offender Status:	Permanent Revocation. N.C.G.S. §20-138.5(d).
Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status:	Class F felony. N.C.G.S. §20-138.5.
Imprisonment (Term):	10-59 months; fine is discretionary. N.C.G.S. §15A-1340.17.
Mandatory Minimum Term/Fine:	12 months. N.C.G.S. §20-138.5.
Licensing Action (Specify):	Permanent Revocation- eligible for conditionally restored license after 10 years. N.C.G.S. §20-19(c3).

Other State Laws Related to Alcohol Use:

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	No
BAC Chemical Test Given to Deceased Driver Killed in Crash:	N/A
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	N/A
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	N/A
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes. N.C.G.S. §§20-16.2(a1); 20-16.3(a); 20-141.4(a2).
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. N.C.G.S. §18B-302(a), (b).
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. Employment exemption. N.C.G.S. §§18B-301(f)(4); 18B-302(h).

Dram Shop and Social Host Laws:

State Has a Dram Shop Law (Yes/No):	Yes (underage persons). N.C.G.S. §18B-120, <i>et seq.</i> The law limits recovery to \$500,000. N.C.G.S. §18B-123.
"Dram Shop Law" 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. Under general negligence principles of common law, a social host may be held liable for the injuries caused by intoxicated guests. <i>Hart v. Ivey</i> , 420 S.E.2d 174 (N.C. 1992).
Social Host – Criminal Enforcement:	I. Any person who gives an underage person alcohol may be found guilty of a class 1 misdemeanor, punishable by 1-120 days <u>or</u> a \$250 fine and 25 hours of community service for a first offense. For a subsequent offense (within 4 years) the punishment is 1-120 days, or a \$500 fine and 150 hours of community service. N.C.G.S. §§15A-1340.23; 18B-302(a1); 18B-302.1. The length of the imprisonment term is

determined in part by the number of prior criminal convictions. N.C.G.S. §15A-1340.23

II. A person who is at least 16 who knowingly or willfully causes, encourages or aid any juvenile to commit an act whereby such juvenile could be adjudicated delinquent may be found guilty of a class 1 misdemeanor, punishable by 10-59 months and, in the discretion of the court, a fine. N.C.G.S. §§14-316.1; 15A-1340.23.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Imprisonment/Fine:

Class 1 Misdemeanor. N.C.G.S. §§18B-102; 18B-305.

1-120 days and a fine in the court's discretion. The length of the imprisonment term is determined in part by the number of prior criminal convictions. N.C.G.S. §15A-1340.23

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes – Suspension, revocation, fine or suspension & fine. N.C.G.S. §§18B-104; 18B-305(a).

Suspension – Not more than 3 years;

Revocation period is not specified in the statute. A fine of up to **\$500** (1st violation), **\$750** (2nd violation) or **\$1,000** (3rd violation) may be imposed. A permittee may pay a penalty of up to **\$5,000** as an offer in compromise for revocation. The Commission may not revoke the permit if a penalty is paid. However, the Commission may still suspend the permit and collect the penalty. N.C.G.S. §18B-104.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Imprisonment/Fine:

Class 1 Misdemeanor. N.C.G.S. §§18B-102; 18B-302; 18B-302.1.

First offense –120 days or \$250 and 25 hours community service;

Subsequent offense –120 days or \$500 and 150 hours community service. The imposition of a fine is in the court's discretion. N.C.G.S. §15A-1340.23.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes – Suspension, revocation, fine or suspension & fine. N.C.G.S. §§18B-104; 18B-305(a).

Suspension – Not more than 3 years;

Revocation period is not specified in the statute. A fine of up to **\$500** (1st violation), **\$750** (2nd violation) or **\$1,000** (3rd violation) may be imposed. A permittee may pay a penalty of up to **\$5,000** as an offer in compromise for revocation. The

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Commission may not revoke the permit if a penalty is paid. However, the Commission may still suspend the permit and collect the penalty. N.C.G.S. §18B-104.

Anti-Happy Hour Laws/Regulations:

Yes. 4 NCAC 2S.0232.

Open Container Laws:

Open Container Law (Yes/No):

Yes. N.C.G.S. §§18B-401(a); 20-138.7.

Anti-Consumption Law (Yes/No):

Yes. N.C.G.S. §§18B-401(a); 20-138.7.

Alcohol Exclusion Law (UPPL):

No. N.C.G.S. §58-51-16(b).

STATE

General Reference:

NORTH DAKOTA

North Dakota Century Code Annotated (NDCC)

North Dakota Administrative Code (NDAC)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor.

NDCC §39-08-01(1)(b).

Illegal Per Se Law (BAC/BrAC):

≥ **.08**.⁵³² NDCC §§39-08-01(1)(a); 39-20-07(3), (4).

Presumption (BAC/BrAC):

≥ **.08**. NDCC §39-20-07(3).⁵³³

Types of Drugs/Drugs and Alcohol:

Under the influence of any drug or substance, any combination of drugs or substances or the combined influence of alcohol and any drug or substance.

NDCC §39-08-01(1)(c), (d).

“Drug” means any drug or substance or combination of drugs or substances that renders an individual incapable of safely driving. NDCC §39-20-01.

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

Yes. NDCC §39-20-14.

Implied Consent Law:

Yes. NDCC § 39-20-01.

Arrest Required (Yes/No):

Yes. NDCC § 39-20-01.

Implied Consent Law Applies to Drugs

Yes. NDCC § 39-20-01.

(Yes/No):

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal and Civil Cases. NDCC §39-20-08.

Other Information:

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the Implied

Consent Law:

Blood:

Yes. NDCC §39-20-01.

Urine:

Yes. NDCC §39-20-01.

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No. However the court may not defer the imposition of sentence. NDCC §39-08-01(5)(e).

Anti-Plea-Bargaining Statute (Yes/No):

No

Pre-Sentencing Investigation Law (PSI)

Yes. Addiction evaluation is mandatory for all offenders.

(Yes/No):

NDCC §39-08-01(5).

Sanctions for Refusal to Submit to a

Chemical Test:

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

No

⁵³² Alcohol concentration is described as “percent by weight” of alcohol in the blood. This is defined to mean 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. NDCC §39-20-07(4).

⁵³³ If a person has a BAC < .05 there is a presumption against intoxication. A ABC > .05 but < .08 is not to be given prima facie effect but is relevant. NDCC §39-20-07(2), (3)

Refusal to Take a Preliminary Breath Test –
Administrative Licensing Action (Susp/Rev):

First offense – **Suspension 180 days;**
Second offense (within 7 years) – **Suspension 2 years;**
Third offense (within 7 years) – **Suspension 3 years.**
NDCC §§39-20-04(1)(a)-(c); 39-20-14(3).

Preliminary Breath Test – Other:

N/A

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

.⁵³⁴ NDCC §39-08-01(2)(a)

Refusal to Take Implied Consent Chemical Test
- Administrative Licensing Action (Susp/Rev):

First offense – **Revocation 180 days;**
Second offense (within 7 years) – **Revocation 2 years;**
Third offense (within 7 years) – **Revocation 3 years.**
NDCC §39-20-04.

Implied Consent Chemical Test - Other:

A person’s driving privileges are not subject to revocation for the refusal if an administrative hearing is not held, the person mails in an affidavit of intent to plead guilty and the person actually pleads guilty. NDCC §39-20-04(2)(a)-(e). However, if such person has been convicted of DUI, his/her driving privileges shall be suspended until such person furnishes a written statement of the counselor/instructor that no education or treatment program is necessary, or the offender has attended and complied with the program’s rules. NDCC §39-06.1-10(4)(a).

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine:

Note.⁵³⁵

First offense (Class B Misdemeanor) – A maximum of **30 days** and/or a fine of **\$1,500;**
Second offense (within 7 years) (Class B Misdemeanor) – A maximum of **30 days** and/or a fine of **\$1,500;**
Third offense (within 7 years) (Class A Misdemeanor) – A maximum of **1 year** and/or a fine of **\$3,000;**
Fourth offense (within 15 years) (Class C Felony) – A maximum of **5 years** and/or a fine of **\$10,000.**
NDCC §§12.1-32-01; 39-08-01.

DWI Serious Injury (Class C felony): At least **1 year** for a first offense, and at least **2 years** for a subsequent offense. A maximum fine of **\$10,000** may be imposed as well. NDCC §§12.1-32-01; 39-08-01.2.

Mandatory Minimum Term/Fine:

Note.⁵³⁶

⁵³⁴ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

⁵³⁵“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. NDCC §39-08-01(6).

⁵³⁶ 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. NDCC §39-08-01(5)(h).

First offense – **\$500**; BAC \geq 0.16 – **2 days/\$750**;
Second offense – **10 days (48 hours consecutive)/\$1,500**;
Third offense – **120 days/\$2,000/360 days supervised probation and a sobriety program**;
Fourth or subsequent offense – **1 year, 1 day /\$2,000/2 years supervised probation and a sobriety program**.
 NDCC §39-08-01(5).

DWI Serious Injury – At least **1 year** (first offense); **2 years** (subsequent offense).⁵³⁷ NDCC §§12.1-32-01; 39-08-01.2.

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.” NDCC §39-08-01(5)(h).
 For a first offense, the court may convert each day of mandatory time to 10 hours of community service.
 NDCC §39-08-01(5)(f).

Community Service:

Child Endangerment:

It is a Class A misdemeanor for any person an individual at least 21 to drive under the influence with a minor in the vehicle. The penalty is not more than **1 year** and/or a fine of at least \$500 but not more than **\$3,000**. A subsequent offense is a Class C felony, punishable by at least 10 days (48 hours consecutive) but not more than **5 years** and/or a fine of at least \$500 but not more than **\$10,000**. NDCC §§12.1-32-01; 39-08-01.4; 39-08-01(5).

Restitution:

Yes – by the defendant and through a victims compensation fund. NDCC §§12.1-32-02; 12.1-32-08; 54-23.4-01, *et seq.*

Other:

A court shall order a defendant to pay **\$50** to the department of corrections and rehabilitation at the time a presentence investigation is initiated.
 NDCC §12.1-32-02(10).

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

\geq **.08**.

Persons Under 21 – \geq **.02**

First offense – **Suspension 91 days** (30 days mand);

BAC \geq .16 – **Suspension 180 days** (mand);

Second offense (within 7 years) – **Suspension 365 days** (mand);

Third or subsequent offense (within 7 years) – **Suspension 2 years** (mand);

Third or subsequent offense w/last offense \geq .18 – **Suspension 3 years** (mand).

NDCC §§39-06.1-11(2); 39-20-03.1; 39-20-04.1; 39-20-07.

⁵³⁷ The sentence may not be suspended unless the court finds that manifest injustice would result from the imposition of the sentence. NDCC §39-08-01.2.

Other:

For a second or subsequent offense, a temporary restricted license may be issued for good cause if the offender has not committed an offense for a period of 1 year before the date of filing the written application that must be accompanied by a report from a licensed addiction treatment program, or if the offender is participating in the drug court program and has not committed an offense for a period of 365 days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. The director may require the installation of ignition interlock as a condition of a restricted license. NDCC § 39-06.1-11(2)-(4).

Additionally, the director of the department of transportation shall issue a temporary restricted driver's permit to the offender only for the purpose of participation in the twenty-four seven sobriety program. NDCC § 39-06.1-11(7).

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Suspension/Revocation.

NDCC §§39-06-31; 39-06.1-10(8).

Term of Withdrawal:

First offense – Suspension 91 days;

BAC ≥ .18 – Suspension 180 days;

Second offense (within 7 years) – Suspension 365 days;

Second offense w/BAC ≥ .18 – Suspension 2 years;

Third or subsequent offense (within 5 years) –

Suspension 2 years;

Third or subsequent offense w/BAC ≥ .18 – Suspension 3 years (mand).

Mandatory Minimum Term of Revocation:

DWI Serious Injury – Revocation 1 year (mand).

First offense – 30 days;

Subsequent offense (within 5 years) – none;

NDCC §39-06-31.

Note: No restricted licenses can be issued in cases where there has been a serious injury related to a DWI offense.

NDCC §§39-06-31(2)(b);39-06.1-11(5).

Alcohol Education:

Yes

Substance Abuse Treatment:

Yes. A 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. NDCC §39-08-01(5).

A defendant's license cannot be restored until the defendant furnishes a written statement from an approved treatment program that he/she does not need alcohol education/treatment or that he/she has complied with the attendance rules of such program.

NDCC §39-06.1-10(4)(a).

<p>Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:</p>	<p>For a fourth or subsequent offense (within 7 years), a defendant must complete an addiction treatment program <u>and</u> have no alcohol or drug-related offense convictions within 2 consecutive years before his/her driving privileges can be restored. NDCC §39-06.1-10 (4)(b). Forfeiture. NDCC §39-08-01.3.</p> <p>For a second or subsequent DWI offense conviction (within 7 years), a defendant's vehicle may be subject to forfeiture. NDCC§ 39-08-01.3.</p>
<p>Terms Upon Which Vehicle Will Be Released: Other Miscellaneous Sanctions:</p>	<p>N/A</p> <p>Upon conviction of a second or subsequent offense within 7 years, the court may order the motor vehicle number plates of all vehicles owned and operated by the offender at the time, to be destroyed. NDCC §39-08-01(4).</p>
<p><u>Ignition Interlock:</u> Permitted or Prohibited: Type of Law (Mandatory or Permissive): Sanction (Judicial, Administrative or Hybrid) Conditions of Use:</p>	<p>Permitted. NDCC §§39-06.1-11. Permissive Hybrid</p> <p>The court or driver licensing agency may order a defendant to install an ignition interlock device on his/her vehicle. This requirement applies to the issuance of temporary restricted driving privileges. NDCC §39-06.1-11(4).</p>
<p>Other Provisions:</p>	<p>A restricted license issued is solely for the use of a motor vehicle during the individual's normal working hours and may contain any other restrictions authorized. NDCC §39-06.1-11(6)(a).</p>
<p><u>Sobriety Checkpoints:</u> Permitted or Prohibited:</p>	<p>Permitted. <i>City of Bismarck v. Uhden</i>, 513 N.W.2d 373 (N.D. 1994).</p>
<p><u>Homicide by Vehicle:</u> State Has Such a Law:</p>	<p>Yes – NDCC §39-08-01.2</p>
<p>Imprisonment/Fine:</p>	<p>Class A Felony – maximum of 20 years imprisonment and a fine of \$20,000. NDCC §12.1-32-01(2).</p>
<p>Mandatory Minimum Term/Fine:</p>	<p>First offense – 3 years; <u>First offense with a subsequent DUI offense – 10 years.</u> NDCC §39-08-01.2(1).</p>
<p>Authorized Licensing Action: Length of Term of Licensing Withdrawal: Mandatory Minimum License Withdrawal: Other:</p>	<p>Revocation. NDCC§ 39-06-31. 1 year 1 year</p>
<p><u>DWI Offenses and Commercial Motor Vehicles (CMV):</u></p>	<p>A person is disqualified from operating a CMV for 1 mandatory year (3 years if transporting hazardous</p>

materials) if, while driving a CMV, that person: (1) has a BAC/BrAC/UrAC \geq .04; (2) is convicted of driving under the influence of alcohol or drugs; or (3) refuses to submit to a chemical test for an alcohol concentration. NDCC §39-06.2-10(1)(a), (d), (e), (8), (9).

Note: The disqualification section, NDCC §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, NDCC §39-06.2-10.2, applies to tests for either an alcohol concentration or for the presence of other drugs.

For a subsequent violation or a combination of two or more violations of any of the above-listed items, the disqualification is for life (10 years mand). NDCC §39-06.2-1(3).

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 \geq .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 \$1,500. NDCC §§12.1-32-01(7); 39-06.2-10; 39-06.2-10.1; 39-06.2-10.2; 39-06.2-10.9; 39-07-06; NDAC 37-10-01-01.

Driving While License Suspended for DWI

Offense:

Criminal - Fine/Imprisonment:

First – Third offenses (within a 5-year period) (Class B misdemeanor) – Not more than **30 days** and/or **\$1,500**;
Subsequent offense (Class A misdemeanor) – Not more than **1 year** and/or **\$3,000**.

The court may dismiss a charge under this section if the person reinstates their license within 60 days of the offense. NDCC §39-06-42(3).

NDCC §§12.1-32-01; 39-06-42(1).

Mandatory Minimum Fine/Imprisonment Term:

4 consecutive days. NDCC §39-06-42(2).

Administrative Licensing Action Type:

Suspension/Revocation

Withdrawal Action:

Suspension:

First offense – **90 days plus an additional 6 months**;

Second offense (within 3 years) – **180 days** plus an additional **6 months**;

Third or subsequent offense (within 3 years) – **1 year** plus an additional **6 months**. NDCC §39-06-43.

<p>Mandatory Term of License Withdrawal Action: Other:</p>	<p>Revocation: The revocation period is extended for an additional period of 1 year. The terms above appear to be mandatory. The court may order the number plates of the motor vehicle owned and operated by the offender at the time to be destroyed. NDCC §39-06-42(4).</p>
<p><u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No):</p>	<p>No.⁵³⁸</p>
<p><u>Other State Laws Related to Alcohol Use:</u> BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):</p>	<p>Yes. NDCC §39-20-13.</p>
<p>BAC Chemical Test Given to Deceased Driver Killed in Crash:</p>	<p>Yes. NDCC §39-20-13.</p>
<p>BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:</p>	<p>Yes. NDCC §39-20-13.</p>
<p>BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:</p>	<p>Yes. NDCC §39-20-13.</p>
<p>BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:</p>	<p>Yes. NDCC §39-20-01.1.</p>
<p>Minimum Age (Years) for Sale/Purchase of Alcohol:</p>	<p>21. NDCC §§5-01-08; 5-01-09; 5-02-01.1(2)(d); 5-02-06.</p>
<p>Minimum Age (Years) for Possession/Consumption of Alcohol:</p>	<p>21. NDCC §§5-01-08; 5-02-06(6). There is an employment exception for employees 18-20 years old, and for religious services, or when accompanied by a parent or legal guardian.</p>
<p><u>Dram Shop and Social Host Laws:</u> State Has a Dram Shop Law (Yes/No):</p>	<p>Yes. NDCC 5-01-06.1.</p>
<p>"Dram Shop Law" Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):</p>	<p>No</p>
<p>Dram Shop Actions – Social Hosts:</p>	<p>Yes. NDCC § 5-01-06.1. Limited to persons under 21 or those obviously intoxicated.</p>
<p>Social Host – Criminal Enforcement:</p>	<p>I. Any person who gives alcohol to an underage person may be found guilty of a class B misdemeanor, punishable by not more than 30 days and/or \$1,500. NDCC §§5-01-15; 12.1-32-01. II. Any individual who willfully encourages, causes or contributes to the delinquency of a minor may be found guilty of a class A misdemeanor, punishable by not more</p>

⁵³⁸ However, an individual who is a habitual drunkard (3 or more convictions of DWI, or 3 or more administrative suspensions within a 5-year period), shall not be issued a license, unless such person can provide adequate proof of removal of the habit, which may include satisfactory completion of a licensed drug or alcohol treatment program. NDCC §39-06-03.

than **1 year** and/or **\$3,000**.
 NDCC §§12.1-32-01; 14-10-06.

Criminal Actions Regarding Establishments that
 Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action: **Class A Misdemeanor**. NDCC §5-01-09.
 Imprisonment/Fine: Not more than **1 year** and/or **\$3,000**.
 NDCC §12.1-32-01.

Administrative Actions Regarding
 Establishments that Serve Alcohol to Intoxicated
 Patrons:

License to Serve Alcoholic Beverages **Yes – Revocation/suspension**. NDCC §§5-02-10;
 Withdrawn (Yes/No): 5-02-11.
 Length of Term of License Withdrawal: Time period is not specified in the statute.
 NDCC §5-02-11.

Criminal Actions Regarding Establishments that
 Serve Alcohol to Persons Under the Legal
 Drinking Age:

Type of Criminal Action: **Class A Misdemeanor**. NDCC §§5-01-09; 5-02-06.
 Imprisonment/Fine: Not more than **1 year** and/or **\$3,000**.
 NDCC §12.1-32-01.

Administrative Actions Regarding
 Establishments That Serve Alcohol to Persons
 Under the Legal Drinking Age:

License to Serve Alcoholic Beverages **Yes – Revocation/suspension**. NDCC §§5-02-10;
 Withdrawn (Yes/No): 5-02-11.
 Length of Term License Withdrawal: Time period is not specified in the statute.
 NDCC §5-02-11.

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

Open Container Laws:

Open Container Law (Yes/No): **Yes**. NDCC §39-08-18.
 Anti-Consumption Law (Yes/No): **Yes**. NDCC §39-08-18.

Alcohol Exclusion Law (UPPL): **No**.⁵³⁹

⁵³⁹ In 2009, the North Dakota legislature struck the alcohol exclusion provision from NDCC §26.1-36-04.

STATE

General Reference:

OHIO

Ohio Revised Code Annotated (R.C.)
Ohio Administrative Code (OAC)Basis for a DWI Charge:

Standard DWI Offense:

Operating a vehicle under the influence of alcohol and/or drugs (OVI). R.C. §4511.19(A)(1)(a), (A)(2).

Illegal Per Se Law (BAC/BrAC):

I. Whole Blood or Breath: $\geq .08$ but $< .17$.⁵⁴⁰Blood Serum or Plasma: $\geq .096$ but $< .204$.Urine: $\geq .11$ but $< .238$.II. Whole Blood or Breath: $\geq .17$.⁵⁴¹Blood Serum or Plasma: $\geq .204$.Urine: $\geq .238$.

R.C. §4511.19(A)(1)(a)-(i).

Persons Under 21:Whole Blood or Breath: $\geq .02$ but $< .08$ Blood Serum or Plasma: $\geq .03$ but $< .096$ Urine: $\geq .028$ but $< .11$

R.C. §4511.19(B).

Presumption (BAC/BrAC):

Yes

Types of Drugs/Drugs and Alcohol:

I. Under the influence of alcohol, a drug of abuse or a combination of alcohol and a drug of abuse. "Drug of abuse" includes the following controlled substances, or metabolites of a controlled substance: amphetamines, cocaine, heroin, L.S.D., marijuana, phencyclidine, and salvia divinorum
II. The person has a concentration of a controlled substance that is greater than or equal to the limits proscribed in R.C. §§4506.01(L); 4511.19(A)(1).Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

No.⁵⁴²

Implied Consent Law:

Yes. R.C. §4511.191.

Arrest Required (Yes/No):

No. R.C. §4511.191(A)(3), (5).⁵⁴³

Implied Consent Law Applies to Drugs (Yes/No):

Yes. R.C. §4511.191(A).

⁵⁴⁰ Alcohol concentration standards when expressed as a percentage, mean grams of alcohol per the following: (1) 100 milliliters of whole blood, blood serum, or blood plasma; (2) 210 liters of breath; and (3) 100 milliliters of urine. R.C. §§4506.01(A); 4511.19(A), (B).

⁵⁴¹ Also, for a breath or whole blood alcohol concentration which is $\geq .17$, for a blood serum or plasma alcohol concentration $\geq .204$, or for a urine alcohol concentration which is ≥ 0.238 . R.C. §4511.19(A)(1)(f), (g), (h), (i).

⁵⁴² However, a field sobriety test may be given. Evidence of such test may be presented in a criminal case so long as it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with testing standards. R.C. §4511.194(C). Further, the result of a portable breath test is a factor, in addition to field sobriety tests, upon which a law enforcement officer may base probable cause for arrest.

⁵⁴³ The code states that a chemical test shall be administered at the request of an officer having reasonable grounds to believe a person was operating a vehicle in violation of the DWI (OVI) statute. It also states that if an officer arrests a person for a violation, the officer shall request such person to submit to a chemical test. R.C. §4511.191(A)(3), (5). Based on this language, it appears that arrest is not required for an officer to request someone to submit to a test. However, if there is an arrest, then the officer is mandated to give such test.

Refusal to Submit to Chemical Test
Admitted into Evidence:

Yes – Criminal Cases. *State v. Hoover*, 916 N.E.2d 1056 (Ohio 2009); *City of Westerville v. Cunningham*, 239 N.E.2d 40 (Ohio 1968).

Other Information:

A law enforcement officer shall advise the person at the time of the refusal that the officer may employ whatever reasonable means are necessary to ensure that the person submits to a chemical test of the person's whole blood or blood serum or plasma. A law enforcement officer who acts pursuant to this division to ensure that a person submits to a chemical test is immune from criminal and civil liability based upon a claim for assault and battery or any other claim for the acts, unless the officer acted with malicious purpose, in bad faith or in a wanton or reckless manner. R.C. §4511.191(A)(5)(b).⁵⁴⁴

Non-Breath Chemical Tests for Alcohol
Concentration Authorized Under the
Implied Consent Law:

Blood:

Yes. R.C. §4511.191(A)(2).

Urine:

Yes. R.C. §4511.191(A)(2).

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea-Bargaining Statute (Yes/No):

No

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

No, but courts will generally order a PSI prior to sentencing.

Sanctions for Refusal to Submit to a
Chemical Test:

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

N/A

Refusal to Take a Preliminary Breath Test –
Administrative Licensing Action
(Susp/Rev):

N/A

Preliminary Breath Test – Other:

N/A

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

Note.⁵⁴⁵

First Refusal (within 20 years of DUI conviction): **3 consecutive days** in jail and **3 consecutive days** in a driver improvement program or 6 days in jail if driver improvement program deemed inappropriate or the offender refuses to participate and not less than \$375 nor more than \$1,075.

⁵⁴⁴ However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court's decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

⁵⁴⁵ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

O.R.C. §§4511.19(A)(2)(b), (G)(1)(a)(ii)-(iii).

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):

First refusal – **Suspension 1 year** (limited driving privileges after mandatory 30 days);
Second refusal (within 6 years) – **Suspension 2 years** (limited driving privileges after mandatory 90 days);
Third refusal (within 6 years) – **Suspension 3 years** (limited driving privileges after mandatory 1 year);
Subsequent refusal (within 6 years) – **Suspension 5 years** (limited driving privileges after mandatory 3 years).
 R.C. §§4510.02; 4510.13; 4511.191(B)(1).

Implied Consent Chemical Test - Other:

Except as noted, limited driving privileges may be granted after the mandatory period of license suspension has passed. R.C. §§4510.021; 4510.13. The license suspension is subject to appeal pursuant to R.C. §4511.197.

A suspension for a refusal will not terminate if the driver is found “not guilty” of the related DWI (OVI) offense. However, such suspension will terminate if the person is found guilty of or pleads guilty to a related DWI (OVI) offense. Additionally, such suspension shall be credited against any judicial suspension for a DWI (OVI) conviction any time during which the person serves a related suspension imposed for a refusal. R.C. §4511.191(B)(2).

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine:

OVI:

First conviction (misdemeanor 1st degree) – Not more than **6 months** and not less than **\$375** or more than **\$1,075**;
Second conviction (within 6 years) (misdemeanor 1st degree) – Not more than **6 months** and not less than **\$525** or more than **\$1,675**;
Third conviction (within 6 years) (unclassified misdemeanor)⁵⁴⁶ – Not more than **1 year** and not less than **\$850** or more than **\$2,750**;
Fourth conviction (within 6 years, or 5 or more OVI convictions within 20 years) (fourth degree felony) – If the offender has 5 or more convictions within 20 years of the present offense, then the court shall impose a mandatory additional prison term of **1-5 years**. Cumulative jail time shall not exceed 1 year. If the sentence is served in prison, the court may impose an additional and definite prison term of **6 to 30 months** and not less than **\$1,350** or more than **\$10,500**;
Prior felony OVI conviction within any time period – (third degree felony) – Cumulative prison time shall not exceed 5 years. If the offender has 5 or more convictions within 20 years of the present offense, in addition to the OVI offense, such offender shall be sentenced an additional prison term of

⁵⁴⁶ A crime is classified as a misdemeanor if the imprisonment sanction is not more than 1 year. R.C. § 2901.02(F).

1 to 5 years. If the offender does not have the prior convictions, then such offender shall be sentenced to a mandatory **60 days** or mandatory **120 days** (for high concentration), and not less than **\$1,350** or more than **\$10,500**. R.C. §§2929.14; 2929.16; 2929.18; 2929.19(C); 2929.21; 4511.19(G).

Offense for Persons Under 21:

First conviction (fourth degree misdemeanor) – Not more than 30 days;

Second conviction (within 1 year) (third degree misdemeanor) – Not more than 60 days. R.C. §§2929.21; 4511.19(H)(1), (2).

Aggravated Vehicular Assault (serious physical harm):

First offense (third degree felony) – 1 to 5 years and not more than \$10,000;

First offense (where: (1) the offender has been convicted previously of a vehicular homicide offense; (2) at the time of offense the offender was driving under suspension; (3) the offender has a prior conviction for any traffic-related homicide, manslaughter or assault offense) (second degree felony) – 2 to 18 years and not more than \$15,000;

Subsequent offense (within 6 years) (second degree felony) – 2 to 8 years and not more than \$15,000.

R.C. §§2903.08; 2929.11; 2929.18; 4510.02.

OVI:

First conviction – **3 consecutive days**;⁵⁴⁷

Second conviction – **10 consecutive days** (Alternative: 5 consecutive days in jail and not less than 18 consecutive days “house arrest” with electronic monitoring⁵⁴⁸);

Third conviction (within 6 years) – **30 consecutive days** (Alternative: 15 consecutive days in jail and not less than 55 consecutive days “house arrest” with electronic monitoring);

Fourth conviction (within 6 years) – **60 consecutive days**.⁵⁴⁹

R.C. §4511.19(G)(a)(i), (b)(i), (c)(i), (d)(i), (e)(ii).

BAC ≥ .17:

First conviction – **3 consecutive days** in jail with **3 consecutive days** of a drivers’ intervention program or **6 consecutive days** in jail;

Second conviction (within 6 years) – **20 consecutive days** (Alternative: 10 consecutive days in jail and not less than 36

Mandatory Minimum Term/Fine:

⁵⁴⁷ Three consecutive days is defined as 72 consecutive hours. 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. R.C. §4511.19.

⁵⁴⁸ 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. R.C. §4511.19(G(3)).

⁵⁴⁹ Special Conditions for OVI Felony Offenses: I. For a first OVI 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 on community control probation or in the electronic monitoring program. II. For a subsequent OVI 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. R.C. §§2929.13(G); 2929.15(A); 2929.17.

consecutive days “house arrest” with electronic monitoring”);
Third conviction (within 6 years) – **60 consecutive days**
 (Alternative: 30 consecutive days in jail and not less than 110
 consecutive days “house arrest” with electronic monitoring);
Fourth conviction (within 6 years) – **120 consecutive days**
 (in jail or prison);
Prior felony conviction (within any time period) – **120**
consecutive days in prison. R.C. §4511.19(G)(a)(ii), (b)(ii),
 (c)(ii), (d)(ii), (e)(ii).

Aggravated OVI: any sentence is mandatory.
 R.C. §4510.02; 2903.08(D)(1).

Community Service:

A court may order an offender to perform supervised
 community service. R.C. §2951.02(B).

Child Endangerment:

It is a separate offense to operate a motor vehicle in violation
 of the drunk-driving laws when one or more children under
 age 18 are in the vehicle. R.C. §§2919.22(C)(1).

First offense (first degree misdemeanor) – Not more than **6**
months and/or not more than **\$1,000**;

First offense where there has been serious physical harm to
the child or subsequent offense (fifth degree felony) – **6 to 12**
months and/or a fine of not more than **\$2,500**;

Subsequent child endangerment offense (serious physical
 harm to the child, or where there has been serious physical
 harm to the child, and the driver has a prior vehicular
 homicide (prior to March, 23, 2000) conviction = fourth
 degree felony) – **6 to 18 months** and 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.
 R.C. §§2919.22(E)(5), (F)(1); 2929.14; 2929.18; 2929.21.

Restitution:

Yes.

I. An offender may be ordered to pay restitution to a victim in
 an amount based on the victim’s financial loss.

R.C. §2929.18.

II. A victim is eligible for reparations from the State.

R.C. §2743.51, *et seq.*

Other:

N/A

Administrative Sanctions – Pre-Conviction:
 Administrative Per Se Law:

≥ **.08 BAC/BrAC** or ≥ **.11 UrAC** or ≥ **.096 Blood Plasma or**
Serum.

First offense – **Suspension 3 months** (15 days mand);

Second offense (within 6 years) – **Suspension 1 year** (45
 days mand);

Third offense (within 6 years) – **Suspension 2 years** (180
 days mand);

Subsequent offense (within 6 years) – **Suspension 3 years**

(mand). R.C. §§4510.02(B); 4510.13; 4511.191(B).

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Suspension/Revocation:

First conviction – **Suspension**;

Second conviction (within 6 years) – **Suspension**;

Third conviction (within 6 years) – **Suspension**;

Subsequent convictions (within 6 years) –

Suspension/Revocation. R.C. §4510.02.

OVI-Related Aggravated Vehicle Assault – **Suspension**.

R.C. §§2903.08; 4510.02.

Child Endangerment – **Suspension**. R.C. §2919.22(C)(1).

Offense for Persons Under 21 – **Suspension**.

R.C. §§4510.02; 4511.19(H).

First offense – Suspension 3 months to 2 years;

Second offense – Suspension 1 to 5 years;

Third offense – Suspension 2 to 10 years;

Subsequent offenses – Suspension for not less than 3 years or Permanent Revocation (for life).

Term of Withdrawal:

DWI Related Aggravated Vehicle Assault:

First offense – Suspension 2 to 10 years;

Subsequent offense – Suspension 3 years to life.

Child Endangerment: Suspension not more than 1 year.

Offense for Persons Under 21:

First offense – 3 months to 2 years;

Subsequent offense (within 1 year) – 1 to 5 years.

R.C. §§4510.02(A)(1)-(7); 4511.19(H).

Mandatory Minimum Term of Revocation:

None. A court may grant limited driving privileges.

R.C. §§4510.021; 4510.13.

Alcohol Education:

Yes

Substance Abuse Treatment:

Yes. A person charged with a misdemeanor offense, determined by the court to be either an alcoholic or a person suffering from acute alcohol intoxication and 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, an OVI offender must be confined in a treatment facility for at least 3 days.

R.C. §2935.33(B).

For subsequent 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. R.C. §4511.19(G).

Vehicle Impoundment/Confiscation:

Seizure, Immobilization, Impoundment

Authorized by Specific Statutory Authority:

Upon a second offense, the vehicle may be seized.

Terms Upon Which Vehicle Will Be Released:	<p>R.C. §4511.195(B); <u>Second conviction</u> (within 6 years) – Immobilization of and impoundment of the license plates of the vehicle used in the offense for 90 days if registered to the offender; <u>Third conviction</u> (within 6 years) – Criminal forfeiture of the vehicle used in the offense if registered to the offender; <u>Subsequent convictions</u> (within 6 years) – Criminal forfeiture of the vehicle used in the offense if registered to the offender. R.C. §§4507.164; 4511.19(G)(v). 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. R.C. §4503.234(B)(2).</p>
Other Miscellaneous Sanctions:	<p>If the vehicle is subject to forfeiture pursuant to a statute other than R.C. §4503.234 and the vehicle's registration has been assigned or transferred, the defendant may be required to pay a fine that is equal to the value of the vehicle. R.C. §4503.234(E). Juvenile DWI Offenders: A person under 18 who violates the regular DWI law may be assigned to temporary custody of not more than 5 days to: (1) a detention home; (2) another similar institution for children; or (3) a school camp. R.C. §2152.21(A)(5). Confinement Costs: In some counties, offenders may have to pay the costs of confinement (workhouses). R.C. §2947.19.</p>
<u>Ignition Interlock:</u> Permitted or Prohibited: Type of Law (Mandatory or Permissive): Sanction (Judicial, Administrative or Hybrid) Conditions of Use:	<p>Permitted Both (during a period of limited driving privileges, based upon the facts of the case). R.C. §4510.13. Judicial The court may require any offender to operate only a motor vehicle equipped with an ignition interlock device. R.C. §§2951.02(C); 4510.13.</p>
Other Provisions:	<p>If an offender violates his terms of restricted driving privileges, the court may require the offender to wear a monitor that provides continuous alcohol monitoring that is remote. R.C. §4510.13(A)(8).</p>
<u>Sobriety Checkpoints:</u> Permitted or Prohibited:	<p>Permitted. <i>State v. Bauer</i>, 651 N.E.2d 46 (Ohio App. 10 Dist. 1994).</p>
<u>Homicide by Vehicle:</u> State Has Such a Law:	<p>Yes. Aggravated Vehicular Homicide (felony). R.C. §2903.06(A)(1)(a). Involuntary Manslaughter (felony). R.C. §2903.04. Aggravated Vehicular Homicide Specification (mandatory</p>

Imprisonment/Fine:	<p>prison time). R.C. §2929.142.</p> <p>Aggravated Vehicular Homicide: <u>First offense</u> (2nd degree felony) – 2 to 8 years and may be fined not more than \$15,000; <u>Subsequent offense</u> (1st degree felony) – 3 to 11 years and may be fined not more than \$20,000. R.C. §§2929.14; 2929.142; 2929.18.</p>
Mandatory Minimum Term/Fine:	<p>Involuntary Manslaughter: (3rd degree felony) – 9 months to 36 months; (1st degree felony) – 3 to 11 years (mand). R.C. §§2903.04; 2929.14.</p>
<p>Authorized Licensing Action: Length of Term of Licensing Withdrawal: Mandatory Minimum License Withdrawal: Other:</p>	<p>Aggravated Vehicular Homicide Specification (offender has 3 or more OVI convictions within 6 years, or 2 more felony OVI convictions) – 10 to 15 years. R.C. §2929.142. An offender who commits a subsequent offense, or who commits aggravated vehicular homicide while his license is suspended must serve mandatory time.</p> <p>Suspension. R.C. §§2903.04; 2903.06(B)(2)(d); 4510.02. Life. R.C. §4510.02. Life suspension is mandatory.</p> <p>License Plate Impoundment: A vehicle’s license plates may be impounded if the owner thereof has had his/her driver’s license either suspended or revoked. R.C. §4507.164(A).</p>
<p><u>DWI Offenses and Commercial Motor Vehicles (CMV):</u></p>	<p>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 $\geq .04$; (2) is under the influence of a controlled substance; or (3) refuses to submit to a chemical test for the presence of either alcohol or controlled substances. R.C. §4506.17(E)(1).</p> <p>For a subsequent violation or 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). R.C. §4506.17(E)(2).</p> <p>A person is “disqualified” for a period of 180 days for a violation of an “out-of-service” order. For a second or subsequent violation within 10 years the disqualification period is 2 years. For a third or subsequent within 10 years a 3 years suspension. R.C. §4506.16(A)(1)-(3).</p> <p>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 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-</p>

service” for 24 hours. R.C. §4506.16(C).

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. R.C. §§2929.21; 4506.01; 4506.15; 4506.16(A), (B); 4506.17(A); 4511.79; 4511.99(C).

Driving While License Suspended for DWI

Offense:

Criminal - Fine/Imprisonment:

First offense (first degree misdemeanor) – Not more than **6 months** and not less than **\$250** or more than **\$1,000**;
Second offense (within 6 years – first degree misdemeanor) – Not less than **10 consecutive days** or more than **1 year** and not less than **\$500** or more than **\$2,500**;
Third or subsequent offense (within 6 years – unclassified misdemeanor) – Not less than **30 consecutive days** or more than **1 year** and not less than **\$500** or more than **\$2,500**.
 R.C. §4510.14.

Mandatory Minimum Fine/Imprisonment Term:

First offense – **3 consecutive days/\$250** (Alternative: 30 consecutive days of electronically monitored house arrest);
Second offense (within 5 years) – **10 consecutive days** (Alternative: 90 consecutive days of “house arrest” with electronic monitoring.)/**\$500**;
Third and subsequent offense (within 5 years) – **30 consecutive days/\$500** (electronically monitored house arrest not available).

Administrative Licensing Action Type:

Suspension. R.C. §4510.14(E).

Withdrawal Action:

Not more than 1 year. R.C. §4510.02(A)(7).

Mandatory Term of License Withdrawal Action:

A mandatory period is not specified. However, a definite term of suspension must be applied.

Other:

First offense – Immobilization of vehicle for 30 days and impoundment of license plates for 30 days;
Second offense – Immobilization of vehicle for 60 days and impoundment of license plates for 60 days;
Third or subsequent offense – Criminal forfeiture or a fine of up to the value of the vehicle. R.C. §4510.14.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No – However, there is a State registry of habitual offenders for those who have been convicted of a 5th or subsequent OVI/OWI within 20 years. R.C. §5502.10.

Other State Laws Related to Alcohol Use:

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law

Yes. R.C. §313.13.

(Yes/No):

BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes. R.C. §313.13.
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	No
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	No
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	No
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. R.C. §§4301.22(A)(1); 4301.63; 4301.69.
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. R.C. §4301.69.
<u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	Yes. R.C. §§4399.02; 4399.18.
"Dram Shop Law" 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. ⁵⁵⁰
Dram Shop Actions – Social Hosts:	Yes – Limited to underage persons only. <i>Mitseff v. Wheeler</i> , 526 N.E.2d 798 (Ohio 1988).
Social Host – Criminal Enforcement:	No parent, spouse who is not an under aged person, or legal guardian of a minor shall knowingly permit the minor to purchase or consume alcohol. Such person may be found guilty of a 1st degree misdemeanor, punishable by not more than 6 months and not more than \$1,000. R.C. §§4301.69(F); 4301.99(C).
<u>Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
Type of Criminal Action:	Third Degree Misdemeanor. R.C. §§4301.22(B); 4301.99(D).
Imprisonment/Fine:	Not more than 60 days and not more than \$500 . R.C. §2929.21.
<u>Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes – Revocation/Suspension. ⁵⁵¹ R.C. §§4301.25; 4301.27.
Length of Term of License Withdrawal:	Indeterminate

⁵⁵⁰ However, for social host liability, there has been a change to the common law rule by actions of the court. See *Huston v. Konieczny*, 556 N.E.2d 505 (Ohio 1990).

⁵⁵¹ 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. R.C. §4301.252.

Criminal Actions Regarding Establishments
that Serve Alcohol to Persons Under the
Legal Drinking Age:

Type of Criminal Action:

Imprisonment/Fine:

Misdemeanor

Under R.C. §4301.69(A):

Not less than **\$500** or more than **\$1,000** and may be imprisoned for not more than **6 months**. R.C. §4301.99(I).

Under R.C. §4301.22(A):

Not less than **\$500** or more than **\$1,000** and may be imprisoned for not more than **60 days**. R.C. §4301.99(H).

Administrative Actions Regarding
Establishments That Serve Alcohol to
Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes – Revocation/Suspension.

R.C. §§4301.25; 4301.27.

Indeterminate

Anti-Happy Hour Laws/Regulations:

Yes. OAC 4301:1-1-50.⁵⁵²

Open Container Laws:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes. R.C. §4301.62(B)(4), (5).

Yes. R.C. §4301.64.

Alcohol Exclusion Law (UPPL):

No.⁵⁵³

⁵⁵² 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.”

⁵⁵³ In 2008, the Ohio legislature struck the alcohol exclusion provision from R.C. §3923.05.

STATE

General Reference:

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC/BrAC):

Types of Drugs/Drugs and Alcohol:

Other:

Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to Drugs
(Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

Other Information:

OKLAHOMA

Oklahoma Statutes Annotated (Okl.St. Ann.)

I. Under the influence of alcohol.

47 Okl.St. Ann. §11-902(A)(2).

II. Impaired by the consumption of alcohol (driving while impaired) 47 Okl.St. Ann. §761(A).

≥ **.08**.⁵⁵⁴ 47 Okl.St. Ann. §11-902(A)(1).**Persons Under 21** – Any measurable quantity of alcohol in the blood or breath. 47 Okl.St. Ann. §11-906.4(A)(1).**None**

I. Under the influence of intoxicating substances or a combination of these and alcohol. 47 Okl.St. Ann.

§11-902(A)(3), (4).

II. Impaired by any other substance. 47 Okl.St. Ann. §761(A).

III. Persons Under 21 – Under the influence of any other intoxicating substance or a combination of alcohol and any other intoxicating substance. 47 Okl.St. Ann. §11-906.4(A).I. A BAC/BrAC ≥ **.08** is *prima facie* evidence that a person was under the influence of alcohol.

47 Okl.St. Ann. §756(A)(3).

II. A BAC/BrAC > **.05** but < **.08** is “relevant evidence” of Driving While Impaired. 47 Okl.St. Ann. §756(A)(2).III. Any measurable quantity of alcohol is *prima facie* evidence that a person < 21 violated the DWI law.

47 Okl.St. Ann. §756(A).

No**Yes.** 47 Okl.St. Ann. §751⁵⁵⁵.**Yes.** 47 Okl.St. Ann. §751(A).**Yes.** 47 Okl.St. Ann. §751(A).**Yes** – Criminal Cases. 47 Okl.St. Ann. §756(A).

I. A mandatory chemical test may be ordered in situations (1) 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 or (2) upon issuance of a search warrant. 47 Okl.St. Ann. §753(A).

II. A mandatory chemical test for alcohol/drugs may be

⁵⁵⁴ Alcohol concentration is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. 47 Okl.St. Ann. §756(B).⁵⁵⁵ 47 Okl.St. Ann. §751 allows for a law enforcement officer, without a warrant, to take a blood sample from an individual who is unconscious or otherwise incapable of consenting to a test. However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

ordered in traffic accident situations where the driver (person to be tested) has been cited for a traffic offense.
47 Okl.St. Ann. §10-104(B).

Non-Breath Chemical Tests for Alcohol Concentration Authorized Under the Implied Consent Law:

Blood: **Yes.** 47 Okl.St. Ann. §751(A).
Urine: **Yes.** 47 Okl.St. Ann. §751(A).
Other: **Saliva.** 47 Okl.St. Ann. §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.**
47 Okl.St. Ann. §§761(D); 11-902(G).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **N/A**
Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **N/A**
Preliminary Breath Test – Other: **N/A**

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**
Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev): **First refusal – Revocation 180 days;**⁵⁵⁶
Second refusal (within 10 years) – **Revocation 1 year** (mand);
Subsequent refusal (within 10 years) – **Revocation 3 years** (mandatory). 47 Okl.St. Ann. §§6-205.1; §753; 754.1; 755.
Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine: **Driving While Impaired:** Not more than **6 months** and/or not less than **\$100** or more than **\$500**. 47 Okl.St. Ann. §761.

Driving Under the Influence/Illegal Per Se:

First conviction (misdemeanor) – Not less than **10 days** or more than **1 year** and not more than **\$1,000**;
Second conviction (within 10 years) (felony) – Not less than **1 year** or more than **5 years** and not more than **\$2,500**;
Third conviction (within 10 years) (felony) – Not less than **1 year** or more than **10 years** and not more than **\$5,000**;

⁵⁵⁶ 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. This applies to Class D vehicles only. 47 Okl.St. Ann. §§1-107.4; 754.1(B); 755.

Fourth and subsequent conviction (within 10 years) (felony)
– Not less than **1 year** or more than **20 years** and not more than **\$5,000**. 47 Okl.St. Ann. §11-902(C).

DUI – Personal Injury:

First conviction (misdemeanor) – Not less than **90 days** or more than **1 year** and not more than **\$2,500**;

Second or subsequent conviction (felony) – Not less than **1 year** or more than **5 years** and not more than **\$5,000**.

47 Okl.St. Ann. §11-904(A).

DUI – Great Bodily Injury(felony): Not less than **1 year** or more than **10 years** and not more than **\$5,000**.

47 Okl.St. Ann. §11-904(B).

Persons Under 21:

First conviction – Not less than **\$100** or more than **\$500**;

Second conviction – Not less than **\$100** or more than **\$1,000**;

Third or subsequent conviction – Not less than **\$100** or more than **\$2,000**. 47 Okl.St. Ann. §11-906.4.

Mandatory Minimum Term/Fine:

Driving While Impaired: None

Driving Under the Influence/Illegal Per Se:

Second conviction – **5 days** jail (or 5 days inpatient treatment);

Third conviction – **10 days** jail (or 10 days inpatient treatment);

Fourth or subsequent conviction – **10 days** jail.

47 Okl.St. Ann. §11-902.

DUI – Personal Injury:

First conviction – **90 days**;

Second conviction – **1 year**. 47 Okl.St. Ann. §11-904.

DUI – Great Bodily Injury:

First conviction – **1 year**. 47 Okl.St. Ann. §11-904.

Community Service:

Persons Under 21: None.

Driving Under the Influence/Illegal Per Se:

Third conviction – **240 hours**;

Fourth or subsequent conviction – **480 hours**. A fine cannot be imposed in lieu of community service.

47 Okl.St. Ann. §11-902(C), (K).

Aggravated DUI (BAC ≥ .15): 480 hours. 47 Okl.St. Ann. §11-902(D).

Community service may be ordered under 22 Okl.St. Ann. §991a(A)(1)(c).

Child Endangerment:

Any person age 18 or older who violates a DUI law while transporting or having any child less than 18 shall be subject

to an enhanced penalty in the form of a doubled fine. Said driver may also be prosecuted for Felony Child Endangerment. 47 Okl.St. Ann. §11-902(L); 21 Okl.St. Ann. § 852.1.

Restitution:

Yes

The court may order a defendant to pay restitution to a victim. 22 Okl.St. Ann. §§991a(A)(1)(a); 991f.

Other:

Aggravated DUI (BAC ≥ .15): In addition to any other penalty, a defendant shall participate in an assessment and evaluation and shall comply with all recommendations for treatment. Such person shall be sentenced to not less than 1 year of supervision and periodic testing at his own expense. 47 Okl.St. Ann. §11-902(D).

Assessment Fee: In addition to any other penalty, the court shall order a \$100 assessment to be deposited into the Drug Abuse Education and Treatment Revolving Fund. 47 Okl.St. Ann. §11-902(K).

Victims Impact Panel: Any person may be required to attend a victims impact panel program, and to pay a fee of not less than \$15 or more than \$60. 47 Okl.St. Ann. §11-902(H).

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

BAC ≥ .08/Any measurable quantity of alcohol in blood/breath (for persons under 21):

First offense – **Revocation 180 days (may be modified);**

Second offense (within 10 years) – **Revocation 1 year** (mand.);

Subsequent offense (within 10 years) – **Revocation 3 years** (mand.). 47 Okl.St. Ann. §6-205.1.

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Term of Withdrawal:

Suspension/Revocation

Driving While Impaired:

First offense – **Suspension 30 days;**

Second offense – **Suspension 6 months;**

Third or subsequent offense – **Suspension 12 months.**

47 Okl.St. Ann. §761(B).

Driving While Under the Influence/Illegal Per Se:

First offense – **Revocation 180 days;**

Second offense (within 10 years) – **Revocation 1 year;**

Subsequent offense (within 10 years) – **Revocation 3 years.**

47 Okl.St. Ann. §§6-205; 6-205.1.

Mandatory Minimum Term of Revocation:

Driving While Impaired:

First offense – **None;**

Second offense – **6 months;**

Third offense – **12 months.** 47 Okl.St. Ann. §761.

Driving While Under the Influence/Illegal Per Se:

None (licensing action may be modified if ignition interlock is installed). 47 Okl.St. Ann. §6-205.1.

Alcohol Education:

Yes. A first offender must successfully complete this course before license can be reinstated. 22 Okl.St. Ann. §991a(A)(1)(p), (A)(7); 47 Okl.St. Ann. §6-212.2.

Substance Abuse Treatment:

Yes. The court may order first offenders and shall order subsequent offenders (all types of DUI offenses within 10 years) to participate in alcohol or drug rehabilitation treatment programs. 22 Okl.St. Ann. §991a(A)(7); 47 Okl.St. Ann. §11-902(G).

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority:

Forfeiture
A subsequent DUI offender's vehicle may be subject to forfeiture.⁵⁵⁷ 47 Okl.St. Ann. §11-902b.

Terms Upon Which Vehicle Will Be Released:

Any person having ownership or a security interest in the vehicle may file a written objection.

Other Miscellaneous Sanctions:

Electronic Home Monitoring: A person who has been convicted of a felony offense shall be subject to court-ordered electronic home monitoring. 22 Okl.St. Ann. §991a(A)(1)(o), (A)(7)(e); 47 Okl.St. Ann. §11-902(I).

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. 22 Okl.St. Ann. §991a(A).

Investigation Costs: The defendant may be required by the court to reimburse the Oklahoma State Bureau of Investigation for any services that were associated with the defendant's criminal offense. There is an exception based on "manifest hardship" to the defendant. 22 Okl.St. Ann. §991a(A)(4).

Ignition Interlock:

Permitted or Prohibited:

Permitted

Type of Law (Mandatory or Permissive):

Both

Sanction (Judicial, Administrative or Hybrid)

Hybrid

Conditions of Use:

Permissive:

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, but not more than 2 years. 22 Okl.St. Ann. §991a(A)(1)(n), (A)(7)(d). Additionally, the revocation period may be modified if ignition interlock is installed for the revocation period. The period of revocation and period of

⁵⁵⁷ 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 DUI injury-related offense and has a prior conviction for one of these offenses (within 10 years); and one of the offenses, either present or prior, must have involved death of or serious bodily injury to another person; or (2) the person has been convicted of a third or subsequent DUI felony offense. 47 Okl.St. Ann. §11-902b.

ignition interlock shall run concurrently. 47 Okl.St. Ann. §6-205.1.

Mandatory:

I. As a condition of license modification for an admin per se violation or a DUI conviction, the licensing agency must require persons to install ignition interlock devices on the vehicles they operate. 47 Okl.St. Ann. §754.1(A), (B).

II. Driving While Under the Influence/Illegal Per Se Convictions: Fourth or subsequent conviction – A minimum of 30 days. 47 Okl.St. Ann. §11-902(C)(4).

III. Aggravated DUI Conviction: A minimum of 30 days. 47 Okl.St. Ann. §11-902(D).

Other Provisions:

As a condition of reinstatement of driving privileges and restricted license, installation of an ignition interlock device for a second or subsequent offender convicted within 5 years shall run concurrently with a court order, if any. 47 Okl.St. Ann. §6-212.3(E).

Sobriety Checkpoints:

Permitted or Prohibited:

Permitted. *Geopfert v. State ex rel. Dept. of Public Safety*, 884 P.2d 1218 (Okl.App. 1994).

Homicide by Vehicle:

State Has Such a Law:

Negligent Homicide (misdemeanor).

47 Okl.St. Ann. §11-903.

Imprisonment/Fine:

Not more than **1 year** in the county jail and/or not less than **\$100** or more than **\$1,000**. 47 Okl.St. Ann. §11-903(B).

Mandatory Minimum Term/Fine:

\$100

Authorized Licensing Action:

Revocation. 47 Okl.St. Ann. §6-205(A)(1).

Length of Term of Licensing Withdrawal:

First offense – **1 year**;

Subsequent offense (within 5 years) – **3 years**.

47 Okl.St. Ann. §6-205(A)(1), (B), (C).

Mandatory Minimum License Withdrawal:

The terms above are mandatory.

Other:

DWI Offenses and Commercial Motor Vehicles (CMV):

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 \geq .04 (amount of alcohol in the blood; or (2) while under the influence of alcohol or a controlled substance; or (3) refusing to submit to a chemical test. For a subsequent conviction or a combination of two or more convictions of any of the above-listed items, the "disqualification" is for life (10 years mand). 47 Okl.St. Ann. §6-205.2(B), (C), (D).

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:	Misdemeanor. <u>First conviction</u> – Not more than 1 year and/or not less than \$500 or more than \$1,000 ; <u>Second conviction</u> – Not more than 1 year and/or not less than \$1,000 or more than \$2,000 ; <u>Third or subsequent conviction</u> – Not more than 1 year and/or not less than \$2,000 or more than \$5,000 . 47 Okl.St. Ann. §6-303(C). The fines listed above appear to be mandatory.
Mandatory Minimum Fine/Imprisonment Term:	
Administrative Licensing Action Type:	Revocation. 47 Okl.St. Ann. §6-303(E). Period of revocation extended for 4 months.
Withdrawal Action:	47 Okl.St. Ann. §6-303(E). This term appears to be mandatory.
Mandatory Term of License Withdrawal Action:	
Other:	
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	No
<u>Other State Laws Related to Alcohol Use:</u>	
BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	No
BAC Chemical Test Given to Deceased Driver Killed in Crash:	N/A
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	N/A
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	N/A
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes. 47 Okl.St. Ann. §751(A).
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. 37 Okl.St. Ann. §§241; 246(A); 537(A)(1).
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. 10A Okl.St. Ann. §2-8-222; 37 Okl.St. Ann. §§241; 246(A).
<u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	Yes. <i>Brigance v. Velvet Dove Restaurant, Inc.</i> , 725 P.2d 300 (Okl. 1986).
"Dram Shop Law" Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	Yes. <i>Brigance v. The Velvet Dove Restaurant</i> , 725 P.2d 300 (Okl. 1986).
Dram Shop Actions – Social Hosts:	No. <i>Troxell v. Bingham</i> , 774 P.2d 1073 (Okl.App. 1989); <i>Teel v. Warren</i> , 22 P.3d 234 (Okla.Civ.App. Div 1 2001).
Social Host – Criminal Enforcement:	A person who serves or gives alcohol to a minor may be found guilty of a misdemeanor, punishable by not more than

1 year and/or not more than \$1,000, for a first offense. For a second or subsequent offense such person shall be found guilty of a felony, punishable by not more than 3 years and/or not more than \$5,000. 21 Okl.St. Ann. §§856; 858.3.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

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.

Imprisonment/Fine:

37 Okl.St. Ann. §§247; 506(3); 537(A)(2); 538(G).
Alcoholic Beverages – Not more than **1 year** and/or not less than **\$500** or more than **\$1,000**. 37 Okl.St. Ann. §538(G).

Low-point Beer: Not more than **6 months** and/or not more than **\$500**. 37 Okl.St. Ann. §247.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Revocation. 37 Okl.St. Ann. §§247; 528.

Length of Term of License Withdrawal:

Alcoholic beverages: Revocation (unspecified).
37 Okl.St. Ann. §528(D).
Low-point Beer: No provisions found involving suspension or revocation of license with regard to serving intoxicated patrons.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the 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 Okl.St. Ann. §§9; 10; 37 Okl.St. Ann. §§163.1; 163.2; 163.20(a); 241; 537(A)(1); 538(F).

Imprisonment/Fine:

Alcoholic Beverages – Not more than **5 years** and/or not less than **\$2,500** or more than **\$5,000**. 37 Okl.St. Ann. §538(F).
Low-point Beer:
First violation (misdemeanor) – Not more than **1 year** and/or not more than **\$500**;
Second violation (within 1 year) (misdemeanor) – Not more than **1 year** and/or not more than **\$2,500**;
Third violation (within 1 year of the 1st) (felony) – Not more than **5 years** and/or not more than **\$5,000**.
37 Okl.St. Ann. §241(D).

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages

Yes – Suspension/Revocation. 37 Okl.St. Ann. §§244; 528.

Withdrawn (Yes/No):
 Length of Term License Withdrawal:

For alcoholic beverages: Revocation (unspecified).
 37 Okl.St. Ann. §528(D).

For low-point beer:

First conviction – **Suspension** not more than **30 days**;
Second conviction (within 24 months) – **Suspension 30 days**
 (mand) if both violations by same employee or of an
 egregious nature;

Third conviction (within 24 months) – **Suspension 30 days**
 (mand), or **180 days** (if all 3 were by same employee);

Fourth or subsequent conviction (within 24 months) –
Revocation (mandatory) (duration not specified).

37 Okl.St. Ann. §244.

Anti-Happy Hour Laws/Regulations:

Yes. 37 Okl.St. Ann. §537(B)(4).

Open Container Laws:

Open Container Law (Yes/No):

Yes. 21 Okl.St. Ann. §1220; 37 Okl.St. Ann. §537(A)(7).

Anti-Consumption Law (Yes/No):

Yes. 37 Okl.St. Ann. §8.

Alcohol Exclusion Law (UPPL):

Yes. Addresses the use of narcotics, only.
 36 Okl.St. Ann. §4405(B)(10)

STATE

OREGON

General Reference:

Oregon Revised Statutes (O.R.S.)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor
O.R.S. §813.010(1)(b).

Illegal Per Se Law (BAC/BrAC):

≥ **.08**.⁵⁵⁸ O.R.S. §813.010(1)(a).

Presumption (BAC/BrAC):

Not less than **.08** constitutes being under the influence of
intoxicating liquor. O.R.S. §813.300(2).

Types of Drugs/Drugs and Alcohol:

Under the influence of a controlled substance, an inhalant⁵⁵⁹
or any combination of intoxicating liquor, an inhalant and a
controlled substance. O.R.S. §813.010(1)(b), (c).

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

No

Implied Consent Law:

Yes. O.R.S. §§813.131; 813.100.

Implied Consent Law Applies to Drugs
(Yes/No):

Yes. O.R.S. §813.131.

Refusal to Submit to Chemical Test

Yes – Criminal and Civil Cases. O.R.S. §813.310.

Admitted into Evidence:

Other Information:

There is also an implied consent law on field sobriety testing.
Evidence of refusal to submit to a field sobriety test is
admissible in any criminal or civil proceeding arising out of
the allegations. O.R.S. §§813.135; 813.136.

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the

Implied Consent Law:

Blood:

Yes – Limited to: (1) when a driver expressly consents to the
taking of the sample; (2) when a driver is receiving medical
care in a health facility immediately after a motor vehicle
accident; or (3) when a driver is unconscious, or otherwise in
a condition rendering him incapable of expressly consenting.
O.R.S. §§813.100; 813.140.

Urine:

Yes – Limited to when a breath test discloses a BAC of less
than .08 or when such person has been in an accident.
Additionally, prior to asking for urine, an officer must have
reasonable suspicion to believe the person is under the
influence of a controlled substance. O.R.S. §813.131(1), (2).

Other:

None.

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea-Bargaining Statute (Yes/No):

Yes. A person charged with DWI shall not be allowed to

⁵⁵⁸ Standard: "Percent by weight" of alcohol is to be based on grams of alcohol per 100 milliliters of blood or based upon grams of alcohol per 210 liters of breath. O.R.S. §813.300(4).

⁵⁵⁹ An inhalant means any glue, paint, cement or other substance that is capable of causing intoxication and that contains one or more of the chemical compounds listed in O.R.S. §801.317.

Pre-Sentencing Investigation Law (PSI) (Yes/No):	plead guilty or no contest to any other offense in exchange for a dismissal of the offense charged. O.R.S. §813.170. No
<u>Sanctions for Refusal to Submit to a Chemical Test:</u>	
Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail):	N/A
Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev):	N/A
Preliminary Breath Test – Other:	N/A
Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	At least \$500 and not more than \$1,000 , with the “presumptive” fine being \$650 . ⁵⁶⁰ O.R.S. §§813.095(2); 813.130(2)(f).
Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):	Suspension – 1 year if no previous suspensions for a test refusal or a DWI offense (90 days are mandatory). Suspension – 3 years for a previous test refusal or a previous DWI offense/admin per se violation based license suspension within 5 years (1 year mand). O.R.S. §§813.100; 813.130; 813.132; 813.410; 813.420; 813.430; 813.520; 809.428.
Implied Consent Chemical Test - Other:	Consecutive license suspensions for refusals to submit to both breath and urine tests. O.R.S. §813.132.
<u>Criminal Sanctions Following a DWI Conviction:</u>	
Imprisonment/Fine:	<u>First offense</u> (Class A misdemeanor) – Not more than 1 year and not less than \$1,000 ; <u>Second offense</u> (Class A misdemeanor) – Not more than 1 year and not less than \$1,500 ; <u>Third or subsequent offense</u> (Class A misdemeanor) – Not more than 1 year or not less than \$2,000 (if no imprisonment); <u>Fourth offense</u> (within 10 years) (Class C felony) – Not more than 5 years or not less than \$2,000 (if no imprisonment). O.R.S. §§161.605; 813.010(4), (5), (6)(a)-(c). BAC ≥ .15: A minimum of \$2,000 shall be imposed. O.R.S. §813.010(6)(d). <u>Assault in the 4th Degree</u> (physical injury ⁵⁶¹) (Class A misdemeanor) – Not more than 1 year and/or not more than \$6,250 . O.R.S. §§161.615; 161.635; 163.160.

⁵⁶⁰ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

⁵⁶¹ Physical injury means impairment of physical condition or substantial pain. O.R.S. §161.015(7).

Mandatory Minimum Term/Fine:	<u>Assault in the 3rd Degree</u> (serious physical injury ⁵⁶²) (Class B felony) – Not more than 10 years and/or not more than \$250,000 . O.R.S. §§161.605; 161.625; 163.165(2). All offenses – 48 consecutive hours ⁵⁶³ and a fine, as listed above. O.R.S. §813.020(2).
Community Service:	All offenses – Not less than 80 hours or more than 250 hours (as an alternative to imprisonment). O.R.S. §§813.020(2); 137.129(4).
Child Endangerment:	If the driver has a passenger who is under age 18 <i>and</i> at least three years younger than the driver, the court may impose a maximum fine of \$10,000 in addition to the penalties, above. O.R.S. §813.010(7).
Restitution:	Yes. Direct compensation to victims by the defendant. O.R.S. § 137.106. Also a victims' compensation fund is available. O.R.S. §147.005, <i>et seq.</i>
Other:	A \$255 fee is charged in addition to any fine imposed. The court may waive this fee in whole or in part for indigent defendants. O.R.S. §§813.020(1)(a); 813.030.

Diagnostic Assessment Fee: There is a diagnostic assessment fee of **\$150**. O.R.S. §§813.020(1)(b); 813.021(1)(b); 813.240(3).

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 not less than \$5 or more than \$50 to offset the cost of this program. O.R.S. §813.020(3).

Incarceration and Medical Costs: A city or county may seek reimbursement from an offender for the costs of medical care and incarceration. O.R.S. §§169.150; 169.151.

No Deferred Proceedings: A person who has been found guilty of or who pleads guilty to a DWI offense cannot be placed on probation and have the judgment of guilt not entered on the record via a deferred proceeding. O.R.S. §137.533.

School and Work Zone: If the offense occurred in 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. O.R.S. §§811.230; 811.235.

Administrative Sanctions – Pre-Conviction:

⁵⁶² Serious physical injury means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ. O.R.S. §161.015(8).

⁵⁶³ This term must be served unless justice requires otherwise. The court must state the reasons why the mandatory imprisonment term cannot be served consecutively. O.R.S. §813.020. For the purpose of the minimum period of incarceration, imprisonment includes a jail, minimum security facility or inpatient rehabilitation or treatment center. O.R.S. §813.020(2).

Administrative Per Se Law:

≥ .08 (Any BAC for persons under 21).

Suspension – 90 days (30 days mand) if there has been no previous suspension for a chemical test refusal, an admin per se violation, or a DWI offense.

Suspension – 1 year (mandatory) if there has been a previous suspension for a chemical test refusal, an admin per se violation, or a DWI offense within 5 years.

O.R.S. §§813.100(4); 813.130; 813.300(2), (3); 813.410; 813.420; 813.430; 813.520; 809.428.

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Suspension/Revocation.

O.R.S. §§809.428; 813.400.

Term of Withdrawal:

First conviction – **Suspension 1 year;**

Second conviction (within 5 years) – **Suspension 3 years;**

Third conviction (within 5 years) – **Suspension 3 years;**

Fourth conviction (with 3 prior offenses within 10 years) –

Permanent revocation. O.R.S. §§ 809.235; 809.428; 813.400.

Assault in the 4th Degree – **Suspension 1 year.**

O.R.S. §809.411(10)(d).

Assault in the 3rd Degree – **Suspension 5 years.**

O.R.S. §809.411(10)(c).

Mandatory Minimum Term of Revocation:

First offense – **30 days;**

Second offense (within 5 years) – **90 days;**

Third or subsequent offenses (within 5 years) – **permanent revocation** (a petition for restoration of the driving privilege may be filed with District Court **10 years** after release on parole or post-prison supervision). O.R.S. §809.235(2)(a).

Alcohol Education:

Yes

Substance Abuse 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. O.R.S. §§813.020(1)(b); 813.021; 813.500.

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. O.R.S. §813.500.

Vehicle Impoundment/Confiscation:

Impoundment/Immobilization

Authorized by Specific Statutory Authority:

I. A court may order a motor vehicle impounded or immobilized upon conviction for a second or subsequent DWI offense. This shall last not more than 1 year.

O.R.S. §809.700(1)(b), (2).

Terms Upon Which Vehicle Will Be Released:	<p>II. A police officer may impound a motor vehicle if he has probable cause of a DWI offense or driving on a suspended/revoked license. O.R.S. §809.720(1)(b).</p> <p>I. A vehicle shall be released upon payment of the costs of removing, storing or immobilizing the vehicle. O.R.S. §809.700(6).</p> <p>II. A vehicle shall be released only upon proof of valid driving privileges, proof of financial responsibility and payment of any fees associated with the impoundment. O.R.S. §809.720(3)(a)-(c).</p>
Other Miscellaneous Sanctions:	N/A
<u>Ignition Interlock:</u>	
Permitted or Prohibited:	Permitted. O.R.S. §813.602.
Type of Law (Mandatory or Permissive):	Mandatory
Sanction (Judicial, Administrative or Hybrid)	Hybrid
Conditions of Use:	<p>Upon conviction of a DWI offense, the DOT shall require that the person install and use an approved ignition interlock device in any vehicle operated by that person for 5 years after the ending date of the longest running suspension/revocation.</p> <p>If the court determines that approved ignition interlock devices are reasonably available, the court shall require as a condition of a driving while under the influence of intoxicants diversion agreement that the device be installed in any vehicle operated by the offender, unless the court exempts the person if that person meets the requirements for a medical exemption. O.R.S. §813.602(3).</p>
Other Provisions:	<p>Person must provide proof of installation. Failure to submit proof extends the suspension or revocation period for 5 years. O.R.S. §813.602(8).</p>
<u>Sobriety Checkpoints:</u>	
Permitted or Prohibited:	Prohibited. <i>State v. Boyanovsky</i> , 743 P.2d 711 (Or. 1987).
<u>Homicide by Vehicle:</u>	
State Has Such a Law:	<p>First Degree Manslaughter. O.R.S. §163.118. Second Degree Manslaughter. O.R.S. §163.125. Criminally Negligent Homicide. O.R.S. §163.145. Aggravated Vehicular Homicide (subsequent offense). O.R.S. §163.149.</p>
Imprisonment/Fine:	<p>First Degree Manslaughter: 10 years. Second Degree Manslaughter: 10 years. Criminally Negligent Homicide: <u>First offense</u> (Class B felony) – Not more than 10 years and/or not more than \$250,000. O.R.S. §§161.605; 161.645.</p> <p>Aggravated Vehicular Homicide: <u>Subsequent offense</u> (Class A felony) – Not more than 20 years and/or not more than \$375,000. O.R.S. § §61.605; 161.649.</p>

Mandatory Minimum Term/Fine: First and second degree manslaughter and aggravated vehicular homicide are Measure 11 mandatory sentence crimes which carry mandatory sentences as listed above. O.R.S. §163.147 classifies second degree manslaughter and criminally negligent homicide when the result was from operating a motor vehicle under the influence of alcohol/intoxicants, as “crime category 9” of the sentencing guidelines grid. The sentence received will depend on the offender’s criminal history.

Authorized Licensing Action: **Revocation.** O.R.S. §809.409(2).
 Length of Term of Licensing Withdrawal: **10 years.** O.R.S. §809.409(2).
 Mandatory Minimum License Withdrawal: **5 years.** O.R.S. §809.409(3).
 Other: **N/A**

DWI Offenses and Commercial Motor Vehicles (CMV):

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 a subsequent violation or a combination of two or more violations of any of the above-listed items, the disqualification is for life (10 years mand).

If a police officer has reasonable grounds to believe that a CMV operator has consumed alcohol or other intoxicating beverage within 4 hours prior to the time the operator began operating the vehicle, then he shall be able to issue an out-of-service order which shall remain in effect for 24 hours. A violation also carries a civil penalty of not less than \$2,500 for the first violation and \$5,000 for the second or subsequent violation. O.R.S. §§; 809.510; 813.050; 813.055.

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment: **Class A Misdemeanor** – Not more than **1 year** and at least **\$1,000** (first offense); at least **\$2,000** (second or subsequent offense) but not more than **\$6,250**.
 O.R.S. §§161.615; 161.635; 811.182(4).

Mandatory Minimum Fine/Imprisonment Term: First offense – **\$1,000**;
Second offense – **\$2,000**

Administrative Licensing Action Type: **None**
 Withdrawal Action: It is a Class B felony if the license is suspended/revoked as a result of any murder, manslaughter, criminally negligent homicide or assault resulting from a motor vehicle, or aggravated vehicular homicide or felony DWI. This is punishable by not more than **10 years** and/or not more than **\$250,000**. O.R.S. §§161.605; 161.625; 811.182(3).

Mandatory Term of License Withdrawal **N/A**

Action:	
Other:	N/A
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	Yes. O.R.S. §809.600, <i>et seq.</i>
Grounds for Being Declared Habitual Offender:	(1) Three serious traffic offenses (within 5 years); or (2) A combination of 20 minor and serious traffic offenses (within 5 years). ⁵⁶⁴ O.R.S. §809.600.
Term of License Revocations While on Habitual Offender Status:	5 years. Note: A one-year probationary and renewable permit is available if certain conditions are met. O.R.S. §§807.270; 809.650.
Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):	Class A misdemeanor. O.R.S. §811.182(4)(g). Not more than 1 year and at least \$1,000 (first offense); at least \$2,000 (second or subsequent offense) but not more than \$6,250 . O.R.S. §§161.615; 811.182(4).
Mandatory Minimum Term/Fine:	<u>First offense</u> - \$1,000 ; <u>Second offense</u> - \$2,000 .
Licensing Action (Specify):	N/A
<u>Other State Laws Related to Alcohol Use:</u>	
BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes. O.R.S. §146.113.
BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes. If over 13 and within 5 hours of accident.
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	Yes. If over 13 and within 5 hours of accident.
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	Yes. If over 13 and within 5 hours of accident.
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes. O.R.S. §813.131.
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. O.R.S. §§471.410; 471.430.
Minimum Age (Years) for Possession/Consumption of Alcohol:	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. O.R.S. §§471.410(3)(c), (4); 471.430.
<u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	Yes. O.R.S. §§471.565(2); 471.567.
"Dram Shop Law" Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State	No

⁵⁶⁴ Serious traffic offenses include manslaughter, DWI, driving on a suspended/revoked license, aggravated vehicular homicide. O.R.S. §809.600.

(Case Citation):

Dram Shop Actions – Social Hosts:
Social Host – Criminal Enforcement:

Yes. O.R.S. §§471.565(2); 471.567.

No person who exercises control over private real property may knowingly allow any other person under age 21 (who is not a child of such person) to remain on such property if the child consumes alcoholic liquor. Such act is a violation and punishable by:

First conviction - **\$500**;

Second or subsequent conviction - **\$1,000**.

O.R.S. §471.410(3), (9).

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Imprisonment/Fine:

Class A Misdemeanor.⁵⁶⁵ O.R.S. §471.410(1), (5).

First conviction – Not more than **1 year** and **\$500**;

Second conviction – Not more than **1 year** and **\$1,000**;

Third or subsequent conviction – Not less than **30 days** or more than **1 year** and **\$1, 500**. O.R.S. §§161.615; 471.410(5).

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes – Cancellation/Suspension/Civil Penalty.

O.R.S. §471.315(1)(a)(G).

Not specified in the statute. However, if the license is suspended for 30 days or less, a civil penalty may be imposed in lieu or in addition to the suspension. Such penalty shall not be less than \$100 or more than \$5,000. O.R.S. §471.322.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Imprisonment/Fine:

Class A Misdemeanor. O.R.S. §471.410(2), (5).

First conviction – Not more than **1 year** and at least **\$500**;

Second conviction – Not more than **1 year** and at least **\$1,000**;

Third or subsequent conviction – Not less than **30 days** or more than **1 year** and at least **\$1,500**.

O.R.S. §§161.615; 471.410(5).

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes – Cancellation/Suspension/Civil Penalty.

O.R.S. §471.315(1)(a)(G).

Not specified in the statute. However, if the license is suspended for 30 days or less, a civil penalty may be imposed

⁵⁶⁵ 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. However, for the first 3 violations within 2 years, the only sanction is a letter of reprimand. O.R.S. §471.412(4).

in lieu or in addition to the suspension. Such penalty shall not be less than \$100 or more than \$5,000. O.R.S. §471.322.

Anti-Happy Hour Laws/Regulations:

No.

Open Container Laws:

Open Container Law (Yes/No):

Yes. O.R.S. §811.170(1).

Anti-Consumption Law (Yes/No):

Yes. O.R.S. §811.170(1).

Alcohol Exclusion Law (UPPL):

No. O.R.S. §743A.164.

STATE

PENNSYLVANIA

General Reference:

Pennsylvania Statutes Annotated (Pa.C.S.A.)
 Pennsylvania Administrative Code (Pa. Code)

Basis for a DWI Charge:

Standard DWI Offense:

Note.⁵⁶⁶

General impairment – Imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving. 75 Pa.C.S.A. §3802(a)(1).

Illegal Per Se Law (BAC/BrAC):

≥ **.08**.⁵⁶⁷ 75 Pa.C.S.A. §3802(a)(2);

High rate of alcohol – ≥ **.10 but < .16**.

75 Pa.C.S.A. §3802(b);

Highest rate of alcohol – ≥ **.16**. 75 Pa.C.S.A. §3802(c);

Persons Under 21 – ≥ **.02**. 75 Pa.C.S.A. §3802(e);

School buses ≥ **.02**. 75 Pa.C.S.A. §3802(f)(1)(ii).

Presumption (BAC/BrAC):

Types of Drugs/Drugs and Alcohol:

I. Any amount in the blood of a Schedule I controlled substance or a Schedule II or III controlled substance not prescribed for the individual, or the metabolite of either of the above;

II. Under the influence of a drug or combination of drugs to a degree which impairs the ability to safely drive;

III. Under the influence of alcohol and a drug or drugs to a degree which impairs the ability to safely drive;

IV. Under the influence of a solvent or noxious substance. 75 Pa.C.S.A. §3802(d).

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

Yes. 75 Pa.C.S.A. §1547(k).

Implied Consent Law:

Yes. 75 Pa.C.S.A. §1547(a).

Arrest Required (Yes/No):

No. However an officer must have reasonable grounds to believe the person to have been driving in violation of DWI laws.

Implied Consent Law Applies to Drugs (Yes/No):

Yes. 75 Pa.C.S.A. §1547(a).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal Cases. 75 Pa.C.S.A. §1547(e).

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the Implied

Consent Law:

Blood:

Yes. 75 Pa.C.S.A. §1547.

⁵⁶⁶ Evidence of alcohol or controlled substance concentration more than 2 hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle is sufficient to establish the element of BAC when: (1) the Commonwealth shows good cause explaining why the chemical test sample could not be obtained within 2 hours; and (2) 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. 75 Pa.C.S.A. §3802(g).

⁵⁶⁷ Standard: “Alcohol concentration in the individual’s blood or breath.” “Percent by weight” of alcohol in the blood. 75 Pa.C.S.A. §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).

Urine: **Yes.** 75 Pa.C.S.A. §1547.
 Other: **None**

Adjudication of DWI Charges:

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

No
No. However the presiding judicial officer at preliminary hearing or arraignment shall not reduce or modify an original DWI charge without the consent of the attorney for the Commonwealth. 75 Pa.C.S.A. §3812.

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

Yes. Alcohol or drug evaluation is required prior to sentencing. A full assessment for alcohol and drug addiction shall be completed: (1) for a second or subsequent DWI violation; (2) if the evaluation indicates a need for counseling or treatment; or (3) if the defendant’s BAC was **≥ .16**.
 75 Pa.C.S.A. §3814.

Sanctions for Refusal to Submit to a Chemical Test:

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

None

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev):

N/A

Preliminary Breath Test – Other:

N/A

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

This applies to an individual who both violates the general impairment statute (75 Pa. C.S.A. §3802(a)) and refuses testing or blood or breath.

First offense – Not less than **72 hours** and not less than **\$1,000** or more than **\$5,000**;

Second offense – Not less than **90 days** and not less than **\$1,500**;

Third or subsequent offense – Not less than **1 year** and not less than **\$2,500**. 75 Pa.C.S.A. §3804(c).

Note.⁵⁶⁸

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):

First refusal – **Suspension 12 months**;
Subsequent refusal (or prior DUI) – **Suspension 18 months**.
 75 Pa.C.S.A. §1547(b).

Refusal when suspected of operating with .02 or greater while DUI suspended, or .025 or greater in violation of Interlock restrictions – **Suspension 6 months**.

75 Pa.C.S.A. §§1547(b.1); 1543(b)(1.1); 3808(a)(2).

Implied Consent Chemical Test - Other:

N/A

Criminal Sanctions Following a DWI

⁵⁶⁸ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

Conviction:

Imprisonment/Fine:

General impairment:

First offense (misdemeanor) – Mandatory minimum term of 6 months' probation and **\$300**;

Second offense (misdemeanor) – Not less than **5 days** or more than **6 months** and not less than **\$300** or more than **\$2,500**;

Third or subsequent offense (2nd degree misdemeanor) – Not less than **10 days** or more than **2 years** and not less than **\$500** or more than **\$5,000**. 75 Pa.C.S.A. §§3803; 3804(a).

High rate of blood alcohol (BAC ≥ .16); minors; commercial vehicles and school buses and school vehicles; accidents (general impairment):

First offense (misdemeanor) – Not less than **48 consecutive hours** or more than **6 months** and not less than **\$500** or more than **\$5,000**;

Second offense (misdemeanor) – Not less than **30 days** or more than **6 months** and not less than **\$750** or more than **\$5,000**;

Third offense (1st degree misdemeanor) – Not less than **90 days** or more than **5 years** and not less than **\$1,500** or more than **\$10,000**;

Fourth or subsequent offense (1st degree misdemeanor) – Not less than **1 year** or more than **5 years** and not less than **\$1,500** or more than **\$10,000**. 18 Pa.C.S.A. §1104; 75 Pa.C.S.A. §§3803; 3804(b).

Refusal (general impairment); highest blood alcohol; controlled substances:

First offense (misdemeanor) – Not less than **72 consecutive hours** or more than **6 months** and not less than **\$1,000** or more than **\$5,000**;

Second offense (1st degree misdemeanor) – Not less than **90 days** or more than **5 years** and not less than **\$1,500** or more than **\$10,000**;

Third or subsequent offense (1st degree misdemeanor) – Not less than **1 year** or more than **5 years** and not less than **\$2,500** or more than **\$10,000**. 18 Pa.C.S.A. §§1101; 1104; 75 Pa.C.S.A. §§3803; 3804(c).

Aggravated Assault DWI (serious bodily injury) (2nd Degree Felony): Not more than **10 years** and/or not more than **\$25,000**. 18 Pa.C.S.A. §§1101; 1103; 75 Pa.C.S.A. §3735.1.

Mandatory Minimum Term/Fine:

The base terms listed above reflect mandatory minimum sentences. A criminal sentence in Pennsylvania must have a minimum and a maximum; the maximum must be at least two times the duration of the minimum.

Community Service:

In addition to other penalties, the sentencing judge may impose up to 150 hours of community service, and order

- attendance by the defendant at a victim impact panel.
75 Pa.C.S.A. §3804(f).
- Child Endangerment: An individual who violates the impaired driving statute with a minor (under age 18) in the vehicle shall be convicted of a 1st degree misdemeanor and sentenced to:
First offense – Not less than **\$1,000** and **100 hours** community service;
Second offense – Not less than **\$2,500** and not less than **1 month** or more than **6 months**;
Third or subsequent offense – Not less than **6 months** or more than **2 years**. 75 Pa.C.S.A. §3804(c.1).
- Restitution: Restitution under Accelerated Rehabilitative Disposition. 75 Pa.C.S.A. §3807.
Restitution as part of probation. 42 Pa.C.S.A. §9754(c)(8).
Crime Victim’s Compensation Fund. 18 Pa.C.S.A. §11.101, *et. seq.*
- Other: **Extended supervision of court:** If after the initial drug and alcohol assessment, a defendant 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.
75 Pa.C.S.A. §3804(d).

Accelerated Rehabilitative Disposition (ARD): A first-time DWI offender may be placed in ARD. Acceptance into and satisfactory completion of the program may lead to dismissal and expungement of the DWI charge. ARD applies to a first offense within ten years (or second offense if the first offense was for **> .08 but < .10**) and is not available if a crash caused death or serious bodily injury to others, or if a passenger under 14 was in the vehicle at the time of the offense. Acceptance of ARD is considered a first conviction for purposes of computing any subsequent violations. License suspension for ARD is based upon BAC, there is no period of suspension for a BAC **under .10**, there is a 30-day suspension for a BAC **between .10 and .16**, and there is a 60-day suspension for a BAC of **.16 or higher**. The 60-day suspension also applies to: refusals, crashes with bodily injury and/or vehicle or property damage, and drug DUI. A driver under 21 placed on ARD undergoes a 90-day license suspension. 75 Pa.C.S.A. §3807.

Laboratory Costs: A defendant may be required to pay a laboratory user fee that includes the costs associated with laboratory services for BAC testing and any court appearances by laboratory technicians. 42 Pa.C.S.A. §1725.3.

Victim Impact Panel: The court may order a defendant to attend a victim impact panel. 75 Pa.C.S.A. §3804(f.1).

Administrative Sanctions – Pre-Conviction:
Administrative Per Se Law:

N/A

Administrative Sanctions – Post-Conviction:
Type of Licensing Action (Susp/Rev):
Term of Withdrawal:

Suspension. 75 Pa.C.S.A. §3804(e).

General impairment:

First offense (misdemeanor) – **none**;

Second offense (misdemeanor) – **12 months**;

Third or subsequent offense (2nd degree misdemeanor) – **12 months**.

High rate of blood alcohol; minors; commercial vehicles and school buses and school vehicles; accidents:

First offense (misdemeanor) – **12 months**;

Second offense (misdemeanor) – **12 months**;

Third offense (1st degree misdemeanor) – **18 months**;

Fourth or subsequent offense (1st degree misdemeanor) – **18 months**.

Refusal; highest blood alcohol; controlled substances:

First offense (misdemeanor) – **12 months**;

Second offense (1st degree misdemeanor) – **18 months**;

Third or subsequent offense (1st degree misdemeanor) – **18 months**. 75 Pa.C.S.A. §3804(e).

Aggravated Assault DWI (serious bodily injury) (2nd Degree Felony): **1 year**. 75 Pa.C.S.A. §1532.

The terms are mandatory. 75 Pa.C.S.A. §1541.

Yes. 75 Pa.C.S.A. §§3804; 3815.

Yes. 75 Pa.C.S.A. §§3804; 3815.

Forfeiture.

No, however under common law, a court may order forfeiture of the motor vehicle used in a DWI offense. See *Commonwealth v. Crosby*, 568 A.2d 233 (Pa.Super. 1990).⁵⁶⁹

No statutory forfeiture, however under common law, a court will consider whether forfeiture will present a hardship to family members. See *Commonwealth v. Crosby*, 568 A.2d 233 (Pa.Super. 1990).

Mandatory Minimum Term of Revocation:
Alcohol Education:
Substance Abuse Treatment:
Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority:

Terms Upon Which Vehicle Will Be Released:

Other Miscellaneous Sanctions:

Ignition Interlock:

Permitted or Prohibited:

Permitted. 75 Pa.C.S.A. §3805.

Type of Law (Mandatory or Permissive):

Mandatory

⁵⁶⁹ The Commonwealth may not proceed with common law civil forfeiture of derivative contraband without evidence of a conviction. *Commonwealth v. 2010 Buick Enclave*, 99 A.3d 163 (Pa. Cmwlth 2014).

Sanction (Judicial, Administrative or Hybrid)
Conditions of Use:

Administrative

Any convicted offender with a prior offense within 10 years, or person who has had his operating privileges suspended for driving with a BAC of **.02 or greater** while DUI suspended, or for illegally operating a vehicle not equipped with ignition interlock who seeks a restoration of driving privileges shall be required, as a condition for receipt of a restricted license, to equip each motor vehicle driven by that person with an ignition interlock for the duration of the restricted license period, or up to 1 year. 75 Pa.C.S.A. §3805.

Other Provisions:

The court may sentence an offender to “any other requirement or condition with the treatment needs of the person, the restoration of the victim to pre-offense status or the protection of the public.” 75 Pa.C.S.A. §3804(j).

Sobriety Checkpoints:

Permitted or Prohibited:

Permitted. *Com. v. Yastrop*, 768 A.2d 318 (Pa. 2001).

Homicide by Vehicle:

State Has Such a Law:

Yes – 2nd Degree Felony.

Homicide by Vehicle While Driving Under the Influence.

75 Pa.C.S.A. §3735.

Imprisonment/Fine:

Not more than **10 years** and/or not more than **\$25,000**.

18 Pa.C.S.A. §§1101; 1103.

Mandatory Minimum Term/Fine:

3 years. 75 Pa.C.S.A. §3735(a).

Authorized Licensing Action:

Suspension.

Length of Term of Licensing Withdrawal:

3 years. 75 Pa.C.S.A. §1532(a.1)(2).

Mandatory Minimum License Withdrawal:

3 years. 75 Pa.C.S.A. §§1541; 1532(a.1)(2).

Other:

DWI Offenses and Commercial Motor Vehicles (CMV):

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 with a BAC \geq **.04** (amount of alcohol in the blood or while under the influence of alcohol or a controlled substance).

For a subsequent conviction or a combination of two or more convictions of any of the above-listed items, the disqualification is for life (10 years mand).

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 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 the system commits a summary offense and is subject to a fine of \$100.

Even a DUI violation in a personal vehicle subjects the holder of a CDL to a one-year CDL disqualification. 75 Pa.C.S.A. §§1603; 1611; 1612; 1613; 3802(f).

Driving While License Suspended for DWI

Offense:

Criminal - Fine/Imprisonment:

Summary Offense:

Not less than **60 days** or more than **90 days** and **\$500**.
75 Pa.C.S.A. §1543(b)(1).

Driving on DUI Suspended with BAC ≥ .02:

First offense – Not less than **90 days** and **\$1,000**;

Second offense (3rd degree misdemeanor) – Not less than **6 months** or more than **1 year** and **\$2,500**;

Third or subsequent offense (1st degree misdemeanor) – Not less than **2 years** or more than **5 years** and **\$5,000**.

18 Pa.C.S.A. §§1101; 1104; 75 Pa.C.S.A. §1543(b)(1.1).

The base terms listed above are mandatory.

Mandatory Minimum Fine/Imprisonment Term:

Administrative Licensing Action Type:

Withdrawal Action:

Revocation/Suspension. 75 Pa.C.S.A. §1543(c)

If suspension, original suspension extended an additional period of 1 year.

If revocation, original revocation extended an additional period of 2 years. 75 Pa.C.S.A. §1543(c).

Terms are mandatory. 75 Pa.C.S.A. §§1553(d)(15); 1554(f)(12).

Mandatory Term of License Withdrawal Action:

Other:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Grounds for Being Declared Habitual Offender:

Term of License Revocations While on Habitual Offender Status:

Yes. 75 Pa.C.S.A. §1542.

Three convictions of any one or more serious traffic offenses⁵⁷⁰ within a 5-year period.

5 years. Each additional offense committed within 5 years shall result in a revocation period of 2 years.

75 Pa.C.S.A. §1542(e).

Second Degree Misdemeanor. 75 Pa.C.S.A. §6503.1.

Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):

Not more than **2 years** and/or not more than **\$5,000**.

18 Pa.C.S.A. §1104(2).

Mandatory Minimum Term/Fine:

Licensing Action (Specify):

None

Other State Laws Related to Alcohol Use:

BAC Chemical Tests on Persons Killed in

Yes. 75 Pa.C.S.A. §3749. Blood or urine samples shall be

⁵⁷⁰ Serious traffic offenses include DWI, driving on suspended/revoked license, racing, accidents involving death or personal injury, accidents involving death or personal injury while not licensed, accidents involving damage to attended vehicle or property. 75 Pa.C.S.A. §1542.

Traffic Crashes - State Has Such a Law (Yes/No):	taken.
BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes. If > 15 years old and died within 4 hours of accident.
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	Yes. If driver cannot be determined, then all vehicle occupants over 15.
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	Yes. If > 15 and died within 4 hours of accident.
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	No
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. 18 Pa.C.S.A. §6308.
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. 18 Pa.C.S.A. §6308.
<u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	Yes. 47 P.S. §4-497. ⁵⁷¹
"Dram Shop Law" Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	Yes. <i>Jardine v. Upper Darby Lodge No. 1973 Inc.</i> , 198 A.2d 550 (Pa. 1964).
Dram Shop Actions – Social Hosts:	Yes – limited to minors. See, e.g., <i>Congini by Congini v. Portersville Valve Co.</i> , 470 A.2d 515 (Pa. 1983).
Social Host – Criminal Enforcement:	A person who knowingly furnishes any liquor or malt or brewed beverages to a person under age 21 shall be guilty of a 3rd degree misdemeanor, punishable by a fine of not less than \$1,000 and/or jail for not more than 1 year, for a first offense. For a subsequent offense, the fine shall be \$2,500 and/or jail for not more than 1 year. 18 Pa.C.S.A. §§1101; 6310.1.
<u>Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
Type of Criminal Action:	Misdemeanor. 47 P.S. §§4-493(1); 4-494(a).
Imprisonment/Fine:	<u>First offense</u> – Not less than \$100 or more than \$500 (upon <u>failure to pay fine</u> , imprisonment shall be not less than 1 month or more than 3 months); <u>Subsequent offense</u> – Not less than 3 months or more than 1 year and/or not less than \$300 or more than \$500 .
<u>Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
License to Serve Alcoholic Beverages	Yes – Suspension, Revocation, and/or Fine.

⁵⁷¹ 47 P.S. §4-497 only includes “customers” who are visibly intoxicated. This term does not include minors. However, a licensee can be held liable under the common law for injuries caused by an inebriated minor who has been sold alcoholic beverages. See *Matthews v. Konieczny*, 527 A.2d 508 (Pa. 1987).

Withdrawn (Yes/No):
Length of Term of License Withdrawal: If revocation, **3 years**. 47 P.S. §4-471(b).

Criminal Actions Regarding Establishments
that Serve Alcohol to Persons Under the Legal
Drinking Age:

Type of Criminal Action: **Misdemeanor**. 47 P.S. §§4-493(1); 4-494(a).
Imprisonment/Fine: First offense – Not less than **\$100** or more than **\$500** (upon
failure to pay fine, imprisonment shall be not less than **1
month** or more than **3 months**);
Subsequent offense – Not less than **3 months** or more than **1
year** and/or not less than **\$300** or more than **\$500**.

Administrative Actions Regarding
Establishments That Serve Alcohol to Persons
Under the Legal Drinking Age:

License to Serve Alcoholic Beverages **Yes – Suspension, Revocation, and/or Fine.**

Withdrawn (Yes/No):
Length of Term License Withdrawal: If revocation, **3 years**. 47 P.S. §4-471(b).

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

Open Container Laws:

Open Container Law (Yes/No): **Yes**. 75 Pa.C.S.A. §3809.

Anti-Consumption Law (Yes/No): **Yes**. 75 Pa.C.S.A. §3809.

Alcohol Exclusion Law (UPPL): **Yes**. 31 Pa. Code §90g.4.

TERRITORY

PUERTO RICO

General Reference:

Laws of Puerto Rico Annotated (L.P.R.A.)⁵⁷²

Basis for a DWI Charge:

Standard DWI Offense:

Driving under the influence of intoxicating beverages.
9 L.P.R.A. §5202.

Illegal Per Se Law (BAC/BrAC):

≥ **.08**. 9 L.P.R.A. §5202(a).

Persons age 18-20 - ≥ **.02**. 9 L.P.R.A. §5202(B).

Persons under 18. – Any alcohol content.

9 L.P.R.A. §5202(C).

Presumption (BAC/BrAC):

None

Types of Drugs/Drugs and Alcohol:

Under the influence of any narcotic drug, marijuana, stimulant or depressant substance, or of any chemical or controlled substance. 9 L.P.R.A. §5203.

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

Yes. 9 L.P.R.A. §5209.

Implied Consent Law:

Yes. 9 L.P.R.A. §5209.

Arrest Required (Yes/No):

No. 9 L.P.R.A. §5209.

Implied Consent Law Applies to Drugs

Yes. 9 L.P.R.A. §5209(a).

(Yes/No):

Refusal to Submit to Chemical Test

N/A

Admitted into Evidence:

Other Information:

I. If alcohol concentration for a person over age 18 is less than **.08**, it shall be concluded that the person has not been driving or operating a vehicle under the influence of alcoholic beverages. 9 L.P.R.A. §5209.

II. If after performing the alcohol tests they show that the driver was not under the effect of alcoholic beverages, yet appeared to be intoxicated, the police officer may have grounds to believe that the driver is under the influence of drugs or controlled substances. In such case, the police officer shall then perform the field tests he deems necessary before submitting the person detained or arrested to a chemical analysis of the urine. 9 L.P.R.A. §5209(F).

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the

Implied Consent Law:

Blood:

Yes. 9 L.P.R.A. §5209.

Urine:

Yes. 9 L.P.R.A. §5209.

Other:

Any bodily fluid. 9 L.P.R.A. §5209(K).

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea-Bargaining Statute (Yes/No):

No

Pre-Sentencing Investigation Law (PSI)

Yes. 9 L.P.R.A. §5207(A).

(Yes/No):

⁵⁷² Updated through December 2013.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): N/A

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): N/A

Preliminary Breath Test – Other: N/A

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

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev): N/A

Implied Consent Chemical Test - Other: There are no provisions for criminal or administrative sanctions. However, anyone who refuses to submit to a chemical test will be arrested and transported to a medical facility where a person certified by the Department of Health will perform the test. 9 L.P.R.A. §5209(A).

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine:

Misdemeanor.

DWI: First conviction – Not less than **\$300** or more than **\$500**;⁵⁷³

Second conviction (within 3 years) – **15 to 30 days** and not less than **\$500** or more than **\$750**;

Third and subsequent convictions (within 3 years) – Not less than **60 days** or more than **6 months** and not less than **\$2,000** or more than **\$2,500**. 9 L.P.R.A. §5204(B).

DWI – Bodily Harm: In addition to any other penalty for DWI, any person causing bodily harm shall be punished by a fine of not less than **\$1,000** or more than **\$5,000**. 9 L.P.R.A. §5205.

DWI – Serious Bodily Injury: In addition to any other penalty for DWI, any person causing serious bodily injury shall be punished by imprisonment of **18 months**.⁵⁷⁴ 9 L.P.R.A. §5206.

Mandatory Minimum Term/Fine:

DWI:

First conviction - **\$300**;

Second conviction – **15 days/\$500**;

Third conviction – **60 days/\$2,000**.

⁵⁷³ If a defendant does not comply with the conditions of judgment and rehabilitation, he is subject to 5 to 15 days of imprisonment. 9 L.P.R.A. §5204(B)(1).

⁵⁷⁴ The term of imprisonment may be increased to a maximum of 3 years if there are aggravating circumstances, or decreased to minimum of 6 months, 1 day if there are mitigating circumstances. The law does not provide examples of either aggravating or mitigating circumstances. 9 L.P.R.A. §5206.

	DWI – Bodily Harm: \$1,000.
	DWI – Serious Bodily Injury: 18 months.
Community Service:	Community service may be ordered in any case. However, a defendant, whose sentence is suspended, shall perform community service of 30 days. 9 L.P.R.A. §5208(C). <u>Second conviction</u> – not less than 30 days community service; <u>Third or subsequent conviction</u> – not less than 60 days community service. 9 L.P.R.A. §5204(B)(2)(C).
Child Endangerment:	DWI – With Minor ≤ 15: 48 hours and \$500 (mand). 9 L.P.R.A. §5204(C).
Restitution:	Included in the penalties. 9 L.P.R.A. §5204(B).
Other:	I. A person who has been convicted of DWI and subsequent commits the same or similar offense is deemed to be a repeat offender 9 L.P.R.A. §5206. II. A sentence may be suspended for any DWI, except serious bodily injury or when a person is deemed a repeat offender and his/her BAC was ≥ .08 but ≤ .10. 9 L.P.R.A. §5208.
<u>Administrative Sanctions – Pre-Conviction:</u>	N/A
<u>Administrative Sanctions – Post-Conviction:</u>	
Type of Licensing Action (Susp/Rev):	Suspension
Term of Withdrawal:	DWI: <u>First conviction</u> – Not more than 30 days ; <u>Second conviction</u> (within 3 years) – Not less than 1 year ; <u>Third conviction</u> (within 3 years) – Indefinitely . 9 L.P.R.A. §5204(B), (C).
	DWI – Bodily Harm: Not less than 1 year or more than 5 years . 9 L.P.R.A. §5205.
	DWI – Serious Bodily Injury: Not less than 2 years or more than 7 years . 9 L.P.R.A. §5206. <u>Second conviction</u> – 45 days . 9 L.P.R.A. §5204(B)(2)(A).
Mandatory Minimum Term of Revocation:	Mandatory for all offenders.
Alcohol Education:	Yes . 9 L.P.R.A. §5204(B).
Substance Abuse Treatment:	Yes . 9 L.P.R.A. §5204(B).
Vehicle Impoundment/Confiscation:	Seizure.
Authorized by Specific Statutory Authority:	The court shall order seizure of the motor vehicle for second or subsequent convictions (within 5 years). 9 L.P.R.A. §5204(B)(4).
Terms Upon Which Vehicle Will Be Released:	The court may make an exception for an individual who completely depends on the motor vehicle for his/her needs, including any member of the family unit of the defendant, or any co-owner (provided such person is not the defendant). 9 L.P.R.A. §5204(C).
Other Miscellaneous Sanctions:	N/A

Ignition Interlock:

Permitted or Prohibited:
 Type of Law (Mandatory or Permissive):
 Sanction (Judicial, Administrative or Hybrid)
 Conditions of Use:

Permitted.
Permissive.
Judicial.

The court may permit the use of an ignition interlock device for a second conviction. 9 L.P.R.A. §5204(B)(2).
 The defendant must show proof of ignition interlock purchase and installation within 5 days of sentencing. 9 L.P.R.A. §5204(B)(2)(C).

Other Provisions:

Sobriety Checkpoints:

Permitted or Prohibited:

No provisions

Homicide by Vehicle:

State Has Such a Law:
 Imprisonment/Fine:
 Mandatory Minimum Term/Fine:
 Authorized Licensing Action:
 Length of Term of Licensing Withdrawal:
 Mandatory Minimum License Withdrawal:
 Other:

No.⁵⁷⁵

DWI Offenses and Commercial Motor Vehicles (CMV):

It shall be unlawful for any operator of a CMV to operate such vehicle with a BAC of $\geq .02$. Sanctions are the same as those for DWI.

An operator is subject to disqualification for 1 year (3 years if driving with hazardous material) if he drives under the influence, drives with a BAC of $\geq .04$ or refuses to consent to a chemical test. A second or subsequent offense results in disqualification for life (10 year mand). 49 C.F.R. §383.51.

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:
 Mandatory Minimum Fine/Imprisonment Term:
 Administrative Licensing Action Type:
 Withdrawal Action:
 Mandatory Term of License Withdrawal Action:
 Other:

Misdemeanor. 9 L.P.R.A. §5073(M).
 Not less than **\$500** or more than **\$3,000**.
\$500
Suspension/Revocation. 9 L.P.R.A. §5069(d).
 Not more than **1 year**. 9 L.P.R.A. §5069(d).
None
N/A

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Other State Laws Related to Alcohol Use:

⁵⁷⁵ The laws surrounding homicide by vehicle in Puerto Rico were repealed effective September 2012.

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes. 9 L.P.R.A. §5209(B).
BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes, within 4 hours after the accident.
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	No.
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	Yes, within 4 hours after the accident.
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes. 9 L.P.R.A. §5209(E).
Minimum Age (Years) for Sale/Purchase of Alcohol:	18. ⁵⁷⁶
Minimum Age (Years) for Possession/Consumption of Alcohol:	18
<u>Dram Shop and Social Host Laws:</u> State Has a Dram Shop Law (Yes/No):	Limited to <u>commercial</u> establishments who serve alcohol to visibly intoxicated individuals. <i>Lopez v. Porrata Doria</i> , 2006 WL 2873349 (October 4, 2006); <i>Vernet v. Serrano-Torres</i> , 566 F.3d 254 (C.A. 1 - Puerto Rico 2009).
"Dram Shop Law" Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	N/A
Dram Shop Actions – Social Hosts:	No statutory provisions
Social Host – Criminal Enforcement:	N/A
<u>Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u> Type of Criminal Action:	No statutory provisions. However, under the 21st Amendment, State and local governments may regulate the sale and distribution of alcohol. See <i>Broadwell v. Municipality of San Juan</i> , 312 F.Supp.2d 132 (D. Puerto Rico 2004).
Imprisonment/Fine:	N/A
<u>Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u> License to Serve Alcoholic Beverages Withdrawn (Yes/No):	No statutory provisions.
<u>Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the</u>	

⁵⁷⁶ Specific reference could not be found. However, a reading of the DWI laws (9 L.P.R.A. §5201, *et seq.*) indicates the legal age of drinking may be 18, although an attempt in 2013 was made to raise the legal age to 21.

Legal Drinking Age:

Type of Criminal Action: **N/A**
Imprisonment/Fine:

Administrative Actions Regarding
Establishments That Serve Alcohol to
Persons Under the Legal Drinking Age:

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

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

Open Container Laws:

Open Container Law (Yes/No): **Yes. 9 L.P.R.A. §5201.**
Anti-Consumption Law (Yes/No): **Yes. 9 L.P.R.A. §5201.**

Alcohol Exclusion Law (UPPL): **Yes. 26 L.P.R.A. §1628.**

STATE

RHODE ISLAND

General Reference:

General Laws of Rhode Island (Gen.Laws 1956)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor.
Gen.Laws 1956 §31-27-2(a).

Illegal Per Se Law (BAC/BrAC):

≥ **.08**.⁵⁷⁷ Gen.Laws 1956 §31-27-2(b)(1).

Persons under 21 (BAC ≥ **.02** but < **.08**) are considered to have been driving while impaired which is not a criminal offense. Gen.Laws 1956 §31-27-2.7(a), (d).

Presumption (BAC/BrAC):

None

Types of Drugs/Drugs and Alcohol:

Under the influence of any drug, toluene, any controlled substance or any combination of these substances and intoxicating liquor, or with a blood presence of any scheduled controlled substance. Gen.Laws 1956 §31-27-2.

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

Yes. Gen.Laws 1956 §31-27-2.3.

Implied Consent Law:

Yes. Gen.Laws 1956 §31-27-2.1.

Arrest Required (Yes/No):

No. Gen.Laws 1956 §31-27-2.1.

Implied Consent Law Applies to Drugs

Yes. Gen.Laws 1956 §31-27-2.1.

(Yes/No):

Refusal to Submit to Chemical Test

Only if the defendant chooses to testify.

Admitted into Evidence:

Gen.Laws 1956 §31-27-2(c)(1).

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the

Implied Consent Law:

Blood:

Yes. However, there is an exception based for medical or religious reasons. Gen.Laws 1956 §31-27-2.1(b).

Urine:

Yes. Gen.Laws 1956 §31-27-2.1.

Other:

Body fluids. Gen.Laws 1956 §31-27-2.1.

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea-Bargaining Statute (Yes/No):

No

Pre-Sentencing Investigation Law (PSI)

No

(Yes/No):

Sanctions for Refusal to Submit to a

Chemical Test:

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

None

Refusal to Take a Preliminary Breath Test –
Administrative Licensing Action

None

(Susp/Rev):

⁵⁷⁷ Standard: "Percent by weight" of alcohol in the blood is to be based upon milligrams of alcohol per 100 cubic centimeters of blood. Gen.Laws 1956 §31-27-2(e).

Preliminary Breath Test – Other:	Infraction: An administrative fine of \$85 shall be imposed. Gen.Laws 1956 §§31-27-2.3(b); 31-41.1-4(a).
Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	First refusal: \$200-500; Second refusal (within 5 years): Not more than 6 months and \$600-1,000; Third or subsequent refusal (within 5 years): Not more than 1 year and \$800-1,000. Gen.Laws 1956 §31-27-2.1(b).
Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):	Note. ⁵⁷⁸ Suspension: First refusal: 6 months-1 year; Second refusal: 1-2 years; Third or subsequent refusal: 2-5 years. Gen.Laws 1956 §31-27-2.1(b)(1)-(3). Prior to the reinstatement of a driver’s license to a person charged with a third or subsequent refusal within a <i>3-year period</i> , a judge shall hold a hearing to determine whether the offender demonstrates behavior to warrant reinstatement. Gen.Laws 1956 §31-27-2.1(b)(3).
Implied Consent Chemical Test - Other:	First refusal – Attendance at a DWI class or alcohol/drug treatment program and 10-60 hours community service; Second refusal – Attendance at an alcohol/drug treatment program and 60-100 hours community service; Third or subsequent refusal – Attendance at an alcohol/drug treatment program and not less than 100 hours community service. Gen.Laws 1956 §31-27-2.1(b).
	Highway safety assessments of \$500 and \$200 and shall be paid by any person found in violation. Gen.Laws 1956 §31-27-2.1(b)(5), (6).

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine:

DWI:

First offense (BAC ≥ **.08 but < .10**): Imprisonment up to **1 year** and/or not less than **\$100** or more than **\$300;**
First offense (BAC ≥ **.10 but < .15**): Imprisonment up to **1 year** and/or not less than **\$100** or more than **\$400;**
First offense (BAC ≥ **.15**): Imprisonment up to **1 year** and/or **\$500;**
Second offense (within 5 years) (BAC ≥ **.08 but < .15**): Not less than **10 days** or more than **1 year** and **\$400;**
Second offense (within 5 years) (BAC ≥ **.15**): Not less than **6 months** or more than **1 year** and **\$1,000**
Third or subsequent offense (BAC ≥ **.08 but < .15**) (felony) – Not less than **1 year** or more than **3 years** and **\$400;**

⁵⁷⁸ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

Third or subsequent offense (BAC ≥ .15): Not less than **3 years** or more than **5 years** and not less than **\$1,000** or more than **\$5,000**. Gen.Laws 1956 §31-27-2(d)(1)-(3).

DWI – Serious Bodily Injury (felony):

First offense: Not less than **1 year** or more than **10 years** and not less than **\$1,000** or more than **\$5,000**;

Second or subsequent offense (within 5 years): Not less than 2 years or more than 15 years and not less than **\$3,000** or more than **\$10,000**. Gen.Laws 1956 §31-27-2.6(c), (d).

The base terms listed above are mandatory.

Gen.Laws 1956 §31-27-2(i).⁵⁷⁹

Mandatory Minimum Term/Fine:

Community Service:

DWI:

First offense (BAC ≥ .08 but < .10): **10 - 60 hours** (mandatory);

First offense (BAC ≥ .10 but < .15): **10 - 60 hours** (mand.);

First offense (BAC ≥ .15): **20 - 60 hours** (mand/).

Gen.Laws 1956 §31-27-2(d)(1).

Child Endangerment:

Driving while intoxicated with a minor under the age of 13 in the vehicle is punishable by a term of not more than **1 year**, which cannot be suspended. Gen.Laws 1956 §31-27-2(d)(5)(ii).

Restitution:

Victims compensation fund Gen.Laws 1956 §12-25-16, *et seq.*

Other:

Highway Assessment Fee: In addition to the above fines, a defendant must pay a highway assessment fee of \$500 and an additional fee of \$86. Gen.Laws 1956 §31-27-2(d)(6)(i), (ii).

EMS Special Assessment: In addition to any fine, an offender must be assessed \$1. Gen.Laws 1956 §31-27-18.

Administrative Sanctions – Pre-Conviction:

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. Gen.Laws 1956 §31-11-7(a).

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Term of Withdrawal:

Suspension/Revocation

DWI:

First offense (BAC ≥ .08 but < .10): **30 - 180 days**;

First offense (BAC ≥ .10 but < .15): **3 - 12 months**;

First offense (BAC ≥ .15): **3 - 18 months**;

Second offense (BAC ≥ .08 but < .15): **1 - 2 years**;

Second offense (BAC ≥ .15): **2 years**;

Third or subsequent offense (BAC ≥ .08 but < .15): **2-3 years**;

⁵⁷⁹“No fines, suspensions, assessments, alcohol or drug treatment programs, course on driving while intoxicated or under the influence of a controlled substance, public community restitution, or jail provided for under this section can be suspended.” Gen.Laws 1956 §31-27-2(i).

Third or subsequent offense (BAC \geq .15): **3 years.**
Gen.Laws 1956 §31-27-2(d)(1)-(3).

Persons at least 18 but under 21 with a BAC \geq .02 but < .10:

First violation – A fine of \$250 and 30 hours of community service, and license suspension of 1-3 months;

Second violation – An assessment of \$300, a fine of \$250 and 60 hours of community service, and license suspension of 3-6 months; Gen.Laws 1956 §31-27-2.(a), (b)(1)-(3).

DWI – Serious Bodily Injury:

First offense: **Revocation** up to **2 years**;

Second or subsequent offense: **Revocation** up to **4 years**.

Gen.Laws 1956 §31-27-2.6(c), (d).

Mandatory Minimum Term of Revocation:
Alcohol Education:

The terms above are mandatory. Gen.Laws 1956 §31-27-2(i).

Yes. A course on driving while intoxicated or under the influence of controlled substances may be required.

Gen.Laws 1956 §31-27-2(d).

Substance Abuse Treatment:

Yes.: A court shall order a person to successfully complete an alcohol or drug treatment program except for first offense without an elevated BAC. Gen.Laws 1956 §31-27-2; 31-27-2.6.

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority:

Forfeiture

For a third or subsequent DWI offense – A person's vehicle shall be subject, in the discretion of the sentencing judge, to forfeiture. Gen.Laws 1956 §31-27-2(d)(3)(iii).

Terms Upon Which Vehicle Will Be Released:

A person petitioning for release of a seized vehicle must (1) assert by a preponderance of the evidence a right, title, or interest in the vehicle vested in the petitioner rather than the defendant or a superior right, title, or interest of the defendant at the time of the commission of the act(s) which gave rise to the forfeiture of the vehicle; or (2) the petitioner is a bona fide purchaser for value of any right, title or interest in the vehicle and was at the time of purchase reasonably without cause to believe that the vehicle was subject to forfeiture. Gen.Laws 1956 §31-27-4.4(f)(6).

Other Miscellaneous Sanctions:

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. Gen.Laws 1956 §31-27-2(j).

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, which shall include extensive physical regimentation, drug and alcohol abuse counseling, behavioral counseling and mandatory education courses and community services. Gen.Laws 1956 §12-19-2.2.

DWI Offenders Under 18:

Persons Under 18 with a BAC \geq .02 but $<$.10:

First violation – A highway safety assessment of \$150 or community service in lieu of the assessment, and license suspension of 6 months (but may be suspended for up to 12 months);

Second violation – A highway safety assessment of \$150 or community service in lieu of the assessment, and license suspension until age 21;

Third or subsequent violation – A highway safety assessment of \$150 or community service in lieu of the assessment, and license suspension for an additional 2 years.

Gen.Laws 1956 §31-27-2.5(d).

Ignition Interlock:

Permitted or Prohibited:

Type of Law (Mandatory or Permissive):

Sanction (Judicial, Administrative or Hybrid)

Conditions of Use:

Permitted. Gen.Laws 1956 §§31-27-2(d); 31-27-2.8.

Both

Judicial

First offense (BAC \geq .08 but $<$.15) – A court may prohibit operation of motor vehicle that is not equipped with ignition interlock for 3 months-1 year following completion of sentence.

First offense (BAC \geq .15) – A court shall prohibit operation of motor vehicle that is not equipped with ignition interlock for 3 months-1 year following completion of sentence.

Gen.Laws 1956 §§31-27-2(d)(1)(i)-(iii); 31-27-8(b)(1).

Second offense (within 5 years– A court shall prohibit operation of motor vehicle that is not equipped with ignition interlock for 6 months-2 years following completion of sentence. Gen.Laws 1956 §§31-27-2(d)(2); 31-27-8(b)(3).

Third or subsequent offense – An offender shall be required to operate only motor vehicles installed with an ignition interlock device for a period of 1-4 years. Gen.Laws 1956 §§31-27-2(d)(3); 31-27-2.8(b)(5).

N/A

Other Provisions:

Sobriety Checkpoints:

Permitted or Prohibited:

Prohibited. *Primental v. Rhode Island*, 561 A.2d 1348 (R.I. 1989).

Homicide by Vehicle:

State Has Such a Law:

Driving under the influence of liquor or drugs, resulting in death. Gen.Laws 1956 §31-27-2.2.

Imprisonment/Fine:

Felony

First offense – Not less than **5 years** or more than **15 years** and not less than **\$5,000** or more than **\$10,000**;

Second or subsequent offense (within 5 years) – Not less than **10 years** or more than **20 years** and not less than **\$10,000** or more than **\$20,000**. Gen.Laws 1956 §31-27-2.2.

The terms above appear to be mandatory.

Mandatory Minimum Term/Fine:

Authorized Licensing Action:

Revocation. Gen.Laws 1956 §31-27-2.2.

Length of Term of Licensing Withdrawal: **5 years**
 Mandatory Minimum License Withdrawal: **5 years**
 Other:

DWI Offenses and Commercial Motor Vehicles (CMV):

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 \geq .04; (2) while under the influence of alcohol or controlled substances; or (3) of a refusal to submit to a chemical test. For a second violation of any of the above-listed items, a person's privilege to operate a CMV is revoked for life (10 years mand).
 In addition, a CMV operator who has any alcohol in the system must "cease" to operate a CMV for 24 hours.
 Gen.Laws 1956 §§31-10.3-3; 31-10.3-31.

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

First offense (misdemeanor) – Not less than **10 days** or more than **1 year** and **\$500**;
Second offense (within 5 years - misdemeanor) – Not less than **6 months** or more than **1 year** and **\$500**;
Third or subsequent offense (within 5 years - felony) – Not less than 1 year or more than 5 years and a \$1,000 fine.
 Gen.Laws 1956 §§31-11-18.1; 31-27-13; 31-27-14.

Mandatory Minimum Fine/Imprisonment Term:
 Administrative Licensing Action Type:
 Withdrawal Action:

The terms above are mandatory. Gen.Laws 1956 §31-11-18.1.
Suspension/Revocation. Gen.Laws 1956 § 31-11-18.1(b).
Driving While Suspended:
First offense – An additional period of **3 months**;
Second offense – An additional period of **6 months**;
Subsequent offense – Revocation for **1 year**
Driving While Revoked – An additional period of **1 year**.
 Gen.Laws 1956 §31-11-18.1(b).
 The terms above appear to be mandatory.

Mandatory Term of License Withdrawal Action:
 Other:

N/A

Habitual Traffic Offender Law:

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

Yes. Gen.Laws 1956 §31-40-1, *et seq.*
 Three or more convictions within three 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. Gen.Laws 1956 §31-40-2.

Term of License Revocations While on Habitual Offender Status:	Not less than 1 year or more than 5 years . Gen.Laws 1956 §31-40-7.
Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status:	Felony . Gen.Laws 1956 §11-1-2.
Imprisonment (Term):	Not more than 5 years . Gen.Laws 1956 §31-40-8.
Mandatory Minimum Term/Fine:	The 5-year sentence may not be suspended <u>except</u> in cases where the defendant operated a vehicle in order to save life or limb. Gen.Laws 1956 §31-40-8.
Licensing Action (Specify):	The court shall determine whether the person has been held a habitual offender and by reason of the holding, is barred from operating a motor vehicle on the highways. Gen.Laws 1956 §31-40-8(b).
 <u>Other State Laws Related to Alcohol Use:</u>	
BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	No specific provisions . However, by reference, testing of a driver, passenger or pedestrian may be permitted. Gen.Laws 1956 §31-27-3.1(c).
BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	Yes
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	Yes
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	No
Minimum Age (Years) for Sale/Purchase of Alcohol:	21 . Gen.Laws 1956 §§3-8-4; 3-8-5; 3-8-6(a)(2).
Minimum Age (Years) for Possession/Consumption of Alcohol:	21 . Gen.Laws 1956 §§3-8-6(a)(2); 3-8-10. There is an exception of employment and for religious purposes.
 <u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	Yes . Gen.Laws 1956 §§3-14-6; 3-14-7.
"Dram Shop Law" 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 . See <i>Ferreira v. Strack</i> , 652 A.2d 965 (R.I. 1995); ⁵⁸⁰ <i>Marty v. Garcia</i> , 667 A.2d 282 (R.I. 1995).
Social Host – Criminal Enforcement:	A person who willfully encourages, aids, contributes to or in any way causes any child under age 16 to violate any State law shall be guilty of a misdemeanor, punishable by a fine of not more than \$500 or imprisonment for not more than 1 year. Gen.Laws 1956 §11-9-4.

⁵⁸⁰ In declining to recognize social host responsibility, the Supreme Court of Rhode Island held that the Legislature must set out the duties and responsibilities of various segments of the society within certain social situations. *Ferreira v. Strack*, 652 A.2d 965, 970 (R.I. 1995).

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Imprisonment/Fine:

Violation

Not more than **\$1,000**. Gen.Laws 1956 §§3-8-1; 3-11-5.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes – Suspension/Revocation.

Gen.Laws 1956 §3-5-23.

Suspension – Length is not specified. Gen.Laws 1956 §3-5-23.

Revocation – 5 years (under Gen.Laws 1956 §3-5-23).⁵⁸¹

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Imprisonment/Fine:

Violation.⁵⁸² Gen.Laws 1956 §§3-8-5; 11-1-2.

First offense – **\$250**;

Second offense (within 3 years) – **\$500**;

Third or subsequent offense (within 3 years) – **\$750**.

Gen.Laws 1956 §3-8-5.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes – Suspension/Revocation.

Gen.Laws 1956 §3-5-23.

Suspension – Length is not specified. Gen.Laws 1956 §3-5-23.

Revocation – 5 years (under Gen.Laws 1956 §3-5-23).⁵⁸³

Anti-Happy Hour Laws/Regulations:

Yes. Gen.Laws 1956 § 3-7-26.

Open Container Laws:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes. Gen.Laws 1956 §31-22-21.1.

Yes. Gen.Laws 1956 §31-22-21.1.

Alcohol Exclusion Law (UPPL):

No. Gen.Laws 1956 §27-18-4(11).

⁵⁸¹ If the revocation is under Gen.Laws 1956 §3-5-22, the length would be 1 year.

⁵⁸² A licensee who sells alcoholic beverages to one under the legal drinking age can also be charged with a violation of Gen.Laws 1956 §3-8-1. The sanctions for this offense are: 1st offense – imprisonment for not more than 6 months and/or a fine of not less than \$350 or more than \$1,000; 2nd offense – imprisonment for not more than 1 year and/or a fine of not less than \$750 or more than \$1,000; 3rd or subsequent offense – imprisonment for not more than 3 years and/or a fine of not less than \$1,000 (mand) or more than \$2,500. Gen.Laws 1956 §§3-8-11.1; 3-8-11.2.

⁵⁸³ If the revocation is under Gen.Laws 1956 §3-5-22, the length would be 1 year.

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General Reference:

Code of Laws of South Carolina Annotated (Code 1976)

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Under the influence of alcohol. Code 1976 §56-5-2930(1).
 ≥ **.08**.⁵⁸⁴ Driving with an unlawful alcohol concentration
 Code 1976 §56-5-2933.

Presumption (BAC/BrAC):

Persons Under 21 (≥ .02). Code 1976 §56-1-286(A).
 ≥ **.08** – Permissible inference.
 Code 1976 §56-5-2950(G)(3).

Types of Drugs/Drugs and Alcohol:

Under the influence of any drug, any combination of drugs
 or substances or a combination of alcohol and other drugs
 or substances. Code 1976 §56-5-2930(A).

Chemical Breath Tests for Alcohol
 Concentration:

Preliminary Breath Test Law:

No.

Implied Consent Law:

Yes. Code 1976 §56-5-2950.

Arrest Required (Yes/No):

Yes. Code 1976 §§56-5-2950(A); 56-1-286(C).

Implied Consent Law Applies to Drugs
 (Yes/No):

Yes. Code 1976 §56-5-2950(A).

Refusal to Submit to Chemical Test Admitted
 into Evidence:

Yes – Criminal Cases. *State v. Miller*, 185 S.E.2d 359
 (S.C. 1971).

Other Information:

I. No tests may be administered or samples obtained
 unless, upon activation of the video recording equipment
 and prior to the commencement of the testing procedure,
 the person has been given a written copy of and verbally
 informed of his implied consent rights. Violator must have
 his conduct at the incident site and the breath test site
 videotaped, if law enforcement vehicle is equipped with a
 videotaping device, and if breath test site is equipped with
 a videotaping device. Code 1976 §§56-5-2950(B); 56-5-
 2953(A), (G).

Non-Breath Chemical Tests for Alcohol
 Concentration Authorized Under the Implied
 Consent Law:

Blood:

Yes. If the person is physically unable to provide an
 acceptable breath sample because he has an injured
 mouth, is unconscious or dead, or for any reason
 considered acceptable by the licensed medical
 professional, the arresting officer may request a blood
 sample to be taken. Code 1976 §56-5-2950(A).

Urine:

Yes. If the officer has reasonable suspicion that the person
 is under the influence of drugs other than alcohol, or is
 under the influence of a combination of alcohol and drugs,
 the officer may order that a urine sample be taken for
 testing. Code 1976 §56-5-2950(A).

⁵⁸⁴“Alcohol concentration” is defined to mean grams of alcohol per 100 milliliters of blood or other bodily fluids as determined by the South Carolina Law Enforcement Division. Code 1976 §56-1-10(17).

Other: Breath samples must be collected within 2 hours of arrest; any additional tests to collect other samples must be collected within 3 hours of arrest. Code 1976 §56-5-2950(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): **No**

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **N/A**
 Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **N/A**
 Preliminary Breath Test – Other: **N/A**

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev): **First refusal – Suspension 6 months; Second refusal (within 10 years) – Suspension 9 months; Third refusal (within 10 years) – Suspension 12 months; Fourth or subsequent refusal (within 10 years) – Suspension 15 months.** A person may still be issued restricted driving privileges for employment or college education purposes. Code 1976 §56-5-2951(I)(1)(a), (2)(a)-(c), (P).
 In lieu of serving a suspension a person may enroll in the Ignition Interlock Device Program, end the suspension and obtain a restricted license. The ignition interlock device is required to be affixed to the vehicle equal to the length of time remaining on the person's suspension, but for not less than 3 months.⁵⁸⁵ Code 1976 §§56-5-2951(I)(3); 56-1-400; 56-5-2941.

Persons Under 21:

First refusal – **Suspension 6 months;**
Subsequent refusal (within 3 years) – **Suspension 1 year.**
 Code 1976 §56-1-286(F).

Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine: **First offense** – Not less than **48 hours** or more than **30 days** or **\$400;**
First offense (BAC ≥ **.10 but < .16**) – Not less than **72**

⁵⁸⁵ A person cannot subsequently choose to serve the suspension once enrolled in the Ignition Interlock Device Program. Code 1976 §56-5-2951(I)(3).

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hours or more than 30 days or \$500;

First offense (BAC \geq .16) – Not less than **30 days** or more than **90 days** or **\$1,000**;

Second offense (class C misdemeanor) – Not less than **5 days** or more than **1 year** and not less than **\$2,100** or more than **\$5,100**;

Second offense (class C misdemeanor) (BAC \geq .10 but $<$.16) – Not less than **30 days** or more than **2 years** and not less than **\$2,100** or more than **\$5,100**;

Second offense (class C misdemeanor) (BAC \geq .16) – Not less than **90 days** or more than **3 years** and not less than **\$3,500** or more than **\$6,500**;

Third offense (class A misdemeanor) – Not less than **60 days** or more than **3 years** and not less than **\$3,800** or more than **\$6,300**;

Third offense (class A misdemeanor) (BAC \geq .10 but $<$.16) – Not less than **90 days** or more than **4 years** and not less than **\$5,000** or more than **\$7,500**;

Third offense (class A misdemeanor) (BAC \geq .16) – Not less than **6 months** or more than **5 years** and not less than **\$7,500** or more than **\$10,000**;

Fourth or subsequent offense (class F felony) – Not less than **1 year** or more than **5 years**;

Fourth or subsequent offense (class F felony) (BAC \geq .10 but $<$.16) – Not less than **2 years** or more than **6 years**;

Fourth or subsequent offense (class F felony) (BAC \geq .16) – Not less than **3 years** or more than **7 years**.

Code 1976 §§16-1-10; 16-1-20; 16-1-90(F); 16-1-100; 56-5-2930(B)(1)-(4); 56-5-2933.

DUI – Great bodily injury (felony) – Not less than **30 days** or more than **15 years** and not less than **\$5,100** or more than **\$10,100**. Code 1976 §§16-1-90(B); 56-5-2945.

Mandatory Minimum Term/Fine:

First offense – **\$400**;

First offense (BAC \geq .10 but $<$.16) – **\$500**;

First offense (BAC \geq .16) – **\$1,000**.⁵⁸⁶

Second offense – **5 days/\$1,100**;

Second offense (BAC \geq .10 but $<$.16) – **30 days/\$1,100**;

Second offense (BAC \geq .16) – **90 days/\$1,100**.

Third offense – **60 days/\$3,800**;

Third offense (BAC \geq .10 but $<$.16) – **90 days/\$5,000**;

Third offense (BAC \geq .16) – **6 months/\$7,500**.

Fourth or subsequent offense – **1 year**;

Fourth or subsequent offense (BAC \geq .10 but $<$.16) – **2 years**;

Fourth or subsequent offense (BAC \geq .16) – **3 years**. Code 1976 §56-5-2930(B)(1)-(4), (C).

⁵⁸⁶ In lieu of jail time, the court may order a defendant to complete the same amount (48 hours/72 hours) in community service. Code 1976 §56-5-2930(A)(1).

Community Service:	DUI – Great bodily injury (felony) – 30 days/\$5,100 . Code 1976 §56-2-2945(A). <u>First offense</u> – 48 hours; <u>First offense</u> (BAC ≥ .10 but < .16) – 72 hours; <u>First offense</u> (BAC ≥ .16) – 30 days. ⁵⁸⁷ Code 1976 §56-5-2930(B)(1)-(4).
Child Endangerment:	A person ≥ 18 who commits a DUI, a driving with an unlawful alcohol concentration or DUI-great bodily injury offense while transporting a child < 16 is subject to <u>additional</u> jail and fine sanctions which are equal to not more than one-half the maximum jail and fine sanctions for these offenses. These sanctions are <u>mandatory</u> if the jail or fine sanctions have been imposed for the original offense. Also, <u>mandatory</u> license suspension for 60 days. Code 1976 §56-5-2947(A)-(D).
Restitution:	Victims' Compensation Fund. Code 1976 §16-3-1110, <i>et seq.</i>
Other:	Motor vehicle immobilization: For second or subsequent DUI violations, the violator's motor vehicles must be immobilized for a period of thirty days, ⁵⁸⁸ unless the person is a holder of a valid ignition interlock restricted license. Code 1976 §56-5-2942.

Mandatory Assessments:

I. In general sessions court, magistrates court and municipal court, a defendant must pay respectively an assessment which is equal to 107.5 percent of the fine imposed. Code 1976 §§14-1-206(A); 14-1-207; 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, along with an additional mandatory \$100 surcharge. Code 1976 §14-1-211(A)(1), (2).

III. Every defendant must pay a \$12 assessment in addition to any other sanction. Code 1976 §56-5-2995.

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

≥ .15 BAC:First violation – **Suspension 1 month**,⁵⁸⁹Second violation (within 10 years) – **Suspension 2 months**;Third violation (within 10 years) – **Suspension 3 months**;Fourth or subsequent violation (within 10 year) –**Suspension 4 months**. Code 1976 §56-5-2951(I)(1)(a),

⁵⁸⁷ Community service may be ordered in lieu of imprisonment.

⁵⁸⁸ Immobilization means suspension and surrender of the registration and motor vehicle license plate. Code 1976 §56-5-2942(B).

⁵⁸⁹ These suspensions are not mandatory as restricted driving privileges are available for either employment or college education purposes, and there is a \$100 fee for a restricted license. Code 1976 §56-5-2951(H).

(2)(a)-(c).

Persons Under 21 (BAC ≥ .02):

First violation – **Suspension 3 months** (mand);

Subsequent violation (within 3 years) – **Suspension 6 months** (mand). Code 1976 §56-1-286(A), (G).

A person must be attending or have completed an alcohol safety action program before license can be restored. Code 1976 §56-5-2951(J).

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Term of Withdrawal:

Suspension/Revocation

First offense – **Suspension 6 months**. In lieu of the suspension the person may enroll in the ignition interlock program;

First offense (BAC > .15) - **Suspension** until enrollment in ignition interlock device program;

Second offense (within 10 years) – **Suspension** until enrollment in ignition interlock device program;

Third offense (within 10 years) – **Suspension** until enrollment in ignition interlock device program;

Third offense (within 5 years) – **Suspension** until enrollment in ignition interlock device program;

Fourth or subsequent offense (within 10 years) – **Suspension** until enrollment in ignition interlock device program. Code 1976 §56-5-2990.

Mandatory Minimum Term of Revocation:

DUI offense causing great bodily injury – **Suspension for the term of imprisonment plus 3 years** ignition interlock restricted license. Code 1976 §56-5-2945.

First offense – For a first DUI offense, a provisional license may be issued for the 6-month suspension period provided the defendant participates in an alcohol/drug education/treatment program.

Code 1976 §§56-1-385(A)(1); 56-1-1320; 56-1-1330.

Alcohol Education:

DUI offense causing great bodily injury – **Suspension for the term of imprisonment plus 3 years** ignition interlock restricted license. Code 1976 §56-5-2945.

An offender whose license was suspended must successfully complete an Alcohol and Drug Safety Action Program prior to license reinstatement. 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. Code 1976 §56-5-2990(B), (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. Code 1976 §56-1-385(A)(3).

Substance Abuse Treatment:

All offenders convicted of DUI or DUAC must enroll in

Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	and successfully complete an Alcohol and Drug Safety Action Program. Code 1976 §56-5-2930(H). Forfeiture For a third or subsequent DUI offense (within 10 years), the vehicle owned <u>and</u> operated by the offender or operated by an offender who is a resident of the household of the registered owner must be forfeited. Code 1976 §56-5-6240(A).
Terms Upon Which Vehicle Will Be Released:	The court shall order a vehicle returned to the registered owner if it is shown by a preponderance of the evidence that the use of the vehicle on the occasion of arrest was not expressly or impliedly authorized, or the registered owner did not know that the driver did not possess a valid driver's license. Code 1976 §56-5-6240(B).
Other Miscellaneous Sanctions:	N/A
<u>Ignition Interlock:</u> Permitted or Prohibited: Type of Law (Mandatory or Permissive): Sanction (Judicial, Administrative or Hybrid) Conditions of Use:	Permitted. Code 1976 §56-5-2941. Mandatory Administrative An offender with a BAC > .15 and subsequent offenders must install an ignition interlock device on any motor vehicle he drives. The terms are: 6 months for a BAC > .15; 2 years for a second offense; 3 years for a third offense within 10 years or 4 years for a first offense within 5 years; Life for a fourth or subsequent offense. Code 1976 §56-5-2941(A)(2)(c), (3)-(5). South Carolina uses a point system managed by the Department of Probation, Parole & Pardon Services. The number of points received by an offender determines the length of time ignition interlock use is extended. Code 1976 §56-5-2941(E).
Other Provisions:	South Carolina uses a point system managed by the Department of Probation, Parole & Pardon Services. The number of points received by an offender determines the length of time ignition interlock use is extended. Code 1976 §56-5-2941(E).
<u>Sobriety Checkpoints:</u> Permitted or Prohibited:	No statutory provisions or case law. ⁵⁹⁰
<u>Homicide by Vehicle:</u> State Has Such a Law: Imprisonment/Fine:	Yes. Code 1976 §56-5-2945. Not less than 1 year or more than 25 years and not less than \$10,100 or more than \$ \$25,100 . Code 1976 §56-5-2945(A)(2). 1 year/\$10,100
Mandatory Minimum Term/Fine: Authorized Licensing Action: Length of Term of Licensing Withdrawal:	Suspension. Code 1976 §56-5-2945(C). Term of imprisonment plus 5 years ignition interlock restricted license Code 1976 §56-5-2945. This period is mandatory.
Mandatory Minimum License Withdrawal: Other:	N/A

⁵⁹⁰ However, in *State v. Groome*, 664 S.E.2d 460 (S.C. 2008), the South Carolina Supreme Court references sobriety checkpoints, which indicates their use or permitted use. *See also* Code 1976 §56-5-6540 which references limitations, rather than prohibitions, on the use of checkpoints in the safety belt context.

DWI Offenses and Commercial Motor Vehicles (CMV):

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 \geq .04; (2) has an alcohol concentration \geq .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 (Code 1976 §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 (Code 1976 §56-1-2130) applies to tests for both an alcohol concentration and the presence of other drugs.

For a subsequent violation or 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. Code 1976 §§ 56-1-2030; 56-1-2110; 56-1-2120; 56-1-2130; 56-5-6190.

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 not less than 90 days (mand) or more than 1 year;
Second violation (within 10 years) – disqualification for not less than 1 year (mand) or more than 5 years;
Third or subsequent violation (within 10 years) – disqualification for not less than 3 years (mand) or more than 5 years. In addition, first or subsequent offenders are subject to a civil penalty of not less than \$1,000 or more than \$2,500.

If the offender was operating a CMV while transporting hazardous materials operating a vehicle designed to transport more than 15 persons, that person is subject to the following sanctions:
First violation – disqualification for not less than 180 days (mand) or more than 2 years;
Second or subsequent violation (within 10 years) – disqualification for not less than 3 years (mand) or more than 5 years. In addition, first or subsequent offenders are subject to a civil penalty of \$1,000 to \$2,500.
 Code 1976 §56-1-2070(E).

Driving While License Suspended for DWI Offense:

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Criminal - Fine/Imprisonment:	<p><u>First offense</u> (misdemeanor) – Not less than 10 days or more than 30 days or \$300;</p> <p><u>Second offense</u> (within five years) (misdemeanor) – Not less than 60 days or more than 6 months or \$600;</p> <p><u>Third or subsequent offense</u> (within five years) (Class A Misdemeanor) – Not less than 6 months or more than 3 years and \$1,000. Code 1976 §§16-1-10(C); 16-1-20; 16-1-100(A); 56-1-460(A)(2), (B).</p>
Mandatory Minimum Fine/Imprisonment Term:	<p><u>First offense</u> – 10 days or \$300;</p> <p><u>Second offense</u> – 60 days or \$600;</p> <p><u>Third or subsequent offense</u> – 6 months/\$1,000. Code 1976 §56-1-460(A)(2).</p>
Administrative Licensing Action Type: Withdrawal Action:	<p>Suspension or Revocation. Code 1976 §56-1-460(B). Suspension for a like period of time if the original suspension was for a definite period of time. If not, then suspension for an additional 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. Code 1976 §56-1-460(B).</p>
Mandatory Term of License Withdrawal Action: Other:	<p>The terms above appear to be mandatory.</p> <p>Forfeiture: For a fourth or subsequent offense (within 5 years), the vehicle owned and operated by the offender or operated by an offender who is a resident of the household of the registered owner must be forfeited. Code 1976 §56-5-6240(A).</p>
<u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No): Grounds for Being Declared Habitual Offender:	<p>Yes. Code 1976 §56-1-1010, <i>et seq.</i></p> <p>3 or more serious convictions or 10 or more moving violations rated at 4 points or more under the point system within a period of 3 years Code 1976 §56-1-1020(a), (b).</p>
Term of License Revocations While on Habitual Offender Status:	<p>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.” Code 1976 §56-1-1090.</p>
Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term): Mandatory Minimum Term/Fine: Licensing Action (Specify):	<p>Felony. Code 1976 §56-1-1100.</p> <p>Not more than 5 years. Code 1976 §56-1-1100.</p> <p>None</p> <p>N/A</p>
<u>Other State Laws Related to Alcohol Use:</u> BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	<p>Yes. Code 1976 §17-7-80.</p>
BAC Chemical Test Given to Deceased Driver Killed in Crash:	<p>Yes</p>
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	<p>No</p>

BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:

Yes – 16 or older.

BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:

No. However, when a person is suspected of causing a motor vehicle accident resulting in the death of another, the driver must submit to field sobriety tests if he/she is physically able to do so. Code 1976 §56-5-2948.

Minimum Age (Years) for Sale/Purchase of Alcohol:

21. Code 1976 §§63-19-2440; 63-19-2450.

Minimum Age (Years) for Possession/Consumption of Alcohol:

21. There are exceptions for home, education, religious ceremonies, and employment. The employment exception applies only to persons over 18. Code 1976 §63-19-2460.

Dram Shop and Social Host Laws:
State Has a Dram Shop Law (Yes/No):

No. See *Lydia v. Horton*, 583 S.E.2d 750 (S.C. 2003); *Tobias v. Sports Club, Inc.*, 504 S.E.2d 318 (S.C. 1998).

"Dram Shop Law" 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. *Garren v. Cummings and McCrady, Inc.*, 345 S.E.2d 508 (S.C.App. 1986). However, a social host may be liable for serving alcohol to a minor.

Social Host – Criminal Enforcement:

A person who transfers or gives to a person under 21 beer or wine may be found guilty of a misdemeanor, punishable by not more than 30 days or not less than \$200 or more than \$300 (first offense), or not more than 30 days or not less than \$400 or more than \$500 (second or subsequent offense). Code 1976 §61-4-90(A).

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Misdemeanor. Code 1976 §§61-4-580(2); 61-6-2220.

Imprisonment/Fine:

Alcoholic Liquors – Not more than **30 days** or more than **\$100**. Code 1976 §61-6-2600.

Non-intoxicating Beverages – Not less than **3 months** or not less than **\$100**. Code 1976 §§61-2-250; 61-6-4210.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Yes – **Suspension** or **Revocation**.

Withdrawn (Yes/No):

Alcoholic Beverages:

Length of Term of License Withdrawal:

First offense – **Revocation** for **1 year** or pay a penalty of **\$250**;

Subsequent offense – Revocation for **2 years** or pay a penalty of **\$500**. Code 1976 §61-6-4260.

Note: Under Code 1976 §61-6-4270, an administrative fine of from \$100 to \$1,500 may be paid in lieu of

suspension/revocation.

Non-intoxicating Beverages: Length of suspension or revocation is not specified. However, an administrative fine from \$25 to \$1,000 may be paid in lieu of suspension or revocation. Code 1976 §§61-4-250; 61-4-580.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal

Drinking Age:

Type of Criminal Action:

Imprisonment/Fine:

Misdemeanor

First offense – Not more than **30 days** and/or not less than **\$200** or more than **\$300**;

Second or subsequent offense – Not more than **30 days** and/or not less than **\$400** or more than **\$500**.

Code 1976 §§61-4-50; 61-6-4080.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes – Suspension or Revocation.

Alcoholic Beverages:

First offense – **Revocation** for **1 year** or pay a penalty of **\$250**;

Subsequent offense – **Revocation** for **2 years** or pay a penalty of **\$500**. Code 1976 §61-6-4260.

Note: Under Code 1976 §61-6-4270, an administrative fine of from \$100 to \$1,500 may be paid in lieu of suspension/revocation.

Non-intoxicating Beverages: Length of suspension or revocation is not specified. However, an administrative fine from \$25 to \$1,000 may be paid in lieu of suspension or revocation. Code 1976 §§61-4-250; 61-4-580.

Anti-Happy Hour Laws/Regulations:

Yes. Code 1976 §§61-4-160; 61-6-4550.

Open Container Laws:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

Yes. Code 1976 §§61-4-110; 61-6-4020.

Yes. Code 1976 §61-6-4720.

Alcohol Exclusion Law (UPPL):

Yes. Code 1976 §38-71-370(9).

STATE

General Reference:

SOUTH DAKOTA

South Dakota Codified Laws (SDCL)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of an alcoholic beverage.
SDCL §32-23-1(2).

Illegal Per Se Law (BAC/BrAC):

≥ **.08**.⁵⁹¹ SDCL §32-23-1(1).

Presumption (BAC/BrAC):

Persons Under 21: ≥ **.02** or any evidence of marijuana or a controlled drug or substance in the body. SDCL §32-23-21.
≥ **.08**. SDCL §32-23-7.

Types of Drugs/Drugs and Alcohol:

Under the influence of any substance, any controlled drug, marijuana or a combination of these substances and an alcoholic beverage, or any substance ingested, inhaled, or otherwise taken into the body for the purpose of becoming intoxicated. SDCL §32-23-1(2), (3), (4), (5).

Other:

< **.05** – Presumed not intoxicated.
> **.05** – < **.08** – No presumption but such fact may be considered with other competent evidence in determining guilt or innocence. SDCL §32-23-7.Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

Yes. SDCL §32-23-1.2.

Implied Consent Law:

Yes. SDCL §32-23-10⁵⁹².

Arrest Required (Yes/No):

Yes. SDCL §32-23-10.

Implied Consent Law Applies to Drugs

Yes SDCL §32-23-10.

(Yes/No):

Refusal to Submit to Chemical Test

Yes – Criminal cases. SDCL §32-23-10; 19-19-513.

Admitted into Evidence:

Non-Breath Chemical Tests for AlcoholConcentration Authorized Under theImplied Consent Law:

Blood:

Yes. SDCL §32-23-10.

Urine:

No. SDCL §32-23-10.

Other:

Other bodily substances. SDCL §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. SDCL §32-23-1.3.

⁵⁹¹ Based on “percent by weight” of alcohol in the blood. However, SDCL §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.”

⁵⁹² SDCL §32-23-10 provides that the arresting law enforcement officer may, subsequent to the arrest of any operator for a violation of § 32-23-1, require the operator to submit to the withdrawal of blood or other bodily substances as evidence. However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes.** Limited for first offenders where the BAC is $\geq .17$, the court must require them to undergo an evaluation to determine if they are addicted to alcohol. SDCL §32-23-2.1. The courts have general authority to order discretionary pre-sentence investigation reports. SDCL §23A-27-5.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **N/A**

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **N/A**

Preliminary Breath Test – Other: **N/A**

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev): **Revocation 1 year.**⁵⁹³ SDCL §§32-23-11; 32-23-18.

Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine: First offense (Class 1 misdemeanor) – Not more than **1 year** (county jail) and/or not more than **\$2,000**;
Second offense (within 10 years) (Class 1 misdemeanor) – Not more than **1 year** (county jail) and/or not more than **\$2,000**; Third offense (within 10 years) (Class 6 felony) – Not more than **2 years** (State penitentiary) and/or not more than **\$4,000**;
Fourth offense (within 10 years) (Class 5 felony) – Not more than **5 years** (State penitentiary) and a fine of **\$10,000** may be imposed;⁵⁹⁴
Fifth or subsequent offense (within 10 years) (Class 4 felony) – Not more than **10 years** and a fine of **\$20,000** may be imposed;
 Sixth or subsequent (within 25 years with 2 or more within 10 years) (Class 4 felony) – Not more than **10 years** and a fine of **\$20,000** may be imposed;
 SDCL §§22-6-1; 22-6-1.1; 22-6-2; 32-23-2; 32-23-3; 32-23-4; 32-23-4.1; 32-23-4.6; 32-23-4.7; 32-23-4.9.

Vehicle Battery (Class 4 felony) – Not more than **10 years**

⁵⁹³ Under SDCL §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: (1) the driver pleads guilty to a DWI offense; (2) the DWI charge is dismissed prior to a hearing on the refusal and the person is not convicted of a reckless or careless driving offense; or (3) a hearing is not requested prior to the revocation being ordered.

⁵⁹⁴ 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. SDCL §22-6-1.1.

(State penitentiary) and a fine of not more than **\$20,000** may be imposed. SDCL §§22-6-1; 22-18-36.

Mandatory Minimum Term/Fine: **None**

Community Service: Community service may be condition of probation. SDCL §23A-27-18.3.

Child Endangerment: **No**

Restitution: Restitution is to be paid by the defendants to the victims. SDCL §§22-6-1; 22-6-2; 23A-27-18.3; 23A-28-3.

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. SDCL §24-11-45.

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law: **None**

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev): **Revocation.** SDCL §§32-23-2; 32-23-3; 32-23-4; 32-23-4.6; 32-23-4.7.

Term of Withdrawal: **First offense** – Not less than **30 days**;⁵⁹⁵
Second offense – Not less than **1 year**;
Third offense – Not less than **1 year** from the date sentence is imposed or **1 year** from the date of discharge from incarceration, whichever is later;
Fourth offense – Not less than **2 years** from the date sentence is imposed or **2 years** from the date of discharge from incarceration, whichever is later;
Fifth or subsequent offenses – Not less than **3 years** from the date sentence is imposed or **3 years** from the date of discharge from incarceration, whichever is later.
SDCL §§32-23-2; 32-23-3; 32-23-4; 32-23-4.6; 32-23-4.7; 32-23-4.9.

Mandatory Minimum Term of Revocation:

Vehicle Battery – Not less than **3 years** from the date sentence is imposed or **3 years** from the date of discharge from incarceration, whichever is later. SDCL §22-18-36.

First offense – **None**;⁵⁹⁶
Second offense – **1 year** (not mandatory in all situations);⁵⁹⁷
Third offense – Not less than **1 year**;
Fourth offense – **2 years**;
Fifth or subsequent offense – **3 years**. SDCL §§32-12-52.1; 32-23-1; 32-23-4.6.

Alcohol Education:

Vehicle Battery – **3 years**. SDCL §22-18-36.
There are no specific provisions mandating alcohol education

⁵⁹⁵ The court may order revocation of the defendant’s driving privilege for a further period not to exceed one year or restrict the driving privilege in such a manner as it sees fit for a period not to exceed one year. SDCL §32-23-2.

⁵⁹⁶ A restricted hardship license is available for employment purposes, education, and for attending court-ordered counseling programs. SDCL §32-23-2.

⁵⁹⁷ Upon the successful completion of an alcohol treatment program and proof of financial responsibility, the court may grant any DUI offender driving privileges for employment purposes, attendance at school or counseling programs, and may place such conditions on these privileges as it sees fit. SDCL §32-23-3.

or treatment upon conviction. However, a defendant may only be granted a restricted license upon successful completion of an alcohol or drug treatment program, and the court may order treatment for chemical dependency as part of probation. SDCL §§23A-27-18.3; 32-23-23.

Substance Abuse Treatment:
 Vehicle Impoundment/Confiscation: **N/A**
 Authorized by Specific Statutory Authority: **None**
 Terms Upon Which Vehicle Will Be Released:
 Other Miscellaneous Sanctions: **N/A**

Ignition Interlock:

Permitted or Prohibited: **Permitted** – the statewide 24/7 sobriety program shall be administered by the Office of the Attorney General. Each locality’s sheriff’s department or the department of corrections may establish such program, which administers testing and supervision of offenders, to include the use of ignition interlock devices. SDCL §1-11-17, *et. seq.*

Type of Law (Mandatory or Permissive): **Permissive**
 Sanction (Judicial, Administrative or Hybrid) **Judicial**
 Conditions of Use: **N/A**
 Other Provisions:

The post-release supervision of any person convicted of a sixth or subsequent DWI offense shall include one of the following: enrollment in a drug or alcohol accountability program, ignition interlock, breath alcohol interlock, an alcohol monitoring bracelet or another enhanced monitoring tool. SDCL §32-23-4.9.

Any driving permit issued by the court to any person who has been convicted of a subsequent offense of driving under the influence, or DUI ≥ .17 shall be conditioned upon the person’s total abstinence from alcohol and participation in the 24/7 sobriety program (which may include the use of ignition interlock), where available. SDCL §32-23-23.

Sobriety Checkpoints:

Permitted or Prohibited: **Permitted.** *State v. Tilton*, 561 N.W.2d 660 (S.D. 1997).

Homicide by Vehicle:

State Has Such a Law: **Vehicular Homicide.** SDCL §22-16-41.
 Imprisonment/Fine: **Class 3 felony** – Not more than **15 years** (State penitentiary) and a fine of **\$30,000** may be imposed. SDCL §§22-6-1; 22-16-41.

Mandatory Minimum Term/Fine: **None**
 Authorized Licensing Action: **Revocation.** SDCL §22-16-41.
 Length of Term of Licensing Withdrawal: Not less than **10 years** from the date sentence is imposed or **10 years** from the date of initial release from imprisonment. SDCL §22-16-41.

Mandatory Minimum License Withdrawal: **10 years.** However, a restricted hardship license may be available for education, employment, or counseling in some

circumstances. SDCL §22-16-41.

Other:

DWI Offenses and Commercial Motor Vehicles (CMV):

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 \geq .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 only applies to a refusal to submit to a chemical test for alcohol concentration; however, the CMV implied consent provision applies to the testing for both alcohol concentrations and drugs.

For a second violation or a combination of two violations of any of the above-listed items, the disqualification is for life (10 years mand). For a subsequent violation or 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 \geq .04 to \geq .08 or more is a Class 2 Misdemeanor; the sanctions for the offense are a jail term of not more than 30 days and/or a fine of not more than \$500.

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. SDCL §§22-6-2; 32-12A-1(5), (9); 32-12A-36; 32-12A-37; 32-12A-39; 32-12A-43; 32-12A-44; 32-12A-46.

The State has also adopted by reference 49 CFR Parts 383 and 384. SDCL §32-12A-58.

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

These provisions do not provide for special or additional sanctions if the license was suspended/revoked where the basis was a DWI offense.

For driving while revoked (Class 1 misdemeanor) – Not more than **1 year** and/or not more than **\$2,000**;

For driving while suspended (Class 2 Misdemeanor) – Not more than **30 days** and/or not more than **\$500**. SDCL §§22-6-2; 32-12-65.

Mandatory Minimum Fine/Imprisonment Term:

None

Administrative Licensing Action Type:

Suspension/Revocation. SDCL §32-12-66.

Withdrawal Action:

For driving while revoked – original revocation period is

Mandatory Term of License Withdrawal Action: Other:	extended for 1 year ; <u>For driving while suspended</u> – an additional like suspension period. SDCL §32-12-66. The terms appear to be mandatory.
<u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No):	Yes. SDCL §32-12-49(2).
<u>Other State Laws Related To Alcohol Use:</u> BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes. SDCL §34-25-22.1.
BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	Yes
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	Yes
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes. SDCL §§32-23-1.1; 32-23-1.2; 32-23-1.3.
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. SDCL §§35-9-1; 35-9-1.1; 35-9-2.
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. There is an exception for employment, religious ceremonies or if such underage person is accompanied by a parent, guardian or spouse who is at least 21. SDCL §§35-4-79; 35-9-1; 35-9-1.1; 35-9-2.
<u>Dram Shop and Social Host Laws:</u> State Has a Dram Shop Law (Yes/No): "Dram Shop Law" 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. SDCL §§35-4-78; 35-11-1. Case law providing for dram shop liability has been abrogated by statutory law. SDCL §35-11-1.
Dram Shop Actions – Social Hosts:	No. Liability is prohibited via statutory law. SDCL §§35-9-1.1; 35-11-2.
Social Host – Criminal Enforcement:	A person who sells or gives alcoholic beverages to a person under age 18, may be found guilty of a class 1 misdemeanor (if the person is under 18) or a class 2 misdemeanor (if the person is over 18 but under 21). There is an exception for situations where the minor is in the immediate presence of a parent or guardian. SDCL §§35-9-1; 35-9-1.1.
<u>Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u> Type of Criminal Action: Imprisonment/Fine:	Class 1 misdemeanor. SDCL §§22-6-2; 35-4-78. Not more than 1 year (county jail) and/or not more than

\$2,000. SDCL §22-6-2.

Administrative Actions Regarding
Establishments that Serve Alcohol to
Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes – Revocation/Suspension. SDCL §35-2-10.

Revocation – 1 year;
Suspension – Not more than 60 days.⁵⁹⁸ SDCL §§35-2-20;
35-2-21.

Criminal Actions Regarding Establishments
that Serve Alcohol to Persons Under the
Legal Drinking Age:

Type of Criminal Action:

If under age 18: **Class 1 misdemeanor.** SDCL §§22-6-2;
35-9-1.

If > 18 but < 21: **Class 2 misdemeanor.** SDCL §§22-6-2;
35-9-1.1.

Imprisonment/Fine:

Class 1 misdemeanor: Not more than **1 year** (county jail)
and/or not more than **\$2,000.** SDCL §22-6-2.

Class 2 misdemeanor: Not more than **30 days** (county jail)
and/or not more than **\$500.** SDCL §22-6-2.

Administrative Actions Regarding
Establishments That Serve Alcohol to
Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes – Revocation/Suspension.⁵⁹⁹ SDCL §35-2-10.

Revocation – 1 year;
Suspension – Not more than 60 days.
SDCL §§35-2-20; 35-2-21.

Anti-Happy Hour Laws/Regulations:

No

Open Container Laws:

Open Container Law (Yes/No):

Yes. SDCL §35-1-9.1.

Anti-Consumption Law (Yes/No):

Yes. SDCL §35-1-9.1.

Alcohol Exclusion Law (UPPL):

No. SDCL §58-17-30.8.⁶⁰⁰

⁵⁹⁸ 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. SDCL §35-2-21.

⁵⁹⁹ A license cannot be suspended/revoked for an employee's action if the licensee has not had more than 2 violations of any statute, ordinance, rule or regulation prohibiting the sale or service of an alcohol beverage to a person under age 21 on the premises where the violation occurred in the previous 24 months. A civil penalty of \$500 shall be imposed for the first violation and \$1,000 for the second violation. SDCL §35-2-10.1.

⁶⁰⁰ However, a health insurer may exclude coverage for an insured for any sickness or injury caused in the commission of a felony.

STATE

TENNESSEE

General Reference:

Tennessee Code Annotated (T.C.A.)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of any intoxicant.
T.C.A. §55-10-401(1).

Illegal Per Se Law (BAC/BrAC):

≥ .08.⁶⁰¹ T.C.A. §55-10-401(2).

Persons ≥ 16 but < 21: > .02 (underage impaired driving offense) T.C.A. §55-10-415(a)(1)(A).

Presumption (BAC/BrAC):

≥ .08. T.C.A. §55-10-411(a).

Types of Drugs/Drugs and Alcohol:

Under the influence of any intoxicant, marijuana, controlled substance, controlled substance analogue, drug, substances affecting the central nervous system or combination thereof. T.C.A. §55-10-401(1).

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

No

Implied Consent Law:

Yes. T.C.A. §55-10-406⁶⁰²

Arrest Required (Yes/No):

No. T.C.A. §55-10-406(a)(1).

Implied Consent Law Applies to Drugs

Yes. T.C.A. §55-10-406(a)(1).

(Yes/No):

Refusal to Submit to Chemical Test

Yes – Criminal Cases. T.C.A. §55-10-406(d).

Admitted into Evidence:

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the

Implied Consent Law:

Blood:

Yes. T.C.A. §55-10-406.

Urine:

Yes – at person’s own expense. T.C.A. §55-10-408(e).

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea-Bargaining Statute (Yes/No):

No

Pre-Sentencing Investigation Law (PSI)

No

(Yes/No):

Sanctions for Refusal to Submit to a

Chemical Test:

Refusal to Take a Preliminary Breath Test -

N/A

Criminal Sanction (Fine/Jail):

⁶⁰¹ Standard: Percent or “percent by weight” of alcohol in the blood. T.C.A. §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, 415 (Tenn. 1992).

⁶⁰² T.C.A. §55-10-406(5) allows for a law enforcement to compel production of a blood sample regardless of consent in certain circumstances. However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **N/A**
 Preliminary Breath Test – Other: **N/A**

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):
 Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev): **None**
 Implied Consent Chemical Test - Other: **Revocation:**

First refusal – **1 year**;
Subsequent refusal – **2 years**;
Refusal for DWI – serious bodily injury – **2 years**;
Refusal for DWI – death – **5 years**. A restricted license may be issued. T.C.A. §55-10-407(a).

Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine:

First conviction (Class A misdemeanor) – Not less than **48 hours** or more than **11 months, 29 days** and not less than **\$350** or more than **\$1,500**;
First conviction (BAC ≥ .20) (Class A misdemeanor) – **7 days** and not less than **\$350** or more than **\$1,500**;
Second conviction (Class A misdemeanor) – Not less than **45 days** or more than **11 months, 29 days** and not less than **\$600** or more than **\$3,500**;
Third conviction (Class A misdemeanor) – Not less than **120 days** or more than **11 months, 29 days** and not less than **\$1,100** or more than **\$10,000**;
Fourth or subsequent conviction (within 10 years) (Class E felony) – Not less than **150 days** or more than **6 years** and not less than **\$3,000** or more than **\$15,000**. T.C.A. §§40-35-111; 55-10-402(a).

Vehicular Assault (Class D felony) – Not less than **2 years** or more than **12 years** and a fine of not more than **\$5,000** may be imposed. T.C.A. §§39-13-106; 40-35-111.

Persons Under 21 (Misdemeanor) – A fine of **\$250**. T.C.A. §55-10-415(2).

Mandatory Minimum Term/Fine:

Note.⁶⁰³
First offense – **48 hours/\$350**;
First offense (BAC ≥ .20) – **7 days/\$350**;
Second offense (within 10 years) – **45 days/\$600**;
Third offense (within 10 years) – **120 days/\$1,100**;
Fourth or subsequent offense (within 10 years) – **150 days/\$3,000**.

⁶⁰³ All fines shall be mandatory unless the judge determines that a person is indigent. T.C.A. §55-10-403(b).

Community Service:	<p><u>Vehicle Assault – 2 years.</u></p> <p>I. The court shall order first offenders to perform 24 hours of community service as part of probation. Additionally, the court may require an offender to remove litter from the State highway system, public playgrounds, public parks or other appropriate locations for any prescribed period in addition to any other penalties, and may sentence an offender to 200 hours of community service. T.C.A. §55-10-402.</p> <p>II. Persons < 21: The court may impose public service work. T.C.A. §55-10-415(2).</p>
Child Endangerment:	<p>If a person is convicted of DUI with a passenger under age 18, the person’s sentence shall be enhanced by a mandatory minimum period of 30 days, which shall be in addition to any punishment imposed. T.C.A. §55-10-402(b)(1).</p> <p>If such passenger under age 18 suffers serious bodily injury, it is a Class D felony, punishable by not less than 2 years or more than 12 years, and possibly a fine of not more than \$5,000. T.C.A. §55-10-402(b)(2).</p>
Restitution:	<p>Yes. A defendant may be sentenced to pay compensation directly to a victim. T.C.A. §§39-11-118; 40-35-104; 40-35-304.</p> <p>A victim's compensation fund is available. T.C.A. §29-13-101, <i>et seq.</i></p>
Other:	<p>BAC Test Fee: DWI offenders in certain counties or counties with a metropolitan form of government are required to pay a BAC test fee. T.C.A. §55-10-413(d)(1).</p> <p>Addiction Treatment Fee: Offenders will be assessed \$100 for each conviction. T.C.A. §55-10-413(c)(1).</p> <p>Interlock Fee: Offenders will be assessed a fee of \$40 for each conviction. T.C.A. §55-10-413(a).</p> <p>Other Fees: A person convicted of DWI shall be assessed a fee of \$5. T.C.A. §55-10-413(b).</p>
<u>Administrative Sanctions – Pre-Conviction:</u>	
Administrative Per Se Law:	None
Other:	Under T.C.A. §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.
<u>Administrative Sanctions – Post-Conviction:</u>	
Type of Licensing Action (Susp/Rev):	<p>Revocation. T.C.A. §§55-10-404; 55-50-501; 55-50-502.</p> <p>Persons ≥ 16 but < 21: Suspension. T.C.A. §55-10-415(d).</p>
Term of Withdrawal:	<p>Vehicle Assault: Revocation. T.C.A. §39-13-106.</p> <p><u>First conviction – 1 year;</u></p> <p><u>Second conviction – 2 years;</u></p>

Third conviction – 6 years;
Fourth or subsequent offense (within 10 years) – 8 years.
 T.C.A. §55-10-404.

Persons ≥ 16 but < 21 – 1 year. T.C.A. §55-10-415(d)(1).

Vehicular Assault:

First conviction – 1 year;
Second conviction – 2 years;
Third conviction – 3 years;
Fourth or subsequent conviction – 5 years.
 T.C.A. §39-13-106.

Mandatory Minimum Term of Revocation: First offense – None (1 year if injury/death-related);
Second offense – 1 year;
Third offense – 1 year;
Fourth and subsequent offense – 1 year.
 T.C.A. §55-10-404(b).

Persons ≥ 16 but < 21 – 1 year: The law is not clear on whether this licensing action is mandatory.

Vehicular Assault –

First offense – 1 year;
Second offense – 2 years;
Third offense – 3 years;
Fourth or subsequent offense – 5 years.
 T.C.A. §39-13-106.

Alcohol Education: **Yes** – Every person convicted of a DUI offense must undergo drug and alcohol assessment, to be paid by the convicted party (unless indigent). T.C.A. §55-10-402.

Substance Abuse 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. T.C.A. §55-10-402. Probation can begin only after serving the minimum imprisonment term. T.C.A. §55-10-402.

For second and subsequent convictions, a condition of probation may be participation in a substance abuse treatment program (which includes any aftercare and drug or DUI court) after a clinical substance abuse assessment is completed and the offender serves at least 25 days of the incarceration period. T.C.A. §55-10-402(a)(2).

Vehicle Impoundment/Confiscation: **Forfeiture.** T.C.A. §55-10-414.
 Authorized by Specific Statutory Authority: The vehicle used in the commission of a second or subsequent DWI violation is subject to seizure and forfeiture.⁶⁰⁴

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

⁶⁰⁴ The violation must have occurred in Tennessee and at least one prior offense must have occurred within 5 years of the current offense. T.C.A. §55-10-414(b).

Other Miscellaneous Sanctions: N/A

Ignition Interlock:

Permitted or Prohibited:

Permitted

Type of Law (Mandatory or Permissive):

Both

Sanction (Judicial, Administrative or Hybrid)

Judicial

Conditions of Use:

Permissive: 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 for up to 1 year after the defendant's license is no longer suspended or revoked. T.C.A. §55-10-417(a)(1)(A).

Mandatory: The court shall order ignition interlock use under the following circumstances:

- (1) the person has a BAC \geq .08;
- (2) the person is accompanied by a person under age 18;
- (3) the person is involved in a traffic crash, which is a proximate result of such person's intoxication;
- (4) there is an implied consent violation, with a past conviction/adjudication for implied consent, underage driving while impaired, open container law or reckless driving (originally broken down from a DWI);
- (5) the person has a prior conviction within the past 10 years. T.C.A. §§55-10-409; 55-10-417.

Other Provisions:

If a person convicted of a DUI violation has a prior conviction within 5 years, the court shall order, or the department of safety shall require, prior to issuing an operator's license and after the license revocation period, the person to operate a motor vehicle equipped with an ignition interlock device for a period of 6 months. T.C.A. § 55-10-417(1).

Sobriety Checkpoints:

Permitted or Prohibited:

Permitted. *State v. Downey*, 945 S.W.2d 102 (Tenn. 1997).

Homicide by Vehicle:

State Has Such a Law:

Vehicular Homicide (Class B felony).

T.C.A. §39-13-213(a)(2).

Aggravated Vehicle Homicide⁶⁰⁵ (Class A felony).

T.C.A. §39-13-218.

Imprisonment/Fine:

Vehicular Homicide – Not less than **8 years** or more than **30 years** and a fine of not more than **\$25,000** may be imposed; **Aggravated Vehicular Homicide** – Not less than **15 years** or more than **60 years** and a fine of not more than **\$50,000** may be imposed. T.C.A. §40-35-111(b).

Mandatory Minimum Term/Fine:

No prior alcohol convictions: 48 hours consecutive incarceration;

Prior alcohol related conviction: 45 days;

⁶⁰⁵ Aggravated Vehicular Homicide is vehicular homicide where the defendant had: (1) two or more prior DWI/vehicle assault convictions (or any combination of them); (2) one or more prior vehicular homicide convictions; (3) or at the time of the vehicular homicide offense, a BAC \geq 0.20 and a previous DWI or vehicular assault conviction. T.C.A. §39-13-218.

<p>Authorized Licensing Action: Length of Term of Licensing Withdrawal:</p>	<p>Two or more prior alcohol related convictions: 120 days; Three or more prior alcohol related convictions: 150 days. T.C.A. §39-13-213(2)(B)-(E).⁶⁰⁶ Revocation. T.C.A. §§39-13-213; 55-50-501(1). There are two separate driving privilege withdrawal schemes which could apply to <u>all</u> 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; or (2) the court can prohibit the offender from operating a motor vehicle for not less than 3 years or more than 10 years. T.C.A. §§39-13-213; 55-50-501(a)(1). 3 years. T.C.A. §39-13-213.</p>
<p>Mandatory Minimum License Withdrawal:</p>	<p>3 years. T.C.A. §39-13-213.</p>
<p>Other:</p>	<p>If the child was killed at the time of the offense, the person commits a Class B felony, which is punishable by imprisonment for not less than 8 years or more than 30 years and a fine of not more than \$25,000 may be imposed. T.C.A. §§40-35-111(b)(3); 55-10-402(b)(3).</p>
<p><u>DWI Offenses and Commercial Motor Vehicles (CMV):</u></p>	<p>A person's CDL is suspended for 1 mandatory year (3 years mandatory if transporting hazardous materials) if, while driving a CMV, that person has a BAC \geq .04 or is under the influence of alcohol (with a BAC \geq .04) or a controlled substance. For a subsequent violation or 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 \geq .04 violates the regular DWI laws. T.C.A. §§55-50-102(12); 55-50-405(a); 55-50-408.</p>
<p><u>Driving While License Suspended for DWI Offense:</u></p>	<p><u>First offense</u> (Class B misdemeanor) – Not less than 2 days or more than 6 months and a fine of not more than \$1,000; <u>Second or subsequent offense</u> (within 10 years) (Class A misdemeanor) – Not less than 45 days or more than 11 months, 29 days and/or not more than \$3,000. T.C.A. §§40-35-111; 55-50-504(a)(1), (a)(2).</p>
<p>Criminal - Fine/Imprisonment:</p>	<p><u>First offense</u> – 2 days; <u>Second or subsequent offense</u> – 45 days. T.C.A. §50-55-504(a), (f).</p>
<p>Mandatory Minimum Fine/Imprisonment Term:</p>	<p>Revocation/Suspension. T.C.A. §55-50-504(b). Revocation – The original revocation period extended 1 year; Suspension – The original suspension period is extended an additional like period. T.C.A. §55-50-504(b).</p>
<p>Administrative Licensing Action Type: Withdrawal Action:</p>	<p>Revocation/Suspension. T.C.A. §55-50-504(b). Revocation – The original revocation period extended 1 year; Suspension – The original suspension period is extended an additional like period. T.C.A. §55-50-504(b).</p>
<p>Mandatory Term of License Withdrawal Action:</p>	<p>N/A</p>
<p>Other:</p>	<p>N/A</p>

⁶⁰⁶ A prior alcohol conviction under this section is a conviction for §55-10-401, §39-13-106 or §39-13-318. T.C.A. §39-13-213(F).

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. T.C.A. §55-10-601, *et seq.*

Grounds for Being Declared Habitual Offender:

I. Three or more serious traffic offenses⁶⁰⁷ within 3 years.

II. Three or more serious traffic offenses within 5 years.

III. Five or more serious traffic offenses within 10 years.

T.C.A. §55-10-603.

Term of License Revocations While on Habitual Offender Status:

3 years.⁶⁰⁸

T.C.A. §55-10-615.

Type of Criminal Offense if Convicted of

Class E felony.

Driving While on Habitual Offender Status:

T.C.A. §55-10-616.

Imprisonment (Term):

Not less than **1 year** or more than **6 years** and a fine of not more than **\$3,000** may be imposed. T.C.A. §§40-35-111(b); 55-10-616.

Mandatory Minimum Term/Fine:

1 year.⁶⁰⁹

Licensing Action (Specify):

N/A

Other State Laws Related to Alcohol Use:

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):

Discretionary. T.C.A. §38-7-109.

BAC Chemical Test Given to Deceased Driver Killed in Crash:

Discretionary

BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:

Discretionary

BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:

Discretionary

BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:

Yes. T.C.A. §55-10-406(d)(5)(A).

Minimum Age (Years) for Sale/Purchase of Alcohol:

21. T.C.A. §1-3-113.

Minimum Age (Years) for Possession/Consumption of Alcohol:

21. There are exceptions for employment and religious services. T.C.A. §1-3-113(b)(1)-(2).

Dram Shop and Social Host Laws:

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

No. However if a judge or jury has found, beyond a reasonable doubt that the service of alcoholic beverage or beer was the proximate cause of injury or death, then damages may be awarded. T.C.A. §§57-10-101; 57-10-102.

⁶⁰⁷ The following are serious traffic offenses: (1) voluntary or involuntary motor vehicle homicide or manslaughter; (2) Adult 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; (10) evading arrest in a motor vehicle; (11) vehicular assault. T.C.A. §55-10-603(2)(A).

⁶⁰⁸ 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 T.C.A. §55-10-603(c).

⁶⁰⁹ One year of imprisonment is mandatory unless the habitual offender operated a motor vehicle in order to save life or limb. T.C.A. §55-10-616.

"Dram Shop Law" 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. T.C.A. §§57-10-101; 57-10-102; *Biscan v. Brown*, 160 S.W.3d 462 (Tenn. 2005).

Social Host – Criminal Enforcement:

Any person who furnishes or gives any alcoholic beverage to a person under age 21 commits a Class A misdemeanor, punishable by not more than 11 months, 29 days in jail and/or a fine of not more than \$2,500. T.C.A. §§40-35-111; 57-4-203(b). Additionally, any adult who contributes to or encourages the delinquency of a child may be found guilty of a Class A misdemeanor. T.C.A. §37-1-156.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Class A Misdemeanor. T.C.A. §§40-35-111; 57-3-406(c); 57-3-412(a)(1); 57-4-203(c).

Imprisonment/Fine:

Not more than **11 months, 29 days** and/or not more than **\$2,500.** T.C.A. §40-35-111.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Yes – Suspension/Revocation. T.C.A. §§57-3-104(c)(1)(A); 57-3-214; 57-3-215(a); 57-4-202(a); 57-4-203(j)(3).

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Package sales of alcoholic beverages (except beer containing less than 5 percent alcohol):
Suspension– length not specified; **Revocation 1 year.**

On- premises consumption of all alcoholic beverages:

First offense – Length of suspension/revocation is not specified;

Second offense – **Permanent revocation.**

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Class A Misdemeanor.

T.C.A. §§40-35-111; 57-3-406(d); 57-3-412(a)(1); 57-4-101(a); 57-4-203(b)(1), (j)(1), (4); 57-5-101; 57-5-301(a); 57-6-102(1).

Imprisonment/Fine:

Not more than **11 months, 29 days** and/or not more than **\$2,500.** T.C.A. § 40-35-111.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages

Yes – Suspension/Revocation. T.C.A. §§57-3-104(c)(1)(A); 57-3-214; 57-3-215(a); 57-4-202(a); 57-4-203(j)(4);

Withdrawn (Yes/No):

57-5-303(c).

Length of Term License Withdrawal:	Package sales of alcoholic beverages (except beer containing less than 5 percent alcohol): Suspension – length not specified; Revocation 1 year.
	On- premises consumption of <u>all</u> alcoholic beverages: <u>First offense</u> – Length of suspension/revocation is not specified; <u>Second offense</u> – Permanent revocation.
<u>Anti-Happy Hour Laws/Regulations:</u>	No
<u>Open Container Laws:</u>	
Open Container Law (Yes/No):	Yes. T.C.A. §55-10-416.
Anti-Consumption Law (Yes/No):	Yes. T.C.A. §55-10-416.
<u>Alcohol Exclusion Law (UPPL):</u>	Yes. T.C.A. §56-26-109(11)

STATE

TEXAS

General Reference:

Texas Revised Statutes Annotated (V.T.C.A.)

Basis for a DWI Charge:

Standard DWI Offense:

Intoxicated while driving. V.T.C.A., Penal Code §49.04.

Illegal Per Se Law (BAC/BrAC):

≥ **.08**.⁶¹⁰ V.T.C.A., Penal Code §§49.01(2)(B); 49.04.

Presumption (BAC/BrAC):

Persons Under 21 – Any detectable amount of alcohol.
V.T.C.A., Alcoholic Beverage Code §§106.01; 106.041(a).

Types of Drugs/Drugs and Alcohol:

None
Intoxicated while driving. V.T.C.A., Penal Code §§49.01(2); 49.04.

Other:

It is illegal for a person to operate a motor vehicle if such person is a chemically dependent person.
V.T.C.A., Transportation Code §521.319.

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

No

Implied Consent Law:

Yes. V.T.C.A., Transportation Code §724.011.

Arrest Required (Yes/No):

Yes. V.T.C.A., Transportation Code §724.011(a).

Implied Consent Law Applies to Drugs (Yes/No):

Yes. V.T.C.A., Transportation Code §724.011(a).

Refusal to Submit to Chemical Test

Yes – Criminal Cases.

Admitted into Evidence:

V.T.C.A., Transportation Code §§724.061; 724.064.

Other Information:

Note⁶¹¹.

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the

Implied Consent Law:

Blood:

Yes. V.T.C.A., Transportation Code §724.011(a).

Urine:

Yes – only if person consents. V.T.C.A., Transportation Code §724.011(b).

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. Second or subsequent offense – An evaluation is conducted to determine the appropriateness of an alcohol or drug rehabilitation program.

(Yes/No):

Vernon’s Ann.Texas.C.C.P. Art. 42.12 §9(h).

⁶¹⁰ Standard: Number of grams of alcohol per 210 liters of breath, 100 milliliters of blood or 67 milliliters of urine. V.T.C.A., Penal Code §49.01(1).

⁶¹¹ V.T.C.A. Transportation Code §724.014 allows for a law enforcement officer to take a blood sample from a person who is dead, unconscious, or otherwise incapable of refusal. However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **N/A**

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **N/A**

Preliminary Breath Test – Other: **N/A**

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev): **First refusal – Suspension 180 days; Subsequent refusal (within 10 years) Suspension 2 years.** V.T.C.A., Transportation Code §724.035.

Occupational License: If a person has not had a prior “alcohol-related or drug-related enforcement contact,” within 5 years of the arrest, 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,” within 5 years such a license is not available until the person’s license has been suspended for at least 90 days. If a person had a prior conviction within 5 years such a license is not available until at least 180 days. If a person had at least two prior convictions, then such a license is not available until the passage of one year. A court may also issue an occupational license to an offender who equips his motor vehicle(s) with ignition interlock. An occupational license is only available once in a 10-year period. V.T.C.A., Transportation Code §§521.242; 521.245; 521.251(a)-(d-1).

Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine:

DWI:

First offense (Class B misdemeanor) – Not less than **72 hours** or more than **180 days** and/or not more than **\$2,000**; **BAC ≥ .15** (Class A misdemeanor) – Not more than **1 year** and/or not more than **\$4,000**;

Second offense (Class A misdemeanor) – Not less than **30 days** or more than **1 year** and/or not more than **\$4,000**.

Second offense (with a prior Intoxication Manslaughter within 5 years) (Third degree felony) – Not less than **2 years** or more than **10 years** and a fine of not more than **\$10,000** may be imposed;

Third offense (Third degree felony) – Not less than **2 years** or more than **10 years** and a fine of not more than **\$10,000** may be imposed.

V.T.C.A., Penal Code §§12.21; 12.22; 12.34; 49.04; 49.09.

Persons Under 21 (any detectable amount):

First & second offense (Class C misdemeanor) – Not more than **\$500**;

Subsequent offense – Not more than **180 days** and/or not less than **\$500** or more than **\$2,000**. V.T.C.A., Alcoholic Beverage Code §106.041; V.T.C.A., Penal Code §12.23.

Intoxication Assault:

Causing serious bodily injury (Third degree felony): Not less than **2 years** or more than **10 years** and may be fined up to **\$10,000**;

Causing serious bodily injury to an officer while on duty⁶¹² (Second degree felony): Not less than **2 years** or more than **20 years** and may be fined up to **\$10,000**;

Causing serious bodily injury resulting in brain injury⁶¹³ (Second degree felony): Not less than **2 years** or more than **20 years** and may be fined up to **\$10,000**.

V.T.C.A., Penal Code §§12.33; 12.34; 49.07; Vernon’s Ann.Texas.C.C.P. Art. 42.12 §13(a).

DWI:

First offense – **72 hours**;⁶¹⁴

Second offense – **30 days** (if community supervision is granted and the person is subject to use of ignition interlock = 5 days);

Second offense (within a prior Intoxication Manslaughter within 5 years) **2 years** (if community supervision is granted = **10 days**);

Third offense – **2 years** (if community supervision is granted = **10 days**). V.T.C.A., Penal Code §§49.04; 49.09; Vernon’s Ann.Texas.C.C.P. Art. 42.12 §13(i).

Note: Under V.T.C.A., Penal Code §12.44, a third degree felony offender may receive the imprisonment sanction of a Class A Misdemeanor.

Persons Under 21:

First or second offense – **None**;

Subsequent offense – **None**. V.T.C.A., Alcoholic Beverage Code §106.041.

Intoxication Assault – 2 years (if community supervision is granted = **30 days**). V.T.C.A., Penal Code §49.07; Vernon’s Ann.Texas.C.C.P. Art. 42.12 §13(i).

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

Mandatory Minimum Term/Fine:

Community Service:

⁶¹² It is a second degree felony if, at trial, it is shown that the person caused serious bodily injury to a peace officer, a firefighter, or emergency medical services personnel while in the actual discharge of an official duty. V.T.C.A., Penal Code §49.09(b-1).

⁶¹³ It is a second degree felony if, at trial, it is shown that the person caused serious bodily injury to another in the nature of a traumatic brain injury that results in a persistent vegetative state. V.T.C.A., Penal Code §49.09(b-4).

⁶¹⁴ If a first offender had in immediate possession an open container of an alcoholic beverage, the minimum term of confinement is 6 days. V.T.C.A., Penal Code §49.04(c).

sanctions.

Third degree felony – Not more than **600 hours**;

Class A misdemeanor – Not more than **200 hours**;

Class B misdemeanor – Not more than **100 hours**.

Vernon’s Ann.Texas.C.C.P. Art. 42.036; 42.12 §16(b).

Persons Under 21:

First & second offense – Not less than **20** or more than **40 hours**;

Subsequent offense –Not less than **40** or more than **60 hours**.

V.T.C.A., Alcoholic Beverage Code §106.041(d).

Child Endangerment:

A person driving while intoxicated with a passenger under 15 shall be sentenced to not less than **180 days** or more than **2 years** and possibly a fine of not more than **\$10,000**.

V.T.C.A., Penal Code §§12.35; 49.045.

Restitution:

As a condition of community supervision. Vernon’s Ann.Texas.C.C.P. Art. 42.12 §11.

A victim of a DWI offense may receive payments from a State victims' compensation fund via the State attorney general. Vernon’s Ann.Texas.C.C.P. Art. 42.037; 56.31, *et seq.*

Other:

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. Vernon’s Ann.Texas.C.C.P. Art. 102.018(a).

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.

V.T.C.A. Government Code, §76.017.

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

≥ **.08**.⁶¹⁵

First violation – **Suspension 90 days**;

Subsequent violation (within 10 years) – **Suspension 1 year**.

Occupational License: If a person has not had a prior “alcohol-related or drug-related enforcement contact” an occupational license may be issued based on essential need. If a person has 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 at least 90 days. If a person had a prior conviction within 5 years such a license is not available until at least 180 days. If

⁶¹⁵ An administrative per se suspension is not imposed or it is rescinded if a driver is acquitted of the drunk-driving offense associated with such suspension. V.T.C.A., Transportation Code § 524.015(b). Additionally, an administrative per se suspension is credited towards a suspension imposed for a DWI offense conviction. V.T.C.A., Transportation Code § 524.023.

a person had at least two prior convictions, then such a license is not available until the passage of one year. A court may also issue an occupational license to an offender who equips his motor vehicle(s) with ignition interlock. 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. V.T.C.A., Transportation Code §§521.241; 521.242; 521.245; 521.251; 524.011; 524.012; 524.022(a).

Persons Under 21:

First violation – **Suspension 60 days** (30 days mand);

Second violation – **Suspension 120 days** (90 days mand);

Subsequent violation – **Suspension 180 days** (90 days mand).

V.T.C.A., Transportation Code §§524.001; 524.012; 524.022.

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Term of Withdrawal:

Suspension. V.T.C.A., Transportation Code §521.344.

DWI:⁶¹⁶

First offense – Not less than **90 days** or more than **1 year**;

Subsequent offense – Not less than **180 days** or more than **2 years**;

Subsequent offense (within five years) – Not less than **1 year** or more than **2 years**. V.T.C.A., Transportation Code §521.344(a); Vernon’s Ann.Texas.C.C.P. Art. 42.12 §13(k).

Persons Under 21⁶¹⁷ – **Suspension 1 year.**

V.T.C.A., Transportation Code §521.342.

Intoxication Assault:

First offense – Not less than **90 days** or more than **1 year**;

Subsequent offense **1 year.**

V.T.C.A., Transportation Code §521.344(a).

DWI:

First offense – **None**;

Subsequent offense (with required ignition interlock usage) –

Mandatory Minimum Term of Revocation:

⁶¹⁶ 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. V.T.C.A., Transportation Code §521.344(d); Vernon’s Ann.Texas.C.C.P. Art. 42.12 §§4; 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, and such 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. V.T.C.A., Transportation Code §521.344(d); V.T.C.A. Crim Pro Art. 42.12 §13(k).

⁶¹⁷ 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. An offender’s license is not subject to suspension if he/she is placed under community supervision and required to operate only motor vehicles equipped with ignition interlock devices. Additionally, an occupational license is available. V.T.C.A., Transportation Code §§521.241, *et seq.*; 521.342. Notwithstanding any other provision of law, offenders who are placed on community supervision must have their licenses suspended for 90 days, which must begin at the time they are placed on supervision. Vernon’s Ann.Texas.C.C.P. Art. 42.12 §13(n).

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 he was issued an occupational license within the past 10 years for a prior DWI offense conviction. V.T.C.A., Transportation Code §§521.242(b)(2); 521.244.

II. First offenders 21 or older placed on probation are not subject to license suspension if they attend an alcohol education program. V.T.C.A., Transportation Code §521.344(d); Vernon’s Ann.Texas.C.C.P. Art. 42.12 §13(h), (j).

Alcohol Education:

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 cause by the offender.

Vernon’s Ann.Texas.C.C.P. Art. 42.12 §13(h), (j).

Substance Abuse Treatment:

Felony offenders (third or subsequent DWI offenses, Intoxication Assault and Intoxication Manslaughter) may be confined in a substance abuse treatment facility in lieu of imprisonment from 90 days to 1 year.

Vernon’s Ann.Texas.C.C.P. Art. 42.12 §14(a).

Vehicle Impoundment/Confiscation:

N/A

Authorized by Specific Statutory Authority:

Terms Upon Which Vehicle Will Be Released:

Other Miscellaneous Sanctions:

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.

Vernon’s Ann.Texas.C.C.P. Art. 42.034.

Intermittent Sentence: A sentence may be served intermittently including confinement as a condition of community supervision. Vernon’s Ann.Texas.C.C.P. Art. 42.033.

Electronic Monitoring: An offender may serve a county jail sentence via electronic monitored house arrest.

Vernon’s Ann.Texas.C.C.P. Art. 42.035

Incarceration Costs: Persons who are 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. Vernon's Ann.Texas.C.C.P. Art. 42.038.

Ignition Interlock:

Permitted or Prohibited:

Type of Law (Mandatory or Permissive):

Sanction (Judicial, Administrative or Hybrid)

Conditions of Use:

Permitted

Mandatory

Judicial

Upon conviction the judge shall require ignition interlock installed for the duration of the suspension. V.T.C.A., Transportation Code §521.246.

Community supervision: When a defendant has been placed on community supervision, the court may require that the offender install an ignition interlock device on the vehicle. Vernon's Ann.Texas.C.C.P. Art. 42.12 §13(i).

By magistrate after release: Unless the interests of justice indicate otherwise, a magistrate shall require a DWI subsequent offender, after release from confinement, to only operate vehicles that are equipped with ignition interlock devices. Vernon's Ann.Texas.C.C.P. Art. 17.441.

Second or subsequent offenses or > .15 BAC: The court shall order these offenders to install ignition interlock devices on all of the motor vehicles they own for 1 year following a period of license suspension. V.T.C.A., Penal Code §49.09(h); Vernon's Ann.Texas.C.C.P. Art. 42.12 §13(i).

Other Provisions:

An offender who has an occupational license 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. V.T.C.A., Transportation Code §521.246.

Sobriety Checkpoints:

Permitted or Prohibited:

Prohibited. *State v. Holt*, 887 S.W.2d 16 (Tex.Crim.App. 1994).

Homicide by Vehicle:

State Has Such a Law:

Yes. Intoxication Manslaughter (Second degree felony). V.T.C.A., Penal Code §49.08.

Intoxication Manslaughter of officer (First degree felony). V.T.C.A., Penal Code §49.09(b-2).

Imprisonment/Fine:

Second degree felony: Not less than **2 years** or more than **20 years** and may be fined not more than **\$10,000**. V.T.C.A., Penal Code §12.33.

First degree felony: Not less than **5 years** or more than **99 years**, or **life**, and may be fined not more than **\$10,000**. V.T.C.A., Penal Code §12.32.

Mandatory Minimum Term/Fine:

120 days if community supervision is granted. Vernon's Ann.Texas.C.C.P. Art. 42.12 §13(b).

Authorized Licensing Action: **Suspension.** V.T.C.A., Transportation Code §521.344(b).
 Length of Term of Licensing Withdrawal: First offense – Not less than **180 days** or more than **2 years**;
Second or subsequent offense (within 10 years) – Not less than **1 year** or more than **2 years**. V.T.C.A., Transportation Code §521.344(b).

Mandatory Minimum License Withdrawal: First offense – **None**;
Second or subsequent offense (within 10 years) – **1 year**.
 V.T.C.A., Transportation Code §521.344(b).

Other:

DWI Offenses and Commercial Motor Vehicles (CMV):

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 $\geq .04$; (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 a subsequent violation or 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. V.T.C.A., Transportation Code §§522.003(1), (2), (5), (9), (23); 522.081; 522.082; 522.085; 522.086; 522.101; 522.102.

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

Class B misdemeanor. V.T.C.A., Transportation Code §521.457(f-1).

Not more than **180 days** and/or not more than **\$2,000**.

V.T.C.A., Transportation Code §§521.457; V.T.C.A., Penal Code §12.22.

Mandatory Minimum Fine/Imprisonment Term:

None

Administrative Licensing Action Type: Withdrawal Action:

Suspension. V.T.C.A., Transportation Code §521.292(a)(1). The regular suspension period is extended for an additional period of the lesser of the term of the original suspension or 1 year. V.T.C.A., Transportation Code §521.293

Mandatory Term of License Withdrawal Action:

None

Other:

An occupational license may be issued based on essential need. V.T.C.A., Transportation Code §521.241.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Other State Laws Related to Alcohol Use:
 BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):

Yes. V.T.C.A., Transportation Code §724.014.

BAC Chemical Test Given to Deceased Driver Killed in Crash:	Discretionary
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	No
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	No
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes. V.T.C.A., Transportation Code §724.012(b).
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. V.T.C.A., Alcoholic Beverage Code §§106.01; 106.02; 106.03.
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. Exemptions for employment, while in the presence of a parent or guardian or if the minor requested medical assistance for himself or another and remained on scene and cooperative. V.T.C.A., Alcoholic Beverage Code §§106.01; 106.04; 106.05.
<u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	Yes. V.T.C.A., Alcoholic Beverage Code §2.02.
"Dram Shop Law" 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. Limited to social hosts who serve alcohol to minors (under age 18). See <i>Smith v. Merritt</i> , 940 S.W.2d 602 (Tex. 1997).
Social Host – Criminal Enforcement:	A person who is not the parent, guardian, spouse or legal custodian of a minor under age 18 may be found guilty of a Class A misdemeanor if he/she purchases for or give alcohol to such minor. V.T.C.A., Alcoholic Beverage Code §106.06.
<u>Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
Type of Criminal Action:	Class A Misdemeanor. ⁶¹⁸ V.T.C.A., Alcoholic Beverage Code §101.63.
Imprisonment/Fine:	<u>First offense</u> – Not more than 1 year and/or not less than \$100 or more than \$500 ; <u>Second offense</u> –Not more than 1 year and/or not less than \$500 or more than \$1,000 . V.T.C.A., Alcoholic Beverage Code §101.63(b), (c).
<u>Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes
Length of Term of License Withdrawal:	Suspension for not more than 60 days, revocation or cancellation. V.T.C.A., Alcoholic Beverage Code §§11.61;

⁶¹⁸ The sale must be with criminal negligence. V.T.C.A., Alcoholic Beverage Code §106.03(a).

32.17; 61.71.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Class A Misdemeanor.⁶¹⁹ V.T.C.A., Alcoholic Beverage Code §106.03.

Imprisonment/Fine:

First offense – Not more than **1 year** and/or not less than **\$100** or more than **\$500**;
Second offense – Not more than **1 year** and/or not less than **\$500** or more than **\$1,000**. V.T.C.A., Alcoholic Beverage Code §101.63(b), (c).

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes. V.T.C.A., Alcoholic Beverage Code §106.13.

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 (within 36 months) – cancel or suspend for not more than **12 months**. V.T.C.A., Alcoholic Beverage Code §106.13.

Anti-Happy Hour Laws/Regulations:

No

Open Container Laws:

Open Container Law (Yes/No):

Yes. V.T.C.A., Penal Code §49.031.

Anti-Consumption Law (Yes/No):

Yes. V.T.C.A., Penal Code §49.031.

Alcohol Exclusion Law (UPPL):

No. (V.T.C.A., Insurance Code §1201.227 was repealed on September 1, 2013).

⁶¹⁹ The sale must be with criminal negligence. V.T.C.A., Alcoholic Beverage Code §106.03(a).

STATE

General Reference:

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC/BrAC):

Types of Drugs/Drugs and Alcohol:

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to Drugs

(Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the

Implied Consent Law:

Blood:

Urine:

Other:

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

Anti-Plea-Bargaining Statute (Yes/No):

Pre-Sentencing Investigation Law (PSI)

UTAH

Utah Code Annotated (U.C.A. 1953)

Utah Administrative Code (U.A.C.)

Under the influence of alcohol.

U.C.A. 1953 §41-6a-502(1)(b).

≥ **.08**.⁶²⁰ U.C.A. 1953 §§41-6a-502(1)(a), (c); 53-3-223.

Persons Under 21 – Any measurable blood, breath or urine alcohol concentration. U.C.A. 1953 §53-3-231(2)(a).

None

Under the influence of any drug or a combination of any drug and alcohol, or has any measurable controlled substance or metabolite of a controlled substance in the person's body.

U.C.A. 1953 §§41-6a-502(1)(b); 41-6a-517(2).

No

Yes. U.C.A. 1953 §41-6a-520.

Yes. U.C.A. 1953 §41-6a-520(2).

Yes. U.C.A. 1953 §41-6a-520(1)(a).

Yes – Criminal and Civil Cases.

U.C.A. 1953 §41-6a-524.

Yes. U.C.A. 1953 §41-6a-520(1)(a).

Yes. U.C.A. 1953 §41-6a-520(1)(a).

Oral fluids. U.C.A. 1953 §41-6a-520(1)(a).

No

A court may not accept a plea of guilty or no contest to a DUI charge unless: (1) the prosecutor agrees to the plea in open court, in writing or by any other means of adequate communication to record the prosecutor's agreement; (2) the charge is filed by information; or (3) the court receives verification from law enforcement that the defendant's driver's license records shows no conviction of more than 1 prior violation within 10 years, a felony DUI conviction or automobile homicide. A prosecutor must examine a defendant's criminal and driver's records before entering into a plea. U.C.A. 1953 §41-6a-513.

No

⁶²⁰ Alcohol concentration is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. U.C.A. 1953 §41-6a-502(2).

(Yes/No):

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **N/A**

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **N/A**

Preliminary Breath Test – Other: **N/A**

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev): **First refusal – Revocation 18 months; Subsequent refusal – Revocation 36 months.**⁶²¹
Persons Under 21:

First refusal – Revocation until age 21 or 2 years, whichever is longer (if arrest made on or after 7/1/2011);

Subsequent refusal – Revocation until age 21 or 36 months, whichever is longer. U.C.A. 1953 §41-6a-521(5)(a).

Implied Consent Chemical Test - Other:

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine:

DUI (including controlled substances):

First and second offense (Class B misdemeanor) – Not more than **6 months** and/or not more than **\$1,000**;

Subsequent offense (where prior offense is felony DUI or automobile homicide) (Third degree felony) – Not more than **5 years** and/or not more than **\$5,000**;

Third offense (within 10 years) (Third degree felony) – Not more than **5 years** and/or not more than **\$5,000**.

DUI – Serious Bodily Injury (Third degree felony) – Not more than **5 years** and/or not more than **\$5,000**.

Impaired Driving⁶²² (Class B misdemeanor) – Not more than **6 months** and/or not more than **\$1,000**.

U.C.A. 1953 §§41-6a-503; 76-3-203; 76-3-204; 76-3-301.

First offense – 48 consecutive hours/\$700;

Second offense (within 10 years) – **240 consecutive hours/\$800**;

Subsequent offense (where prior offense is felony DUI or automobile homicide) – **1500 hours/\$1,500**;

Third offense (within 10 years) – **1500 hours/\$1,500**.

Mandatory Minimum Term/Fine:

⁶²¹ If arrest was made on or after July 1, 2009, and the person had a previous license sanction within the previous 10 years for a DUI, refusal, or DUI (controlled substance) offense. U.C.A. 1953 §41-6a-521.

⁶²² Impaired driving is a lesser offense and a defendant may plead guilty to this for an offense committed on or after July 1, 2008, and if the defendant completes court ordered probation requirements or the prosecutor agrees as part of a negotiated plea, and the plea is in the interests of justice except if a defendant has a prior conviction. U.C.A. 1953 §§41-6a-502.5(8); 76-3-402.

DUI – Serious Bodily Injury (Third degree felony) – **1500/\$1,500.**

Impaired Driving (Class B misdemeanor) – **None.**
U.C.A. 1953 §41-6a-505.

Community Service:

First offense – Not less than **48 hours** in lieu of imprisonment;
Second offense – Not less than **240 hours** in lieu of imprisonment. U.C.A. 1953 §41-6a-505(1)(a)(i)(B), (2)(a)(i)(B).

Child Endangerment:

A person who drives under the influence with a passenger under age 16 is guilty of a Class A misdemeanor, punishable by not more than **1 year** and/or not more than **\$2,500.**
U.C.A. 1953 §§41-6a-503(1)(b)(ii); 76-3-204(A)(1); 76-3-301(1)(c).

Restitution:

Victims Compensation Fund or direct payment by the defendant to the victim. U.C.A. 1953 §§63M-7-501, *et seq.*; 76-3-201; 77-38a-301.

Other:

Electronic Home Monitoring: As an alternative to imprisonment or community service for 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.
U.C.A. 1953 §§41-6a-505(1)(a)(C), (2)(a)(C), (3)(b); 41-6a-506(4)(b).

Surcharge: A DUI-related fine is subject to an additional 90% surcharge. U.C.A. 1953 §51-9-401(1)(b)(i)(B).

Administrative Sanctions – Pre-Conviction:
Administrative Per Se Law:

First suspension – **120 days;**
Second or subsequent suspension (within 10 years) – **2 years.**
U.C.A. 1953 §53-3-223(7)(a)(i).

Under age 21 (arrest on or after May 14, 2013):⁶²³

First suspension – **6 months**, beginning on the 30th day after arrest;
Second or subsequent suspension (within 10 years) – Until **age 21 or 2 years**, whichever is longer, beginning on the 30th day after arrest. U.C.A. 1953 §53-3-223(7)(a)(ii).

Other:

Under U.C.A. 1953 §53-3-221, a person's license may be suspended for not more than 1 year if that person has committed an offense usually requiring license revocation. Such action may be taken without a preliminary hearing and

⁶²³ A driver under age 19 (at the time of arrest) shall have his/her 1- or 2-year license suspension shortened to a 6-month suspension period if the first offense was committed prior to 5/14/2013 and there is written proof of the following: court order to shorten the driver license suspension; dismissal of a DUI or underage possession charge; notice of declination to prosecute a DUI or underage possession charge; a reduction of DUI or underage possession charge; or other written documentation acceptable to the division. U.C.A. 1953 §§53-3-223; 53-3-231.

may occur prior to a conviction.

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Suspension/Revocation:

First offense (for either injury or non-injury-related offenses) – **Suspension**;

Subsequent DUI offense (within 10 years for either injury or non-injury-related offenses) – **Revocation**.

U.C.A. 1953 §§41-6a-509; 53-3-220; 53-3-221.

Any Measurable Controlled Substance in the Body –

First offense – **Suspension**;

Subsequent DWI offense (within 10 years) – **Revocation**.

U.C.A. 1953 §41-6a-517.

Term of Withdrawal:

DUI

First offense – **Suspension for 120 days** or **Revocation** for not more than **1 year**.

Second offense (within 10 years) – **Revocation 2 years**.

U.C.A. 1953 §§41-6a-509(1)(a), (1)(b); 53-3-221(9)(a).

DUI – Under age 21:

First offense – **Suspension until age 21** or **1 year** whichever is longer;

Second offense – **Revocation until age 21** or **2 years**.

U.C.A. 1953 §§41-6a-509(2)(a), (2)(c).

Impaired Driving:⁶²⁴

First conviction – **No mandatory suspension**;

Subsequent conviction (within 1 year) – **Revocation 1 year**.

U.C.A. 1953 §53-3-220(1)(a)(viii).

Mandatory Minimum Term of Revocation:

Suspension or revocation is mandatory (with the exception of a first conviction for Impaired Driving under U.C.A. 1953 §41-6a-502.5. *See* U.C.A. 1953 §41-6a-509).

U.C.A. 1953 §§41-6a-509; 53-3-220(1)(a), (4).

Alcohol Education:

Yes – Substance abuse assessment, including screening, assessment, education series and subsequent substance abuse treatment, is required for (1) a second or subsequent conviction; (2) an offender under 21; or (3) upon a conviction for impaired driving.⁶²⁵ U.C.A. 1953 §§17-43-201(4)(m); 41-6a-502.5; 41-6a-505(4); 53-3-231(12)(a).

Substance Abuse Treatment:

Yes – see above.

Vehicle Impoundment/Confiscation:

Impoundment

Authorized by Specific Statutory Authority:

If a peace officer arrests, cites or refers for administrative action the operator of a motor vehicle for violating a DUI

⁶²⁴ The suspension or revocation period for a DUI conviction is reduced by any suspension period received under the administrative per se law. U.C.A. 1953 §41-6a-517(6)(c). Note: Impaired driving is a lesser offense to which a person can plead guilty after being charged with DUI only if the offender has no prior convictions. The court entering the plea may still order suspension of the offender's driver's license for a period of 90 days under U.C.A. 1953 §53-3-220(1)(a)(viii). U.C.A. 1953 §41-6a-502.

⁶²⁵ 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. U.C.A. 1953 §41-6a-517.

Terms Upon Which Vehicle Will Be Released:

law, the officer shall seize and impound the vehicle. U.C.A. 1953 §§41-6a-527; 41-6a-1406.

If a registered owner of the vehicle, other than the operator is present at the time of arrest, the peace officer may release the vehicle to that registered owner only if: (1) the registered owner requests to remove the vehicle and presents sufficient identification to prove ownership; and (2) the vehicle is legally operable. U.C.A. 1953 §41-6a-527(2).

Other Miscellaneous Sanctions:

Assessments for Treatment: Following a DUI conviction, the court may assess a defendant an amount sufficient to fully compensate agencies for the cost of any treatment provided to such offender. U.C.A. 1953 §§62A-15-502; 62A-15-503.

Probation with BAC ≥ .16: An offender with a BAC ≥ .16 must be placed on probation. U.C.A. 1953 §41-6a-505(a).

Ignition Interlock:

Permitted or Prohibited:

Permitted

Type of Law (Mandatory or Permissive):

Both

Sanction (Judicial, Administrative or Hybrid)

Judicial

Conditions of Use:

The court may require the use of an ignition interlock device for anyone convicted of a DUI and who is granted probation, for the period of probation.

The court shall require the use of an ignition interlock device for a person under age 21, as a condition of probation.

The court shall require the use of an ignition interlock device for a second or subsequent conviction within 10 years⁶²⁶.

If the court imposes such use, it shall stipulate on the record the requirement for and period of use of the ignition interlock device.

If the defendant had a BAC of ≥ .16, the court shall order ignition interlock and/or electronic home monitoring.

U.C.A. 1953 §§41-6a-518(2)(a)-(c), (3)(a); 41-6a-505(6).

There is an exemption for an employer-owned vehicle.

U.C.A. 1953 §41-6a-518(7)(a).

Other Provisions:

Sobriety Checkpoints:

Permitted or Prohibited:

Permitted. U.C.A. 1953 §§77-23-103; 77-23-104.

Homicide by Vehicle:

State Has Such a Law:

Automobile Homicide.⁶²⁷ U.C.A. 1953 §76-5-207.

⁶²⁶ This provision does not apply if the violation involves drugs rather than alcohol. U.C.A. 1953 §41-6a-518(2)(e).

⁶²⁷ Automobile Homicide is a third degree felony, where a person operates a motor vehicle in a negligent manner and causes the death of another while driving under the influence. However, it becomes a second degree felony if it is subsequent to a DUI conviction. The second degree felony is where a person operates a motor vehicle in a criminally negligent manner and causes the death of another while driving under the influence. By virtue of the prior DUI conviction, the standard of criminal negligence is met because it is presumed the person should have known the consequences of such behavior. U.C.A. 1953 §§76-2-103; 76-5-207.

Imprisonment/Fine:	<u>Third Degree Felony</u> – Not more than 5 years and/or not more than \$5,000 ; <u>Second Degree Felony</u> (with a prior conviction)– Not less than 1 year or more than 15 years and/or not more than \$10,000 . U.C.A. 1953 §§76-3-203; 76-3-301; 76-5-207.
Mandatory Minimum Term/Fine:	None
Authorized Licensing Action:	Revocation. U.C.A. 1953 §53-3-220(1)(a).
Length of Term of Licensing Withdrawal:	1 year. U.C.A. 1953 §53-3-225.
Mandatory Minimum License Withdrawal:	1 year. No hardship license may be issued. U.C.A. 1953 §53-3-220(4)(a)(i).
Other:	N/A
<u>DWI Offenses and Commercial Motor Vehicles (CMV):</u>	Persons are disqualified from operating a CMV for 1 mandatory year (3 mandatory years if transporting hazardous materials) if, while driving a CMV, they: (1) have an alcohol concentration $\geq .04$; (2) are under the influence of alcohol, drugs or a controlled substance; or (3) refuse to submit to a chemical test for an alcohol concentration. For a subsequent violation or 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. U.C.A. 1953 §§53-3-102(4)(a), (8); 53-3-414; 53-3-417; 53-3-418.
<u>Driving While License Suspended for DWI Offense:</u>	
Criminal - Fine/Imprisonment:	Not more than 6 months and/or not more than \$1,000 . U.C.A. 1953 §§53-3-227(3)(a); 76-3-204; 76-3-301.
Mandatory Minimum Fine/Imprisonment Term:	\$750. U.C.A. 1953 §§53-3-227(3)(c).
Administrative Licensing Action Type:	Suspension/Revocation. U.C.A. 1953 §53-3-220(2)(a).
Withdrawal Action:	An additional like period of suspension or revocation, to a maximum of one year for each subsequent occurrence. U.C.A. 1953 §53-3-220(2).
Mandatory Term of License Withdrawal Action:	The term imposed will be mandatory. U.C.A. 1953 §53-3-220(4).
Other:	
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	No
<u>Other State Laws Related to Alcohol Use:</u>	
BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes. U.C.A. 1953 §26-1-30(19).
BAC Chemical Test Given to Deceased	Yes

Driver Killed in Crash: BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash: BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	No Yes – Adults only.
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	No
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. U.C.A. 1953 §§32B-1-102(66); 32B-4-409(9). There is an exception (1) for medicinal purposes if furnished by parents, physicians, or dentists; or (2) for religious purposes.
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. U.C.A. 1953 §§32B-1-102(66); 32B-4-408; 32B-4-409.
<u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	Yes. U.C.A. 1953 §32B-15-201.
"Dram Shop Law" 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 – limited to minors (under 21). U.C.A. 1953 §32B-15-201(2).
Social Host – Criminal Enforcement:	A person who negligently or recklessly, or knowingly serves a minor alcohol may be found guilty of a class B or class A misdemeanor, respectively. A person above age 18 who provides alcohol to a person under age 18 may be found guilty of contributing to the delinquency of a minor, a class B misdemeanor. U.C.A. 1953 §76-10-2301.
<u>Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
Type of Criminal Action:	<u>Negligently or recklessly</u> – Class B misdemeanor; <u>Knowingly</u> – Class A misdemeanor. U.C.A. 1953 §32B-4-404.
Imprisonment/Fine:	<u>Negligently or recklessly</u> – Not more than 6 months and/or not more than \$1,000 ; <u>Knowingly</u> – Not more than 1 year and/or not more than \$2,500 . U.C.A. 1953 §§76-3-204; 76-3-301.
<u>Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes – Suspension, Revocation or Imposition of Fine. U.C.A. 1953 §32B-3-205.
Length of Term of License Withdrawal:	Suspension: Time period not specified in the statute (but see U.A.C. R81-1 for a table summarizing fine and suspension ranges). Revocation: At least 3 years . U.C.A. 1953 §32B-3-205. Administrative Fine: An administrative fine of not more than \$25,000 may be imposed in lieu of or in addition to a

license suspension. U.C.A. 1953 §32B-3-205.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Negligently or recklessly – Class B misdemeanor;
Knowingly – Class A misdemeanor. U.C.A. 1953 §32B-4-403.

Imprisonment/Fine:

Negligently or recklessly – Not more than **6 months** and/or not more than **\$1,000**;
Knowingly – Not more than **1 year** and/or not more than **\$2,500**. U.C.A. 1953 §§76-3-204; 76-3-301.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Suspension, Revocation or Imposition of Fine.
U.C.A. 1953 §32B-3-205.

Length of Term License Withdrawal:

Suspension: Time period not specified in the statute (but see U.A.C. R81-1 for a table summarizing fine and suspension ranges).
Revocation: At least **3 years**. U.C.A. 1953 §32B-3-205.

Administrative Fine: An administrative fine of not more than **\$25,000** may be imposed in lieu of or in addition to a license suspension. U.C.A. 1953 §32B-3-205.

Anti-Happy Hour Laws/Regulations:

Yes. U.C.A. 1953 §32B-5-305.

Open Container Laws:

Open Container Law (Yes/No):

Yes. U.C.A. 1953 §41-6a-526(3).

Anti-Consumption Law (Yes/No):

Yes. U.C.A. 1953 §41-6a-526(2).

Alcohol Exclusion Law (UPPL):

Yes.⁶²⁸

⁶²⁸ There are no statutes in place, however, case law indicates that insurance policies may contain alcohol and/or intoxicant exclusion provisions. See e.g. *Hardy v. Beneficial Life Ins. Co.*, 787 P.2d 1 (Utah App., 1990).

STATE

VERMONT

General Reference:

Vermont Statutes Annotated (VSA)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor.
23 VSA §1201(a)(2).

Illegal Per Se Law (BAC/BrAC):

≥ **.08**⁶²⁹ (≥ **.02** if operating a school bus).
23 VSA §1201(a)(1).

Presumption (BAC/BrAC):

Persons Under 21 – ≥ **.02**. 23 VSA §1216(a).

Types of Drugs/Drugs and Alcohol:

None

Under the influence of any other drug or a combination of any other drug and alcohol. 23 VSA §1201(a)(3).

Other:

A BAC/BrAC ≥ **.08** is a permissive inference of a DUI offense. 23 VSA §1204(a)(2).

≥ **.02** within 2 hours of incident is a rebuttable presumption that a person < 21 committed a civil traffic violation.
23 VSA §1216(e).

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

Yes. 23 VSA §1203(f).

Implied Consent Law:

Yes. 23 VSA §1202.

Arrest Required (Yes/No):

No. 23 VSA §1202(a).

Implied Consent Law Applies to Drugs (Yes/No):

Yes. 23 VSA §1202(a).

Refusal to Submit to Chemical Test

Yes – in Criminal Cases. 23 VSA §1202(b).

Admitted into Evidence:

Other Information:

I. A driver who has been convicted previously of DUI, where there are reasonable grounds to believe the driver is under the influence, is required to submit to a chemical test of breath or blood for alcoholic content and, if the test is refused, the driver's license is suspended or revoked. 23 VSA §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.
23 VSA §1202(f).

III. Results of a preliminary breath test are admissible in a DUI proceeding against persons under 21. 23 VSA §1216(d).

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the

Implied Consent Law:

Blood:

Yes. 23 VSA §1202(a)(2).

Urine:

No

Other:

N/A

⁶²⁹ Alcohol concentration is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. 23 VSA §1200(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.** Before sentencing, the court may order a defendant to submit to an alcohol assessment screening. 23 VSA §1210(a).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **None**

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **None**

Preliminary Breath Test – Other:

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev): **First refusal – Suspension 6 months** (or 30 days mand. if operating under with an ignition interlock); **Second refusal – Suspension 18 months** (or 90 days mand. if operating under with an ignition interlock);

Third or subsequent refusal – Suspension for life (or 1 year mand. if operating under with an ignition interlock). 23 VSA §1205(a)(1), (m).

Implied Consent Chemical Test - Other: I. No person shall have his license reinstated until he has met all conditions of reinstatement, which includes successful completion of alcohol education, treatment and/or therapy programs. 23 VSA §1209a.

II. Prior to reinstatement, a **\$50** surcharge shall be assessed to a person whose license is suspended for a refusal. 23 VSA §1205(r).

III. Suspensions shall run concurrently. 23 VSA §1205(p).

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine: **First conviction** (misdemeanor) – Not more than **2 years** and/or not more than **\$750**;

Second conviction (misdemeanor) – Not more than **2 years** and/or not more than **\$1,500**;

Third conviction (felony) – Not more than **5 years** and/or not more than **\$2,500**;

Fourth or subsequent conviction (felony) – Not more than **10 years** and/or not more than **\$5,000**.

Mandatory Minimum Term/Fine: **DUI – Serious Injury:** Not more than **15 years** and/or not more than **\$5,000**. 13 VSA §1; 23 VSA §1210(a)-(f), (g)(1).

Second conviction – 60 consecutive hours;

Third conviction – 96 consecutive hours;

Fourth or subsequent conviction – **192 consecutive hours.**⁶³⁰

Community Service: DUI – Serious Injury (third or subsequent offense): 5 years (unless written findings made).
23 VSA §1210(c), (d), (f).
First conviction – Community service may be ordered;
Second conviction – At least **200 hours** mandatory in lieu of imprisonment; 13 VSA §7030; 23 VSA §1210(c).

Child Endangerment: **No.**

Restitution: **Yes.** The court may order a defendant to pay restitution to a victim. 13 VSA §7043.

Other: **Surcharge:** In addition to any fine, an offender must pay the following surcharges: **\$60**, used to fund blood and breath alcohol testing special fund; **\$50**, used to fund public defenders special fund; and **\$50**, used to fund DUI law enforcement. 23 VSA §1210(i), (j), (k).

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

Yes ≥ .08.
First action – **Mandatory Suspension 90 days** (or **30 days** if operating with an ignition interlock);
Second action – **Mandatory Suspension 18 months** (or **90 days** if operating with an ignition interlock);
Third or subsequent action – **Suspension for life** (1 year mandatory if operating with an ignition interlock). 23 VSA §1205(a)(2), (m).

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Term of Withdrawal:

Suspension/Revocation. 23 VSA §§1206; 1208.

First conviction – **Suspension 90 days**;

Second conviction – **Suspension 18 months**;

Third or subsequent conviction – **Revocation for life.**

23 VSA §§1206(a); 1208.

Mandatory Minimum Term of Revocation:

Second or subsequent conviction BAC ≥ .16 – **Suspension 3 years.** 23 VSA §1201(d).

First offense – **90 days/30 days** with ignition interlock;

Second offense – **18 months/90 days** with ignition interlock;

Third or subsequent offense – **Life** (but maybe reinstated after 1 year if using an ignition interlock). 23 VSA §§1206; 1208; 1209a.

Persons Under 21 (suspensions shall run concurrently with administrative suspensions):

First violation – **Suspension 6 months** and until such person complies with an alcohol and drug program, which includes

⁶³⁰ For a third conviction, the court may impose a sentence that does not include a term of imprisonment or that does not require that the 96 hours of imprisonment be served consecutively only if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety. For a fourth or subsequent conviction, the sentence may not be suspended or deferred, unless the court makes written findings on the record that there are compelling reasons why such a sentence will serve the interests of justice and public safety. 23 VSA §1210(d), (e).

Alcohol Education:	<p>alcohol screening and education; <u>Second or subsequent violation</u> – Suspension 1 year or until the person reaches age 21, whichever is longer, and until such person complies with an alcohol education, treatment and/or therapy program. 23 VSA §§1209a; 1216(a)(1), (2). Yes. <u>First license suspension</u>, 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. <u>Second suspension</u>, 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. <u>Third or subsequent suspension</u>, a defendant has to complete or show substantial progress in completing a therapy program prior to license reinstatement. 23 VSA §§1205; 1206; 1208; 1209a(a).</p>
Substance Abuse Treatment: Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	<p>Yes Immobilization and Forfeiture Immobilization: <u>Second or subsequent offense</u> – the vehicle operated by the offender may be immobilized for 18 months or when that person obtains a valid license, whichever comes first. 23 VSA §1213a(a), (d). Forfeiture: <u>Third or subsequent offense</u> – the vehicle operated by the offender may be forfeited. 23 VSA §1213b. The court may consider any undue hardship which immobilization or forfeiture would cause to a person, other than the defendant, who is dependent on the motor vehicle for essential transportation needs. 23 VSA §1213c(e). Special Assessment: A defendant is assessed a mandatory \$47.00 fee, of which \$39.75 is deposited into an account that is used to assist/compensate victims of crimes. 13 VSA §7282(8)(C).</p>
Terms Upon Which Vehicle Will Be Released:	<p>Permitted. 23 VSA §§1205(m); 1213. Permissive. Administrative. <u>First offense</u> – A person whose license is suspended shall be permitted to operate a vehicle with an ignition interlock for the term of suspension; <u>Second offense</u> – 90 days; <u>Third or subsequent offense</u> – 1 year. 23 VSA §§1205(m); 1213.</p>
Other Miscellaneous Sanctions:	<p>N/A</p>
<u>Ignition Interlock:</u> Permitted or Prohibited: Type of Law (Mandatory or Permissive): Sanction (Judicial, Administrative or Hybrid) Conditions of Use:	<p>Permitted. 23 VSA §§1205(m); 1213. Permissive. Administrative. <u>First offense</u> – A person whose license is suspended shall be permitted to operate a vehicle with an ignition interlock for the term of suspension; <u>Second offense</u> – 90 days; <u>Third or subsequent offense</u> – 1 year. 23 VSA §§1205(m); 1213.</p>
Other Provisions:	<p>N/A</p>
<u>Sobriety Checkpoints:</u> Permitted or Prohibited:	<p>Permitted. <i>State v. Record</i>, 548 A.2d 422 (Vt. 1988); see</p>

23 VSA §1220.

Homicide by Vehicle:

State Has Such a Law:

Imprisonment/Fine:

Mandatory Minimum Term/Fine:

Authorized Licensing Action:

Length of Term of Licensing Withdrawal:

Mandatory Minimum License Withdrawal:
Other:

DWI Offenses and Commercial Motor Vehicles (CMV):

Yes. 23 VSA §1210(f).

Not less than **1 year** or more than **15 years** and/or not more than **\$10,000**.

Third or subsequent offense – **5 years** (unless there are written findings by the court that a suspended sentence or term of imprisonment of less than 5 years serves the interests of justice and public safety).

Suspension.

23 VSA §1206.

1 year and until a defendant completes alcohol education, treatment and/or therapy. 23 VSA §§1206(b); 1209a.

1 year

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 \geq .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 a subsequent violation or 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 with a BAC/BrAC of \geq .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 VSA §§4(59); 1218; 1219; 4103; 4116; 4116a.

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

Mandatory Minimum Fine/Imprisonment Term:

Not more than **2 years**⁶³¹ and/or not more than **\$5,000**.
13 VSA §1; 23 VSA §674(b).

First offense – **\$300** or **40 hours** community service;⁶³²
Second offense (within 5 years) – **\$750** or **80 hours** community service;

Third offense (within 5 years) – **12 days** of preapproved

⁶³¹ If a person is convicted of both driving on a suspended and DUI, any penalty or suspension/revocation for these offenses shall be consecutive (not concurrent). 23 VSA §674(d).

⁶³² If there is no term of imprisonment, community service shall be performed within 120 days. 23 VSA §674(b)(1).

<p>Administrative Licensing Action Type: Withdrawal Action:</p>	<p>furlough with community restitution (suspended sentence); <u>Fourth offense</u> (within 5 years) – 18 days of preapproved furlough with community restitution (suspended sentence); <u>Fifth and subsequent offenses</u> (within 5 years) – 16 days. 23 VSA §674(b). Suspension. 23 VSA §674(f). The suspension period shall not be deemed to expire until the defendant has complied with alcohol education, treatment and/or therapy and the person’s license has been reinstated. 23 VSA §674(f).</p>
<p>Mandatory Term of License Withdrawal Action: Other:</p>	<p>None.</p> <p>Immobilization: <u>Second or subsequent offense</u> – the vehicle operated by the offender may be immobilized for 18 months or when the person obtains a valid license, whichever comes first. 23 VSA §674(h).</p> <p>Forfeiture: <u>Third or subsequent offense</u> – the vehicle operated by the offender may be forfeited. 23 VSA § 674(h).</p> <p>Surcharge: A \$50 surcharge shall be assessed, which is added to any fine or other surcharge imposed by the court. 23 VSA §674(i).</p> <p>Reinstatement fee: A \$71 fee shall be paid before any license is reinstated. 23 VSA §675.</p> <p>Removal of license plates: A law enforcement officer shall have the authority to remove any number plates from a motor vehicle that is being operated in violation of the statute. 23 VSA §674(c).</p>
<p><u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No): Grounds for Being Declared Habitual Offender: Term of License Revocations While on Habitual Offender Status: Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term): Mandatory Minimum Term/Fine: Licensing Action (Specify):</p>	<p>Yes. 23 VSA §673a. 8 or more convictions based on moving violations (with 6 points or more assessed for DWI offenses within 5 years). 2 years. 23 VSA §673a.</p> <p>None</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>
<p><u>Other State Laws Related to Alcohol Use:</u> BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):</p>	<p>No</p>
<p>BAC Chemical Test Given to Deceased Driver Killed in Crash:</p>	<p>N/A</p>

BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	N/A
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	N/A
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes. 23 VSA §1202(a)(4).
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. 7 VSA §§2(26); 656; 657; 658.
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. There is an employment exemption and an exemption for students age 18 or older and enrolled in post-secondary education culinary art program. 7 VSA §§2(26); 3; 656; 657.
<u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	Yes. 7 VSA §501. ⁶³³
"Dram Shop Law" 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 – Minors only. 7 VSA §501(g)(2).
Social Host – Criminal Enforcement:	A person who furnishes alcohol to a minor may be found guilty of a misdemeanor, punishable by not more than 2 years and/or not less than \$500 or more than \$2,000. 7 VSA §658.
<u>Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
Type of Criminal Action:	None. <i>Langle v. Kurkul</i> , 510 A.2d 1301, 1304 (Vt. 1986) (holding there is no statute in Vermont making it a crime for any person [vendors or social hosts] to sell or furnish alcohol to an adult who is visibly intoxicated).
Imprisonment/Fine:	N/A
<u>Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	N/A
<u>Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:</u>	
Type of Criminal Action:	Misdemeanor. ⁶³⁴ 7 VSA §658; 13 VSA §1.

⁶³³ A person who sells or furnishes alcohol to a minor, where the person under age 21, while operating a motor vehicle on a public highway, causes death or serious bodily injury to himself or herself or to another person as a result of the violation, shall be imprisoned not more than 5 years and/or fined not more than \$10,000.00. 7 VSA §658(d).

⁶³⁴ However, an employee of a licensee or an employee of a State-contracted liquor agency, who in the course of employment sells or furnishes alcohol to a minor during a compliance check conducted by law enforcement, shall be assessed a civil penalty of not more than \$100 (first violation), or not less than \$100 or more than \$500 (second violation that occurs more than 1 year after the first), and shall be subject to the criminal penalties for a second violation (within 1 year) or third or subsequent violation (within 3 years of the first). 7 VSA §658(c)(1).

Imprisonment/Fine: Not more than **2 years** and/or not less than **\$500** or more than **\$2,000**. 7 VSA §658

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:
License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Suspension/Revocation. 7 VSA § 236(a).

An administrative penalty of not more than \$2,500 may be imposed on a licensee in lieu of suspension/revocation.
7 VSA § 236(b).

Length of Term License Withdrawal:

Indeterminate. 7 VSA §236(a).

Anti-Happy Hour Laws/Regulations:

No.

Open Container Laws:

Open Container Law (Yes/No):

Yes. 23 VSA §§1134(b); 1134a(a).

Anti-Consumption Law (Yes/No):

Yes. 23 VSA §§1134(a); 1134a(a).

Alcohol Exclusion Law (UPPL):

Yes.⁶³⁵

⁶³⁵ See e.g., Furry's Adm'r v. General Acc. Ins. Co., 68 A. 655 (Vt. 1908).

STATE

General Reference:

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC/BrAC):

Types of Drugs/Drugs and Alcohol:

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to Drugs
(Yes/No):

Refusal to Submit to Chemical Test
Admitted into Evidence:

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the

Implied Consent Law:

Blood:

Urine:

Other:

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

Anti-Plea-Bargaining Statute (Yes/No):

VIRGINIA

Code of Virginia Annotated (Va. Code Ann.)

Virginia Administrative Code (VAC)

Under the influence of alcohol. Va. Code Ann. §18.2-266.
≥ **.08**.⁶³⁶ (BAC/BrAC)

Persons Under 21: ≥ **.02** but < **.08**. Va. Code Ann. §18.2-266.1(A).

≥ **.08**. Va. Code Ann. §18.2-269(3).

Under the influence of any drug, any narcotic drug, any self-administered intoxicant or drug of whatsoever nature, or a combined influence of alcohol and any drug or drugs, or while such person has a blood concentration equal to or greater than: (a) .02 mg of cocaine per liter of blood; (b) 0.1 mg of methamphetamine per liter of blood; (c) .01 mg of phencyclidine per liter of blood; or (d) 0.1 mg of 3, 4-methylene-dioxymethamphetamine per liter of blood. Va. Code Ann. §18.2-266(v).

Yes. Va. Code Ann. §18.2-267(a).

Yes⁶³⁷. Va. Code Ann. §18.2-268.2.

Yes. Va. Code Ann. §18.2-268.2.

Yes. Va. Code Ann. §18.2-268.2.

Evidence of an unreasonable refusal may be admitted *only* to explain the absence of a chemical test result but not as evidence of guilt.⁶³⁸ Va. Code Ann. §18.2-268.10(C).

Yes. Va. Code Ann. §18.2-268.2(A).

No

No

No

No

⁶³⁶ Standards: For blood, percent by weight by volume; for breath, grams of alcohol per 210 liters of breath. Va. Code Ann. §§18.2-266; 18.2-266.1(A); 18.2-269(A)(3); 46.2-391.2.

⁶³⁷ However, any legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court's decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

⁶³⁸ 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. Commonwealth*, 404 S.E.2d 371 (Va. App. 1991).

Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes. An alcohol/drug screening/assessment mandatory via the Alcohol Safety Action Program prior to any treatment. Va. Code Ann. §§18.2-271.1(A); 19.2-299; 19.2-299.2(A).
<u>Sanctions for Refusal to Submit to a Chemical Test:</u>	
Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail):	N/A
Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev):	N/A
Preliminary Breath Test – Other:	N/A
Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	<u>Note.</u> ⁶³⁹ <u>Second refusal</u> (within 10 years) (Class 2 misdemeanor) – Not more than 6 months and/or not more than \$1,000 ; <u>Third refusal</u> (within 10 years) (Class 1 misdemeanor) – Not more than 12 months and/or not more than \$2,500 . Va. Code Ann. §§18.2-11; 18.2-268.3(B).
Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):	<u>First refusal</u> ⁶⁴⁰ – Suspension 1 year ; <u>Second refusal</u> (within 10 years) – Suspension 3 years plus 7 days ; <u>Third refusal</u> (within 10 years) – Suspension 3 years plus 60 days . ⁶⁴¹ Va. Code Ann. §§18.2-268.3(D); 46.2-391.2(A).
Implied Consent Chemical Test - Other:	N/A
<u>Criminal Sanctions Following a DWI Conviction:</u>	
Imprisonment/Fine:	<u>First offense</u> (Class 1 Misdemeanor) – Not more than 12 months and/or not more than \$2,500 ; <u>Second offense</u> (Class 1 Misdemeanor) – Not more than 1 year and/or not more than \$2,500 ; <u>Third offense</u> (within 10 years) (Class 6 Felony) – Not less than 1 year or more than 5 years , or not more than 12 months and/or not more than \$2,500 ; <u>Fourth or subsequent offense</u> (within 10 years) (Class 6 Felony) – Not less than 1 year or more than 5 years , or not more than 12 months and/or not more than \$2,500 . Va. Code Ann. §§18.2-10; 18.2-11; 18.2-270.
	<u>Offense for Persons Under 21:</u> Not more than 12 months and/or not more than \$2,500 . Va. Code Ann. §18.2-266.1(B).

⁶³⁹ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

⁶⁴⁰ A first violation is a civil offense. Subsequent violations are criminal offenses. Va. Code Ann. §18.2-268.3(D).

⁶⁴¹ The 7- and 60-day suspensions are administrative suspensions in addition to court suspensions. The court may dismiss a refusal suspension action if the defendant pleads guilty to a DUI offense. Va. Code Ann. §18.2-268.4.

Mandatory Minimum Term/Fine:	<p>DUI – Maiming (Class 6 Felony) – Not less than 1 year or more than 5 years, or not more than 12 months and/or not more than \$2,500. Va. Code Ann. §18.2-51.4.</p> <p><u>First offense</u> – \$250;</p> <p><u>First offense</u> (BAC ≥ .15 but ≤ .20) – 5 days/\$250;</p> <p><u>First offense</u> (BAC > .20) – 10 days/\$250;</p> <p><u>Second offense</u> (within less than 5 years) – 20 days/\$500;</p> <p><u>Second offense</u> (within 5-10 years) – 10 days/\$500;</p> <p><u>Second offense</u> (within 10 years) (BAC ≥ .15 but ≤ .20) – Additional 10 days/\$500;</p> <p><u>Second offense</u> (within 10 years) (BAC ≥ .20) – Additional 20 days/\$500;</p> <p><u>Third offense</u> (within 10 years) – 90 days/\$1,000;</p> <p><u>Third offense</u> (within 5 years) – 6 months/\$1,000;</p> <p><u>Fourth or subsequent offense</u> (within 10 years) – 1 year/\$1,000;</p> <p><u>Subsequent offense DUI where prior convictions are felony DUI/DUI maiming/involuntary manslaughter</u> – 1 year/\$1,000. Va. Code Ann. §18.2-270.</p>
Community Service:	<p><u>Persons Under 21</u> – \$500 (or community service)</p> <p>For persons under 21, 50 hours of community service may be ordered in lieu of the \$500 fine. Va. Code Ann. §18.2-266.1. Additionally, the court may order community service as a condition of probation. Va. Code Ann. §§19.2-303; 19.2-305.1.</p>
Child Endangerment:	<p>A person convicted of a DUI offense while transporting a minor age 17 years or younger shall be fined an <i>additional</i> minimum \$500 and not more than \$1,000 and sentenced to a mandatory minimum of 5 days.⁶⁴² Va. Code Ann. §18.2-270(D).</p>
Restitution:	<p>The court may order a defendant to pay restitution to a victim. In addition, a crime victims compensation fund is available. Va. Code Ann. §§19.2-305; 19.2-368.1, <i>et seq.</i></p>
Other:	<p>Trauma Fund: The court shall order any defendant convicted of a DUI offense to pay \$50 to the Trauma Center Fund. Va. Code Ann. §18.2-270.01.</p>

EMS/Enforcement Costs: Counties, cities and towns may enact ordinances that make an offender liable in a civil action for the expenses of responding to any DWI offense that was the proximate cause of an accident. Liability is limited to \$1,000. Va. Code Ann. §15.2-1716.

Dismissal of dual charges: Whenever any person is charged with a violation of section 18.2-266 and with reckless driving growing out of the same act or acts, and is convicted of one of these charges, the court shall dismiss the remaining charge. Va. Code Ann. §19.2-294.1.

⁶⁴² A DUI offender who operates a motor vehicle while transporting a child < 18 may be subject to prosecution for felony child abuse and neglect under §18.2-371.1. *Wolfe v. Commonwealth*, 595 S.E.2d 27 (Va. App. 2004).

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

Yes \geq **.08** (\geq **.02** for persons under 21).

First offense – **Suspension 7 days** (mand);

Second offense – **Suspension 60 days**;

Third or subsequent offense – **Suspension** “until the day and time of trial of the criminal offense charged.”

Va. Code Ann. §46.2-391.2.

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Term of Withdrawal:

Suspension/Revocation

First offense – **Suspension/Revocation 1 year**;

Second offense (within 10 years) – **Revocation 3 years**;

Third or subsequent offense (within 10 years) – **Indefinite revocation**. Va. Code Ann. §§18.2-271; 46.2-391.

Offense for Persons Under 21: 1 year.

Va. Code Ann. §18.2-266.1(B).

DUI – Maiming: Indefinite revocation.

Va. Code Ann. §§18.2-271; 46.2-391(B).

Mandatory Minimum Term of Revocation:

First offense – **None**;⁶⁴³

Second offense (within 5 years) – **1 year**;⁶⁴⁴

Second offense (within 10 years) – **4 months**;

Third or subsequent offense (within 10 years) – **3 years**.⁶⁴⁵

DUI – Maiming: 5 years

Offense for Persons Under 21: None.

First offense – **Yes**;

Second offense (within 10 years) – **Yes**;

Third and subsequent offense – Not eligible to participate in the Virginia Alcohol Safety Action Program (VASAP).

Va. Code Ann. §§18.2-271(C); 18.2-271.1(A).

Alcohol Education:

Substance Abuse Treatment:

First offense – **Yes**;

Second offense (within 10 years) – **Yes**;

Third and subsequent offense – Not eligible to participate in VASAP. Va. Code Ann. §§18.2-271(C); 18.2-271.1(A).

Offense for Persons Under 21 (\geq **.02** but $<$ **.08**): An offender is eligible to participate in the VASAP.

⁶⁴³ A restricted license may be issued if the defendant participates in a rehabilitation program. Va. Code Ann. §18.2-271.1(E).

⁶⁴⁴ 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. Va. Code Ann. §18.2-271.1(E).

⁶⁴⁵ For a third offense, if a person at the time of the DUI conviction was dependent on alcohol, the license may be restored after 5 years or 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 a license is reinstated or a restricted employment license is 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. Va. Code Ann. §46.2-391(C).

Vehicle Impoundment/Confiscation:	<p>Va. Code Ann. §18.2-266.1(B). Impoundment/Immobilization; Seizure & Forfeiture</p>
Authorized by Specific Statutory Authority:	<p>Impoundment: The motor vehicle driven by a defendant who commits a DUI offense shall be impounded or immobilized by law enforcement at the time the defendant is arrested. Impoundment shall be for a period of 30 days. Va. Code Ann. §46.2-301.1.</p> <p>Seizure/Forfeiture: The vehicle solely owned by a defendant convicted of felony DUI shall be subject to seizure and forfeiture. Va. Code Ann. §18.2-270(C)(4).</p>
Terms Upon Which Vehicle Will Be Released:	<p>Impoundment/Immobilization:</p> <p>I. Any driver who is the owner of the vehicle may petition the General District Court in the jurisdiction in which the arrest was made for release of the impounded/immobilized motor vehicle.</p> <p>II. Any owner (not the driver) of the impounded/immobilized motor vehicle may petition the General District Court for release of the vehicle if he/she proves he/she had no knowledge that the defendant's license was suspended/revoked or did not consent to the vehicle being driven. If the owner proves that his immediately family has only 1 vehicle and will suffer a substantial hardship, the court may release the vehicle after some period of less than 30 days. Va. Code Ann. §46.2-301.1(B), (C).</p> <p>Seizure/Forfeiture: An immediate family member may petition the court for release of the vehicle if that person proves his family has only one vehicle and seizure/forfeiture would create a substantial hardship. Va. Code Ann. §19.2-386.34.</p>
Other Miscellaneous Sanctions:	<p>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 DUI offense. Va. Code Ann. §4.1-333.</p>
<u>Ignition Interlock:</u> Permitted or Prohibited:	<p>Permitted. Va. Code Ann. §§18.2-270.1; 18.2-271; 46.2-391.</p>
Type of Law (Mandatory or Permissive): Sanction (Judicial, Administrative or Hybrid) Conditions of Use:	<p>Mandatory Judicial</p> <p>As a condition of a restricted license, the court shall prohibit an offender from operating a motor vehicle that is not equipped with an ignition interlock for not less than 6 months.</p> <p>A second or subsequent offender, or offender convicted of DUI maiming, who is required to participate in VASAP or a treatment program may obtain restricted driving privileges permitting only operation of motor vehicles equipped with</p>

Other Provisions:	<p>ignition interlock devices. Va. Code Ann. §§18.2-270.1; 18.2-271; 46.2-391.</p> <p>Failure to comply with ignition interlock requirements is a Class 1 misdemeanor punishable by up to 12 months and/or not more than \$2,500. Va. Code Ann. §18.2-272(C). If the court fails to enforce mandatory use of an ignition interlock, it can be enforced administratively. Va. Code Ann. §46.2-391.01.</p>
<u>Sobriety Checkpoints:</u> Permitted or Prohibited:	<p>Permitted. <i>Lowe v. Commonwealth</i>, 337 S.E.2d 273 (Va. 1985).</p>
<u>Homicide by Vehicle:</u> State Has Such a Law:	<p>Involuntary Manslaughter (Class 5 Felony); Aggravated Involuntary Manslaughter⁶⁴⁶ (Unclassified Felony). Va. Code Ann. §§18.2-36; 18.2-36.1.</p>
Imprisonment/Fine:	<p>Involuntary Manslaughter – Not less than 1 year or more than 10 years, or not more than 12 months and/or not more than \$2,500; Aggravated Involuntary Manslaughter – Not less than 1 year or more than 20 years. Va. Code Ann. §§18.2-10; 18.2-36.1.</p>
Mandatory Minimum Term/Fine:	<p>Involuntary Manslaughter – None; Aggravated Involuntary Manslaughter – 1 year.</p>
Authorized Licensing Action:	<p>Revocation. Va. Code Ann. §§18.2-36.1(C); 46.2-389; 46.2-391(B)</p>
Length of Term of Licensing Withdrawal:	<p>No term specified.</p>
Mandatory Minimum License Withdrawal:	<p>5 years. Va. Code Ann. §46.2-391(C)(2).</p>
Other:	<p>N/A</p>
<u>DWI Offenses and Commercial Motor Vehicles (CMV):</u>	<p>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 \geq .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 a subsequent violation or a combination of two or more violations of any of the above-listed items, the disqualification is for life (10 years mandatory).</p> <p>It is a Class 3 Misdemeanor to operate a CMV with a BAC \geq .04; the sanction for this offense is a fine of not more than \$500.</p> <p>It is a Class 1 Misdemeanor to operate a CMV with a BAC/BrAC \geq .08 or while under the influence of alcohol or</p>

⁶⁴⁶ Aggravated involuntary manslaughter contains the additional element of conduct that is so gross, wanton and culpable as to show a reckless disregard for human life. Certain additional facts, like driving behavior or criminal history may meet that element. Va. Code Ann. §18.2-36.1(B).

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 for not less than 1 month or more than 1 year and/or a fine of not less than \$200 or more than \$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 for not less than 2 months or more than 1 year and/or a fine of not less than \$500 or more than \$2,500. A 30-day jail sentence is mandatory if the third or subsequent offense occurred within 5 years, and a 10-day jail sentence is mandatory if the third or subsequent offense occurred within 10 but more than 5 years.

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. Va. Code Ann. §§18.2-11; 18.2-271.1(J); 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 to 46.2-341.31.

Driving While License Suspended for DWI

Offense:

Criminal - Fine/Imprisonment:

Suspension for a first offense DUI:

First offense - **Class 1 Misdemeanor**. Not more than **12 months** and/or not more than **\$2,500**;

Third or subsequent (within 10 years) – **Class 6 Felony** - Not less than **1 year** or more than **5 years**, or not more than **12 months** and/or not more than **\$2,500**.

Va. Code Ann. §18.2-272.

Revocation for second or subsequent DUI–

Driving did not endanger life, limb, or property - **Class 1 misdemeanor**. Not more than **12 months** and/or not more than **\$2,500**;

Driving endangered life, limb property – **Class 6 Felony**. Not less than **1 year** or more than **5 years**, or not more than **12 months**;

Va. Code Ann. §46.2-391(D)(2).

Did not endanger life, limb or property: 10 days;

Did endanger life, limb, or property: 12 months.

Va. Code Ann. §46.2-391(D)(2).

Revocation. Va. Code Ann. §§46.2-301; 46.2-391(B); 46.2-394.

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 Minimum Fine/Imprisonment Term:

Administrative Licensing Action Type:

Withdrawal Action:

Mandatory Term of License 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. <u>Second or subsequent offense</u> (within 10 years) – Revocation 3 years . Va. Code Ann. §46.2-301(D).
Other:	N/A
<u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No): Grounds for Being Declared Habitual Offender: Term of License Revocations While on Habitual Offender Status: Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):	No. ⁶⁴⁷ 10 years and until the privilege to drive has been restored by an order of the court. Va. Code Ann. §46.2-356. <u>First offense</u> (if driving <u>did not</u> endanger life, limb or property) – Class 1 misdemeanor ; <u>First offense</u> (if driving <u>did</u> endanger life, limb property) – Felony ; <u>Second or subsequent offense</u> – Felony . Va. Code Ann. §46.2-357.
Mandatory Minimum Term/Fine:	Misdemeanor – Not more than 12 months and/or not more than \$2,500 ; Felony – Not less than 1 year or more than 5 years , or 12 months . Va. Code Ann. §46.2-357.
Licensing Action (Specify):	Misdemeanor – 10 days ; Felony – 1 year/12 months . Va. Code Ann. §46.2-357(B).
Licensing Action (Specify):	None.
<u>Other State Laws Related to Alcohol Use:</u> BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	No
BAC Chemical Test Given to Deceased Driver Killed in Crash:	N/A
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	N/A
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	N/A
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	No
Minimum Age (Years) for Sale/Purchase of Alcohol:	21 . Va. Code Ann. §§4.1-304; 4.1-305.

⁶⁴⁷ The habitual offender law has been repealed. However, those persons who were declared to be habitual offenders prior to the repeal may still be prosecuted for violation of their habitual offender status.

Minimum Age (Years) for Possession/Consumption of Alcohol:

21. A special exemption to minors, for employment reasons, and at the order of a parent. Va. Code Ann. §4.1-305.

Dram Shop and Social Host Laws:

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

"Dram Shop Law" 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:

Social Host – Criminal Enforcement: **No**

Any person age 18 or older who gives a minor alcohol may be found guilty of contributing to the delinquency of a minor, a Class 1 misdemeanor, punishable by not more than 12 months and/or not more than \$2,500. Va. Code Ann. §18.2-371(i).

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Class 1 Misdemeanor. Va. Code Ann. §4.1-304.

Imprisonment/Fine:

Not more than **12 months** and/or not more than **\$2,500**. Va. Code Ann. §18.2-11.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Revocation or suspension.^{648, 649}

Length of Term of License Withdrawal:

Va. Code Ann. §4.1-225(1)(j). Time period is not specified in the statute.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Class 1 Misdemeanor. Va. Code Ann. §4.1-304.

Imprisonment/Fine:

Not more than **12 months** and/or not more than **\$2,500**. Va. Code Ann. §18.2-11.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Revocation or suspension. Va. Code Ann. §4.1-225(1)(j).

Length of Term License Withdrawal:

Time period not specified in the statute.

⁶⁴⁸ In lieu of suspending a license or any portion thereof, a civil penalty may be imposed as follows: First offense – Not more than \$2,500; Subsequent offense – Not more than \$5,000. Va. Code Ann. §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. Va. Code Ann. §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. Va. Code Ann. §4.1-227(C).

⁶⁴⁹ This administrative action is based on ‘reasonable cause to believe’ the licensee sold alcoholic beverages to a minor or an intoxicated person. Va. Code Ann. §4.1-225.

<u>Anti-Happy Hour Laws/Regulations:</u>	Yes. 3VAC 5-50-160. ⁶⁵⁰
<u>Open Container Laws:</u>	
Open Container Law (Yes/No):	Yes. Va. Code Ann. §18.2-323.1(B).
Anti-Consumption Law (Yes/No):	Yes. Va. Code Ann. §18.2-323.1.
<u>Alcohol Exclusion Law (UPPL):</u>	Yes. Va. Code Ann. §38.2-3504(11).

⁶⁵⁰ These regulations do not abolish happy hours; they simply impose limitations.

STATE

General Reference:

WASHINGTON

Revised Code of Washington Annotated (RCWA)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of or affected by intoxicating liquor. RCWA §§46.61.502(1); 46.61.504(1).

Illegal Per Se Law (BAC/BrAC):

≥ .08.⁶⁵¹ RCWA §§46.61.502(1)(a); 46.61.504(1)(a).

Presumption (BAC/BrAC):

Persons Under 21 (≥ .02 but < .08). RCWA §46.61.503.

Types of Drugs/Drugs and Alcohol:

None

Under the influence of or affected by marijuana, any drug or a combination of intoxicating liquor and any drug, or with a THC of 5.00 Ng/ml or higher in the blood within 2 hours after driving. RCWA §§46.61.502(1); 46.61.504(1).

Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

Yes. WAC 448-15-010; 020. (admissible for probable cause)

Implied Consent Law:

Yes. RCWA §46.20.308.

Arrest Required (Yes/No):

Yes. RCWA §46.20.308.

Implied Consent Law Applies to Drugs (Yes/No):

Yes. RCWA §46.20.308(1).

Refusal to Submit to Chemical Test

Yes – Criminal Cases involving breath test.

Admitted into Evidence:

RCWA §§46.20.308(2)(b); 46.61.517.

Other Information:

A law enforcement officer may obtain a person's blood to test for alcohol, marijuana, or any drug, pursuant to a search warrant, a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law.⁶⁵² RCWA §46.20.308(4).Non-Breath Chemical Tests for AlcoholConcentration Authorized Under theImplied Consent Law:

Blood:

Yes – Limited (see “Other Information” above).

Urine:

No

Other:

NoneAdjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No⁶⁵³

Anti-Plea-Bargaining Statute (Yes/No):

No

Pre-Sentencing Investigation Law (PSI)

Yes. RCWA §46.61.5056(2).

⁶⁵¹ Standard: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. RCWA §46.04.015.

⁶⁵² However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court's decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

⁶⁵³ Deferred Prosecution: Washington 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. RCWA §10.05.010, *et seq.* The offender's license is placed on probationary status for 5 years. RCWA §10.05.060. In addition, as a condition for granting deferred prosecution, the court shall order an offender to only operate vehicles that are equipped with ignition interlock devices. RCWA §10.05.140. A deferred prosecution is treated as a prior offense for purposes of sanction enhancement for subsequent offenses. RCWA §10.05.120.

(Yes/No):

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **None**

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **None**

Preliminary Breath Test – Other: **None**

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **Yes.** For breath test refusal, increased sanctions both fines, jail, and ignition interlock. RCWA §46.61.5055.

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):

Note.⁶⁵⁴

First refusal (within 7 years) – **Revocation/Denial 1 year**;
Second or subsequent refusal (within 7 years) –
Revocation/Denial 2 years or until the person reaches age 21, whichever is longer. RCWA §§46.20.308; 46.20.310(1).

Implied Consent Chemical Test - Other:

N/A

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine:

First conviction (within 7 years) – Not less than **1 day (24 consecutive hours)** or more than **364 days** and not less than **\$350** or more than **\$5,000**;

First conviction (BAC ≥ **.15 or refusal**) – Not less than **2 days** (48 consecutive hours) or more than **364 days** and not less than **\$500** or more than **\$5,000**;

Second conviction (within 7 years) – Not less than **30 days** or more than **364 days and 60 days** electronic home monitoring or at least **4 days** in jail or a six-month period of 24/7 sobriety monitoring, and not less than **\$500** or more than **\$5,000**;

Second conviction (BAC ≥ **.15**) – Not less than **45 days** or more than **364 days and 90 days** electronic home monitoring or at least **6 days** in jail or a six-month period of 24/7 sobriety monitoring, and not less than **\$750** or more than **\$5,000**;

Third and fourth convictions (within 7 years) – Not less than **90 days** or more than **364 days and 120 days** electronic home monitoring or at least **8 days** in jail; enrollment in a 24/7 sobriety monitoring is mandatory, and not less than **\$1,000** or more than **\$5,000**;

Third and fourth convictions (BAC ≥ **.15**) – Not less than **120 days** or more than **364 days and 150 days** electronic home monitoring or at least **10 days** in jail; enrollment in a 24/7

⁶⁵⁴ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

sobriety monitoring is mandatory, and not less than **\$1,500** or more than **\$5,000**;

Fifth or subsequent conviction or any prior conviction for vehicular homicide/assault (under DUI prong) within 10 years (Felony DUI- Class C felony) – Not more than **5 years** and/or not more than **\$10,000**.

RCWA §§9.94A.550; 9A.20.021; 46.61.502(5);46.61.504(5); 46.61.5055.

Mandatory Minimum Term/Fine:

Vehicular Assault (causing substantial bodily harm) (Class B felony) – Not more than **10 years** and/or not more than **\$20,000**. RCWA §§9A.20.021; 46.61.522.

Vehicular Assault is a Class B felony, subject to the Sentencing Reform Act. An offender may serve from 1 month to 84 months of actual incarceration depending on his offender score, and the specific prong of Vehicular Assault. There are two prongs: (1) operation of a vehicle with disregard for the safety of others; or (2) being under the influence, or by the operation or driving of a vehicle in a reckless manner.

Community Service:
Child Endangerment:

Possible for any misdemeanor. RCWA §9.94A.680.

First offense – an additional **24 hours** and not less than **\$1,000** or more than **\$5,000**;

Second offense (within 7 years) – an additional **5 days** and not less than **\$2,000** or more than **\$5,000**;

Third or fourth offense (within 7 years) – an additional **10 days** and not less than **\$3,000** or more than **\$10,000**.

RCWA §46.61.5055(6).

Restitution:

Direct compensation to a victim, and payment via a crime victims' compensation fund. RCWA §§7.68.020, *et seq.*; 9.94A.505; 9.94A.750.

Other:

Penalty Assessment: A defendant who is convicted of a drunk-driving offense 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. RCWA §7.68.035(1)(a), (b), (2).

Laboratory Assessment Fee: An offender is assessed a \$200 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. RCWA §46.61.5054(1)(a).

Safety and Education Assessment: A defendant must pay an assessment equal to 70 percent of the fine imposed for the purpose of funding safety and education programs. Additionally, an assessment equal to 50 percent of the assessment for public safety and education programs shall be assessed.
RCWA §3.62.090.

Emergency Costs Recovery: A defendant may be ordered to pay for the costs of emergency services, up to \$2,500. RCWA §§38.52.430; 9.94A.030

Administrative Sanctions – Pre-Conviction:
Administrative Per Se Law:

≥ **.08**.
First violation – **Suspension 90 days**;
Second or subsequent violation (within 7 years) –
Revocation or denial 2 years. RCWA § 46.20.3101.

Administrative Sanctions – Post-Conviction:
Type of Licensing Action (Susp/Rev):
Term of Withdrawal:

Suspension/Revocation
BAC < .15:
First conviction (within 7 years) – **Suspension 90 days**;
Second conviction (within 7 years) – **Revocation 2 years**;
Third or subsequent conviction (within 7 years) –
Revocation 3 years.

BAC ≥ .15:
First conviction (within 7 years) – **Revocation 1 year**;
Second conviction (within 7 years) – **Revocation 900 days**;
Third or subsequent conviction (within 7 years) –
Revocation 4 years. RCWA §46.61.5055(9).

Mandatory Minimum Term of Revocation:

Vehicular Assault – **Revocation 1 year**. RCWA §46.20.285.
Those convicted of Driving Under the Influence or Physical Control of a Vehicle Under the Influence, or who have had or will have his or her license suspended, revoked or denied under RCWA § 46.20.3101, may apply for an Ignition Interlock Driver’s License. RCWA §46.20.385.

Alcohol Education:
Substance Abuse Treatment:

Yes – for all offenses. RCWA §46.61.5056.
Yes – for all offenses. RCWA §46.61.5056.
A court-ordered assessment will determine whether an offender will be required to attend an alcohol education course or treatment. RCWA §46.61.5056.

Vehicle Impoundment/Confiscation:

Summary Impoundment
Seizure/Forfeiture

Authorized by Specific Statutory Authority:

Summary Impoundment: If arrested for DUI, vehicular homicide or vehicular assault or while found to be a habitual offender ordered not to drive, 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).

Terms Upon Which Vehicle Will Be Released:

Seizure/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. RCWA §46.61.5058. With regard to seizure/forfeiture, if a person has a claim of ownership within 45 days of the seizure, such person shall have a reasonable opportunity to be heard as to the claim or right. RCWA §46.61.5058(6).

Other Miscellaneous Sanctions:

Mandatory Probation: For any DUI offense, if the court imposes < 1 year in jail, it shall suspend but not defer a period of confinement not exceeding 5 years and place offenders on probation with the following minimum conditions: (1) they cannot operate a vehicle unless they have valid licenses; (2) maintain proof of financial responsibility; (3) they cannot operate a motor vehicle with BAC/BrAC \geq **.08**; (4) they must submit to implied consent tests; and (5) must have ignition interlock. If an offender violates any of these conditions, the offender is subject to a mandatory 30-day jail term and a license suspension for 30 days. RCWA §46.61.5055(11)(a), (b).

Probationary License: After the suspension or revocation period, DWI offenders' driving privileges or must be placed on probationary status for 5 years. RCWA §46.20.355(2).

Special Education Program: A person convicted of a DUI offense may be required to attend an educational program that focuses on the emotional, physical and financial suffering of DUI victims. RCWA §46.61.5152.

Ignition Interlock:

Permitted or Prohibited:

Type of Law (Mandatory or Permissive):

Sanction (Judicial, Administrative or Hybrid)

Conditions of Use:

Permitted. RCWA §46.20.720(2), (3).

Both

Hybrid

Mandatory: The department shall require the use of an ignition interlock device after any applicable period of suspension or revocation for the following periods:

First offense – 1 year;

Second offense – 5 years;

Third or subsequent offense – 10 years.

Additionally, the court shall order any person participating in a deferred disposition program (RCWA §10.05.020) to have an ignition interlock installed. RCWA §46.20.720(2), (3)(c).

For (1) a first offense (BAC \geq **.15** or a refusal to submit to a chemical test); (2) any subsequent drunk-driving offense (within 7 years); (3) an offense following a previous deferred alcohol offense prosecution; or (4) a child under 16 was in the vehicle, the court, after the license suspension or revocation period, must require such offender to operate only motor vehicles that are equipped with an ignition interlock device for the following periods:

First offense – 1 year;

Second offense – 5 years;

Third or subsequent offense – 10 years.

If a child < 16 was a passenger in the vehicle, ignition interlock shall be ordered for an additional 6 months.

RCWA § 46.61.5055(6).

Other Provisions:

Permissive: For a first offense (BAC < .15) the court may require an offender to only operate motor vehicles equipped with ignition interlock devices. This requirement may last for as long as the court has jurisdiction. RCWA §46.20.720(1). In any county or city where a 24/7 sobriety program is available, the court shall order the person to install and use an ignition interlock device; order the person to a period of 24/7 sobriety program; or order both ignition interlock and 24/7 sobriety program. RCWA §46.61.5055(5)(c).

Sobriety Checkpoints:

Permitted or Prohibited:

Prohibited. *City of Seattle v. Mesiani*, 755 P.2d 775 (Wash. 1988).

Homicide by Vehicle:

State Has Such a Law:

Vehicular Homicide.⁶⁵⁵ RCWA §46.61.520.

Imprisonment/Fine:

Class A felony:

Life Imprisonment⁶⁵⁶ and/or not more than **\$50,000.**

RCWA §9A.20.021(1)(a).

Mandatory Minimum Term/Fine:

The sentencing guidelines require a period of incarceration.

Authorized Licensing Action:

Revocation. RCWA §46.20.285.

Length of Term of Licensing Withdrawal:

2 years. RCWA §46.20.285.

Mandatory Minimum License Withdrawal:

2 years. Ignition Interlock License is available.

RCWA §46.20.385(1)(a).

Other:

EMS Cost: A defendant is liable for up to \$2,500 of the cost of an emergency response related to a DWI vehicle homicide offense. RCWA §38.52.430.

DWI Offenses and Commercial Motor Vehicles (CMV):

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 a subsequent violation or 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

⁶⁵⁵ 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. See *State v. Rivas*, 896 P.2d 57 (Wash. 1995).

⁶⁵⁶ Courts use sentencing guidelines. While the statutory sentence is up to life imprisonment, an offender may serve 31-177 months of actual incarceration, depending on his criminal history. RCWA §§9.94A.510; 9.94A.515; 9.94A.520.

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. RCWA §§9.92.020; 46.25.010(2), (6), (8), (15); 46.25.090; 46.25.110; 46.25.120; 46.25.170.

Driving While License Suspended for DWI

Offense:

Criminal - Fine/Imprisonment:

Gross Misdemeanor. Not more than **364 days** and/or not more than **\$5,000**. RCWA §§9.92.020; 9A.20.021; 46.20.342(1).

Mandatory Minimum Fine/Imprisonment Term:

None

Administrative Licensing Action Type:

Suspension or Revocation. RCWA §46.20.342(2).

Withdrawal Action:

An additional suspension/revocation period of **1 year**. RCWA §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. RCWA §46.20.342(2)(c).

Other:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. RCWA §46.65.020.

Grounds for Being Declared 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 365 days immediately preceding the last conviction. RCWA §46.65.020(2).

Term of License Revocations While on Habitual Offender Status:

7 years.⁶⁵⁷ But there is a special stay of revocation if based on DUI offenses and the offender is attending an alcohol treatment program. In addition, after 4 years a license may be issued upon good and sufficient showing. RCWA §§46.65.060; 46.65.070; 46.65.080.

Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):

Gross Misdemeanor. RCWA §46.20.342(1)(a).
First offense – Not less than **10 days** or more than **364 days** and/or not more than **\$5,000**;
Second offense – Not less than **90 days** or more than **364 days** and/or not more than **\$5,000**;
Third or subsequent offense – Not less than **180 days** or more than **364 days** and/or not more than **\$5,000**.
 RCWA §§9.92.020; 9A.20.021; 46.20.342(1)(a).

Mandatory Minimum Term/Fine: Licensing Action (Specify):

The terms above are mandatory. The original revocation for being a habitual violator is extended for an additional period of 1 year. The court may recommend against this extension. RCWA §46.20.342(2).

Other State Laws Related to Alcohol Use:

⁶⁵⁷ After this 7-year period, the revocation remains in effect until the offender petitions and receives a new license from the State licensing agency. RCWA §46.65.100.

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes. RCWA §46.52.065.
BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	No
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	Yes
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	Yes. RCWA §46.20.308(4).
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. RCWA §§66.44.270(1); 66.44.290.
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. Exemptions for minors who have been served alcoholic beverages by their parents or guardians in the home, for medical reasons, for religious services, and for students under 21 with a special permit. RCWA §66.44.270(2), (6).
<u>Dram Shop and Social Host Laws:</u> State Has a Dram Shop Law (Yes/No):	Yes – minors only. RCWA §66.44.200; see <i>Estate of Kelly By and Through Kelly v. Falin</i> , 896 P.2d 1245 (Wash. 1995). <i>Purchase v. Meyer</i> , 737 P.2d 661 (Wash. 1987).
"Dram Shop Law" 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 – minors only. RCWA §66.44.270 (1); <i>Reynolds v. Hicks</i> , 951 P.2d 761 (Wash. 1998).
Social Host – Criminal Enforcement:	Any person who sells or gives alcohol to a minor may be found guilty of a gross misdemeanor, punishable by not more than 364 days and/or not more than \$5,000. RCWA §§9A.20.021(2); 66.44.270(1).
<u>Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u> Type of Criminal Action: Imprisonment/Fine:	Infraction. RCWA §66.44.200. Not more than \$500. RCWA §66.44.200(2)(b).
<u>Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u> License to Serve Alcoholic Beverages Withdrawn (Yes/No): Length of Term of License Withdrawal:	Yes – Suspension/Cancellation/Revocation. RCWA §§66.20.070; 66.24.010; 66.44.200. Not specified in the statute. A suspension may be vacated upon payment of a penalty in an amount fixed by the board. RCWA §§66.24.010; 66.24.120.
<u>Criminal Actions Regarding Establishments</u>	

that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:
Imprisonment/Fine:

Gross Misdemeanor. RCWA §66.44.270(1).
Not more than **34 days** and/or not more than **\$5,000**.
RCWA §9A.20.021(2).

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

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

Yes – Suspension/Cancellation/Revocation.
RCWA §§66.20.070; 66.24.010; 66.24.120.
Not specified in the statute. A suspension may be vacated upon payment of a penalty in an amount fixed by the board.
RCWA §§66.24.010; 66.24.120.

Anti-Happy Hour Laws/Regulations:

No

Open Container Laws:

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

Yes. RCWA §46.61.519(2).
Yes. RCWA §46.61.519(1).

Alcohol Exclusion Law (UPPL):

No. RCWA §48.20.272 was repealed in 2004.

STATE

General Reference:

WEST VIRGINIA

West Virginia Code (W. Va. Code)

West Virginia Rules of Criminal Procedure (W. Va. R.Crim.P.)

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Under the influence of alcohol. W. Va. Code §17C-5-2.
≥ **.08**.⁶⁵⁸ W. Va. Code §17C-5-2(a)(1)(E).Persons Under 21 (≥ **.02** but < **.08**).

W. Va. Code §17C-5-2(j).

Presumption (BAC/BrAC):

None

Types of Drugs/Drugs and Alcohol:

Under the influence of any drug, controlled substance or a combination of alcohol and any other controlled substance or any other drug. W. Va. Code §17C-5-2.

Other:

An alcohol concentration ≥ .08 is *prima facie* evidence of driving under the influence of alcohol.

W. Va. Code §17C-5-8(b)(3).

An alcohol concentration > .05 but < .08 is relevant evidence of driving while under the influence of alcohol.

W. Va. Code §17C-5-8(b)(2).

Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

Yes. W. Va. Code §§17C-5-4(b); 17C-5-5.

Implied Consent Law:

Yes. W. Va. Code §17C-5-4.

Arrest Required (Yes/No):

Yes. W. Va. Code §17C-5-4.

Implied Consent Law Applies to Drugs (Yes/No):

Yes. W. Va. Code §17C-5-4(a).

Refusal to Submit to Chemical Test

Yes – Criminal Cases. *State v. Cozart*, 352 S.E.2d 152

Admitted into Evidence:

(W.Va. 1986)(abrogated on other grounds).

Non-Breath Chemical Tests for AlcoholConcentration Authorized Under theImplied Consent Law:

Blood:

Yes. W. Va. Code §17C-5-4.

Urine:

No

Other:

NoneAdjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea-Bargaining Statute (Yes/No):

No

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

Yes – generally a pre-sentence investigation report will be completed unless a defendant waives or the court finds information from within the court record that enables it to meaningfully exercise its sentencing authority. W. Va. R.Crim.P., Rule 32; see *State v. Bruffey*, 531 S.E.2d 332

⁶⁵⁸ Standard: "Percent by weight" of alcohol in the blood. W. Va. Code. §§17C-5-2; 17C-5-8. 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, and (3) grams of alcohol per 86 milliliters of serum. W. Va. Code §17C-5-8.

(W. Va. 2000).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **None**

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev): **None**
 Preliminary Breath Test – Other:

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev): **First Refusal – Revocation 1 year or 45 days plus 1-year ignition interlock;**

Second refusal – Revocation 10 years (5 years mand) plus 1year ignition interlock;

Third or subsequent refusal – Revocation life.

W. Va. Code §17C-5-7(a).

Implied Consent Chemical Test - Other:

Under W. Va. Code §17C-5-6a(c), a child 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.

Revocation shall run concurrently with the period of suspension/revocation imposed under other provisions of law and growing out of the same incident that gave rise for the arrest. W. Va. Code §17C-5-7(a).

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine:

DUI:

First offense (misdemeanor) (BAC ≥ .08) – Up to 6 months and not less than \$100 or more than \$500;

First offense (BAC ≥ .15) – Not less than 2 days or more than 6 months and not less than \$200 or more than \$1,000;

Second offense (within 10 years) (misdemeanor) – Not less than 6 months or more than 1 year and a fine of not less than \$1,000 or more than \$3,000 may be imposed;

Third or subsequent offense (within 10 years) (felony)– Not less than 2 years or more than 5 years and a fine of not less than \$3,000 or more than \$5,000 may be imposed.

W. Va. Code §17C-5-2(e), (f), (l), (m), (n)(1).

DUI – Bodily injury (misdemeanor) – Not less than 1 day or more than 1 year and not less than \$200 or more than \$1,000.

DUI – Serious Bodily Injury (felony) – not less than 2 years nor more than 10 years and a fine not less than \$1,000 or more than \$3,000. W. Va. Code §17C-5-2(c), (d).

Persons Under 21:⁶⁵⁹

First offense – Not less than **\$25** or more than **\$100**;

Second or subsequent offense – Not less than **24 hours** and not less than **\$100** or more than **\$500**. W. Va. Code §17C-5-2(j).

Mandatory Minimum Term/Fine:

DUI:

First offense (BAC ≥ .15) – **24 hours/\$200**.

DUI with Child < 16 – 48 hours/\$200:

The sentences provided are mandatory and may not be suspended. However, an offender may apply for an alternative program (i.e., weekends, work release, day reporting), or electronic home monitoring. W. Va. Code §§62-11A-1a; 62-11B-1, *et seq.*

Community Service:

In lieu of a fine or incarceration sanction (except mandatory incarceration via statute), a court may impose community service with government entities, or charitable or other nonprofit organizations that have been approved by the court. W. Va. Code §62-11A-1a(a), (c)(1).

Child Endangerment:

A person who commits DUI with a passenger under age 16 shall be punished by a sentence of not less than **2 days** or more than **12 months** and not less than **\$200** or more than **\$1,000**. W. Va. Code §17C-5-2(k).

Restitution:

Victims' Compensation Fund. W. Va. Code §14-2A-1, *et seq.* Direct compensation by the defendant to the victim via court order is also possible. W. Va. Code §14-2A-3(b)(1).

Other:

Assessments: A fee of 20 percent of the fine imposed is assessed against each DUI offender. Additionally, sum of \$10 and \$8 are to be paid as costs in the case in addition to any other costs. Felony offenders are also assessed a fee of \$75. These assessments are deposited into the Crime Victims Compensation Fund. W. Va. Code §§14-2A-4; 62-5-10.

Deferred Proceedings: Any person who has not been previously convicted of any DUI-related offense may request a deferral upon pleading guilty. Such person must successfully complete the Motor Vehicle Alcohol Test and Lock Program for at least 165 days after serving the 15-day license suspension. After a period of not less than one year after successful completion, such person may apply for expungement of records (except if the charge was a felony). W. Va. Code §17C-5-2b.

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

≥ **.08 but < .15:**

First action – **Revocation 6 months or revocation 15 days**

⁶⁵⁹ A person under age 21 and charged with a first offense of DUI may move to continue the proceedings on the conditions that he/she participate in the Motor Vehicle Alcohol Test and Lock Program (ignition interlock). Upon successful completion, the charge shall be dismissed by the court and the person's record expunged. W. Va. Code §§17C-5-2(i); 17C-5a-3a.

plus 120 days ignition interlock;
Second action (within 10 years) – **Revocation 10 years**;
Third or subsequent action (within 10 years) – **Revocation life**.

≥ .15:
First action – **Revocation 45 days plus 275 days** ignition interlock;
Second action (within 10 years) – **Revocation 10 years**;
Third or subsequent action (within 10 years) – **Revocation life**.

DUI – Bodily Injury (includes person < 21):
First action – **Revocation 2 years**;
Second action (within 10 years) – **Revocation 10 years**;
Third or subsequent action (within 10 years) – **Revocation life**.

Persons Under 21:
First action – **Suspension 60 days**;
Subsequent action (within 10 years) – **Revocation 1 year** or until age 21, whichever is longer.

DUI with Child < 16:
First action – **Revocation 1 year**;
Second action (within 10 years) – **Revocation 10 years**;
Third or subsequent action (within 10 years) – **Revocation life**. W. Va. Code §17C-5A-2.

Administrative Sanctions – Post- Conviction:

Type of Licensing Action (Susp/Rev):

Term of Withdrawal:

Mandatory Minimum Term of Revocation:

Alcohol Education:

Substance Abuse Treatment:

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority:

Terms Upon Which Vehicle Will Be

Released:

Other Miscellaneous Sanctions:

Ignition Interlock:

Permitted or Prohibited:

Suspension (persons < 21); **Revocation** (all others).

The licensing sanctions are the same as for an admin per se violation, above. W. Va. Code §17C-5A-1a.

Yes.⁶⁶⁰ After the period of mandatory revocation has elapsed and 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. W. Va. Code §17C-5A-3.

Yes.

N/A

Permitted.

⁶⁶⁰ 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. W. Va. Code §17C-5A-3.

Type of Law (Mandatory or Permissive):	Both.
Sanction (Judicial, Administrative or Hybrid)	Administrative.
Conditions of Use:	<p>Mandatory: <u>First admin per se violation/DUI offense: 125 days;</u> <u>First violation – BAC ≥ .15: 275 days;</u> <u>First refusal: 1 year;</u> <u>First violation with minor < age 16: 10 months;</u> <u>First violation < age 21: 1 year;</u> <u>First violation bodily injury: 2 years;</u></p> <p><u>Second admin per se violation/DUI offense: 2 years;</u> <u>Second or subsequent refusal: 2 years;</u> <u>Second violation with minor < 16: an additional 2 months to the minimum period;</u> <u>Second violation bodily injury: an additional 6 months to the minimum period;</u> <u>Subsequent admin per se violation/DUI offense: an additional 1 year to the minimum period.</u></p> <p>Permissive: The driver licensing agency may reduce the mandatory and regular revocation periods of certain implied consent, admin per se and DUI law offenders if they agree to operate motor vehicles equipped with ignition interlock devices. W. Va. Code §17C-5A-3a. A person is not eligible for this program if involved in death-related violations.</p>
Other Provisions:	
<u>Sobriety Checkpoints:</u>	
Permitted or Prohibited:	Permitted. <i>Carte v. Cline</i> , 460 S.E.2d 48 (W.Va. 1995).
<u>Homicide by Vehicle:</u>	
State Has Such a Law:	DUI Death – Reckless Disregard ⁶⁶¹ (felony). DUI Death (felony). W. Va. Code §17C-5-2(b). Felony – Not less than 3 years or more than 15 years and not less than \$1,000 or more than \$3,000 ; W. Va. Code §17C-5-2(b). The base terms are mandatory. W. Va. Code §17C-5-2(r).
Imprisonment/Fine:	Revocation. W. Va. Code §§17B-3-5; 17C-5A-2. Felony with reckless disregard (includes < 21): <u>First action – 10 years;</u> <u>Subsequent action – life.</u>
Mandatory Minimum Term/Fine:	Felony without reckless disregard: <u>First action – 5 years;</u> <u>Subsequent action – life.</u> W. Va. Code §17C-5A-2(g), (h).
Authorized Licensing Action:	
Length of Term of Licensing Withdrawal:	
Mandatory Minimum License Withdrawal:	The terms appear to be mandatory.

⁶⁶¹ Any person whose driving under the influence is the proximate cause of death within 1 year, and commits the act in reckless disregard of the safety of others, commits a felony. It must be shown that the alcohol consumption contributed to the cause of death. W. Va. Code §17C-5-2(a). The misdemeanor does not contain the added element of reckless disregard.

Other:

DWI Offenses and Commercial Motor Vehicles (CMV):

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 $\geq .04$; (2) are under the influence of either alcohol or a controlled substance; or (3) refuse to submit to a chemical test for an alcohol concentration.

For a subsequent violation or 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 refuses to take a PBT or has any measurable (or detectable) amount of alcohol in the system must be placed out-of-service for 24 hours.
W. Va. Code §§17E-1-3; 17E-1-13; 17E-1-14; 17E-1-15; 17E-1-25.

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

First conviction (misdemeanor) – Not less than **30 days** or more than **6 months** and not less than **\$100** or more than **\$500**;
Second conviction (misdemeanor) – Not less than **6 months** or more than **1 year** and not less than **\$1,000** or more than **\$3,000**;
Third or subsequent conviction (felony) – Not less than **1 year** or more than **3 years** and not less than **\$3,000** or more than **\$5,000**.

Persons Under 21 – Not less than **24 hours** and/or not less than **\$50** or more than **\$500**.

W. Va. Code § 17B-4-3(b), (d).

The base terms are mandatory. However, home detention may be ordered. W. Va. Code §17B-4-3(e).

Suspension/Revocation

An additional **6 months**.⁶⁶² W. Va. Code §17B-4-3(c).

This is mandatory.

Mandatory Minimum Fine/Imprisonment Term:

Administrative Licensing Action Type:

Withdrawal Action:

Mandatory Term of License Withdrawal Action:

Other:

N/A

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No.⁶⁶³

Other State Laws Related to Alcohol Use:

⁶⁶² This may be served concurrently with any other suspension or revocation.

⁶⁶³ However, a person who is a habitual user of narcotic drugs or amphetamine and who drives is guilty of a misdemeanor, punishable by not less than 1 day or more than 6 months (24 hours mand) and not less than \$100 or more than \$500. W. Va. Code §17C-5-2(f).

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes. W. Va. Code §17C-5B-1.
BAC Chemical Test Given to Deceased Driver Killed in Crash:	Yes.
BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	No.
BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:	Yes – Adult pedestrians.
BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:	No.
Minimum Age (Years) for Sale/Purchase of Alcohol:	21. W. Va. Code §§11-16-18(a)(3); 11-16-19(a); 60-3-22(a).
Minimum Age (Years) for Possession/Consumption of Alcohol:	21. W. Va. Code §§11-16-19(a); 60-3A-24(a); 60-8-20a(a).
<u>Dram Shop and Social Host Laws:</u>	
State Has a Dram Shop Law (Yes/No):	Yes. W. Va. Code §55-7-9.
"Dram Shop Law" Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	Yes. <i>Bailey v. Black</i> , 394 S.E.2d 58 (W.Va. 1990).
Dram Shop Actions – Social Hosts:	No. <i>Overbaugh v. McCutcheon</i> , 396 S.E.2d 153 (W.Va. 1990).
Social Host – Criminal Enforcement:	Any person who knowingly buys for, gives to or furnishes to anyone under the age of twenty-one to whom they are not related by blood or marriage, any alcoholic liquors from whatever source, is guilty of a misdemeanor, punishable by not more than 10 days and/or not more than \$100. W. Va. Code §60-3-22a(b). Anyone who knowingly buys for, gives to or furnishes non-intoxicating beer to anyone under age 21 to whom they are not related by marriage or blood shall be guilty of a misdemeanor, punishable by not more than 10 days and/or not more than \$100. W. Va. Code §11-16-19(c). Anyone who knowingly buys for, gives to or furnishes wine to anyone under age 21 to whom they are not related by marriage or blood shall be guilty of a misdemeanor, punishable by not more than 10 days and/or not more than \$100. W. Va. Code §60-8-20a(c).
<u>Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:</u>	
Type of Criminal Action:	Misdemeanor
Imprisonment/Fine:	<u>Alcoholic Liquor</u> – Not less than 30 days or more than 1 year and/or not less than \$100 or more than \$5,000.

W. Va. Code §60-3A-25(a)(2).

Non-intoxicating Beer – Not less than **30 days** or more than **6 months** and/or not less than **\$25** or more than **\$500**.

W. Va. Code §11-16-18.

Wines – Not less than **30 days** or more than **6 months** and/or not less than **\$100** or more than **\$1,000**. W. Va. Code §§60-8-20; 60-8-25.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:
License to Serve Alcoholic Beverages
Withdrawn (Yes/No):

Yes.

Alcoholic Liquor – **Suspension** or **revocation**

W. Va. Code §60-3A-27.

Non-intoxicating Beer – **Suspension/revocation/probation/penalty** W. Va. Code §11-16-23.

Wines – **Suspension/revocation/probation/penalty**

W. Va. Code §60-8-18.

Length of Term of License Withdrawal:

Alcoholic Liquor - **Suspension** or **revocation** for not more than **20 days**. W. Va. Code §60-3A-27.

Non-intoxicating Beer – **Suspension** or **revocation** (time period not specified); **Probation** not more than **12 months**; or **Penalty** not more than **\$1,000** (for each violation where revocation is not imposed). W. Va. Code §11-16-23.

Wines – **Revocation; Suspension** for not more than **12 months; Probation** not more than **12 months**; or **Penalty** not more than **\$1,000** (for each violation where revocation is not imposed). W. Va. Code §60-8-18.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:
Imprisonment/Fine:

Misdemeanor.

Alcoholic Liquor – Not less than **30 days** or more than **1 year** and/or not less than **\$100** or more than **\$5,000**. W. Va. Code §60-3A-25(a)(3).

Non-intoxicating Beer – Not less than **30 days** or more than **6 months** and/or not less than **\$25** or more than **\$500**. W. Va. Code §11-16-18.

Wines – Not less than **30 days** or more than **6 months** and/or not less than **\$100** or more than **\$1,000**. W. Va. Code §§60-8-20; 60-8-25.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:
License to Serve Alcoholic Beverages
Withdrawn (Yes/No):

Yes.

Alcoholic Liquor – **Suspension** or **revocation**

W. Va. Code §60-3A-27.

Non-intoxicating Beer – **Suspension/revocation/probation/penalty**. W. Va. Code §11-16-23.

Length of Term License Withdrawal:	<p><u>Wines</u> - Suspension/revocation/probation/penalty. W. Va. Code §60-8-18. <u>Alcoholic Liquor</u>: Suspension or revocation for not more than 20 days. W. Va. Code §60-3A-27. <u>Non-intoxicating Beer</u> – Suspension or revocation (time period not specified); Probation not more than 12 months; or Penalty not more than \$1,000 (for each violation where revocation is not imposed). W. Va. Code §11-16-23. <u>Wines</u> – Revocation; Suspension for not more than 12 months; Probation not more than 12 months; or Penalty not more than \$1,000 (for each violation where revocation is not imposed). W. Va. Code §60-8-18.</p>
<u>Anti-Happy Hour Laws/Regulations</u> :	No.
<u>Open Container Laws</u> :	
Open Container Law (Yes/No):	Yes. W. Va. Code §60-6-9(a)(3).
Anti-Consumption Law (Yes/No):	Yes. W. Va. Code §60-6-9(a)(3).
<u>Alcohol Exclusion Law (UPPL)</u> :	Yes. W. Va. Code §33-15-5(j).

STATE

WISCONSIN

General Reference:

Wisconsin Statutes Annotated (W.S.A.)

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Under the influence of an intoxicant W.S.A. §346.63(1)(a).
Note.⁶⁶⁴

≥ **.08** (2 or fewer prior convictions, suspensions or
revocations);

≥ **.02** (3 or more prior convictions, suspensions or
revocations). W.S.A. §340.01(46m)(a), (c).

Presumption (BAC/BrAC):

Persons Under 21 (> .00 but < .08). W.S.A. §346.63(2m).

Types of Drugs/Drugs and Alcohol:

None

Under the influence of an intoxicant, a controlled substance,
a controlled substance analog or any combination of an
intoxicant, a controlled substance and a controlled substance
analog, under the influence of any drug to a degree which
renders him or her incapable of safely driving, or under the
combined influence of an intoxicant and any other drug
which renders him/her incapable of safely driving. W.S.A.
§346.63(1)(a).

A detectable amount of a restricted controlled substance in
his or her blood. W.S.A. §346.63(1)(am).

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:

Yes. W.S.A. §343.303.

Implied Consent Law

Yes⁶⁶⁵. W.S.A. §343.305.

Arrest Required (Yes/No):

Yes. W.S.A. §343.305(3). Except in fatal crashes. W.S.A.
§343.305(3)(ar).

Implied Consent Law Applies to Drugs
(Yes/No):

Yes. W.S.A. §343.305(2).

Refusal to Submit to Chemical Test
Admitted into Evidence:

Yes – Criminal cases. *State v. Albright*, 298 N.W.2d 196
(Wis. App. 1980).

Non-Breath Chemical Tests for Alcohol

Concentration Authorized Under the

Implied Consent Law:

Blood:

Yes. W.S.A. §343.305(2).

Urine:

Yes. W.S.A. §343.305(2).

Other:

None.

⁶⁶⁴ Alcohol concentration means the number of grams of alcohol per 100 ml of a person's blood, or the number of grams of alcohol per 210 liters of the person's breath. W.S.A. §340.01(1v).

⁶⁶⁵ Under W.S.A. §343.305 a law enforcement officer may obtain a sample under "any other lawful means." However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court's decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

Adjudication of DWI Charges:

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

No.

No. However, the court must approve dismissals of or amendments to DWI charges. Additionally, a prosecutor may not place a person charged with DWI in a deferred disposition program. W.S.A. §967.055(2), (3).

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

Yes. In felony cases, the court may order a pre-sentence investigation. W.S.A. §972.15.

Sanctions for Refusal to Submit to a Chemical Test:

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

None.

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev):

None.

Preliminary Breath Test – Other:

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

None.

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev):

First refusal – **Revocation 1 year** (mand 30 days);
Second refusal (within 10 years) – **Revocation 2 years** (mand 90 days);
Third or subsequent refusal – **Revocation 3 years** (mand 120 days or 1 year if 2 or more priors within 5 years).
 W.S.A. §§343.10; 343.305(9), (10).

Refusal While Transporting a Minor (< 16) – Minimum and maximum license revocation periods are doubled.
 W.S.A. §343.305(10)(b)(4m).

Persons Under 21 – Revocation 6 months (mand 15 days), or **12 months** if driver was transporting a minor < 16.
 W.S.A. §343.305(10)(em).

Implied Consent Chemical Test - Other:

N/A

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine:

DWI:

First conviction – Not less than **\$150** or more than **\$300**;
Second conviction (within 10 years) – Not less than **5 days** or more than **6 months** and not less than **\$350** or more than **\$1,100**;

Third conviction – Not less than **45 days** or more than **1 year** and not less than **\$600** or more than **\$2,000**;

Fourth conviction – Not less than **60 days** or more than **1 year** and not less than **\$600** or more than **\$2,000**;

Fourth conviction (within 5 years) (Class H felony) – Not less than **6 months** or more than **6 years** and not less than **\$600** or more than **\$10,000**.

Fifth and sixth convictions (Class H felony) – Not less than **6**

months or more than **6 years** and not less than **\$600** or more than **\$10,000**;

Seventh through ninth convictions (Class G felony) – Not less than **3 years** or more than **10 years** and/or not more than **\$25,000**;

Tenth or subsequent conviction (Class F felony) – Not less than **4 years** or more than **12 years, 6 months** and/or not more than **\$25,000**.

DWI – Great bodily harm (Class F felony): Not more than **12 years, 6 months** and/or not more than **\$25,000**.

DWI – Bodily harm – Not less than **\$300** or more than **\$2,000** and may be imprisoned for not less than **30 days** or more than **1 year**. If the offender has a prior conviction, then it is a Class H felony and punishable up to **6 years** or a fine not exceeding **\$10,000**. W.S.A. §346.65(3m), (3p).

BAC – Depending on the BAC, the applicable minimum and maximum fines, forfeitures and imprisonment are:
 .17 - .199 = **doubled**; .20 - .249 = **tripled**; ≥ .25 = **quadrupled**. W.S.A. §§346.63(1), (2); 346.65(2), (3), (3m), (7); 939.50; 940.25.

Mandatory Minimum Term/Fine:

DWI:

First conviction– **None**, or **5 days** if minor < 16 present;
Second conviction – **5 days** (48 consecutive hours mand) or not less than **30 days** community service/**\$350**;

Third conviction – **45 days** (48 consecutive hours mand)/**\$600**;

Fourth conviction – **60 days** (48 consecutive hours mand);

Fourth conviction (within 5 years) – **6 months** and **\$600**;

Fifth and sixth convictions (Class H felony) – **6 months** (48 consecutive hours mand)/**\$600**;

Seventh through ninth convictions (Class G felony) – **3 years**;

Tenth or subsequent conviction (Class F felony) – **4 years**.

DWI – Great bodily harm (Class F felony) – **None**

DWI – Bodily harm – **\$300**. W.S.A. §346.65(3m).

Yes. W.S.A. § 346.65(2g).

Community Service:

Child Endangerment:

DWI with Minor < 16 (felony) – A person who drives under the influence with a minor under age 16 in the vehicle commits a felony. The applicable minimum and maximum fines, forfeitures and imprisonment are **doubled**.

W.S.A. §346.65(2)(f), (3).

Restitution:

Yes. Direct compensation by the defendant to a victim for some types of pecuniary losses. W.S.A. §346.65(2r)(a). In addition, the State has a victims' compensation fund.

W.S.A. §§949.001, *et seq.*; 973.20.

Other:

Surcharges: Persons convicted of a DWI offense must pay a

driver improvement surcharge of **\$435**, in addition to any other fine, forfeiture or assessment that may be imposed, unless BAC < .08. W.S.A. §346.655(1).

In addition, under W.S.A. §814.60, a defendant must pay \$163 to the clerk of court for all necessary filing, entering or recording. Additionally, under W.S.A. §973.045, a defendant must pay a crime victim and witness assistance surcharge of \$67 for a misdemeanor conviction and \$92 for a felony conviction.

Traffic Safety School: A defendant may be required to attend a "traffic safety school". W.S.A. §345.60(3).

Visitation Program: Offenders who have been convicted of an injury-related DWI offense under W.S.A. §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 DWI-related injuries. This requirement may be in lieu of all or part of a forfeiture or in addition to any other sanction. W.S.A. §346.65(2i).

Costs: An offender may be required to pay the costs associated with arrest and trial. Such "costs" may also include payments to non-profit crime prevention and law enforcement organizations. W.S.A. §973.06(1).

Administrative Sanctions – Pre-Conviction:

Administrative Per Se Law:

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" of $\geq .08$ = **Suspension 6 months**;⁶⁶⁶

If the person has had three or more previous DWI offense convictions or refusals, the administrative action is based on a "prohibited alcohol concentration" of $\geq .02$ = **Suspension 6 months**. W.S.A. §§340.01(46m); 343.305(7), (8).

Administrative Sanctions – Post-Conviction:

Type of Licensing Action (Susp/Rev):

Term of Withdrawal:

Suspension/Revocation

DWI:

First offense – **Revocation** not less than **6 months** or more than **9 months**;

Second offense (within 10 years) – **Revocation** not less than **1 year** or more than **18 months**;

Subsequent offense – **Revocation** not less than **2 years** or more than **3 years**. W.S.A. §343.30(1q)(b).

⁶⁶⁶ A restricted occupational license is available through the courts at any time. W.S.A. §§343.10(4); 343.30(1q)(b)(2); 343.305(8)(d). However, a person is not eligible for an occupational license if his/her license has been suspended or revoked for another offense within 1 year. W.S.A. §343.10(2)(a)(1).

	<p>DWI – Great bodily harm = Revocation 2 years. W.S.A. §343.31(3)(f).</p> <p>DWI – Bodily harm = Revocation not less than 1 year or more than 2 years. W.S.A. §343.31(3)(e).</p> <p>DWI with Minor < 16 = Revocation 4 years. W.S.A. §343.31(3)(f).</p>
Mandatory Minimum Term of Revocation:	<p>Persons Under 21 = Suspension – 3 months, or 6 months if transporting minor < 16. W.S.A. §§343.30(1q); 346.63(2m).</p> <p>DWI: <u>First offense – None;</u> <u>Second and subsequent offenses – 45 days.</u></p>
	<p>DWI – Great bodily harm – 120 days. W.S.A. §343.31(3)(f), (3m)(a).</p>
	<p>DWI – Bodily harm – 60 days.</p>
Alcohol Education:	<p>Persons Under 21 – None. Yes. Persons who are 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. W.S.A. §§343.30(1q)(c), (d); 343.305(10)(d).</p>
Substance Abuse Treatment:	Yes.
Vehicle Impoundment/Confiscation:	None.
Authorized by Specific Statutory Authority:	
Terms Upon Which Vehicle Will Be Released:	
Other Miscellaneous Sanctions:	For any revocation period, the court shall extend the revocation by the number of days to which the court sentences the person to imprisonment or jail for an offense related to refusal. W.S.A. §343.30(1r).
<u>Ignition Interlock:</u>	
Permitted or Prohibited:	Permitted. W.S.A. §§343.301(1g), (2m); 343.305(10m).
Type of Law (Mandatory or Permissive):	Mandatory
Sanction (Judicial, Administrative or Hybrid)	Judicial
Conditions of Use:	Mandatory – For a first offense with BAC of 0.15 or higher , and all second or subsequent offenses, all refusals and all vehicles owned by the offender <u>must be</u> equipped with an ignition interlock device for not less than 1 year or more than the maximum period of license revocation, unless the judge finds an undue financial hardship. W.S.A. §§343.301(1g)(1), (2m); 343.305(10m).
Other Provisions:	The ignition interlock restriction period begins on the date

any license is issued.

Sobriety Checkpoints:
Permitted or Prohibited:

Prohibited. W.S.A. §349.02.

Homicide by Vehicle:
State Has Such a Law:

Homicide by Intoxicated Use of Vehicle. W.S.A. §940.09.

Imprisonment/Fine:

First conviction: **Class D felony** – Not more than **25 years** and/or not more than **\$100,000**;
Subsequent conviction: **Class C felony** – Not more than **40 years** and/or not more than **\$100,000.** W.S.A. §939.50.

Mandatory Minimum Term/Fine:

None

Authorized Licensing Action:

Revocation

Length of Term of Licensing Withdrawal:

5 years. W.S.A. §§343.10; 343.31(3)(c).

Mandatory Minimum License Withdrawal:

120 days. A restricted occupational license may be issued after these periods. W.S.A. §343.31(3m).

Other:

DWI Offenses and Commercial Motor Vehicles (CMV):

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 $\geq .04$; (2) is under the influence of an intoxicant; (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 a subsequent violation or 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. W.S.A. §§343.305(2), (3)(a), (4), (7)(b); 343.31; 343.315; 346.63(5)(a), (6)(a), (7)(a); 346.65(2j), (2u)(a), (3m); 885.235(1); 940.25.

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

Not more than **\$2,500** and/or not more than **1 year.** W.S.A. §343.44(2)(ar)(2).

Mandatory Minimum Fine/Imprisonment Term:

None.

Administrative Licensing Action Type:

Suspension/Revocation. W.S.A. §343.30(1g).

Withdrawal Action:

First, second or third offense – Not more than **6 months** – (Revocation or Suspension).

Fourth or subsequent offense – **6 months** (Revocation).

Mandatory Term of License Withdrawal Action:

None

Other:

Impoundment: An offender's vehicle may be impounded.

The length of such impoundment is determined by the court.
W.S.A. §343.44(4).

If the underlying offense is a violation of the habitual offender law, the penalties may be enhanced by imprisonment of up to 180 days and an additional fine not to exceed \$5,000. W.S.A. §§343.44(2)(c); 351.08.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. W.S.A. §351.01, *et seq.*

Grounds for Being Declared Habitual Offender:

Four or more serious offenses⁶⁶⁷ or 12 or more minor moving violations within 5 years. W.S.A. §351.02.

Term of License Revocations While on Habitual Offender Status:

5 years. W.S.A. §351.025(1). A hardship license may be issued after 2 years. W.S.A. §351.07.

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

Misdemeanor.

Imprisonment (Term):

Not more than **180 days** and not more than **\$5,000.**
W.S.A. §351.08.

Mandatory Minimum Term/Fine:

The terms are mandatory.

Licensing Action (Specify):

N/A

Other State Laws Related to Alcohol Use:

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):

Yes. W.S.A. §346.71(2).

BAC Chemical Test Given to Deceased Driver Killed in Crash:

Yes

BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:

No

BAC Chemical Test Given to Deceased Pedestrian Killed in Crash:

Yes (14 or older).

BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law:

No. However, an officer may request testing of such person.
W.S.A. §343.305(3)(ar).

Minimum Age (Years) for Sale/Purchase of Alcohol:

21. W.S.A. §§125.02(8m); 125.07(1), (4).

Minimum Age (Years) for Possession/Consumption of Alcohol:

21. Applies to possession or consumption in public places unless accompanied by a parent or guardian.
W.S.A. §125.07(1), (4).

Dram Shop and Social Host Laws:

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

Yes (Minors only). W.S.A. §125.035.

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

Sorenson v. Jarvis, 350 N.W.2d 108 (Wis. 1984).

Dram Shop Actions – Social Hosts:

Yes (Minors only). W.S.A. §125.035.

⁶⁶⁷ These include homicide involving the use of a vehicle, reckless driving, DWI, and refusal. W.S.A. §351.02(1)(a).

Social Host – Criminal Enforcement:

No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult's control. No adult may encourage or contribute to underage drinking. This is a misdemeanor, punishable in the same fashion as below (Criminal Action Regarding Establishments...). W.S.A. §125.07(1)(a)(3), (4).

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action:

Misdemeanor. W.S.A. §§125.07(2)(a), (b); 939.60.

Imprisonment/Fine:

Not more than **60 days** and/or not less than **\$100** or more than **\$500**. W.S.A. §125.07(2)(b).

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – Suspension /Revocation. W.S.A. §125.12.

Length of Term of License Withdrawal:

Suspension – Not more than **90 days**;
Revocation – At least **12 months**. W.S.A. §125.12(b).

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action:

Civil Violation/Misdemeanor.⁶⁶⁸ W.S.A. §§125.07(1)(a), (b); 939.60.

Imprisonment/Fine:

First offense (Forfeiture) – Not more than **\$500**;
Second offense (within 30 months) (Misdemeanor) – Not more than **30 days** and/or not more than **\$500**;
Third offense (within 30 months) (Misdemeanor) – Not more than **90 days** and/or not more than **\$1,000**;
Fourth or subsequent offense (within 30 months) (Misdemeanor) – Not more than **9 months** and/or not more than **\$10,000**. W.S.A. §125.07(1)(b)(2).

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

Yes – for second and subsequent offenses = **suspension**. W.S.A. §125.07(1)(b)(3).

Length of Term License Withdrawal:

First offense – **None**;
Second offense (within 12 months) – Suspension for not more than **3 days**;
Third offense (within 12 months) – Suspension for not less than **3 days** or more than **10 days**;
Fourth offense (within 12 months) – Suspension for not less

⁶⁶⁸ A person who sells alcoholic beverages to a minor under 18 where the minor dies or suffers great bodily harm as a result of consuming such beverages is subject to the following sanctions: Death (Class G felony) – not more than 10 years and/or not more than \$25,000; Injury (Class H felony) – not more than 6 years and/or not more than \$10,000. W.S.A. §§125.075; 939.50.

than **15 days** or more than **30 days**. W.S.A. §125.07(1)(b)(3).

Anti-Happy Hour Laws/Regulations:

No

Open Container Laws:

Open Container Law (Yes/No):

Yes. W.S.A. §346.935(2), (3).

Anti-Consumption Law (Yes/No):

Yes. W.S.A. §346.935(1).

Alcohol Exclusion Law (UPPL):

Yes. See e.g., *Dipasquale v. American Family Ins. Co.*, 483 N.W.2d 231 (Wis.App. 1992).

STATE

General Reference:

WYOMING

Wyoming Statutes Annotated (W.S. 1977)

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC):

Presumption (BAC/BrAC):

Types of Drugs/Drugs and Alcohol:

Under the influence of alcohol. W.S. 1977 §31-5-233(b)(iii).
≥ .08.⁶⁶⁹ W.S. 1977 §31-5-233(b)(i).**None.**Under the influence of a controlled substance or a
combination of alcohol and any controlled substance.⁶⁷⁰
W.S. 1977 §31-5-233(b)(iii)(B), (C).Chemical Breath Tests for AlcoholConcentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Implied Consent Law Applies to Drugs
(Yes/No):Refusal to Submit to Chemical Test
Admitted into Evidence:**No.****Yes.** W.S. 1977 §§31-6-102; 31-6-108.**Yes.** W.S. 1977 §§31-6-102(a)(i); 31-6-108(a).**Yes.** W.S. 1977 §31-6-102(a)(i).**No.**Non-Breath Chemical Tests for AlcoholConcentration Authorized Under theImplied Consent Law:

Blood:

Urine:

Other:

Yes. W.S. 1977 §31-6-102.**Yes.** W.S. 1977 §31-6-102.**Note**⁶⁷¹Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

Anti-Plea-Bargaining Statute (Yes/No):

No**Yes.** A DWI charge may not be reduced or dismissed, unless
the prosecutor in open court moves or files a statement
containing supporting facts to indicate that there is
insufficient evidence to support the original DWI charge.
W.S. 1977 §31-5-233(j).Pre-Sentencing Investigation Law (PSI)
(Yes/No):**Yes.** No person charged with a felony or with a misdemeanor
(unless the court directs otherwise) shall be placed on
probation or released under suspension of sentence until a
pre-sentence investigation report is completed, presented to
and considered by the court. W.S. 1977 §7-13-303.

⁶⁶⁹ Standard: 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. W.S. 1977 §31-5-233(a)(i).

⁶⁷⁰ "Controlled substance" includes any drug, glue or other toxic vapor intentionally inhaled or sniffed which results in impairment of an individual's ability to drive safely, or psychoactive substance, or any combination of these substances, capable of impairing a person's physical or mental faculties. W.S. 1977 §§31-5-233(a)(ii); 31-6-101(a)(ii).

⁶⁷¹ Technically, W.S. 1977 §31-6-102 provides an officer an ability to take blood without consent of the arrested individual. However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court's decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **N/A**

Refusal to Take a Preliminary Breath Test – Administrative Licensing Action (Susp/Rev):

Preliminary Breath Test – Other:

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**

Refusal to Take Implied Consent Chemical Test - Administrative Licensing Action (Susp/Rev): **None**

Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DWI Conviction:

Imprisonment/Fine:

First conviction (misdemeanor)– Not more than **6 months** and/or not more than **\$750**;

Second conviction (within 10 years) (misdemeanor) – Not less than **7 days** or more than **6 months** and may be fined not less than **\$200** or more than **\$750**;

Third conviction (within 10 years) (misdemeanor) – Not less than **30 days** or more than **6 months** and may be fined not less than **\$750** or more than **\$3,000**;

Fourth or subsequent conviction (within 10 years) (felony) – Not more than **7 years** and/or not more than **\$10,000**.

W.S. 1977 §31-5-233(e).

DWI – Serious Bodily Injury:

First conviction (felony) – Not more than **10 years** and/or not less than **\$2,000** or more than **\$5,000**;

Subsequent conviction (felony) – Not more than **20 years**.

W.S. 1977 §31-5-233(h).

Persons Under 21:

First conviction – Not more than **\$750**;

Second conviction (within 1 year) – Not more than **1 month** and/or not more than **\$750**;

Third or subsequent conviction (within 2 years) – Not more than **6 months** and/or not more than **\$750**.

W.S. 1977 §31-5-234.

Mandatory Minimum Term/Fine:

First conviction – **None**;

Second conviction (within 5 years) – **7 days**;

Third or subsequent conviction (within 5 years) – **30 days** or **15 days** if the offender completes an inpatient treatment program. W.S. 1977 §31-5-233(e).

Community Service:

Persons Under 21 – None.

Community service may be required as a condition of

Child Endangerment:	probation. W.S. 1977 §7-13-304. Any person age 18 or older who commits a violation with a child passenger shall be punished as follows: <u>First conviction</u> (misdemeanor) – Not more than 1 year and/or not more than \$750 ; <u>Subsequent conviction</u> (felony) – Not more than 5 years . W.S. 1977 §31-5-233(m).
Restitution:	The defendant shall be ordered to pay restitution to a victim. W.S. 1977 §7-9-102. The State has a Victims' Compensation Act. W.S. 1977 §1-40-101, <i>et seq.</i>
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. W.S. 1977 §7-13-109. Surcharge: A surcharge of not less than \$150 or more than \$350 (first offense) or not less than \$200 or more than \$400 (subsequent offense) is assessed against convicted DWI offenders. This surcharge is used to help finance the Victims' Compensation Fund. W.S. 1977 §1-40-119(a).
 <u>Administrative Sanctions – Pre-Conviction:</u>	
Administrative Per Se Law:	≥ .08 – Suspension 90 days. ⁶⁷² W.S. 1977 §§31-6-102; 31-6-103.
Other:	Persons Under 21: W.S. 1977 §31-5-234. <u>First violation</u> – Suspension 90 days ; <u>Second violation</u> (within 2 years) – Suspension 6 months . W.S. 1977 §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. W.S. 1977 §31-7-105.	
 <u>Administrative Sanctions – Post-Conviction:</u>	
Type of Licensing Action (Susp/Rev):	Suspension/Revocation.
Term of Withdrawal:	<u>DWI Serious Bodily Injury conviction</u> – Revocation . W.S. 1977 §§31-7-105; 31-7-127(a)(ii); 31-7-128(b). <u>First conviction</u> – Suspension 90 days ; ⁶⁷³ <u>Second conviction</u> (within 10 years) – Suspension 1 year ; <u>Third or subsequent conviction</u> – Revocation 3 years . <u>DWI Serious bodily injury conviction</u> – Revocation 1 year . W.S. 1977 §§31-5-233(h); 31-7-105; 31-7-127; 31-7-128.
Mandatory Minimum Term of Revocation:	<u>First offense</u> – None (hardship driving privileges are available); ⁶⁷⁴

⁶⁷² For a first admin per se action, the 90-day suspension may be modified to allow for limited driving privileges in hardship situations. W.S. 1977 §§31-6-103(b); 31-7-105(d).

⁶⁷³ 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. W.S. 1977 §31-6-102(e).

⁶⁷⁴ 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

Alcohol Education:	<p><u>Second offense</u> (within 10 years) – 1 year; <u>Third and subsequent offenses</u> (within 10 years) – 3 years. <u>DWI Serious Bodily Injury Offenses</u> – 1 year. Yes. I. The court may suspend part or all of the discretionary portion of an imprisonment sentence under if the defendant agrees to pursue and completes an alcohol education or treatment program as prescribed by the court. II. 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. III. 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. W.S. 1977 §§31-5-233; 31-7-105(f)(iii).</p>
Substance Abuse Treatment:	Yes
Vehicle Impoundment/Confiscation:	No
Authorized by Specific Statutory Authority:	No
Terms Upon Which Vehicle Will Be Released:	No
Other Miscellaneous Sanctions:	No
<u>Ignition Interlock:</u>	
Permitted or Prohibited:	Permitted. W.S. 1977 §31-5-233(f).
Type of Law (Mandatory or Permissive):	Mandatory
Sanction (Judicial, Administrative or Hybrid)	Administrative
Conditions of Use:	<p><u>First conviction</u> (BAC ≥ .15) – operate only motor vehicles equipped with ignition interlock devices for 6 months from the date of conviction; <u>Second conviction</u> – operate only vehicles equipped with an ignition interlock device for a period of 1 year from the date of conviction; <u>Third conviction</u> – operate only vehicles equipped with an ignition interlock device for a period of 2 years from the date of conviction; <u>Fourth or subsequent conviction</u> – operate only vehicles equipped with an ignition interlock device for the remainder of the offender's life, except 5 years from the date of conviction and every 5 years thereafter, the offender may apply to the court for removal of the ignition interlock device required by this paragraph. If good cause is shown, the court may remove the ignition interlock device requirement if the offender has not been subsequently convicted of driving a motor vehicle in violation of this section or other law prohibiting driving while under the influence. W.S. 1977 §31-5-233(f).</p>

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. W.S. 1977 §31-7-105(f).

Other Provisions: A person whose license has been suspended/revoked may apply for an ignition interlock license after serving 45 days of the suspension/revocation. W.S. 1977 §31-7-402.

Sobriety Checkpoints:
Permitted or Prohibited:

Prohibited. W.S. 1977 §7-17-102.

Homicide by Vehicle:
State Has Such a Law:

Aggravated homicide by vehicle (felony). W.S. 1977 §6-2-106.

Imprisonment/Fine:

Not more than **20 years.** W.S. 1977 §6-2-106(b).

Mandatory Minimum Term/Fine:

None.

Authorized Licensing Action:

Revocation. W.S. 1977 §§6-2-106(c); 31-7-127(a)(vii), (b).

Length of Term of Licensing Withdrawal:

1 year.

Mandatory Minimum License Withdrawal:

1 year.

Other:

DWI Offenses and Commercial Motor Vehicles (CMV):

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 $\geq .04$; (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 applies only to a refusal to submit to a chemical test for an alcohol concentration; however, the CMV implied consent provision applies to refusals to submit to chemical tests for both an alcohol concentration and the presence of controlled drugs.

For a subsequent violation or 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. W.S. 1977 §§31-7-136; 31-7-305; 31-7-306; 31-7-307.

Driving While License Suspended for DWI Offense:

Criminal - Fine/Imprisonment:

Misdemeanor. Not less than **7 days** nor more than **6 months** and a fine not less than **\$200** nor more than **\$750.** W.S. 1977 §31-7-134(c).

Mandatory Minimum Fine/Imprisonment Term:

7 days⁶⁷⁵/ \$200. W.S. 1977 §31-7-134(c).

Administrative Licensing Action Type:

None additional.

Withdrawal Action:

None.

Mandatory Term of License Withdrawal

⁶⁷⁵ If the offender is under 21 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. W.S. 1977 §31-7-134(c).

Action:

Other:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No): **No**

Other State Laws Related to Alcohol Use:

BAC Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No): **No**

BAC Chemical Test Given to Deceased Driver Killed in Crash: **N/A**

BAC Chemical Test Given to Deceased Vehicle Passengers Killed in Crash: **N/A**

BAC Chemical Test Given to Deceased Pedestrian Killed in Crash: **N/A**

BAC Chemical Tests on Persons Involved in Traffic Crashes – State Has Such a Law: **No**

Minimum Age (Years) for Sale/Purchase of Alcohol: **21**. W.S. 1977 §12-6-101.

Minimum Age (Years) for Possession/Consumption of Alcohol: **21**. W.S. 1977 §12-6-101(c). There are exemptions for employment, by order of a parent, as part of religious services or for medicinal purposes.

Dram Shop and Social Host Laws:

State Has a Dram Shop Law (Yes/No): **Yes** (Limited to minors and habitual drunkards, with notice). W.S. 1977 §12-8-301.

"Dram Shop Law" 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** (Limited). Social hosts who serve alcoholic beverages illegally, such as to persons who are under 21 and who are not their child or ward, etc., may be liable for the resulting damages. W.S. 1977 §12-8-301(c).

Social Host – Criminal Enforcement: Any person who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic liquor or malt beverage to any person under age 21, who is not his legal ward, medical patient or member of his own immediate family, is guilty of a misdemeanor, punishable by not more than 6 months and/or not more than \$750. W.S. 1977 §§12-6-101; 12-8-101.

Criminal Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

Type of Criminal Action: **Misdemeanor** (Limited Application). It is illegal for licensees to sell sealed packages of alcoholic beverages to intoxicated persons in certain “drive-in areas.”

Imprisonment/Fine: W.S. 1977 §§12-5-301(a)(v); 12-8-101.
 Not more than **6 months** and/or not more than **\$750**.
 W.S. 1977 §12-8-101.

Administrative Actions Regarding Establishments that Serve Alcohol to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes – Suspension or Revocation.**⁶⁷⁶
 W.S. 1977 §§12-7-101; 12-7-102.
 Length of Term of License Withdrawal: **Revocation** – No time period specified;
Suspension – For a period not to exceed the balance of the term for which the license was issued. Suspension may occur if it appears inadvisable to revoke a license.
 W.S. 1977 §12-7-102.

Criminal Actions Regarding Establishments that Serve Alcohol to Persons Under the Legal Drinking Age:

Type of Criminal Action: **Misdemeanor.** W.S. 1977 §§12-5-301; 12-6-101; 12-8-101.
 Imprisonment/Fine: Not more than **6 months** and/or not more than **\$750**.
 W.S. 1977 §12-8-101.

Administrative Actions Regarding Establishments That Serve Alcohol to Persons Under the Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes – Suspension** (sufficient cause) or **revocation** (gross violation). W.S. 1977 §12-7-101.
 Length of Term License Withdrawal: **Revocation** – No time period specified; **Suspension** – For a period not to exceed the balance of the term for which the license was issued. Suspension may occur if it appears inadvisable to revoke a license. W.S. 1977 §12-7-102.

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

Open Container Laws:

Open Container Law (Yes/No): **Yes.** W.S. 1977 §31-5-235.
 Anti-Consumption Law (Yes/No): **Yes.** W.S. 1977 §31-5-235.

Alcohol Exclusion Law (UPPL): **Yes. W.S. 1977 §26-18-126.**

⁶⁷⁶ Suspension occurs where there is sufficient cause; revocation occurs where there is gross violation. W.S. 1977 §12-7-101.

General Reference:	FEDERAL LAND United States Code (U.S.C.A.) ⁶⁷⁷ Code of Federal Regulations (CFR)
<u>Basis for a DWI Charge:</u>	
Standard DWI Offense:	Under the Influence of alcohol or drugs. 36 CFR §4.23.
Illegal Per Se Law (BAC/BrAC):	≥ .08 ⁶⁷⁸ (unless the State law that applies establishes more restrictive limits of alcohol concentration). 36 CFR §4.23(a)(2).
Presumption (BAC/BrAC):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of alcohol, or a drug, or drugs, or any combination thereof. 36 CFR §4.23(a)(1).

Chemical Breath Tests for Alcohol

Concentration:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	No. 36 CFR §4.23(c).
Implied Consent Law Applies to Drugs (Yes/No):	Yes. 36 CFR §4.23(c).
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes. 36 CFR §4.23(c)(2).

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

Blood:	Yes. 36 CFR §4.23(c).
Urine:	Yes.
Other:	Saliva.

Criminal Sanctions Following a DWI

Conviction:

Imprisonment/Fine:	A fine and/or not more than 6 months. 36 CFR §1.3(a). A fine and/or not more than 3 months. ⁶⁷⁹ 36 CFR §1.3(b).
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Outside of national parks, forests and property, anyone convicted of driving under the influence shall be sentenced to an additional term of imprisonment of not more than **1 year** and an additional fine. 18 U.S.C.A. §13(b)(2).

Other Penalties:

Child Endangerment: ⁶⁸⁰	Serious bodily injury of a minor: An additional term of imprisonment of not more than 5 years and an additional
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⁶⁷⁷ Title 36 of the Code of Federal Regulations (CFR) addresses national parks, forests and property, including all roadways and parking areas within a park area that are open to public traffic. 36 CFR §4.1. Section 13 of Title 18 of the U.S. Code Annotated (18 U.S.C.A. §13) addresses areas within Federal jurisdiction, but allows for the use State laws if Federal law does not exist.

⁶⁷⁸ Standard: Grams of alcohol per 100 milliliters of blood or per 210 liters of breath. 36 CFR §4.23(a)(2).

⁶⁷⁹ In a national military park, battlefield site, national monument or miscellaneous memorial, listed in a note within 5 U.S.C.A. §901.

⁶⁸⁰ This addresses DUI on Federal land where punishment would mirror the State law in which the Federal land is located. Further, these punishments apply only when the law of the State does not provide an additional term of imprisonment when a minor (under age 18) is present in the vehicle at the time of the offense. 18 U.S.C.A. §13(b)(2)(A).

fine.

Death of a minor: An additional term of imprisonment of not more than **10 years** and an additional fine.
18 U.S.C.A. §13(b)(2)(A).

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):

No driver shall: (1) use alcohol or be under the influence of alcohol within 4 hours before going on duty or operating, or having physical control of a CMV; or (2) use alcohol, be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol while on duty, operating, or in physical control of a CMV; or (3) be on duty or operate a CMV while possessing wine or not less than ½% of alcohol by volume, beer, and distilled spirits that are not part of a shipment or possessed/used by bus passengers.

A violation of the above shall place the driver out-of-order for 24 hours. 49 CFR §392.5.

DUI (.04 BAC):

First conviction or refusal – Disqualification **1 year**;
First conviction or refusal (HAZMAT) – Disqualification **3 years**;
Second conviction or refusal – Disqualification **life**.
49 CFR §383.51.

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years)

21. 36 CFR §2.35(a); 23 U.S.C.A. §158.

Sale/Purchase:

Minimum Age (Years)

21. 36 CFR §2.35; 23 U.S.C.A. §158.

Possession/Consumption:

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

Open Container Law (Yes/No):

Yes. 36 CFR §4.14.

Anti-Consumption Law (Yes/No):

Yes. 36 CFR §4.14.

DOT HS 812 394
June 2017



U.S. Department
of Transportation
**National Highway
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