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National Highway
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Digest of State Alcohol-Highway Safety Related Legislation

Current as of January 1, 1990

Eighth Edition

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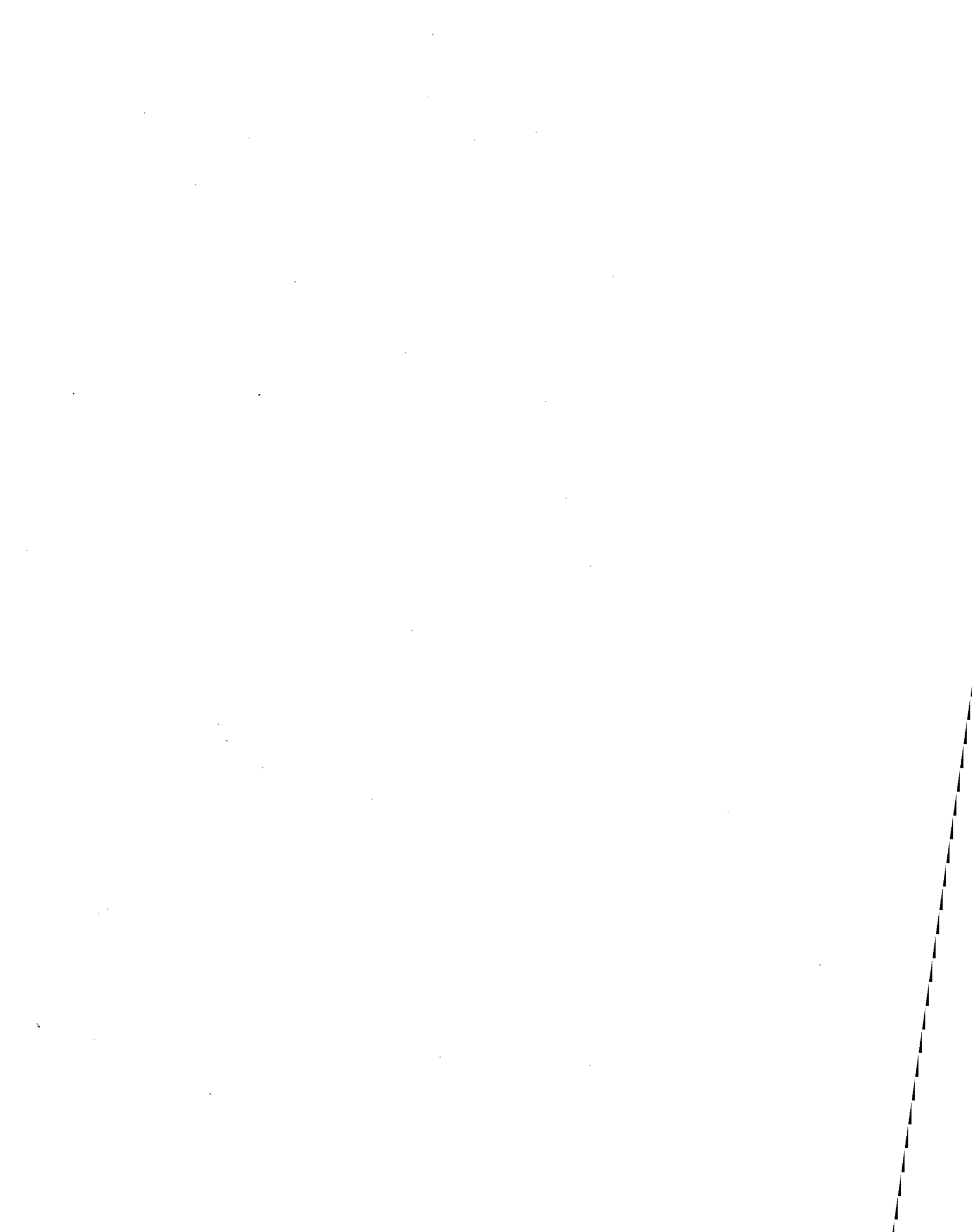
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Abstract: The digest is designed for use by anyone interested in State laws related to alcohol/drug use and highway safety. Except as indicated, it provides the reader with the status of such State laws as of January 1, 1990. The digest is divided into three main areas: (1) Introduction; (2) High Interest Legislation; and (3) State Law Summary. The Summary is organized by State and then by specific legal topics. The Summary includes code and, where needed, case law citations; these should help individuals conducting additional research in the area of the law. It should be noted that the Summary can be used to facilitate the comparison of State laws in the subject areas.



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INTRODUCTION

PURPOSE

This Digest is designed for use by anyone interested in State laws related to alcohol/drug use and highway safety. Except as indicated, it provides the reader with the status of such State laws as of January 1, 1990.

ORGANIZATION

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

The Digest also includes two appendices, using the State Law Summary's format, giving (1) the Uniform Vehicle Code's alcohol and drug driving offense provisions and (2) certain criteria for Federal Alcohol Incentive Grant Funds under 23 USC §408.

EXPLANATIONS

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

1. The term "DWI" is a general term that refers to the criminal action of driving a motor vehicle either (1) while "illegal per se" or (2) while either impaired, under the influence or while intoxicated by either alcohol or other drugs.
2. The term "illegal per se" refers to State laws that make it a criminal offense to operate a motor vehicle at or above a specified alcohol concentration in either the blood, breath or urine.
3. An "administrative per se law" refers to a statute that allows a State's driver licensing agency to either suspend or revoke a driver's license based either on a specific alcohol concentration or on some other criteria related to alcohol use and driving. Such action is completely independent of any licensing action related to a DWI offense conviction.
4. Unless otherwise stated, for illegal per se and/or administrative per se States, the alcohol concentration levels in either the blood, breath or urine are based on the following ratio standards. For alcohol concentration in the blood, the ratio is the number of grams of alcohol per 100 milliliters of blood. For alcohol concentration in the breath, the ratio is number of grams of alcohol per 210 liters of breath. And, for alcohol concentration in urine, the ratio is the number of grams of alcohol per 67 milliliters of urine.

EXPLANATIONS (continued)

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

6. The term "mandatory sanction" means either a criminal sanction (e.g., jail, fine or community service) or an administrative licensing action (e.g., license suspension or revocation) which must be imposed by either a court or an administrative agency. That is, statutory law specifically requires that such sanction be given; this may be accomplished by denying either the court or the administrative agency the power to either suspend or otherwise prevent the imposition of such sanction.

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

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

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

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

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

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

LEGISLATIVE SUBJECT AREAS

- o Basis for a DWI Charge (e.g., Blood Alcohol Concentration, Types of Drugs)

LEGISLATIVE SUBJECT AREAS (continued)

- o Chemical Breath Tests
 - o Preliminary
 - o Evidential (Implied Consent Law)
- o Chemical Tests of Other Substances for Alcohol/Drugs Under the Implied Consent Law
- o Adjudication of Alcohol Driving Offenses
 - o Mandatory Adjudication
 - o Anti-Plea Bargaining Statutes
 - o Pre-Sentence Investigation
- o Sanctions for Refusal to Submit to a Chemical Test
- o Sanctions Following a Conviction for an Alcohol Driving Offense
 - o Criminal
 - o Administrative (Civil: Pre-conviction and Post conviction)
 - o Rehabilitation
 - o Vehicle Impoundment
- o Homicide by Vehicle
- o Driving While License Suspended or Revoked Where the Basis was an Alcohol Driving Offense
- o Habitual Offender Laws
- o BAC Tests Required for Persons Killed as a Result of a Traffic Crash
- o Laws Establishing Minimum Ages Concerning the Use of Alcohol Beverages
- o Dram Shop Laws and Related Legal Actions
- o Laws Concerning Criminal/Administrative Actions Against Employees/Owners of Licensed Liquor Establishments who Sell Alcoholic Beverages to Persons who are under the Legal Drinking Age or who are Intoxicated
- o Laws Prohibiting "Happy Hours"
- o Laws Prohibiting the Possession of Open Containers of Alcoholic Beverages in Motor Vehicles (the Passenger Compartment)
- o Laws Prohibiting the Consumption of Alcoholic Beverages in Motor Vehicles

ABBREVIATIONS

BAC = blood alcohol concentration
BrAC = breath alcohol concentration
CDL = Commerical Drivers License
cl = class
CMV = Commerical Motor Vehicle
cons = consecutive
dy = day
dys = days
hr = hour
hrs = hours
mand = mandatory

ABBREVIATIONS (continued)

misd = misdemeanor
mo = month
mos = months
N/A = not applicable
n.a. = not available
off = offense
offs = offenses
pkg = package
rev = revocation
susp = suspension
UrAC = urine alcohol concentration
UVC = Uniform Vehicle Code
veh = vehicle
w/n = within
yr = year
yrs = years

FEEDBACK

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

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

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

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

TABLE 1
ANALYSIS BY STATES — HIGH-INTEREST LEGISLATION

STATE	PBT Law ¹	Implied Consent Ref		Admin- istrative Per Se (BAC Level)	Administrative Per Se (Mand Min Licensing Action)			Illegal Per Se (BAC Level)	Pre- sumptive (BAC Level)	In Vehicle		Dram Shop Law ¹³	Legal Purch/ Sale Age for Alc Bev	STATE
		Mand 1st Refusal	Min 2nd Refusal		1st Offense	2nd Offense	3rd Offense			Open Con- tainer ¹²	Anti- Consump tion			
AL		S-90 dys	S-1 yr	N	—	—	—	0.10	0.10			Statute	21	AL
AK	X	R-90 dys	R-1 yr	Y-0.10	R-30 dys	R-1 yr	R-10 yrs	0.10	—	X		Statute	21	AK
AZ		S-12 mos	S-12 mos	Y-0.10	S-30 dys	S-90 dys	S-90 dys	0.10	0.10		X ¹⁴	Statute	21	AZ
AR		S-6 mos	S-1 yr	N	—	—	—	0.10	—		X ¹⁵	No	21	AR
CA		S-6 mos	S-6 mos ³⁴	Y-0.10	S-4 mos	S-1 yr	S-1 yr	0.08	0.08	X	X	Statute ¹⁶	21	CA
CO	X	R-1 yr	R-1 yr	Y-0.10	R-3 mos	R-1 yr	R-1 yr	0.10	>.05..10 ¹⁷		X	Statute	21	CO
CT		S-6 mos	S-1 yr	Y-0.10	S-90 dys	S-1 yr	S-2 yrs	0.10	—			Statute ¹⁹	21	CT
DE	X	R-6 mos	R-18 mos	Y ³	R-3 mos	R-1 yr	R-18 mos	0.10	0.10 ²⁰		X ¹⁴	No	21	DE
DC		S-12 mos	S-12 mos	Y ⁴	—	—	—	0.10	>0.05 ²⁰		X	Case Law	21	DC
FL		S-30 dys ¹⁵	S-18 mos	Y-0.10	S-30 dys	S-1 yr	S-1 yr	0.10	0.10 ²⁰	X		Statute ²²	21	FL
GA		S-6 mos	S-6 mos	N	—	—	—	0.12	0.10			Statute	21	GA
HI		R-12 mos	R-2 yrs	N	—	—	—	0.10	0.10 ¹⁸	X	X	Case Law	21	HI
ID		S-180 dys	S-1 yr	N	—	—	—	0.10	>0.08	X	X	Statute	21	ID
IL	X	—	S-6 mos	Y-0.10	—	S-90 dys	S-90 dys	0.10	0.10	X		Statute ¹⁹	21	IL
IN		S-1 yr	S-1 yr	Y-0.10	S-180 dys ⁵	S-180 dys ⁵	S-180 dys ⁵	0.10	0.10 ³¹			Statute	21	IN
IA	X	R-240 dys ⁶	R-360 dys ⁶	Y-0.10	—	R-1 yr	R-1 yr	0.10	—	X	X	Statute	21	IA
KS	X	S-180 dys	S-1 yr	Y-0.10	S-30 dys	S-1 yr	S-1 yr	0.10	0.10 ²⁰	X	X	No	21	KS
KY	X	—	—	A ⁷	—	—	—	—	0.10		X	Statute	21	KY
LA		S-90 dys	S-545 dys	Y-0.10	S-30 dys ²¹	S-365 dys	S-365 dys	0.10	0.10			Possible ²³	21	LA
ME		S-90 dys	S-1 yr	Y-0.08	—	—	—	0.08	—		X ¹⁴	Statute ¹⁹	21	ME
MD	X	S-120 dys	S-1 yr	Y-0.10	—	S-90 dys	S-90 dys	—	.07..10 ^{20,24}	X ²⁵	X ¹⁴	No	21	MD
MA		S-120 dys	S-120 dys	A ⁷	—	—	—	—	0.10		X ¹⁴	Case Law	21	MA
MI	X	—	S-1 yr	N	—	—	—	0.10	.07..10 ¹⁷	X	X	Statute	21	MI
MN	X	—	—	Y-0.10	—	—	—	0.10	—	X	X	Statute	21	MN
MS	X	S-90 dys ⁸	S-90 dys ⁸	Y-0.10 ⁹	—	—	—	0.10	—			Statute	21	MS
MO		—	R-1 yr	Y-0.13	—	R-1 yr ³⁹	R-1 yr ³⁹	0.10	—			Statute ²⁶	21	MO
MT		S-90 dys	R-1 yr	N	—	—	—	0.10	0.10	X	X	Statute	21	MT
NE	X	R-60 dys	R-6 mos	N	—	—	—	0.10	—		X	No	21	NE
NV	X	R-1 yr	R-3 yrs	Y-0.10	R-90 dys ⁴¹	R-90 dys ⁴¹	R-90 dys ⁴¹	0.10	0.10		X ¹⁴	No	21	NV

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

STATE	PBT Law ¹	Implied Consent Ref		Admin- istrative Per Se (BAC Level)	Administrative Per Se (Mand Min Licensing Action)			Illegal Per Se (BAC Level)	Pre- sumptive (BAC Level)	In Vehicle		Dram Shop Law ¹³	Legal Purch/ Sale Age for Alc Bev	STATE
		Mand 1st Refusal	Min 2nd Refusal		1st Offense	2nd Offense	3rd Offense			Open Con- tainer ¹²	Anti- Consump- tion			
NH	X	R-90 dys	R-1 yr	N	—	—	—	0.10	0.10 ²⁰		X ¹⁵	Statute	21	NH
NJ		R-6 mos	R-2 yrs	N	—	—	—	0.10	—		X	Statute	21	NJ
NM		R-1 yr	R-1 yr	Y-0.10	R-90 dys ¹⁰	R-1 yr ³⁵	R-1 yr ³⁵	0.10	—	X	X	Statute	21	NM
NY	X	R-6 mos	R-1 yr	A ⁷	—	—	—	0.10	.07-0.10 ³⁸		X	Statute	21	NY
NC	X	R-6 mos	R-12 mos	Y-0.10 ⁹	R-10 dys	R-10 dys	R-10 dys	0.10	—	X ²⁵	X ^{14,25}	Statute ^{19&27}	21	NC
ND	X	R-1 yr	R-2 yrs	Y-0.10	S-30 dys	S-364 dys	S-2 yrs	0.10	—	X	X	Statute	21	ND
OH		—	—	A ⁷	—	—	—	0.10	—		X	Statute	21	OH
OK		—	—	Y-0.10	R-30 dys	R-1 yr	R-3 yrs	0.10	>.05-.10 ⁴²	X	X	Case Law	21	OK
OR		S-90 dys	S-1 yr	Y-0.08	S-30 dys	S-1 yr	S-1 yr	0.08	0.08 ²⁸	X	X	Statute	21	OR
PA	X	S-12 mos	S-12 mos	N	—	—	—	0.10	—		X ¹⁴	Statute	21	PA
PR	X	S-6 mos	S-1 yr	N	—	—	—	—	0.10 ⁴⁰			No	18	PR
RI	X	S-3 mos	S-1 yr	N	—	—	—	0.10	—		X ¹⁴	Statute	21	RI
SC		S-90 dys	S-90 dys	N	—	—	—	—	0.10 ³⁶	X	X ¹⁵	Possible ³⁷	21	SC
SD	X	—	—	N	—	—	—	0.10	0.10	X		No	21	SD
TN		—	—	N	—	—	—	—	0.10			Statute	21	TN
TX		—	—	N	—	—	—	0.10	—		X ¹⁴	Statute ³²	21	TX
UT		R-1 yr	R-1 yr	Y-0.08	S-90 dys	S-120 dys	S-120 dys	0.08	—	X	X	Statute ¹⁹	21	UT
VT	X	S-6 mos	S-18 mos	Y-0.10	S-90 dys	S-18 mos	S-2 yrs	0.10 ²	0.10 ²⁹		X ¹⁴	Statute	21	VT
VA	X	S-6 mos	S-1 yr	N	—	—	—	0.10	0.10		X ¹⁴	No	21	VA
WA		R-1 yr	R-2 yrs	N	—	—	—	0.10	—	X	X	Case Law ^{19,30}	21	WA
WV	X	R-1 yr	R-5 yrs	Y-0.10 ¹¹	R-90 dys	R-5 yrs	R-10 yrs	0.10	0.10 ³¹		X	No	21	WV
WI	X	R-30 dys	R-90 dys	Y-0.10	R-15 dys	R-15 dys	R-15 dys	0.10	—	X	X	Statute ¹⁶	21	WI
WY		S-6 mos	S-6 mos	Y-0.10	—	S-90 dys	S-90 dys	0.10	—			Statute ³³	21	WY

TOTAL	25	S - 25 R - 17	S - 26 R - 19	Admin Per Se - 29	S - 11 R - 9	S - 14 R - 11	S - 14 R - 11	.08 - 4 .10 - 41 .12 - 1	.08 - 1 .10 - 16 .10 or more prima facie - 9	22	38	Case Law - 5 Statute - 35 Possible Case Law - 2	18 - 1 21 - 51
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S = Suspension
R = Revocation
Y = Yes
N = No
A = Alternative

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

- ¹Preliminary Breath Test (Pre-arrest/nonevidentiary breath test) Law
- ²Civil Offense at a BAC level of 0.08.
- ³Based on probable cause of DWI.
- ⁴Based on sufficient evidence of DWI.
- ⁵Suspension up to 180 days or until the DWI charges have been disposed of which ever occurs first.
- ⁶A restricted license may be issued for an implied consent law violation provided the defendant pleads guilty to a subsequent DWI charge.
- ⁷Alternative pre-DWI criminal adjudication licensing action by the courts.
- ⁸License suspension for one (1) year if the driver has a prior DWI offense conviction.
- ⁹Special provisions/procedures.
- ¹⁰Applies to persons 18 years old or above.
- ¹¹Or under the influence of alcohol.
- ¹²Laws prohibiting the possession of an open container of an alcoholic beverage in the passenger compartment of a motor vehicle.
- ¹³Ten (10) States do not have dram shop liability.
- ¹⁴Applies only to drivers.
- ¹⁵Eff: 10/1/90.
- ¹⁶Applies only to the actions of intoxicated minors.
- ¹⁷The lower of the two numbers is driving while impaired; the higher is driving while under the influence.
- ¹⁸Competent evidence of DWI.
- ¹⁹This state has a statute that places a monetary limit on the amount of damages that can be awarded in dram shop liability actions.
- ²⁰BAC level or levels which indicated prima facie evidence.
- ²¹Not mandatory in all situations.
- ²²Applies only to the actions of intoxicated minors or persons known to be habitually addicted to alcohol.
- ²³Possible case law based upon the actions of minors.
- ²⁴The lower of the two numbers is prima facie evidence of driving while under the influence; the higher is prima facie evidence of driving while intoxicated.
- ²⁵Limited application.
- ²⁶Cause of action limited to licensees who have been convicted of the offense of selling alcoholic beverages either to minors or to intoxicated individuals.
- ²⁷The statute applies specifically to the actions of intoxicated minors, but the law does not foreclose developing case law as to other types of dram shop actions.
- ²⁸Not less than 0.08 constitutes being under the influence of intoxicating liquor.
- ²⁹Permissive inference of a DWI offense.
- ³⁰Applies only to the actions of (1) intoxicated minors and/or (2) adults who have lost their will to stop drinking.
- ³¹This state has both prima facie and presumptive evidence laws with BAC levels of 0.10.
- ³²Statutory law has limited dram shop actions.
- ³³Liability limited only to the actions of persons who are under 21 years old.
- ³⁴Susp. for 1 yr (mandatory) if a person refuses to submit to a chemical test after having been convicted of either a DWI offense or vehicle homicide w/n 7 yrs.
- ³⁵Provided there is also a 2nd or sub. DWI conviction.
- ³⁶This BAC level is an inference of DWI.
- ³⁷Possible case law.
- ³⁸Prima facie evidence of impairment.
- ³⁹This revocation is mandatory only if a restricted hardship license has not been issued for a previous offense w/n 5 years.
- ⁴⁰0.05 for persons who operate busses, trucks or other large motor vehicles.
- ⁴¹A DWI conviction following an admin. revocation cancels the admin. revocation action. Thereafter, the licensing sanctions for a DWI offense apply; this includes the right to obtain restricted driving privileges.
- ⁴²The lower of the two numbers is evidence of driving while impaired; the higher is prima facie evidence of driving while under the influence.

TABLE 2
ANALYSIS BY STATES — HIGH-INTEREST LEGISLATION

STATE	Fine (\$) (Mandatory Minimum For a DWI Conviction)			Imprisonment (Mandatory Minimum For a DWI Conviction)			Community Service In Lieu of Jail For a DWI Conviction			License Sanction (Mandatory Minimum For a DWI Conviction)			STATE
	First Offense	Second Offense	Third Offense	First Offense	Second Offense	Third Offense	First Offense	Second Offense	Third Offense	First Offense	Second Offense	Third Offense	
AL	—	—	—	—	48 con hrs	60 dys	—	20 dys	—	S-90 dys	R-1 yr	R-3 yrs	AL
AK	—	—	—	72 con hrs	20 con dys	30 con dys	—	—	—	R-30 dys	R-1 yr	R-10 yrs	AK
AZ	\$250	\$500	—	24 con hrs	60 dys ¹³	6 mos	8 hrs	—	—	S-90 dys ²⁰	R-1 yr	R-3 yrs	AZ
AR	\$150	\$400	\$900	—	7 dys	90 dys	—	—	—	—	S-1 yr	S-2 yrs	AR
CA	\$390	\$375	\$390	—	48 hrs ^{1,2}	120 dys ^{1,2}	—	10 dys ²	— ²	—	S-30 dys	R-3 yrs	CA
CO	—	—	—	5-dys ³¹	7 dys	7 dys	(48 hrs) ¹⁸	(60 hrs) ¹⁸	(60 hrs) ¹⁸	—	R-1 yr	R-2 yrs	CO
CT	—	—	—	48 con. hrs	10 dys	120 dys	100 hrs	—	—	S-1 yr	S-2 yrs	S-3 yrs	CT
DE	—	—	—	—	60 dys	60 dys	—	—	—	R-90 dys	R-6 mos	R-6 mos	DE
DC	—	—	—	—	—	—	—	—	—	R-6 mos	R-1 yr	R-2 yrs	DC
FL	—	—	—	—	10 dys	30 dys	(50 hrs) ¹⁸	—	—	—	R-12 mos	R-24 mos	FL
GA	—	—	—	—	48 hrs	10 dys	—	80 hrs	30 dys	—	S-120 dys	R-5 yrs	GA
HI	\$150-1000 ³	—	—	48 hrs ³	48 con hrs	—	72 hrs ³	10 dys	—	S-30 dys	S-1 yr	R-1 yr	HI
ID	—	—	—	—	10 dys ¹³	30 dys	—	—	—	—	S-1 yr	S-1 yr	ID
IL	—	—	—	—	48 con hrs	—	—	10 dys	—	—	—	—	IL
IN	—	—	—	—	5 dys ⁴	5 dys ⁴	—	10 dys	10 dys	S-30 dys	S-1 yr	S-1 yr	IN
IA	\$500 ⁶	\$750	\$750	—	7 dys ⁷	30 dys	—	—	—	—	R-1 yr ³⁰	R-2 yrs ³⁰	IA
KS	—	—	—	48 con. hrs	5 con. dys	90 dys	100 hrs	—	—	S-30 dys	S-1 yr	S-1 yr	KS
KY	—	—	—	—	7 dys	30 dys	—	—	—	S-30 dys	R-12 mos	R-24 mos	KY
LA	—	—	—	2 dys ²³	15 dys ²³	6 mos ²³	4 dys	30 dys	—	—	R-12 mos	R-12 mos	LA
ME	\$300	\$500	\$750	48 con hrs ¹⁷	7 dys	30 dys	—	—	—	S-60 dys ²⁴	S-1 yr ²⁴	S-2 yrs ²⁴	ME
MD	—	—	—	—	48 con hrs	48 con hrs	—	80 hrs	80 hrs	—	—	—	MD
MA	—	—	—	—	14 dys ^{8&25}	60 dys ²⁵	—	—	—	S-45 dys	R-1 yr	R-2 yrs	MA
MI	—	—	—	—	—	—	—	—	—	—	R-1 yr	R-5 yrs	MI
MN	—	—	—	—	30 dys	30 dys	—	— ²⁶	— ²⁶	—	—	—	MN
MS	\$200	\$400	\$500	—	—	—	—	—	—	S-30 dys	S-1 yr	S-3 yrs	MS
MO	—	—	—	—	48 con hrs	—	—	10 dys ¹⁹	—	—	R-1 ²¹	R-1 yr ²¹	MO
MT	—	—	—	24 con hrs ⁹	3 dys ¹⁰	10 dys ¹⁰	—	—	—	—	R-3 mos ²⁹	R-3 mos ²⁹	MT
NE	—	—	—	—	48 hrs	7 dys	—	—	—	R-60 dys	R-6 mos	R-1 yr	NE
NV	—	—	—	2 dys ¹¹	10 dys ¹²	1 yr ¹³	48 hrs	—	—	R-45 dys	R-1 yr	R-1.5 yrs	NV

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

STATE	Fine (\$) (Mandatory Minimum For a DWI Conviction)			Imprisonment (Mandatory Minimum For a DWI Conviction)			Community Service In Lieu of Jail For a DWI Conviction			License Sanction (Mandatory Minimum For a DWI Conviction)			STATE
	First Offense	Second Offense	Third Offense	First Offense	Second Offense	Third Offense	First Offense	Second Offense	Third Offense	First Offense	Second Offense	Third Offense	
NH	—	—	—	—	10 dys ¹⁴	10 dys ¹⁴	—	—	—	R-90 dys	R-3 yrs	R-3 yrs	NH
NJ	—	—	—	— ¹⁵	48 con hrs	90 dys ²⁷	—	(30 dys) ¹⁸	(90 dys) ¹⁸	6 mos ²²	2 yrs ²²	10 yrs ²²	NJ
NM	—	—	—	—	48 con hrs	48 con hrs	—	—	—	—	R-1 yr	R-5 yrs	NM
NY	\$350	\$500	\$500	—	—	—	—	—	—	—	R-1 yr	R-1 yr	NY
NC	—	—	—	—	7 dys	7 dys	—	—	—	—	R-2 yrs	R-3 yrs	NC
ND	\$250	\$500	\$1,000	—	4 dys ⁴	60 dys ⁴	—	10 dys	—	S-30 dys	S-364 dys	S-728 dys	ND
OH	\$150	\$150	\$150	—	10 con dys	30 con dys	—	—	—	—	—	S-180 dys	OH
OK	—	—	—	—	— ²⁸	— ²⁸	—	— ²⁸	— ²⁸	R-30 dys	R-1 yr	R-3 yrs	OK
OR	—	—	—	48 hrs	48 hrs	48 hrs	80 hrs	80 hrs	80 hrs	—	S-90 dys	S-1 yr	OR
PA	\$300	\$300	\$300	—	30 dys	90 dys	—	—	—	S-1 mo	S-12 mos	S-12 mos ⁵	PA
PR	—	—	—	—	24 con hrs	30 dys	—	10 dys	—	—	—	—	PR
RI	\$100	\$400	\$400	—	10 dys ⁴	6 mos ⁴	—	—	—	S-3 mos	S-1 yr	S-2 yrs	RI
SC	\$200	\$1,000	\$3,500	48 hrs	48 hrs	60 dys	48 hrs	10 dys	—	—	S-1 yr	S-2 yrs	SC
SD	—	—	—	—	—	—	—	—	—	—	R-1 yr	R-1 yr	SD
TN	\$250	\$500	\$1,000	48 hrs	45 dys	120 dys	—	—	—	—	R-2 yrs	R-3 yrs	TN
TX	—	—	—	—	72 hrs ¹⁶	10 dys ¹⁶	—	—	—	—	—	—	TX
UT	\$50	\$1,000	\$1,000	48 con hrs	240 con hrs	720 dys	24 hrs	80 hrs	240 hrs	S-90 dys	R-1 yr	R-1 yr	UT
VT	—	—	—	—	48 con hrs	48 con hrs	—	10 dys	10 dys	S-90 dys	S-18 mos	R-2 yrs	VT
VA	—	—	—	—	48 hrs	30 dys	—	—	—	—	R-2 yrs ²⁴	R-5 yrs	VA
WA	\$250	\$500	\$500	24 con hrs	7 dys ⁴	7 dys ⁴	—	—	—	S-30 dys	R-1 yr	R-2 yrs	WA
WV	\$100	\$1,000	\$3,000	24 hrs	6 mos	1 yr	—	—	—	N/A	N/A	N/A	WV
WI	—	—	—	—	—	—	—	—	—	S-15 dys	R-60 dys	R-90 dys	WI
WY	—	—	—	—	7 dys	7 dys	—	—	—	—	S-1 yr	R-3 yrs	WY

TOTAL 17 16 15 16 45 42 9 15 6 S - 17 R - 8 S - 17 R - 28 S - 12 R - 33

S = Suspension
R = Revocation

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

- ¹The 48 hours (2nd off) and 120 days (3rd off) are not necessarily served consecutively.
- ²48 consecutive hours or 10 days of community service are mandatory if the Dept. of Motor Vehicles certifies that an application for 23 USC 408 grant funds has been submitted to the U.S. Dept. of Transportation.
- ³The court must sentence defendants to at least one of these sanctions but may sentence them to more than one such sanction.
- ⁴Must serve at least 48 consecutive hours.
- ⁵Could be 5 yrs under the habitual offender law.
- ⁶Not more than 200 hours of community service in lieu of the fine.
- ⁷This sentence may not be suspended; however, the statute is silent as to probation.
- ⁸Or 14 days in a treatment facility.
- ⁹Does not apply to illegal per se offense; this sanction only applies to "regular" DWI offenses.
- ¹⁰Must serve 48 consecutive hours; does not apply to illegal per se offenses.
- ¹¹One day imprisonment or 24 hrs of community service if rehabilitation is taken.
- ¹²5 days if rehabilitation is taken; 48 hours must be served consecutively.
- ¹³48 hrs. must be served consecutively.
- ¹⁴Three (3) consecutive 24 hour periods in a house of correction and seven (7) consecutive 24 hour periods in a DWI detention center.
- ¹⁵Mandatory treatment of not less than 12 nor more than 48 hours; this time is to be spent in an intoxicated driver resource center.
- ¹⁶As a part of probation.
- ¹⁷Provided the defendant either (1) had a BAC level of 0.15 or more, (2) was driving 30 MPH over the speed and had a BAC level of 0.10 or more, (3) was eluding a police officer and had a BAC level of 0.08 or more or (4) refused to submit to a chemical test.
- ¹⁸Mandatory community service regardless of whether there is a mandatory imprisonment sanction.
- ¹⁹Involving at least 40 hours.
- ²⁰May not apply to certain offenders who have been suspended pursuant to the administrative per se law.
- ²¹Applies only to intoxicated offenses; for illegal per se and admin. per se actions, a restricted hardship license may be granted provided the defendant has not received such a privilege within the passed 5 years.
- ²²The law states that the right to operate a motor vehicle is "forfeited."
- ²³Home incarceration is possible.
- ²⁴Temporary restricted license may be issued only for the purpose of attending either an alcohol education or treatment program.
- ²⁵Work release is available for this period of time.
- ²⁶In lieu of imprisonment for 30 dys, 8 hrs of community service may be substituted for each day less than 30 dys that the person would have served in jail.
- ²⁷Not more than 90 dys as an alternative to imprisonment.
- ²⁸If there is no imprisonment sanction, the defendant must serve either 48 con. hrs. of impatient rehabilitation/treatment or 10 dys of community service.
- ²⁹This revocation may not be mandatory if the defendant meets certain eligibility requirements for and does participate in a driver rehabilitation or improvement program.
- ³⁰A person may be issued a restricted license notwithstanding this revocation if certain conditions are met.
- ³¹Applies only to 1st illegal per se convictions.

STATE
General Comments:

ALABAMA
See Code of Alabama.

Basis for a DWI Charge:

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

Under the influence of alcohol §32-5A-191(a)(2)
0.10 §32-5A-191(a)(1)
0.10 §32-5A-194(b)(3)
(1) Any substance, (2) a Controlled Substance
and (3) Alcohol and a Controlled Substance.
§32-5A-191(a)
For Commercial Motor Vehicle Operators, see p.
3-3.

Other:

Chemical Breath Tests for BAC Level:

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

No
Yes §32-5-192
No
Yes (Criminal & Civil Cases) §32-5A-194(c).
Special Note: A person who has been arrested for
a DWI charge shall not be released until their
BAC Level is less than 0.10; see §32-5A-191(g).

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

Blood:
Urine:
Other:

Yes §32-5-192
Yes §32-5-192
None

Adjudication of DWI Charges:

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

No
No
No

Sanctions for Refusal to Submit to a
Chemical Test:

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

N/A
N/A
N/A

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

Refusal to Take Implied Consent Chemical Test:

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

None

1st Refusal - **Susp-90 dys**; 2nd Refusal (w/n 5 yrs) - **Susp-1 yr** Special Note: These susps appear to be mandatory.¹ §32-5-192

Other:

None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment/Fine:

1st off §32-5A-191(c)-Not more than **1 yr, \$250-1,000**; 2nd Off (w/n 5 yrs) §32-5A-191(d)-Not more than **1 yr, \$500 - 2,500**; 3rd or subsequent offs (w/n 5 yrs) **60 dys to 1 yr, \$1,000-5,000**. §32-5A-191(e) Serious Bodily Injury related to a DWI Off (assult in the first degree-Class B felony): **2-20 yrs²**, not more than **\$10,000²** §§13A-5-6(a)(2); 13A-5-11(a)(2) and 13A-6-20(a)(5) & (b)

Mandatory Minimum Term:

For non-injury DWI offs: 2nd off-48 cons hrs³; 3rd & sub off-60 dys

Mandatory Minimum Fine (\$):

None

Other Penalties:

Community Service:

2nd Off (w/n 5 yrs)-Not less than **20 dys³** §32-5A-191(c) & (d)

Restitution (eg Victim's Fund)

Yes, Victims' Compensation Fund; see §15-23-1 et seq. Special Note: Under §15-18-65 et seq., a defendant may be required to pay restitution to a victim (or a victim's representative) as a result of damages caused by the defendant's criminal behavior.

Other:

None

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

No

Other:

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

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

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

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

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

Post DWI Conviction Licensing Action:

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

1st off - Susp, 90 dys¹ 32-5A-191(c); 2nd off -
Rev, 1 yr 32-5A-191(d); 3rd or subsequent offs -
Rev.-3 yrs 32-5A-191(e)

Mandatory Minimum Term of
Withdrawal:

1st off - 90 dys²; 2nd off - 1 yr; 3rd or
subsequent offs - 3 yrs

Other:

Rehabilitation:

Alcohol Education:

1st off - Yes 32-5A-191(c)

Alcohol Treatment:

1st off - Yes 32-5A-191(c)

Alcohol Education/
Treatment as an Altern-

ative to Criminal
Licensing Actions

(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

None

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Miscellaneous Sanctions

Not Included Elsewhere:

None

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

²It may be possible to "modify" this susp. period; see §32-5A-195(1).

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC level of 0.04 or more, (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs. mand.). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. See §§3(e), 11, 12, & 13 of Act 89-878; this law is effective 10/1/90.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes** Two types of offenses (1) "Homicide by Veh"-Felony. See §32-5A-192. (2) "Criminally Negligent Homicide" while DWI-Class C Felony See §13A-6-4(a) & (c).

Sanctions:

Criminal Sanction:

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

Mandatory Minimum Term:

None

Fine (\$ Range):

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

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Rev² §32-5A-195(j)(1)

Length of Term of

Licensing Withdrawal:

Rev. period is not specified in the statute.

Mandatory Action--Minimum

Length of License

Withdrawal:

None

Other:

None

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

Sanction:

Criminal:

Imprisonment (Term):

(Misd) not more than **180 dys** (and/or fine);
§32-6-19

Mandatory Minimum Term
of Imprisonment:**None**

Fine (\$ Range):

Not less than **\$100** nor more than **\$500** (and/or
imprisonment); §32-6-19

Mandatory Minimum Fine:

\$25

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Rev (at the discretion of the director of
public safety) §32-6-19

Length of Term of License

Withdrawal Action:

An **additional period of 6 mos** §32-6-19

Mandatory Term of License

Withdrawal Action:

None

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

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

Other Criminal Actions Related to DWI: (continued)

Habitual Offender Laws:

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

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

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

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

No (Not specifically provided for by
statute. Note: In Lankford v. Redwing
Carriers, Inc., 344 So.2d 515 (Ala., 1977),
the BAC test law provisions were deemed to
apply to dead persons.)

BAC Chemical Test Is Given to the
the Following Persons:

Driver:
Vehicle Passengers:
Pedestrian:

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** §28-1-5 & 28-3A-25(a)(19)
(Year Eff: 1985)
Minimum Age (Years) Possession: **21** §28-3A-25(a)(19)
Minimum Age (Years) Consumption: **21** §28-3A-25(a)(19)

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes** §6-5-71

"Dram Shop Law" Concept Has Been

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

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

Dram Shop Actions--Social Hosts:

Yes--Limited A social host can be held liable
for the actions of intoxicated minors; see
Martin v. Watts, 508 So.2d 1136 (Ala. 1987)¹.
See also DeLoach v. Mayer Electric Co., 378
So.2d 733 (1979) and Beeson v. Scoles Cadillac
Corp., 506 So.2d 999 (1987)²; these cases
involved "business" social host situations.

Other:

None

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

Type of Criminal Action:

See Regulation 20-X-6-.02 which prohibits the
sale of alcoholic beverages to persons "acting
in a manner as to appear to be intoxicated."
Reg. promulgated via §28-3-49.³ It is a **misd.**
to violate a regulation (§28-3-20).

Imprisonment:

Not more than **6 mos** §28-3-20⁴

Fine (\$ Range):

Not more than **\$500** §28-3-20⁴

¹Note: This same case is also reported at 513 So.2d 958.

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

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

⁴See §28-3-19 which also makes it a misd. to violated alcoholic beverage control regulations. The sanction for this offense is a fine of \$100 to \$200 and/or imprisonment for not more than 90 days.

Other State Laws Related To Alcohol Use: (continued)

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

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

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

Type of Criminal Action: 1st off - Misd; 2nd off - Misd; 3rd and subsequent Off Misd §28-3A-25(a)(3)
Term of Imprisonment: 1st off - Not more than 6 mos; 2nd off - 3 to 6 mos; 3rd and subsequent off 6 to 12 mos §28-3A-25(b)(1)
Fine (\$ Range): 1st off - \$100 to 1,000; 2nd off - \$100 to 1,000; 3rd and subsequent off - \$100 to 1,000 §28-3A-25(b)(1)

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes** 1st off - None; 2nd and subsequent off - Rev §28-3A-26
Length of Term License Withdrawal: 1st off None; 2nd and subsequent off - 1 yr §38-3A-26

Anti-Happy Hour Laws/Regulations: **Yes** Regulation 20-X-6-.14

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

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

STATE:
General Comments:

ALASKA
See Alaska Statutes.

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §28.35.030(a)(1)
Illegal Per Se Law (BAC/BrAC Level):	0.10¹ §28.35.030(a)(2)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	(1) A Controlled Substance and (2) Intoxicating Liquor and Another Substance §28.35.030(a)(1) & (3)
Other:	None

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	Yes §28.35.031(b)
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §28.35.031
Implied Consent Law Applies to Drugs (Yes/No):	No
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal & Civil Cases) §28.35.032(e)
Other Information:	Special Note: A chemical test may be administered to a person without their consent if they have been arrested for a DWI off where there has been an accident involving death or physical injury to another person. See §28.35.035(a).

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

Blood:	No
Urine:	No
Other:	None

Adjudication of DWI Charges:

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

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

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	<u>Infraction</u> not more than \$300 §§28.35.031(e) & 28.35.230(c)
Administrative Licensing Action (Susp/Rev):	None
Other:	None

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	<u>C1-A misd</u> , Not more than 1 yr imprisonment and/or \$5,000 fine (sanctions vary for each separate off and are the same, including mandatory sanctions, as for DWI offs; §§28.35.032(f) & (g))
Administrative Licensing Action (Susp/Rev):	<u>1st Refusal</u> -Not less than a 90-day rev ; <u>2nd Refusal</u> or a 1st refusal where there has been a previous DWI conviction-Not less than 1 yr rev ¹ §§28.15.165, 28.15.166 & 28.15.181(c)
Other:	Special Note: All license rev periods given are <u>mandatory</u> .

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment/Fine:	<u>C1 A Misd, 1st Off</u> - Not more than 1 yr, \$250 - 5,000 ; <u>2nd Off</u> ² (w/n 10 yrs) - Not more than 1 yr, \$500 - 5,000 ; <u>Subsequent Offs</u> ² (w/n 10 yrs) - Not more than 1 yr, \$1,000 - 5,000 §§12.55.135 & 28.35.030
Mandatory Minimum Term:	1st off - 72 cons hrs; 2nd off - 20 cons dys; 3rd off - 30 cons dys
Mandatory Minimum Fine (\$):	None

Other Penalties:

Community Service:	<u>C1 A Misd, 1st Off</u> - Yes ³ ; <u>2nd Off</u> ² (w/n 10 yrs) - Yes ³ ; <u>Subsequent Offs</u> ³ (w/n 10 yrs) - Yes ³ §12.55.055
--------------------	--

¹Subsequent refusal where there have been 2 or more (1) refusals, (2) DWI convictions or (3) a combination thereof - not less than a 10 yr rev. (The previous refusal/DWI conviction must have occurred within 10 yrs of the 1st refusal. §§28.15.164, 28.15.166 and 28.15.181(c))

²Special Note: A previous off is considered to be either a previous chemical test refusal or a previous DWI conviction (This note also applies to C1 A misd offs for refusal to submit to a chemical test; see §28.25.032(f) & (g).)

³This community service is not an alternative to the mandatory minimum terms of imprisonment; the length and type of community service is discretionary with the court.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Restitution (eg Victim's Fund) **Yes** The court may order a defendant to pay direct compensation to a victim(s). §12.55.045
Other: **None**

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law: **Yes-0.10** 1st Off-rev for not less than **90 dys** (30 dys are mandatory; a restricted hardship license may be issued for 60 dys); 2nd off (w/n 10 yrs)-**rev** for not less than **1 yr** (mandatory)¹
Other: **None**

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev): **Rev** §28.15.181(c)

Term of License Withdrawal (Days, Months, Years, etc.): The revs for 1st, 2nd and subsequent DWI convictions are respectively the same as for 1st, 2nd and subsequent admin. per se offs.

Mandatory Minimum Term of Withdrawal: Same as for admin. per se violations.

Other:

Rehabilitation:

Alcohol Education: **Yes**² §28.35.030(c)

Alcohol Treatment: **Yes**² §28.35.030(c)

Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe): **No**

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority: **Yes** §28.35.036 A vehicle used in a DWI offense may be subject to forfeiture if the operator has been previously convicted of a DWI or implied consent law offense.

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

Other: **None**

¹Subsequent offs (w/n 10 yrs) - rev for not less than 10 yrs (mandatory) §§28.15.165, 28.15.166 and 28.15.181(c)

²For any DWI conviction, a defendant must complete either an alcohol education or an alcohol treatment program that the Court feels is appropriate for that defendant. §28.35.030(c)

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

Miscellaneous Sanctions
Not Included Elsewhere: **None**

Special Note: The Court may order the forfeiture of a driver's veh following either a DWI or chemical test refusal conviction if they have had more than one such conviction; also, under §28.35.038 municipalities may enact ordinances to impound/forfeit motor vehicles for violations of local DWI/chemical test refusal laws.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such Law/Type of Offense: **No**
Sanctions:
Criminal Sanction:
Imprisonment (Term):
Mandatory Minimum Term:
Fine (\$ Range):
Mandatory Minimum Fine:

Homicide by Vehicle
Administrative Licensing Action:
Licensing Authorized and
Type of Action: See Footnote No. 1 below.
Length of Term of
Licensing Withdrawal:
Mandatory Action--Minimum
Length of License
Withdrawal:
Other:

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:
Sanction:
Criminal:
Imprisonment (Term): Not less than **90 dys** §28.15.291
Mandatory Minimum Term
of Imprisonment: **90 dys**
Fine (\$ Range): Not less than **\$1,000**
Mandatory Minimum Fine: **None**

¹Special Note: Even though this State does not have a veh-homicide statute, it, nevertheless, provides for discretionary license rev for 1 yr for a conviction of manslaughter resulting from the operation of a motor vehicle.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Rev §28.15.291

Length of Term of License

Withdrawal Action:

Original susp or rev extended 1 yr

Mandatory Term of License

Withdrawal Action:

None

Habitual Offender Laws:

State Has Such Law (Yes/No):

No

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

No

BAC Chemical Test Is Given to the

the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: 21 §§04.16.050, .051 & .052 (Year Eff: 1983)
 Minimum Age (Years) Possession: 21 (There are exemptions for parents/physicians furnishing alcoholic beverages to minors) §§04.16.050, .051 & .052
 Minimum Age (Years) Consumption: 21 (There are exemptions for parents/physicians furnishing alcoholic beverages to minors) §§04.16.050, .051 & .052

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): Yes §04.21.020¹
 "Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation): Yes *Nazareo v. Urie*, 638 P.2d 671 (1981)
 Note: The holding in this case limited to actions arising before §04.21.020 was amended in 1980.

Dram Shop Actions--Social Hosts:

No See §04.16.020.

Other:

None

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

Type of Criminal Action: Cl A misd §§04.16.030 & 04.16.180
 Term of Imprisonment: Not more than 1 yr
 Fine (\$ Range): Not more than \$5,000

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): Yes §04.16.180
 Length of Term of License Withdrawal: 1st conviction--45 day susp; 2nd conviction -- 90 day susp; 3rd and/or subsequent convictions--discretionary (No time limit is given in the statute.) Note: The susps and revs are not mandatory. §04.16.180

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

Other State Laws Related To Alcohol Use: (continued)

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

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

Cl. A Misd §§04.16.052 & 04.16.180
Not more than **1 yr**
Not more than **\$5,000**

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

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

Yes §04.16.180
**1st conviction--45 day susp; 2nd convictions
--90-day susp; 3rd and/or subsequent
convictions--Court's discretion (No time limit
is given in the statute.) Note: The time
limitations are not mandatory.**

Anti-Happy Hour Laws/Regulations:

Yes §04.16.015

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

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

Yes §28.35.029
No

JURISDICTION:

AMERICAN SAMOA

General Comments:

American Samoa Code Annotated (Updated through 1987.)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor §22.0707(a)

Illegal Per Se Law (BAC Level):

None

Presumption (BAC Level):

0.08 §22.0607(a)(3)

Types of Drugs/Drugs and Alcohol:

Any Narcotic Drug or Any Other Drug §22.0707(a)

Other:

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

No

Implied Consent Law:

Arrest Required (Yes/No):

Yes §22.0601

Implied Consent Law Applies to

Drugs (Yes/No):

No

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal & Civil Cases) §22.0603

Other Information:

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes §22.0601

Urine:

Yes §22.0601

Other:

Saliva §22.0601

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

Yes-Limited A DWI charge cannot be plea bargained to a lesser offense if the alcohol offense was related to an accident that caused either vehicle damage or personal injury. See §22.0707(b).

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

No¹

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

JURISDICTION - American Samoa

Sanction for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): **N/A**
Administrative Licensing Action
(Suspension/Revocation): **N/A**
Other:

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): **None**
Administrative Licensing Action
(Suspension/Revocation): **Susp-90 dys** (appears to be mandatory) §22.0608
Other:

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.): **Class A Misd-Not more than 1 yr** §§22.0707 & 46.2301(5)

Mandatory Minimum Term: **None**

Fine:

Amount (\$ Range): **Not more than \$1,000** §46.2102(a)(1)

Mandatory Min. Fine (\$): **None**

Other Penalties:

Community Service:

Restitution

(eg Victim's Fund): **Yes** Paid by the defendant to a victim; see §§46.2001 & 46.2002.

Other:

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law: **None**

Other:

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Suspension/Revocation): **Susp/Rev** (for all offenses) §22.0211 See Footnotes Nos. 1, 2 & 3 below.

Term of License Withdrawal

(Days, Months, Years, etc.): **1st off-6 mos; 2nd off-2 yrs; 3rd off-Permanently** §22.0211

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

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

³Either suspension or revocation for the periods indicated.

JURISDICTION - American Samoa

Sanctions Following a Conviction for a DWI Offense:

(continued)

Mandatory Minimum Term of
Withdrawal:

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

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Alcohol Education/

Treatment as an Alternative
to Criminal/

Licensing Actions

(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

Other:

Miscellaneous Sanctions

Not Included Elsewhere:

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

Jurisdiction Has Such Law/Type of

Offense:

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

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Not more than **5 yrs** §§22.0706 & 22.0708

Mandatory Minimum Term:

None

Fine (\$ Range):

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

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Susp or Rev 22.0203 See Footnotes Nos. 2, 3 &
4 below.

Length of Term of

Licensing Withdrawal:

1st off-180 dys; 2nd & sub off-2 yrs See
Footnote No. 4 below.

Mandatory Action--Minimum

Length of License

Withdrawal:

None

Other:

¹Sec. 22.0708 concerns a death related to a DWI offense whereas §22.0706 concerns a death caused by the operation of a vehicle for other traffic law violations. However, the criminal sanctions for a violation of either of these two (2) sections are the same.

²The suspension period may be doubled; see 22 §213(b).

³Either suspension or revocation for the periods indicated.

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

Other Criminal Actions Related to DWI: (continued)

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

Sanction:

Criminal:

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

Mandatory Minimum Term of Imprisonment: **90 days** §22.0223

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

Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action (Suspension/Revocation): **Susp** §22.0219

Length of Term of License

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

Mandatory Term of License

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

Other:

Habitual Offender Laws:

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

Grounds for Being Declared an
Habitual Offender:

Term of License Revocation While
Under Habitual Offender Status:

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

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

Imprisonment (Term):

Mandatory Minimum Term of
Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

JURISDICTION - American Samoa

Other Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

None

BAC Chemical Test Is Given to the
Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Sales Only) (Year Eff: 1961)
§27.0531(a)(1)

Minimum Age (Years) Possession:

None

Minimum Age (Years) Consumption:

None

Dram Shop Laws and Related Legal Actions:

Jurisdiction Has

a Dram Shop Law (Yes/No):

No

"Dram Shop Law" Concept Has Been

Adopted Via a Change to the Common

Law Rule by Action of the Highest

Court of Record in the Case (Case

Citation):

Dram Shop Actions-Social Hosts:

Other:

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

Type of Criminal Action:

Class B Misd. §§27.0531 & 27.0534

Term of Imprisonment:

Not more than 6 mos §46.2301(6)

Fine (\$ Range):

Not more than \$500¹ §46.2102(a)(2)

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes-Susp/Rev §27.0533

Length of Term of License Withdrawal:

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

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

Other Laws Related To Alcohol Use: (continued)

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

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

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

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

Anti-Happy Hour Laws/Regulations: **None**

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

Open Container Law (Yes/No):	Yes §27.0532
Anti-Consumption Law (Yes/No):	Yes (Driver and Passengers) §27.0532

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

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

STATE:
General Comments:

ARIZONA
See Arizona Revised Statutes Annotated.

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §28-692(A)
Illegal Per Se Law (BAC/BrAC Level):	0.10 ¹ §28-692(B)
Presumption (BAC Level):	0.10 §28-692(E)(3)
Types of Drugs/Drugs and Alcohol:	Any Drug ² §28-692(L)
Other:	For Commercial Motor Vehicle Operators, see p. 3-26.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §28-692
Implied Consent Law Applies to Drugs (Yes/No):	Yes
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal & Civil Cases) §28-692(K)
Other Information:	None

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

Blood:	Yes §28-691
Urine:	Yes §28-691
Other:	"Other bodily substances" approved in §28-691 (G) but not in §28-691 (implied consent statute)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	Yes §§28-692(C) ³ & 28-692.04
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes §28-692.01(A)

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

²Impaired to the slightest degree by (1) a combination of intoxicating liquor, drugs or toxic vapor releasing substance per §13-3401 or (2) a toxic vapor releasing substance per §13-3401; see §28-692(O) & (P). A violation of this provision results in the same sanctions as for a DWI offense.

³A DWI charge shall not be dismissed or changed to another misd/petty off unless there is clearly an insufficient legal basis for the DWI off charge.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

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

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): None
Administrative Licensing Action (Susp/Rev): **12 month susp (Mandatory)** §28-691
Other: A person may be required to attend and successfully complete a driver training course. §28-446

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment/Fine/Term:

1st off-C1 1 misd - **Not more than 6 mos, Not more than \$1,000**; 2nd off-C1 1 misd (w/n 60 mos) - **Not more than 6 mos, not more than \$1,000** §§13-707 & 28-692.01; 3rd & sub off (w/n 60 mos)-C1 5 felony §28-692 - **1 to 2 yrs¹, not more than \$150,000** §13-801

Mandatory Minimum Term:

1st off - **24 cons hrs**; 2nd off - **60 dys** (with at least 48 con. hrs); 3rd & sub off - **6 mos**
Note: These sanctions may **not** be mandatory, see Special Note on p. 3-26.

Mandatory Minimum Fine (\$):

1st off C1 1 misd-**\$250**; 2nd off C1 1 misd (w/n 60 mos)-**\$500**; 3rd & sub off (w/n 60 mos) C1 5 felony §28-692.01-**None** (See Footnote No. 2.)

Other Penalties:

Community Service:

1st off (C1 1 misd)-**Yes 8-24 hrs** (May be used in addition to or as an alternate for imprisonment, provided the defendant (1) did not have a BAC level of 0.20 or more or (2) did not cause serious physical injury to another person; see §28-692.01(C) & (D).) See Special Note on p. 3-26.

¹See §28-692.01(H) where a defendant may serve the imprisonment term on a part-time basis for employment purposes.

²Under §36-2219A, an additional fee of \$30 is collected from each defendant for the purpose of financing emergency medical services operating fund. Also, under §36-2219A, \$40 of the regular fine must be deposited into the alcohol abuse treatment fund.

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

Restitution (eg Victim's Fund) **Yes** A victims' compensation fund; see §41-2407. Also, where a defendant's conviction was for an off that resulted in economic loss to a victim, the Court may order that all or any portion of the fine imposed on the defendant be allocated as restitution. §13-804

Other:

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes, 0.10 §28-694(B) For a mandatory suspension period of **not less than 90 cons days**¹ Under §§28-446(A)(1) & 28-448(A) & (B), it may be "possible" to susp/rev a person's license for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., a 2nd DWI off). Such action may be taken without a preliminary hearing.

Other:

Post DWI Conviction Licensing Action:

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

1st off-Susp-not less than 90 con dys^{1&4}; 2nd off-Rev-not less than 1 yr; 3rd & sub off-Rev-3 yrs §§28-445, 28-448 & 28-692.01² Driving under the influence of narcotics-Rev-1yr §§28-445(A)(2) & 28-448(B)

Mandatory Minimum Term of
Withdrawal:

1st off-90 con dys^{1&4}; 2nd off-1 yr³; 3rd & sub off-3 yrs Driving under the influence of narcotics-1yr

¹However, for 1st offenders (Admin. per se or DWI) who did not (1) have a BAC level of 0.20 or more or (2) cause serious physical injury, the license suspension period is not less than 30 cons days (mandatory) and a restricted license for not less than 60 cons days; see §§28-694(B) and 28-692.01(C) & (J).

²In addition to any other legal sanction for a DWI off conviction, a person under 18 yrs old must receive license suspension for two (2) yrs; however, restricted driving privileges are available for employment/education purposes; see §§1-125(4) and 8-249(A) and (D).

³Mandatory if second off. was committed w/n 36 mos. of the first; see §28-445(b).

⁴Note: This suspension period does not apply to certain 1st offenders who have been suspended pursuant to the admin. per se law; see §28-692.01(J).

Sanctions Following a Conviction for a DWI Offense:

(continued)

Other:

Rehabilitation:

Alcohol Education: 1st off - Yes¹ §28-692.01(D)
Alcohol Treatment: 1st off - Yes¹; 2nd off - Yes¹; 3rd Off - Yes¹
§28-692.01(D), (E) & (F)
Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe): **None**

Vehicle Impoundment/Confiscation:

Authorized by Specific
Statutory Authority:

Yes Under §28-1259, vehicle registration and license plates are suspended for the same period of time as the vehicle owner's driver's license. For second or subsequent offenses (w/n 36 mos) this suspension is mandatory. (Note: If a person has had their license suspended/revoked for a DWI offense and they are convicted of another such offense while in a DWI suspension/revocation status, their vehicle is forfeited. §28-692.06(A))

Terms Upon Which Vehicle
Will Be Released:
Other:

N/A
None

Miscellaneous Sanctions
Not Included Elsewhere:

Special Note: Under §§9-499.07 and 11-459, either **community service** or "**home detention**" may be substituted for confinement in jail. This would appear to apply to most non-violent offenses such as DWI (including subsequent DWI offenses). I.e., such service or detention is to be treated the same as confinement in jail.

¹If a defendant has been ordered to participate in either an alcohol education or treatment program, their license cannot be restored until they prove that they have "satisfactorily" completed such program. See §28-454.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they are under the influence of alcohol or a controlled substance. For a subsequent violation, the "disqualification" is for life. See §§28-101(2), 28-101(7), 28-402(4), 28-402(7) & 28-455.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **No**

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Note: License rev for 1 yr for any homicide resulting from the operation of a motor veh. §§28-445 & 28-448

Length of Term of

Licensing Withdrawal:

Mandatory Action--Minimum

Length of License

Withdrawal:

Other:

Note: See Restitution under Sanctions Following a Conviction for a DWI Offense.

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

Sanction:

Criminal:

Imprisonment (Term):

C1 1 Misd. - Not more than 6 mos; C1 5 Felony-DWI off and driving on a susp/rev lic. for a previous DWI conviction - Not more than 2 yrs §§13-707, 13-802, 28-473 & 28-692.02

Mandatory Minimum Term of Imprisonment:

C1 1 Misd. off - 48 cons hrs (§28-473); C1 5 Felony off - 6 mos (§28-269.02(C))

Fine (\$ Range):

C1 1 Misd. off - Not more than \$1,000 (§13-701); C1 5 Felony off - Not more than \$150,000 (§13-801)

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev):

For 1st off & sub. offs.: For driving while suspended - Susp; For driving while revoked - Rev §28-473

Length of Term of License Withdrawal Action:

For 1st off & sub. offs.: Susp equal to original susp period not to exceed one yr form the date of reinstatement; Rev 1 additional yr of rev §28-473

Mandatory Term of License Withdrawal Action:

For 1st off & sub. offs.: Susp equal to original susp period not to exceed one yr form the date of reinstatement; Rev 1 additional yr of rev. §28-473

¹See Note in Vehicle Impoundment/Confiscation on p. 3-26.

Other Criminal Actions Related to DWI: (continued)

Habitual Offender Laws:

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

Other State Laws Related To Alcohol Use:

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

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

Laws Establishing the Minimum Ages
 Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** §§4-101(16) & 4-244(9) (Year Eff: 1985)
 Minimum Age (Years) Possession: **21** §§4-101(16) & 4-244(9)
 Minimum Age (Years) Consumption: **21** §§4-101(16) & 4-244(9)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes** §4-311

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

Yes, *Ontiveros v. Borak, et al.*, 667 P.2d 200
 (Ariz. 1983) and *Brannigan et al. v. Ray Buck*,
 667 P.2d 213 (Ariz. 1983)¹

Dram Shop Actions—Social Hosts:

No §4-301 (However, liability for minors'
 actions may still be possible) and *Profitt v.*
Canez, 575 P.2d 1261 (1977)

Other:

None

¹These cases may have been abrogated by statute; see §4-312.B.

Other State Laws Related To Alcohol Use: (continued)

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

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

Cl 1 Misd §§4-244(14) & 4-246(B)
Not more than **6 mos** §13-707(A)
Not more than **\$1,000** §13-802(A)

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

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

Yes - Susp or rev §4-210(A)(9)
Length of term not fixed

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

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

Cl 1 Misd §§4-244(9) & 4-246(B)
Not more than **6 mos** §13-707(A)
Not more than **\$1,000** §13-802(A)

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

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

Yes - Susp or rev §4-210(A)(9)
Length of term not fixed

Anti-Happy Hour Laws/Regulations:

Yes §4-244(24)

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

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

No
Yes Driver only §4-244(22) Note: There is
also a law prohibiting the consumption of liquor
(but not beer) in a public place; See
§4-244(20); Beer may be consumed in certain
limited public areas.



STATE:
General Comments:

ARKANSAS
See Arkansas Code Annotated.

Basis for a DWI Charge:

Standard DWI Offense:	Intoxicated ¹ §§5-65-102(1) & 5-65-103(a)
Illegal Per Se Law (BAC/BrAC Level):	0.10 ² §§5-65-103(b) & 5-65-204(a)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Controlled Substance ¹ §§5-65-102(1) & 5-65-103(a)
Other:	For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	No ³ §5-65-202
Implied Consent Law Applies to Drugs (Yes/No):	Yes §5-65-202
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) Weaver v. City of Fort Smith, 777 S.W.2d 867 (Ark.App. 1989)
Other Information:	None

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

Blood:	Yes
Urine:	Yes
Other:	None

¹Intoxicated means influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant, or any combination thereof. See §5-65-102(1).

²In the section establishing the illegal per se offense, the standard used is percent by weight of alcohol in the blood; see §5-65-103(b). However, under §5-65-204(a), alcohol concentration is defined as either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

³A law enforcement officer can request a driver to submit to a chemical test if the driver has been involved in a fatal accident or if there is "reasonable cause to believe" that the driver is intoxicated or has a BAC level of 0.10 or more; see §5-65-202(a)(2) & (3).

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC level of 0.04 or more, (2) are intoxicated or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs. mandatory). It is a Class B Misd. to operate a CMV while intoxicated or with a BAC/BrAC of 0.04 or more; sanctions: Jail-not more than 90 dys; fine-not more than \$500 (§§5-4-201(b)(2) & 5-4-401(b)(2)). In addition, a person who has any alcohol in their system must be placed "out-of-service" for 24 hours. See §§3, 11, 12, 13, 14 & 15 of Act 241 of the laws of 1989.

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	Yes¹
Anti-Plea Bargaining Statute (Yes/No):	Yes¹
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes §5-65-109 (Alc. abuse assessment required.)

Sanction for Refusal to Submit to a Chemical Test:

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

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	1st ref-susp. 6 mos to 1 yr; 2nd ref (w/n 3 yrs)-susp. 1 yr-16 mos; 3rd ref (w/n 3 yrs)-susp. 2 yrs-30 mos; 4th ref (w/n 3 yrs)-rev. 3 yrs. (These susps and rev. are mandatory.) §5-65-205 Note: Nonresidents of Ark. would only receive a 6 mos. susp. §5-65-205(d)
Other:	None

Sanctions Following a Conviction for a DWI Offense:

<u>Criminal Sanctions:</u>	
Imprisonment Term/Fine:	1st off-24 hrs to 1 yr \$150 to \$1,000 (For Subsequent Offenses, see Footnote No. 2.) 2nd off: if w/n 3 yrs-7 dys-1 yr; if w/n 5 yrs-\$400 to \$3,000 3rd off: if w/n 3 yrs- 90 dys to 1 yr; if w/n 5 yrs-\$900 to \$5,000 4th and subsequent offs (Felony): if w/n 3 yrs-1 to 6 yrs; if w/n 5 yrs-\$900 to \$5,000 §5-65-111 & 5-65-112 See Footnote No. 3.

¹Persons charged with a DWI offense shall be tried on such charges or plead to such charges and no such charges shall be reduced. §5-65-107 See Footnote No. 2 on p. 3-33.

²Special Note: Arkansas has two different systems for determining sanctions for subsequent DWI offenses. For the imprisonment sanction, the sanctions listed for subsequent offenses apply to those offenses which have been committed within three (3) years of a first offense. For the fine sanction, the sanctions listed for subsequent offenses apply to those offenses which have been committed within five (5) years of a first offense. For example, if a person has been convicted of a DWI off which occurred more than three but less than five years from a first DWI conviction, they would be imprisoned as if they were a first offender but fined as if they were a second. Also, the three year time period as applied to the imprisonment sanction is also used to determine whether a fourth or subsequent DWI conviction is to be considered a felony.

³Note: There is a special court cost of \$250 for any person who either pleads guilty/nolo contendere or is found guilty of a DWI offense; see §5-65-113.

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

Mandatory Minimum Term: 1st off-None; 2nd off (w/n 3 yrs)-7 dys; 3rd off (w/n 3 yrs)-90 dys; 4th & sub. off (w/n 3 yrs)-1 yr §5-65-111 See Footnote No. 1.
Mandatory Min. Fine (\$): 1st off-\$150; 2nd off (w/n 5 yrs)-\$400; 3rd & sub. off (w/n 5 yrs)-\$900 §5-65-112 See Footnote No. 1.

Other Penalties:

Community Service: 1st off - Yes Public Service in lieu of imprisonment §5-65-111(a) (Note: If a person is unable to pay a fine, they may be given community service as an alternative sanction; see §5-65-114.)

Restitution
(eg, Victim's Fund)

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

Other:

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

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law: **None**
Other: **None**

¹Certain minimum sanctions for DWI offenses under §§5-65-111 and 5-65-112 are mandatory. See Lovell v. State, 678 S.W.2d 318 (Ark. 1984), Lovell v. State, 681 S.W.2d 395 (Ark. 1984), and Lawson v. State, 746 S.W.2d 544 (Ark. 1988).

²However, for persons who are either convicted of or plead guilty/non-contendere to a 1st DWI offense, the court is prohibited from placing such persons on probation and later discharging the accused without adjudication after the probation period has been served. §5-65-108

³In addition to any other sanctions provided by law, a person under 18 years old, who is convicted of a DWI offense, must have their license suspended for either 12 months or until they reach 18 whichever is the longer suspension period. However, a restricted hardship driving permit is available for employment/educational purposes; see §§1, 2 & 3 of Act 93 (1989) (3rd extraordinary session of the legislature).

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

Post DWI Conviction Licensing Action:

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

1st off-Susp, 90-120 dys; 2nd off (w/n 3 yrs)-Susp, 1 yr-16 mos; 3rd off (w/n 3 yrs)-Susp, 2 yrs-30 mos; 4th and sub offs (w/n 3 yrs)-Rev, 3 yrs §5-65-104 For person under 18, see Footnote No. 3 on p. 3-33.

Mandatory Minimum Term of
Withdrawal:

1st off-none¹; 2nd off-1 yr; 3rd off-2 yrs; 4th or sub offs-3 yrs

Other:

Rehabilitation:

Alcohol Education:
Alcohol Treatment:
Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):

Yes §5-65-115(a)
Yes §5-65-115(a)

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

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:

Forfeiture. For a 4th DWI off (w/n 3 yrs), a court may order the defendant's motor vehicle forfeited; see §5-65-116(a).

Terms Upon Which Vehicle
Will Be Released:

N/A

Other:

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

Miscellaneous Sanctions
Not Included Elsewhere:

None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense:

Negligent homicide, If death is caused while DWI, Class D Felony; §5-10-105(a)

Sanctions:

Criminal Sanction:

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

Not more than 6 yrs §5-4-201(a)(5)
None
Not more than \$10,000 §5-4-201(a)(2)
None

¹Note: Section 5-65-104(b) provides for restricted hardship licenses for first offenders.
²However, a temporary license plate may be issued if the court determines that it is in the best interests of the dependents of the offender.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:

Licensing Authorized and
Type of Action: **Rev** §27-16-905(1)
Length of Term of
Licensing Withdrawal: **1 yr** §27-16-912
Mandatory Action—Minimum
Length of License
Withdrawal: **1 yr** §§27-16-905(1) & 27-16-912
Other: **None**

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

Sanction:

Criminal:

Imprisonment (Term): **Misd 2 dys to 6 mos** (§27-16-303)
Mandatory Minimum Term
of Imprisonment: **10 dys** if susp or rev is based on a DWI charge
§5-65-105
Fine (\$ Range): **Not more than \$500**
Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev): **If based on susp, susp. If based on rev, rev.**
§27-16-303
See Vehicle Impoundment/Confiscation on p. 3-34.

Length of Term of License
Withdrawal Action: **Original susp period is extended a like period.**
Original period of rev is extended 1 yr.
§27-16-303

Mandatory Term of License
Withdrawal Action: **Original susp period is extended a like period.**
Original period of rev is extended 1 yr.
§27-16-303

Habitual Offender Laws:

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

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

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

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

No

BAC Chemical Test Is Given to the the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21¹ §§3-3-202 & 3-3-203¹ (Year Eff: 1935)

Minimum Age (Years) Possession:

21¹ §§3-3-203 (There is an employment exemption for persons over 18; see §3-3-204.)

Minimum Age (Years) Consumption:

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

Dram Shop Laws and Related Legal Actions:

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

No

"Dram Shop Law" Concept Has Been

Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the Case (Case Citation):

No (Note: For cases denying liability, see Carr v. Turner, 385 S.W. 2d 656 (Ark. 1965), Milligan v. County Line Liquor, 709 S.W.2d 409 (Ark. 1986), and Yancy v. Beverage House of Little Rock, Inc., 723 S.W.2d 826 (Ark. 1987).)

Dram Shop Actions--Social Hosts:

No Alpha Zeta Chapter of Pi Kappa Alpha Fraternity v. Sullivan, 740 S.W.2d 127 (Ark. 1987)

Other:

None

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

Type of Criminal Action:

Misd for all offenses (See Footnote No. 3 on page 3-37 for citations.)

Term of Imprisonment:

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

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

Other State Laws Related To Alcohol Use: (continued)

Fine (\$ Range):

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

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes (under certain conditions)

Length of Term of License Withdrawal:

Package Sales: (1) All alcoholic beverages except those noted below--for two or more convictions--Rev¹ (and a possible administrative fine); (2) Beer and wine not in excess of 5% alcohol by wgt--none. On-Premis Consumption Sales: (1) All alcoholic beverages except those noted below--Susp/Rev¹; (2) beer (all types)--Susp/Rev¹; (3) wine not exceeding 14%--Susp/Rev¹

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

Type of Criminal Action:

Misd for all offs. (except as noted) (See Footnote No. 3 for citations.)

Term of Imprisonment:

Package Sales: (1) All alcoholic beverages except those noted below - (a) where "knowledge" is a factor²--1st off.--not more than 10 days; 2nd off (w/n 3 yrs)--felony-1-5 yrs; (b) where "knowledge" is not a factor²--1st off.--none; 2nd & sub. off.--6 mos-1 yr or not more than 1 yr; (2) beer and wine not in excess of 5% alcohol by wgt.--not more than 1 yr On-Premis Consumption Sales: (1) All alcoholic beverages except those noted below--not more than 6 mos; (2) beer and wine not in excess of 5% alcohol by wgt--not more than 1 yr; (3) wine not in excess of 14%--10-30 dys

¹Length of Rev/Susp is not specified in the statute.

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

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

Other State Laws Related To Alcohol Use: (continued)

Fine (\$ Range):

Package Sales: (1) All alcoholic beverages except those noted below-(a) where "knowledge" is a factor¹-1st off.-not more than \$500; 2nd off (w/n 3 yrs)-felony-not more than \$500; (b) where "knowledge" is not a factor¹-1st off-\$100-250; 2nd & sub. off-\$250-500 or not more than 1 yr; (2) beer and wine not in excess of 5% alcohol by wgt.-not more than \$500
On-Premises Consumption Sales: (1) All alcoholic beverages except those noted below-not more than \$1,000; (2) beer and wine not in excess of 5% alcohol by wgt-not more than \$500; (3) wine not in excess of 14%-\$100-500

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes (under certain conditions)

Length of Term License Withdrawal:

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

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

Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

Yes (Probably but the law is not specific.) - drivers and passengers §5-71-212(c)

¹See State v. Jarvis, 427 S.W.2d 531 (1968).

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

STATE:
General Comments:

CALIFORNIA
See West's Annotated California Codes.

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of an alcoholic beverage Veh. Code §§23152 & 23153
Illegal Per Se Law (BAC Level):	0.08 ¹ Veh. Code §§23152(b) and 23153(b)
Presumption (BAC Level):	0.08 Veh. Code §23155(3)
Types of Drugs/Alcohol and Drugs:	(1) Any Drug & (2) a Combination of Alcohol and Any Drug Veh. Code §§23152 & 23153
Other:	For Commercial Motor Vehicle Operators, see p. 3-42.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes Veh. Code §23157
Implied Consent Law Applies to Drugs (Yes/No):	Yes Veh. Code §23157(a)(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal & Civil Cases) Veh. Code §23157(a)(4)
Other Information:	None

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

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

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No ² (Note: Under Veh. Code §23212, the court must give the reasons a DWI charge either was reduced to a lesser offense or was dismissed.)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes ² Veh. Code §§23149.50 & 23249.52 et seq.

¹Special juvenile offense at 0.05; see Veh. Code §23140.

²These PSI alcohol assessment programs are adopted on a county by county basis. I.e., a county elects whether to participate in such a program. The PSI program is eff. until 1/1/95.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

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

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): No
Administrative Licensing Action
(Susp/Rev):

Susp-6 mos (mandatory); susp for 1 yr if a person refuses after having been convicted of a DWI/Veh. Homicide off w/n 7 yrs of the date of refusal (Mandatory); susp for 2 yrs if a person refuses after having been convicted 2 or more times of a DWI/Veh. Homicide off w/n 7 yrs of the date of refusal (Mandatory) Veh. Code §§13353 & 23157

Other:

See Special Note on p. 3-41.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment/Fine:

Non-Injury DWI Off (Veh. Code §§23152 et seq.), 1st Off-96 hrs-6 mos, \$390-\$1,000; 2nd Off¹ (w/n 7 yr)-90 dys-1 yr, \$390-1,000; 3rd Off¹ (w/n 7 yrs.)-120 dys-1 yr², \$390-1,000; 4th & Sub Off¹ (w/n 7 yrs) - 180 dys-1 yr³, \$390-1,000; Injury related offs (Veh. Code §§23153 et seq.), 1st off - 90 dys-1 yr, \$390-1,000; 2nd off¹ (w/n 7 yrs) - 120 dys-1 yr³, \$390-5,000; 3rd and subsequent offs¹ (w/n 7 yrs) - State prison 2-4 yrs, \$1,015-5,000

Also, a person convicted of a DWI injury related offense in which more than one individual has been injured shall receive an enhanced prison term of one (1) year for each additional injured individual. The maximum number of one (1) year enhancements which may be imposed is three (3); see §23182. See **Juvenile Offenses Involving Alcohol** on p. 3-41.

¹A previous off includes Veh. Code §§23152 & 23153 (DWI offs) and Penal Code §§191.5 & 192(c)(3) offs. (Veh. Homicide offs.). A guilty or nolo contendere plea to reckless driving (Veh. Code §34103) instead of a DWI charge is also considered a previous DWI offense; see Veh. Code §23103.5(c).

²If one previous conviction was injury or death related, the defendant may be sentenced to the State prison for 16 mos, 2 or 3 yrs; see Veh. Code §23170(b) & Penal Code §18.

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

Sanctions Following a Conviction for a DWI Offense:

(continued)

Mandatory Minimum Term: Non-injury DWI off - 1st off - None¹; 2nd off 48 hrs.^{1&2}; 3rd off - 120 dys^{1&2}; 4th and sub off - 180 dys^{1&2}; Injury related DWI off, 1st off - 5 dys; 2nd off - 30 dys²; 3rd & sub. off - 1 yr See Special Note below.

Mandatory Min. Fine (\$): Non-Injury DWI Off, 1st Off - \$390; 2nd Off (w/n 7 yr)-\$375; 3rd Off (w/n 7 yrs)-\$390; 4th & Sub Offs (w/n 7 yrs.)- \$390; Injury related DWI off's, 1st Off- \$390; 2nd Off (w/n 7 yrs)-\$390; 3rd & Sub Off (w/n 7 yrs) - \$390 See Special Note below.

Other Penalties:

Community Service:
Restitution (eg
Victim's Fund)

None¹

Yes, Injury-related DWI offs (§§23153 et. seq.) See Gov't. Code §13959 (Victims' Assistance Fund) and Veh. Code §23191(a). The court may also order direct compensation by the defendant to the victim(s); see Gov't. Code §13967 and Penal Code §1203.1.

¹For non-injury offs where a minor under 14 year old was a passenger, the following mandatory jail sanctions are imposed: 1st off-48 continuous hrs; 2nd off-10 dys; 3rd off-30 dys; 4th off-90 dys. However, these sanctions are not imposed if the driver has been convicted of violating Penal Code §273a that concerns endangering the life or health of a child. See Veh. Code §23194.

²In addition to those given, the following mandatory sanctions become operative when the Dept of Motor Vehicles certifies to the State Sec. of State that the Dept. has submitted a completed application to the U.S. Dept. of Trans. for grant funds under 23 USC §408. At least one period of 48 con. hours of imprisonment or 10 days of community service is mandatory; see §23206.5.

Juvenile Offenses Involving Alcohol. Under Veh. Code §§23140 and 23142, it is unlawful for a person under 18 years old to operate a motor vehicle if they have a BAC level of 0.05 or more. The only sanctions for this offense are participation in either (1) an alcohol education program or (2) a community service program with an alcohol education component.

Note: A person under 18 years old who violates the regular DWI laws must also participate in either an alcohol education or rehabilitation program; see Veh. Code §23142. If such person fails to complete such programs, their license may be either suspended or revoked until they either show proof of completion or until they are 21 years old; see Veh. Code §23144.

Special Note: A person who has been convicted of any DWI offense and who has also refused to submit to a chemical test is subject to the following sanctions; see Veh. Code §23159 : DWI non-injury offs.: 1st off., if probation is granted, the court must use the following sentence structure: Jail-48 hrs. (mandatory) up to 6 mos.; fine-\$390 (mandatory) up to \$1,000; and lic. susp.-6 mos. 2nd off.-96 hrs. in jail (mandatory). 3rd off.-10 days in jail (mandatory). 4th & sub. offs.-18 days in jail (mandatory). DWI injury offs. 1st off.-48 continuous hrs. in jail (mandatory). 2nd off. 96 hrs. in jail (mandatory), sequent off. includes Veh. Code §23153 and Penal Code §192 offs.

Also, any 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 (see Veh. Code §23196(a)).

Sanctions Following a Conviction for a DWI Offense:

(continued)

Other:

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

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes-0.10² 1st violation-susp. 4 mos (30 dys mand. Following the mandatory susp. period, a driver may be granted restricted driving privileges only for the purpose of participating in an alc. education/treatment program. If the person successfully completes the program, they may be granted "unrestricted" driving privileges 60 dys after the restricted lic. was issued. See Veh. Code §13353.7.); 2nd & sub. violations^{3&4} (w/n 7 yrs)-**susp. 1 yr.** (mand.) Veh. Code §§13353.2, 13353.3 & 13353.4 See Footnotes No. 5 & 6 below. Eff. 7/1/90

Other:

None

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

²Standard: Percent by weight of alcohol in the blood; see Veh. Code §13353.2(a).

³For purposes of determining whether a license sanction enhancement should be imposed, the following violations/convictions are considered prior offenses: Any DWI offense, vehicle homicide, refusal to submit to a chemical test and, of course, a previous admin. per se violation. See Veh. Code §13353.3(b)(2).

⁴Under Veh. Code §13353.7(c), the 1 yr mand. susp. remains in effect only so long as such suspension is required for subsequent violations per 23 USC §§408 & 410.

⁵If a person is acquitted of DWI charges associated with the admin. per violation, the admin. per se suspension is cancelled and the driver's license is reinstated. See Veh. Code §13353.2(f).

⁶Admin. per se susps. and DWI susps/revs. are to run concurrently. The total period of lic. susp./rev. shall not exceed the longer of the two periods. See Veh. Code §13353.3(c).

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege to operate a CMV may be "denied" for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they are under the influence of alcohol or a controlled substance. For a subsequent violation, the "disqualification" is for life. A person who operates a CMV with a BAC/BrAC level of 0.04 or more is subject to criminal and licensing sanctions via the regular DWI laws. If a person refuses to submit to a chemical test while operating a CMV, they are subject to licensing sanctions (including license sanction enhancements) as if they had been convicted to a non-injury DWI offense. A CMV operator must be placed "out-of-service" for 24 hrs if they have a BAC level of 0.01 or more. See Veh. Code §§13353, 15210(b), 15300, 15302, 23252, 23253 & 34501.15. Many of the provisions concerning CMV operators and alcohol/drug driving offenses will become eff. on 1/1/92.

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

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

Non-Injury related DWI Off, 1st off Susp - (Veh. Code §23161); 2nd off Susp - (Veh. Code §23161(b)(3)); 3rd off Rev (Veh. Code §23171(a)); 4th & subsequent off Rev - (Veh. Code §23175); Injury Related DWI Off, 1st off Susp - (Veh. §23181(a)); 2nd off Rev (Veh. Code §23185); 3rd & subsequent Rev - (Veh. Code §23191(a)) See Footnote No. 1 and the Special Note below.

Term of License Withdrawal

(Days, Months, Years, etc.):

Non-Injury related DWI Off, 1st Off-6 mos; 2nd Off-18 mos; 3rd Off-3 yrs; 4th & subsequent-4 yrs; Injury Related DWI Off, 1st Off-1 yr; 2nd Off²-3 yrs; 3rd & subsequent Off²-5 yrs;
Note: See generally Veh. Code §§13352 and 13352.5, See Special Note on p. 3-41 and Footnote No. 1 below.

Mandatory Minimum Term of
Withdrawal:

Non-Injury related DWI Off, 1st Off--³; 2nd off--See Footnote No. 4--³; 3rd Off-3 yrs; 4th & subsequent Off- 4 yrs; Injury Related DWI Off, 1st Off-1 yr; 2nd Off - 1 yr susp.⁵; 3rd & subsequent Offs - 5 yrs

¹Under Veh. Code §13352.3 persons, under 18, who are convicted of an alcohol driving off have their licenses revoked (1) until they are 18, (2) for 1 yr or (3) per Veh. Code §13352 whichever period is longer. Also under Veh. Code §13202.5, a person between the ages of 13 and 20 can have their license suspended for one (1) year.

²See Footnote No. 1 on p. 3-40.

³Driving privileges may be restricted for 90 days (Veh. Code §§13352 & 13352.5) under certain probation conditions.

⁴Restricted driving privileges may be granted 30 days after a defendant consents to participate in an alcohol rehabilitation program; see Veh. Code §§13352(a)(3) and 13352.5(a) & (d). Does not apply to persons who have participated in an alcohol program w/n 4 yrs; see Veh. Code §13352.5(c).

⁵One (1) yr suspension and 2 yrs restricted driving privileges if the court grants probation; see Veh. Code §§13352.5(b) & 23186. Does not apply to persons who have participated in an alcohol program w/n 4 yrs; see Veh. Code §13352.5(c).

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

Sanctions Following a Conviction for a DWI Offense:

(continued)

Other:

Rehabilitation:

Alcohol Education:

Conditions of probation usually require a defendant to participate in an alcohol education/rehab. program for any DWI off conviction. See Veh. Code §§23161, et seq. and 13352. (Note: a person convicted of a first DWI offense in a juvenile court must participate in and complete either an alcohol or drug education program; see Veh. Code §23154.)

Alcohol Treatment:

None

Alcohol Education/

Treatment as an Altern-

ative to Criminal

Licensing Actions

(Describe):

None

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Impoundment. 1st DWI off - (1) The veh may be impounded for a DWI off from **1 to 30 dys**; 2nd and subsequent DWI offs (w/n 5 yrs) - The veh may be impounded from **1 to 90 dys** Veh. Code §23195.¹

Forfeiture. However, a defendant's vehicle may be subject to forfeiture if they have been convicted of (1) a DWI vehicle homicide off, (2) a non-injury related DWI off and have had two or more (or combinations of) convictions w/n 7 yrs for either a veh. homicide off or a non-injury/injury related DWI off or (3) a DWI serious injury off and have had one or more (or combinations of) convictions w/n 7 yrs for either a veh. homicide off or a non-injury/injury DWI off; see Veh. Code §23198.¹

Terms Upon Which Vehicle

Will Be Released:

There are no special terms which have to be satisfied prior to releasing a vehicle. However, vehicles are impounded at the owners' expense; see Veh. Code §23195.

Other:

Miscellaneous Sanctions

Not Included Elsewhere:

Youthful (persons less than 21 years old) DWI offenders may as a part of probation for a 1st off participate in a visitation program of an emergency medical care facilitie, coroner's office or an alcoholism treatment center; see Veh. Code §23145.2 et seq.

¹No veh. may be impounded/forfeited if another person has a community property interest in the vehicle and it is the sole vehicle available to the defendant's immediate family.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense:

Yes - Vehicle Manslaughter See Penal Code §§17 191.5, 192(c)(3) and 193. Note: Generally, under Penal Code §17, a crime is classified as a felony only if the defendant is punishable by confinement in the State prison. However, if the court has discretion to punish a defendant for such crime in a place other than the State prison (such as a county jail), impose just a fine, or place the person on probation without a confinement sentence, the crime is usually classified as a misdemeanor.

Sanctions:

Criminal Sanction:

Imprisonment (Term):

1. Death caused by driving a motor veh. not involving alcohol/drugs: a. with gross negligence - Either in the county jail for **not more than 1 yr or 2, 4, or 6 yrs** in the State prison; b. without gross negligence - Not more than **1 yr**; 2. Death caused by driving a motor veh in violation of Veh. Code §§23152 and 23153: a. with gross negligence - **4, 6, or 10 yrs**; b. without gross negligence - Not more than **1 yr** in the county jail (or **16 mos, 2 or 4 yrs** in the State prison)¹.

Mandatory Minimum Term:

None

Fine (\$ Range):

None

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Note: A violation of either Penal Code §§191.5 or 192(c)(3) is considered a violation of Veh. Code §23153 (injury related DWI) for the purposes of determining the licensing sanctions to be imposed. See the section on DWI licensing sanctions above. For persons 13 to 20 years old, lic. susp. for 1 yr; see Veh. Code §13202.5.

Length of Term of

Licensing Withdrawal:

See the Note above.

Mandatory Action--Minimum

Length of License

Withdrawal:

Other:

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

Other Criminal Actions Related to DWI: (continued)

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

Sanction:

Criminal:

Imprisonment (Term): 1st off-10 dys-6 mos; 2nd and subsequent offs (w/n 5 yrs)-30 dys-1 yr and veh impoundment; Veh. Code §14601.2 (See Footnote No. 1 below.)

Mandatory Minimum Term of Imprisonment: 1st off-10 dys; 2nd and subsequent offs (w/n 5 yrs)-30 dys; For a 2nd or subsequent off (w/n 7 but more than 5 yrs) - 10 dys see Veh. Code §14601.2(g) See Footnote Nos. 2 & 3 below.

Fine (\$ Range): 1st off-\$300-\$1,000; 2nd and subsequent offs (w/n 5 yrs)-Not more than \$500-\$2,000

Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev): **None** (See Footnote No. 4.)

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

Habitual Offender Laws:

State Has Such Law (Yes/No): **No**

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

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

²If a defendant injures a person while violating this law, they cannot receive work release, community service or other similar programs but must instead serve the minimum sentence; see Veh. Code §14601.4.

³If the defendant has been designated an habitual offender under Veh. Code §§23170 & 23175(b), the following sanctions apply: Jail- 180 dys; fine-\$2,000. These penalties are "consecutive" to any other sanctions imposed by law. See Veh. Code §§14601.2 & 14601.3.

⁴Note: A veh may be impounded for a conviction of driving while license is suspended or revoked: 1st off-6 mos impoundment; 2nd and subsequent offs-12 mos impoundment. Veh. Code §14602

Other Criminal Actions Related to DWI: (continued)

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

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

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No): **Yes** Govt. Code §27491.25

BAC Chemical Test Is Given to the
the Following Persons:

Driver: **Yes**

Vehicle Passengers: **Yes**

Pedestrian: **Yes**

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** Bus. & Prof. Code §§25658 & 25662 (Year
Eff: 1933)

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

Minimum Age (Years) Consumption: **21** (This applies only to consumption of alcohol
on the premises of licensed "on sale"
establishments.) Bus. & Prof. Code §§25658 &
25662

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes**, but limited to the serving of alcoholic
beverages to obviously intoxicated minors. Bus.
& Prof. Code §§25602 & 25602.1

"Dram Shop Law" Concept Has Been

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

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

Dram Shop Actions—Social Hosts:

No Civil Code §1714(c), Cory v. Shierloh, 629
P.2d 8, 174 Cal. Rptr. 500 (1981); Strang v.
Cabrol, 691 P.2d 1013 (Cal. 1984) and Zieff v.
Weinstein, 236 Cal.Rptr. 536 (Cal.App. 1 Dist.
1987)

Other:

None

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action: **Misd** (Bus. & Prof. Code §25602).
Term of Imprisonment: Not more than **6 mos.** (Bus. & Prof. Code §25617)
Fine (\$ Range): Not more than **\$500**

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

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes, susp or rev**
Length of Term of License Withdrawal: Length of term not fixed

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

Type of Criminal Action: **Misd** (Bus. & Prof. Code §25658)
Term of Imprisonment: Not more than **6 mos**
Fine (\$ Range): Not more than **\$500**

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

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes, susp or rev**
Length of Term License Withdrawal: Length of term not fixed

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

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

Open Container Law (Yes/No): **Yes** Veh. Code §§23222, 23223, 23225 & 23226
Anti-Consumption Law (Yes/No): **Yes** (driver and passengers) Veh. Code §§23220
& 23221

STATE:

COLORADO

General Comments:

See Colorado Revised Statutes.

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of alcohol (§42-4-1202(1)(a))/Impaired by the consumption of alcohol (§42-4-1202(1)(b))

Illegal Per Se Law (BAC/BrAC Level):

0.10¹ §42-4-1202(1.5)(a)

Presumption (BAC Level):

>0.05 (Driving while impaired) **0.10** (Driving under the influence) §42-4-1202(1)(a) & (b)

Types of Drugs/Drugs and Alcohol:

(1) Any Drug & (2) a Combination of Alcohol and Drugs² (applies to both driving under the influence and driving while impaired) §§42-4-1202(1)(a) & 42-4-1202(1)(b)

Other:

For Commercial Motor Vehicle Operators, see p. 3-53.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:

Yes §42-4-1202(2.5)

Implied Consent Law:

Arrest Required (Yes/No):

No Only probable cause is required; an actual arrest is not necessary. §42-4-1202(3)(a)(II)

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

Yes §42-4-1202(3)(a)(III)

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) §42-4-1202(3)(e)
A person's blood may be taken from them by force if there is probable cause that they committed criminally negligent homicide with a motor vehicle, vehicle homicide, assault in the third degree with a motor vehicle or vehicle assault. §42-4-1202(3)(a)(IV)

Other Information:

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes (Alc. & Drugs) §42-4-1202(3)(a)(II) & (III)

Urine:

Yes (For Drugs only) §42-4-1202(3)(a)(III)

Other:

Saliva (For Drugs only) §42-4-1202(3)(a)(III)

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

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

Adjudication of DWI Charges:

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

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:

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

Administrative Licensing Action
(Susp/Rev): **No**

Other: **None**

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): **None**

Administrative Licensing Action
(Susp/Rev): **Rev 1 yr (Mandatory) §§42-2-122.1(1.5)(a)(II),
42-2-122.1(5)(b)(III) and 42-4-1202(3)(d)**

Note: If a person is also convicted of a DWI offense arising out of the same incident, the license revocation or suspension periods for refusal and conviction are **not** to run concurrently; see §§42-2-122.1(5)(c)(II) & 42-4-1202(3)(d).

Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Months, Years
Etc.):

Driving under the influence/illegal per se, 1st Off (Misd)-5 dys to 1 yr; 1st Off²-70 dys to 1 yr; 2nd or subsequent off (w/n 5 yrs)-90 dys to 1 yr; Driving while impaired (Misd)-1st Off-2 dys to 180 dys; 1st Off³-60 dys to 1 yr; 2nd or subsequent off (w/n 5 yrs)-45 dys to 1 yr
§42-4-1202 Injury Related DWI Off (Vehicle Assault) (Class 5 Felony)-1 to 4 yrs §§18-1-105 & 18-3-205

¹One may not plead guilty to non-alcohol or non-drug related traffic off if charged with DWI unless the prosecutor makes a good faith allegation that he/she could not establish a prima facie case on the original charge.

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

³But where there has been w/n 5 yrs a conviction for a driving while under the influence off./Illegal per se.

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

Mandatory Minimum Term: Driving Under the Influence-1st off- 5 dys³; Illegal per se-1st off-5 dys; Driving under the Influence/Illegal per se-1st off¹-70 dys (7 dys⁴); Driving under the Influence/Illegal per se-2nd or sub. off (w/n 5 yrs)-90 dys (7 dys⁴); Driving While Impaired-1st off-2 dys³; Driving While Impaired-1st off²-60 dys (6 dys⁴); Driving While Impaired-2nd or sub. off-45 dys (5 dys⁴)
See Alcohol Treatment.

Fine:
Amount (\$ Range): Driving under the influence/illegal per se, 1st Off-\$300 to \$1,000; 1st Off¹-\$450 to \$1,500; 2nd or subsequent off (w/n 5 yrs)- \$500 to \$1,500; Driving while impaired, 1st Off- \$100 to \$500; 1st Off²-\$450 to \$1,200; 2nd or subsequent off (w/n 5 yrs)-\$300 to \$1,000 Injury Related DWI Off (Vehicle Assult) (Class 5 Felony)-\$1,000 to \$100,000

Mandatory Minimum Fine (\$): **None** Note: Defendants are required to pay \$65 into a law enforcement assistance fund and \$15 into the county treasury; see §43-4-402.

Other Penalties:
Community Service: Driving under the influence/illegal per se, 1st Off-48 to 96 hrs (48 hrs. mandatory); 1st Off-56 to 112 hrs (56 hrs mandatory); 2nd or subsequent off (w/n 5 yrs)-60 to 120 hrs (60 hrs mandatory), Driving While Impaired, 1st Off-24 to 48 hrs (24 hrs mandatory), 2nd or subsequent off-48 to 96 hrs (48 hrs mandatory) §42-4-1202

Restitution (eg, Victim's Fund): **Yes.** A victims' compensation fund; see §24-4.1-100.1 et seq. Also, as a condition of probation for a DWI offense, a defendant shall be required to make restitution; see §42-4-1202(4)(f).

Other: **Special Note:** Persons assigned to community service must pay fee of no more than \$40; This is used to keep the community service self-supporting and to purchase insurance; see §42-4-1202(4)(g)(v).

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

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

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

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

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

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes 0.10 1st Violation-Rev 3 mos (mandatory);
2nd & Subsequent Violations-Rev 1 yr (mandatory)
§§42-2-122.1(1.5)(a)(I) and 42-2-122.1(5)(b)(I)
& (III) Note: If the person is also convicted
of a DWI offense, the licensing actions for the
admin. per se violation and for the DWI
conviction shall run concurrently and the total
revocation period shall not exceed the longer of
the two (2) periods; see §42-2-122.1(5)(c)(I).

Other:

None

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

Driving while under the influence and illegal
per se, 1st off - Susp/Rev; Driving while
impaired - Susp/Rev^{1&2} Injury Related DWI Off
(Vehicle Assult) - Rev

Term of License Withdrawal

(Days, Months, Years, etc.):

Driving while under the influence and illegal
per se, 1st off-Susp Not less than 1 yr; Driving
while impaired, 1st off-1 yr^{1,2,3,4&5}
§§42-2-122, 42-2-123(8.5) & 42-2-124 Injury
Related DWI Off (Vehicle Assult) - 1 yr
§§42-2-122(1)(a) & 42-2-124

¹ For a driving while impaired conviction, eight (8) points placed on driver's record; generally the accumulation of either 12 points in 12 mos or 18 points in 24 mos results in license susp for not more than one yr, but a probationary-restricted license may be issued; see 42-2-123(1)(a), (5) and (11).

² A conviction for either an impaired, under the influence, or illegal per se off where there has been a previous alcohol driving off conviction of any type within a 5-yr period -- Rev (42-2-122(1)(g) and 42-2-124(2)); A conviction for either an impaired, under the influence of illegal per se influence or illegal per se off where there has been two previous alcohol driving off convictions of any type -- Rev §42-2-122(1)(i))

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

⁴ A conviction for either an impaired, under the influence, or illegal per se off where there has been a previous alcohol driving off convictions of any type within a 5-yr period -- Revocation for 1 yr; A conviction for either an impaired, under the influence of illegal per se influence or illegal per se off where there has been two previous alcohol driving off convictions of any type -- Revocation for an indefinite period.

⁵ A person convicted of operating a vehicle while under the influence of a controlled substance must have their license revoked for a mandatory period of one (1) year for a 1st off; see §§42-2122(1)(b) & 42-2-124.

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

Mandatory Minimum Term of
Withdrawal:

Driving while under the influence and illegal
per se, 1st off -None¹; Driving while impaired,
1st off - None; See Footnotes 2 and 3 below.
Injury Related DWI Off (Veh. Assault)-1 yr

Other:

Rehabilitation:

Alcohol Education: Yes §42-4-1202(4)

Alcohol Treatment: Yes §42-4-1202(4)

Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific
Statutory Authority: No

Terms Upon Which Vehicle
Will Be Released:

Other:

Miscellaneous Sanctions

Not Included Elsewhere: None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: Yes, Felony §§18-3-106 & 42-4-1201

¹A probationary-restricted license may be issued for reasons of employment/alcohol education, et al; see §42-2-123(11) & (13)

²Special Note: If the first offender is a minor, a person under 21 yrs of age (see §2-4-402(b)), their license must be revoked for a 1 yr period. See §§42-2-122(i)(j) and 42-2-124(2).

³A conviction for either an impaired, under the influence, or illegal per se off where there has been a previous alcohol driving off conviction of any type w/n a 5-yr period - 1 yr; A conviction for either an impaired, under the influence of illegal per se influence or illegal per se off where there has been two previous alcohol driving off convictions of any type - 2 yrs

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege (i.e., their CDL) to operate a CMV is cancelled/revoked for 1 yr. (mand.) (3 yrs' (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC level of 0.04 or more, (2) are under the influence of a controlled substance or (3) refuse to submit to a chemical test for alcohol concentration. For a either (1) a subsequent violation or (2) a combination of two or more violations of either driving while under the influence of alcohol or of any of the above listed items, the CDL is cancelled/revoked for life (10 yrs. mandatory). (Note: For 1st offs., the above licensing sanctions may apply to the regular license as well.) In addition, a person who has any alcohol in their system is placed "out-of-service" for 24 hours. See §§42-2-122, 42-2-122.1(1.5)(a)(III), (b)(III), (b)(IV) & (b)(V), 42-2-502(2) & (6) and 42-2-505.

Other Criminal Actions Related to DWI: (continued)

Sanctions:

Criminal Sanction:

Imprisonment (Term): **2-4 yrs**
Mandatory Minimum Term: **None**
Fine (\$ Range): **None**
Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and
Type of Action: **Rev**
Length of Term of
Licensing Withdrawal: **1 yr**
Mandatory Action—Minimum
Length of License
Withdrawal: **1 yr**
Other: **None**

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

Sanction:

Criminal:

Imprisonment (Term): 1st off-30 dys to 1 yr; 2nd and subsequent
offs-90 dys to 2 yrs; 42-2-130
Mandatory Minimum Term
of Imprisonment: 1st off-30 dys; 2nd and subsequent offs-90 dys
Fine (\$ Range): 1st off-\$500 to \$1,000; 2nd and subsequent
offs-\$500 to \$3,000
Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev): **Rev**
Length of Term of License
Withdrawal Action: **4 yrs**
Mandatory Term of License
Withdrawal Action: **4 yrs; §42-2-130**

Habitual Offender Laws:

State Has Such Law (Yes/No): **Yes, 42-2-201**
Grounds for Being Declared an
Habitual Offender: **3 or more serious offs in 7 yrs, or 10 or more
convictions for offs of 4 points or more within
5 yrs, or 18 or more convictions of 3 points or
less within 5 yrs; §42-2-2-20**

Other Criminal Actions Related to DWI: (continued)

Term of License Rev While
Under Habitual Offender Status: **Rev for 5 yrs; §42-2-205**

Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status: **Felony, §42-2-206**

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

Imprisonment (Term): **1-2 yrs**

Mandatory Minimum Term of
Imprisonment: **None**

Fine (\$ Range): **None**

Mandatory Minimum Fine (\$): **N/A**

Licensing Actions (Specify): **None**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No): **Yes §42-4-1211**

BAC Chemical Test Is Given to the
the Following Persons:

Driver: **Yes**

Vehicle Passengers: **No**

Pedestrian: **Yes (15 years of age or older)**

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21 §§12-46-112 & 12-47-128 (Year Eff: 1987)**

Minimum Age (Years) Possession: **21 (applies to possession in public places and
motor vehs) §§12-46-112 & 12-47-128**

Minimum Age (Years) Consumption: **None**

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes**, §§12-46-112.5, 12-47-128.5 & 13-21-103
(Note: Damage awards are limited to \$150,000.)

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

Note: Dram shop case law (e.g., Kerby v. Flamingo Club, Inc., 532 P.2d 975 (1974)) may have been abrogated by legislation; see §§12-46-112.5 & 12-47-125.5.

Dram Shop Actions-Social Hosts:

Yes, §§12-46-112.5 & 12-47-128.5 (Limited to the actions of those under the legal drinking ages.) (Note: Damage awards are limited to \$150,000.)

Other:

None

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

Type of Criminal Action:

Class 2 Misd¹ (Alcoholic Beverages); **Misd²** (Fermented Malt Beverages)

Term of Imprisonment:

Cl. 2 Misd-**3-12 mos**; Misd-Not more than **1 yr**

Fine (\$ Range):

Cl. 2 Misd-**\$250 to \$1,000**; Misd-Not more than **\$300**

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

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

Yes Susp or Rev³ See Special Note on p. 3-57.

Length of Term of License Withdrawal:

Susp.-Not more than 6 mos⁴ Rev.-Period not specified in the statutes

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

Type of Criminal Action:

Class 2 Misd¹ (Alcoholic Beverages); **Misd²** (Fermented Malt Beverages)

Term of Imprisonment:

Cl. 2 Misd-**3-12 mos**; Misd-Not more than **1 yr**

Fine (\$ Range):

Cl. 2 Misd-**\$250 to \$1,000**; Misd-Not more than **\$300**

¹For alcoholic beverages (except for fermented malt beverages of 3.2% alcohol), see §§12-47-128(1)(a) & 12-47-130. For a Class 2 Misd, see §18-1-106.

²For fermented malt beverages from 0.05% to 3.2% alcohol, see §§12-46-103(1.5), 12-46-112(1)(b)(I) & 12-46-114(1).

³See Footnote No. 1 on p. 3-57.

⁴See Footnote No. 2 on p. 3-57.

STATE - Colorado

Other State Laws Related To Alcohol Use: (continued)

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

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

Yes, Susp or Rev¹ See Special Note below.
Susp.—not more than **6 mos.**² **Rev.**—period not
specified in the statutes

Anti-Happy Hour Laws/Regulations:

No

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

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

No

Yes — driver and passengers §12-47-128(1)(h)
(Note: The law states that "it is unlawful for
any person to consume malt, wines, or spiritous
liquor in a public place"; licensed premises are
excepted)

¹For alcoholic beverages (except fermented malt beverages from 0.05% to 3.2% alcohol), see §12-47-110. For fermented malt beverages of 3.2% alcohol, see §§12-46-103(1.5), 12-46-107 & 12-46-114(1).

²Summary suspension is allowed for not more than 15 days. See §§12-46-107(3) & 12-47-110(2).

Special Note: If lieu of license suspension, the licensee may be allowed to pay an administrative fine. The fine shall be 20% of the estimated gross revenues of the sale of either alcoholic beverages or fermented malt beverages over the period of the proposed suspension. However, such a fine must be at least \$200 but cannot be more than \$5,000. See §§12-46-107(5)(a) & 12-47-(3)(b).



STATE:
General Comments:

CONNECTICUT
See Connecticut General Statutes Annotated.

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor¹
(§14-227a(a))/impaired by the consumption of
intoxicating liquor (§14-227a(b))

Illegal Per Se Law (BAC Level):

0.10² §14-227a(a)(2); driving while impaired³
if BAC is greater than **0.07** but less than **0.10**
§14-227a(b)

Presumption (BAC Level):

None

Types of Drugs/Drugs and Alcohol:

Under the influence of (1) Any Drug and (2) Any
Drug and Intoxicating Liquor¹ §14-227a(a)

Note: The impaired offense applies only to the
consumption of alcohol.

Other:

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

No

Implied Consent Law:

Arrest Required (Yes/No):

Yes §14-227b

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

Yes §14-227b(a)

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) §14-227a(f)

Other Information:

None

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes §14-227(d)

Urine:

Yes §14-227(d)

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No⁴

Anti-Plea Bargaining Statute (Yes/No):

No Note: The law requires the State to give to
the court in open session the reasons why a
criminal DWI charge was reduced or dismissed.
§14-227a

¹The sanctions listed below for driving "under the influence" apply to driving under the influence of either alcohol or drugs.

²Standard: Ratio of alcohol in the blood is 0.10% or more by weight; see §14-227a(a).

³Driving while impaired is an infraction; see §14-227a(i)

⁴A pre-trial diversion program is available only for first DWI offenders; see §§54-56g, 54-56e and Rehabilitation Section on p. 3-62.

Adjudication of DWI Charges: (continued)

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

No

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):

N/A

Administrative Licensing Action

(Susp/Rev):

N/A

Other:

N/A

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):

None

Administrative Licensing Action

(Susp/Rev):

1st refusal - susp for 6 mos; 2nd refusal-Susp for 1 yr¹; Subsequent refusal-Susp for 2 yrs²; (These suspensions are mandatory) §14-227b(h) Under §54-56g(b), a person's participation in an alc. or treatment program does not effect the mand. lic. susp.

Other:

Special Note: If a driver has a BAC level 0.10 or more or refuses to submit to the chemical test, the police dept. must temporarily rev the license for 24 hrs. See §§14-227a(F) & 14-227b(c)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Under the Influence/Illegal per se: 1st Off-Not more than 6 mos; 2nd Off³-Not more than 1 yr; 3rd Off³-Not more than 2 yrs; 4th or sub off³

-Not more than 3 yrs §14-227a(h) Driving While Impaired (Infraction)-None Veh Assault-C1 D

felony Not more than 5 yrs §53a-60d

Mandatory Minimum Term:

1st Off-48 con. hrs; 2nd off-10 con. dys; 3rd off-120 con. dys; 4th and subsequent offs -1 yr

¹This 1-yr susp would also apply to a 1st refusal where there has been a previous DWI off conviction.

²This 3-yr susp would also apply to a 2nd refusal where there has been a previous DWI off conviction.

³w/n 5 yrs

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

Fine:

Amount (\$ Range):

Under the Influence/Illegal per se: 1st Off - \$500-1,000; 2nd Off¹ - \$500-2,000; 3rd Off¹ - \$1,000-4,000; 4th or subsequent off¹ - \$2,000-8,000 §14-227a(h) Driving While Impaired (Infraction) - Fine schedule determined by the Courts (See §51-164m.) Veh Assault - C1 D felony-Not more than **\$5,000**

Mandatory Minimum Fine (\$):

None

Other Penalties:

Community Service:

Under the Influence/Illegal per se: 1st Off - 100 hrs in lieu of the 48 con. hrs. of mandatory imprisonment. (For the alternative, the entire jail sentence is suspended and the required community service is to be performed as a part of probation.)

Restitution (eg Victim's Fund)

Yes, Criminal injuries compensation fund; see §§54-209 & 54-215

Other:

None

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes-0.10 1st action-susp.-90 dys (mand.); 2nd action-susp.-1 yr (mand.); sub. action-susp. 2 yrs (mand.) §14-227b(b) & (h) Under §54-56g(b), a person's participation in an alc. or treatment program does not effect the mand. lic. susp.

Other:

Under §14-111(a), a person's license may be susp for any cause the licensing agency "deems sufficient". Such action may be taken with or without a preliminary hearing. The law does not specify he length of this susp.
Special Note: The police may take and hold a driver's license for 24 hrs if the driver has a BAC level of 0.10 or more; see §14-227a(b)

¹w/n 5 yrs

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

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

Under the Influence/Illegal per se: For 1st, 2nd and 3rd offs - Susp; 4th or subsequent off - Rev §14-227a(h); Driving While Impaired - None; Veh Assault, DWI off - Susp See Footnote No. 2 below.

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

Under the Influence/Illegal per se: 1st off - 1 yr; 2nd off - 2 yrs; 3rd off - 3 yrs; 4th or subsequent off - Permanently; Driving While Impaired - None; Veh Assault, DWI off - 1 yr

Mandatory Minimum Term of
Withdrawal:

Under the Influence/Illegal per se: 1st off - 1 yr¹; 2nd off - 2 yrs¹; 3rd off - 3 yrs¹; 4th or subsequent off - Permanently¹; Driving While Impaired - None; Veh Assault, DWI off - 1 yr

Other:

Rehabilitation:

Alcohol Education:

Yes - For all DWI criminal offs §14-227a(k)

Alcohol Treatment:

Yes - For all DWI criminal offs §14-227a(k)

Note: Persons charged with a 1st DWI offense (any type) may be allowed to participate in an accelerated pre-trial rehabilitation/alcohol education program. If a defendant satisfactorily completes this program, the court may dismiss the drunk driving charges. See §§54-56e & 54-56g.

Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority: None

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Miscellaneous Sanctions

Not Included Elsewhere:

None

¹Note: The law does not specifically prohibit a court from reducing these susp periods.

²Under §14-227a(j), a person under 18 years old, who is convicted of any DWI offense, has their license suspended either until they are 18 or for the normal suspension period for the offense convicted of which ever is the longer suspension period. In addition, persons under 18 could also have their driver's license revoked under §14-38 for a drunk driving offense conviction.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes, C1 C felony¹** (A person is guilty of manslaughter with a motor vehicle when, while operating a motor vehicle under the influence of intoxicating liquor or any drug or both, they cause the death of another person.) §53a-56b

Sanctions:

Criminal Sanction:

Imprisonment (Term): **1 to 10 yrs** §§53a-35a & 53a-56b
Mandatory Minimum Term: **None**
Fine (\$ Range): **Not more than \$5,000** §§53a-41 & 53a-56b
Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and Type of Action: **Susp** §53a-56b
Length of Term of Licensing Withdrawal: **1 yr**
Mandatory Action--Minimum Length of License Withdrawal: **None**
Other: **None**

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

Sanction:

Criminal:

Imprisonment (Term): **Not more than 1 yr** §14-215(c)
Mandatory Minimum Term of Imprisonment: **30 con. dys** §14-215(c)
Fine (\$ Range): **\$500-1,000** §14-215(c)
Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev): **1st off - Susp; Subsequent offs - Susp** §14-111(b)
Length of Term of License Withdrawal Action: **1st off - Not less than 1 yr; Subsequent offs - Not less than 5 yrs**
Mandatory Term of License Withdrawal Action: **None** (Note: See §14-111(k).)

¹Under §53a-57, it is Class D Felony to cause the death of another person while operating a motor vehicle with criminal negligence; the sanctions for this offense are as follows: Jail-1 to 5 yrs (§53a-35a); fine-not more than \$5,000 (§53-41).

Other Criminal Actions Related to DWI: (continued)

Habitual Offender Laws:

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

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

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

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21 §§30-86 & 30-1(20) (Yr Eff: 1985)**
Minimum Age (Years) Possession: **21 §30-89(b) (Note: Applies only to
possession in a public place. Exceptions:
Employment or under an order of a physical or
while accompanied by a parent/guardian who is
over 21 years of age.)**
Minimum Age (Years) Consumption: **None**

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes §30-102 (Note: Damages are limited to
\$50,000.¹)**

¹Statutory limits on damages were held to be constitutional; see Sanders v. Officer's Club of Connecticut, 493 A.2d 184 (Conn. 1985).

Other State Laws Related To Alcohol Use: (continued)

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

Yes-Limited In situations where there has been
wanton and reckless misconduct in either the
selling or furnishing of alcoholic beverages, a
common law negligence action can be maintained;
see *Kowal v. Hofler*, 436 A.2d 1 (Conn. 1980),
and *Boehm v. Hish*, 517 A.2d 624 (Conn. 1986).
Yes *Kly v. Murphy*, 540 A.2d 54 (Conn. 1988)
This case applied to the actions of an
intoxicated minor guest. See the above cases
where there has been wanton and reckless
misconduct in the furnishing of alcoholic
beverages.

Dram Shop Actions-Social Hosts:

None

Other:

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

Type of Criminal Action:

Misd §30-86

Term of Imprisonment:

Not more than **1 yr** §30-113

Fine (\$ Range):

Not more than **\$1,000** §30-113

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp or rev §30-55

Length of Term of License Withdrawal: Not stated in the statute

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

Type of Criminal Action:

Misd §30-86

Term of Imprisonment:

Not more than **1 yr** §30-113¹

Fine (\$ Range):

Not more than **\$1,000** §30-113

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp of rev §30-55

Length of Term License Withdrawal:

Unspecified

¹Special Note: Any person, except a parent, guardian or physician who gives/delivers liquors
to a minor, shall be fined not more than \$1,500 or imprisoned not more than 18 months, or both;
see §30-86.

Other State Laws Related To Alcohol Use: (continued)

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

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

Open Container Law (Yes/No): **No**

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

STATE:
General Comments:

DELAWARE
See Delaware Code Annotated.

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol 21 §4177(a)
Illegal Per Se Law (BAC Level):	0.10 21 §4177(b)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	(1) Any Drug & (2) a Combination of Alcohol and a Drug
Other:	A BAC of 0.10 is <u>prima facie</u> evidence that a person was under the influence of intoxicating liquor. 11 §3505

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	Yes 21 §2741
Implied Consent Law:	
Arrest Required (Yes/No):	Probably not 21 §§2740 and 2742(e)
Implied Consent Law Applies to Drugs (Yes/No):	Yes 21 §2740
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal & Civil Cases) 21 §2749
Other Information:	None

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:	Yes 21 §2740
Urine:	Yes 21 §2740
Other:	None

Adjudication of DWI Charges:

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

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> :	
Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Refusal to Take <u>Implied Consent Chemical Test</u> :	
Criminal Sanction (Fine/Jail):	None

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

Administrative Licensing Action
(Susp/Rev):

1st Refusal - Rev for **1 yr** (6 mos mandatory);
(Note: A conditional hardship license may be
issued if certain limited conditions are met.);
2nd Refusal (w/n 5 yrs) - **18 mos** (Mandatory
Rev¹); 3rd and subsequent Refusals (w/n 5 yrs) -
24 mos (Mandatory Rev¹)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

1st Off - **60 dys-6 mos**; 2nd or subsequent off
(w/n 5 yrs) - **60 dys-18 mos**; Veh Assault, A DWI
related injury where there has been (1)
Negligent driving (C1 B misd)-Not more than **6**
mos; (2) **Criminally negligent driving** (C1 A
misd)-Not more than **2 yrs**²

Mandatory Minimum Term:

Under 21 §4177(f) a person convicted of a second
or subsequent DWI off may not receive a
suspended sentence; however, there is no
specific language that prohibits a Court from
placing a defendant on probation after
sentencing.²

Fine:

Amount (\$ Range):

1st Off- **\$200-1,000**¹; 2nd or subsequent off (w/n
5 yrs)- **\$500-2,000**¹; Veh Assault, A DWI related
injury where there has been (1) **Negligent**
driving (C1 B misd)-Not more than **\$500**; (2)
Criminally negligent driving (C1 A Misd) - Not
more than **\$1,000**

Mandatory Minimum Fine (\$):

None

Other Penalties:

Community Service:

None

¹For a 2nd and 3rd refusals; the driver would probably not be eligible for a conditional hardship license. 21 §§2741, 2742, 2743 & 4177E

²See Miscellaneous Sanctions on p. 3-70.

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

Restitution (eg Victim's Fund) 1st Off- Yes; 2nd and subsequent off (w/n 5 yrs)- Yes 11 §9001 et seq.; An additional amount equal to 15% of any fine (whether the fine is suspended or not) is assessed against the defendant; such assessments are placed in a victim's Comp. Fund.

Other: **None**

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes Based on probable cause of DWI. Note: Licensing sanctions (Rev) under the Admin Per Se law are as follows: 1st off- 3 mos; 2nd off- 1 yr; 3rd or subsequent offs- 18 mos; 2nd, 3rd, and subsequent offs include implied consent violations as well as DWI offs and are those occurring within five yrs of a first offs all admin. per se lic actions are mandatory (see 21 §§2742 and 2743).

Other:

Under 21 §§2733(a)(1) & (e), a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing.

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

1st Off-Rev; 2nd Off (w/n 5 yrs)-Rev; 3rd or subsequent off (w/n 5 yrs)-Rev; 21 §4177a; Veh Assault-A DWI related injury where there has been (1) negligent driving-Rev; (2) Criminally negligent driving-Rev See Footnote No. 1 below.

Term of License Withdrawal.

(Days, Months, Years, etc.):

1st Off-1 yr; 2nd Off (w/n 5 yrs)-1 yr; 3rd or subsequent off (w/n 5 yrs)-18 mos; Veh Assault, A DWI related injury where there has been (1) negligent driving-1 yr; (2) Criminally negligent driving-2 yrs

¹For persons under 18 years old, license suspension/revocation until they are 21 (6 mos is mandatory). After the mandatory period, a restricted license may be issued provided (1) there is a "critical need" for such a license and (2) the minor is attending an alcohol program. See 1 §302(2) & (12) and 10 §§927(a)(6) & 937(d). Also, under 21 §2707(b)(10), the licensing agency is not supposed to issue a license for either 2 yrs or until the person is 18 whichever is longer to anyone under 21 who has been convicted of either a DWI or any drug offense; the minimum period of 2 yrs appears to be mand.

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

Mandatory Minimum Term of
Withdrawal:

1st Off-90 dys (A conditional license may be issued after the first 90 dys of the rev period); 2nd and subsequent offs - 6 mos; see 21 §§4177B & 4177C (A conditional license may be issued after 6 mos of the rev period, see 21 § 4177c(b))

Other:

Rehabilitation:

Alcohol Education:

For any DWI off-Course of instruction and rehabilitation required for convicted persons prior to having their licenses/driving privileges reinstated¹.

Alcohol Treatment:

Alcohol Education/

Treatment as an Altern-

ative to Criminal

Licensing Actions

(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

No

Terms Upon Which Vehicle

Will Be Released:

Other:

Note: Impoundment of a vehicle or surrender of license plates/registration (for 90 dys for a 1st off and 1 yr for a sub off) is authorized if the vehicle operator was operating his/her vehicle while they were under license susp or rev for a DWI off., implied consent refusal or other situations which require mandatory license revocation. See 21 §2756.

Miscellaneous Sanctions

Not Included Elsewhere:

It appears that "house arrest" may be used as an alternative to imprisonment. See 11 §§4332, 4347(j), 4391 et seq. See especially 11 §4392(c).

¹Subsequent offs within 5 yrs of a first - "Ordered to complete a program of education or rehabilitation which may include in-patient treatment followed by such other programs as established by training facility" for a time not to exceed 15 mos and pay a fee not to exceed the maximum fine (21 §4177 & 4177D). Persons violating either the implied consent or admin per se laws must complete an alcohol education/alcohol rehabilitation program (21 §2743(c)).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: Yes, 1st degree (death caused by criminally negligent driving while DWI) **C1 D felony** 11 §630A; 2nd degree (death caused by (1) criminally negligent driving or (2) negligent driving while DWI) **C1 E felony** 11 §630

Sanctions:

Criminal Sanction:

Imprisonment (Term): 1st degree-10 yrs; 2nd degree-7 yrs; 11 §4205
Mandatory Minimum Term: **None**
Fine (\$ Range): 1st degree-As the court may order; 2nd degree-As the court may order 11 §4205
Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and Type of Action: 1st degree-Rev; 2nd degree-Rev; 21 §2732
Length of Term of Licensing Withdrawal: 1st degree-4 yrs; 2nd degree-3 yrs
Mandatory Action--Minimum Length of License Withdrawal: 1st degree-4 yrs; 2nd degree-3 yrs
Other: **None**

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

Sanction:

Criminal:

Imprisonment (Term): 1st off-30 dys-6 mos; 2nd and subsequent offs-60 dys-1 yr 21 §2756¹
Mandatory Minimum Term of Imprisonment: 1st off-30 dys*; 2nd and subsequent offs -60 dys; 21 §2756 (*This sanction is mandatory where rev was based on a DWI related death or injury.)
Fine (\$ Range): 1st off-\$200-500; 2nd and subsequent offs-\$500-1,000 21 §2756
Mandatory Minimum Fine: 1st off-\$200 or \$500*; 2nd and subsequent offs - \$500 21 §2756 (*This sanction is mandatory where rev was based on a DWI related death or injury.)

¹See Vehicle Impoundment/Consication on p. 3-70.

Other Criminal Actions Related To DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

1st off-Susp or rev; 2nd and subsequent offs-Susp or rev

Length of Term of License

Withdrawal Action:

Original period of susp or rev extended by an equal amount; 21 §2758

Mandatory Term of License

Withdrawal Action:

Original period of susp or rev extended by an equal amount

Habitual Offender Laws:

State Has Such Law (Yes/No):

Yes 21 §2801 et seq. See Footnote No. 1 below.

Grounds for Being Declared an Habitual Offender:

3 serious or 10 minor moving violations within a 5-yr period

Term of License Rev While

Under Habitual Offender Status:

Rev for 5 yrs if based on serious offs or for **3 yrs** if based on minor moving violations

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Misd (Unspecified Misd: 11 §4202(c))

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

1-5 yrs 21 §2810

Mandatory Minimum Term of

Imprisonment:

None

Fine (\$ Range):

None

Mandatory Minimum Fine (\$):

N/A

Licensing Actions (Specify):

None

Other State Laws Related to Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

No

BAC Chemical Test Is Given to the

the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

¹Under 21 §2814, a person, who is convicted of a traffic offense that would make them an habitual offender, is subject to the following additional sanctions: Jail-30 dys to 12 mos; fine-\$100 to \$1,000. No execution is taken to impose these additional sanctions until the person is finally adjudged an habitual offender.

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: 21 4 §904(a) & (b) (Year Eff: 1983)
Minimum Age (Years) Possession: 21 4 §904(f) (Does not apply to alcohol use in religious services or in the home.)
Minimum Age (Years) Consumption: 21 4 §904(f) (Does not apply to alcohol use in religious services or in the home.)

Dram Shop Laws and Related Legal Actions:

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

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

No (For a case denying liability, see Wright v. Moffitt, 437 A.2d 554 (1981). Note especially the statements made by the Court on the liability for third party injury (437 A.2d at 559).)

Dram Shop Actions-Social Hosts:

No

Other:

None

Criminal Action Against Owner or Employees

of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action: Not specified 4 §711
Term of Imprisonment: No¹
Fine (\$ Range): Not more than \$100 4 §903

Administrative Actions Against Owners of

Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): Yes, susp
Length of Term of License Withdrawal: Not specified by statute

Criminal Actions Against Owners or

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

Type of Criminal Action: Misd 4 §713
Term of Imprisonment: No¹
Fine (\$ Range): Not more than \$100 (or imprisonment) 4 §904(a)

¹A person may be imprisoned for 30 dys for failure to pay the fine; see 4 §§903 & 904(g).

Other State Laws Related To Alcohol Use: (continued)

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes **Susp 4 §561**

Length of Term License Withdrawal:

Not specified by statute

Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

Yes Applies only to drivers¹ 21 §4177G

¹Applies to persons who consume an alcoholic beverage while "operating a motor vehicle in the presence of, or in the view of, a police officer."

JURISDICTION:

DISTRICT OF COLUMBIA

General Comments:

See generally D.C. Code and D.C. Municipal Regulations (DCMR).

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence/while impaired ¹ §40-716
Illegal Per Se Law (BAC/BrAC Level):	0.10 ^{2&3} §40-716(b)(1)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Driving under the influence of (1) Any Drug & (2) a Combination of Any Drug and Alcohol ¹ §40-716(b)(1)
Other:	More than 0.05 constitutes prima facie proof of either driving while under the influence or driving while impaired §40-717.1(2)

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §40-502
Implied Consent Law Applies to Drugs (Yes/No):	Yes §40-502(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal & Civil Cases) §40-505(c)
Other Information:	None

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

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

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes §23-103

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

²This jurisdiction's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a BrAC level of 0.10 or more or (2) a UrAC level of 0.13 or more (percent by weight).

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

JURISDICTION - District of Columbia

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

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

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail): None

Administrative Licensing Action (Susp/Rev):

Susp for 12 mos §40-505(a)
Mandatory (No occupational hardship license shall be issued; see 18 DCMR 310.7(a))
Other: None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Illegal per se/Under the Influence:¹ 1st Off-Not more than 90 dys; 2nd Off-(w/n 15 yrs)-Not more than 1 yr; 3rd and subsequent offs (w/n 15 yrs)-Not more than 1 yr; Impaired:¹ 1st Off-Not more than 30 dys; 2nd Off (w/n 15 yrs)-Not more than 90 dys² See §40-716(b)(1) & (12)

Mandatory Minimum Term:

None

Fine:

Amount (\$ Range):

Illegal per se/Under the Influence:¹ 1st Off-Not more than \$300; 2nd Off (w/n 15 yrs)-Not more than \$5,000; 3rd off and subsequent offs (w/n 15 yrs)-Not more than \$10,000; Impaired:¹ 1st Off-Not more than \$300; 2nd Off (w/n 15 yrs)-Not more than \$300³

Mandatory Minimum Fine (\$):

None

Other Penalties:

Community Service:

None

Restitution (eg Victim's Fund)

None

Other:

None

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes⁴

Other:

None

¹ See §40-716(b)(1) & (2)

² 3rd and subsequent off (w/n 15 yrs) - Not more than 1 yr (§40-716(b)(1) & (2))

³ 3rd and subsequent off (w/n 15 yrs) - Not more than \$5,000 (§40-716(b)(1) & (2))

⁴ Under Title 18 DCMR §302.5, the licensing agency may suspend/revoke a driver's license on its own without a DWI conviction if there is sufficient evidence to indicate that a person was operating a motor veh while under the influence of intoxicating liquor. For a 1st Admin. Action - Susp 2 to 30 dys; for subsequent Admin Actions - Susp 15 to 90 dys; see Title 18 DCMR §306.1.

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

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

Driving under the influence/illegal per se -
Rev for all offs; Driving while impaired for any
off - Either **susp or rev** at the discretion of
D.C. officials (See §40-302(a).)

Term of License Withdrawal

(Days, Months, Years, etc.):

Driving under the influence/illegal per se: 1st
off - 6 mos; 2nd off - 1 yr; 3rd and subsequent
offs - 2 yrs; see §40-302(a) and (b); 18 DCMR
§§301.1 & 306.5; Driving while impaired: 1st
off - susp from 2 to 30 dys or rev for 6 mos;
Subsequent offs - susp from 15 to 90 dys or rev
where the time period is discretionary but must
be for definitive period of time; see §40-302(a).

Mandatory Minimum Term of
Withdrawal:

Driving under the influence/illegal per se, 1st
off - 6 mos; 2nd off - 1 yr; 3rd and subsequent
offs - 2 yrs (Note: No occupational hardship
licenses shall be issued; see 18 DCMR
§310.9(a)); Driving while impaired: **None**
(Note: Either a limited license (see 19 DCMR
§309.1 et seq.) or a limited occupational
hardship license (see 18 DCMR §310.1 et seq.)
may be issued.)

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Alcohol Education/

Treatment as an Altern-

ative to Criminal

Licensing Actions

(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

No

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Miscellaneous Sanctions:

Not Included Elsewhere:

None

JURISDICTION - District of Columbia

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes, negligent homicide, felony §40-713**
Sanctions:

Criminal Sanction:

Imprisonment (Term): **Not more than 5 yrs**

Mandatory Minimum Term: **None**

Fine (\$ Range): **Not more than \$5,000**

Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and
Type of Action:

Rev §40-716(d)(12) and 18 DCMR §§301.1(b) & 306.5

Length of Term of

Licensing Withdrawal: **1st off - 6 mos; 2nd off - 1 yr; 3rd and subsequent offs - 2 yrs**

Mandatory Action--Minimum

Length of License

Withdrawal:

1st off - 6 mos; 2nd off - 1 yr; 3rd and subsequent offs - 2 yrs

Other:

None

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term): **Not more than 1 yr §40-302(e)**

Mandatory Minimum Term
of Imprisonment:

None

Fine (\$ Range): **Not more than \$5,000**

Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev):

Rev/Susp

Length of Term of License
Withdrawal Action:

Extend the period of susp or rev for an additional period of time which is equal to the length of the original susp or rev period; see D.C Code 40-302 and 18 DCMR §§305.1 & 305.5

Mandatory Term of License
Withdrawal Action:

Licensing action is mandatory; no occupational license can be granted; see 18 DCMR §310.7(c)

Other Criminal Actions Related to DWI: (continued)

Habitual Offender Laws:

State Has Such Law (Yes/No): **No**
Grounds for Being Declared an
Habitual Offender:
Term of License Rev While
Under Habitual Offender Status:

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

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

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

Other Laws Related To Alcohol Use:

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

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

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** (Year Eff: 1986) §25-121
Minimum Age (Years) Possession: **None**
Minimum Age (Years) Consumption: **21** §25-121

Dram Shop Laws and Related Legal Actions:

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

**Yes, Rong Yao Zhou v. Jennifer Mall Restaurant,
Inc., 534 A.2d 1268 (D.C.App. 1987)**

¹See also Marusa v. D.C., 484 F.2d 828 (D.C.Cir. 1973).

Other Laws Related To Alcohol Use: (continued)

Dram Shop Actions--Social Hosts: **No (No cases)**
Other: **None**

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:
Type of Criminal Action: Unspecified but would probably be considered to
be a misd
Term of Imprisonment: Not more than **1 yr**
Fine (\$ Range): Not more than **\$1,000** §§25-121 & 25-132

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:
License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes Susp or rev** §25-118
Length of Term of License Withdrawal: For Rev - no new license shall be issued for 1 yr

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:
Type of Criminal Action: Unspecified but would probably be considered to
be a misd §§25-121 & 25-132
Term of Imprisonment: Not more than **1 yr**
Fine (\$ Range): Not more than **\$1,000**

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:
License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes Susp or rev**
Length of Term License Withdrawal: For Rev - no new license shall be issued for 1
yr §§25-118 & 25-121

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

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:
Open Container Law (Yes/No): **No**
Anti-Consumption Law (Yes/No): **Yes - Driver and passengers** §25-128(a)

STATE:
General Comments:

FLORIDA
See Florida Statutes Annotated.

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcoholic beverages §316.193(1)(a)
Illegal Per Se Law (BAC Level):	0.10 §316.193(1)(b)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Controlled Substance §§316.193(1)(a) & 316.1931
Other	0.10 BAC level - prima facie evidence of driving under the influence §316.1934(2)(c) For Commercial Motor Vehicle Operators, see p. 3-84.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §316.1932(1)(a)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §316.1932(1)(a) ¹
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §§316.1932(1)(a) & 316.1932(1)(b)
Other Information:	Special Note: A blood test may be given a driver without their consent if they have been involved in an accident resulting in either death or serious bodily injury; see §316.1933.

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

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

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	Yes Applies only to DWI manslaughter/veh homicide offs; see §316.656.
Anti-Plea Bargaining Statute (Yes/No):	Yes Only applies if BAC level is 0.20 or more or for DWI manslaughter/veh homicide offs; see §316.656.

¹The implied consent law, as applied to driving while under the influence of drugs, provides only for the testing of urine.

Adjudication of DWI Charges: (continued)

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

Yes A person convicted of a DWI offense may be referred to substance abuse evaluation; see §316.193(5).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): **None**
Administrative Licensing Action (Susp/Rev): **None**
Other: **None**

Refusal to Take Implied Consent

Chemical Test:

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

1st refusal-Susp for **1 yr** (30 dys mand; §322.2615²) (A hardship license is available after the 30 dy period.); Subsequent refusals-Susp for **18 mos** (Mandatory) §§322.2615(8)(a)² & (10), 322.261³ and 322.271(2)(a))

Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

1st Off-Not more than 6 mos; 2nd Off-Not more than 9 mos; 3rd Off-Not more than 12 mos; 4th or sub. Off (3rd degree felony)-Not more than 5 yrs See Special Note below.

Mandatory Minimum Term:

2nd Off-10 dys if 2nd conviction was w/n 3 yrs of a previous DWI conviction §316.193(6); 3rd and subsequent Off-30 dys if 3rd conviction was w/n 5 yrs of a previous DWI conviction §316.193(6) See the Special Note below.

¹Also under §316.193, for under the influence offenses where there has been: (1) property damage or personal injury-Misd of the 1st degree-Not more than **1 yr** in jail, a fine of not more than **\$1,000**; (2) serious bodily injury-3rd degree felony-Not more than **5 yrs** in prison, a fine of not more than **\$5,000**; (3) a BAC level of 0.20 or more: 1st Off-Not more than 9 mos in jail, a fine of **\$500-1,000**; 2nd Off-Not more than 12 mos in jail, a fine of **\$1,000-2,000**; 3rd Off-Not more than 12 mos in jail, a fine of **\$2,000-\$5,000**

²The mandatory 30 day susp. period is effective 10/1/90; see §8 of Ch. 89-525.

³Repealed 10/1/90.

Special Note: The court at its discretion may require a defendant to serve all or any part of a sentence of imprisonment for a DWI offense in either an alcohol or a drug residential treatment program; see §316.193(6)(d).

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

Fine:

Amount (\$ Range):

1st Off-\$250-500; 2nd Off-\$500-1,000; 3rd Off-\$1,000-2,500; 4th or sub. Off (3rd degree felony)-Not more than \$5,000 See Footnote No. 1 on p. 3-82.

Mandatory Minimum Fine (\$):

None

Other Penalties:

Community Service:

1st off-50 hrs or if the court thinks it in the best interests of the State, a **\$10 fine** for each hour of community work otherwise required. (Required notwithstanding other sanctions)
Note: This sanction for 1st offenders is part of mandatory probation which is not to exceed **1 yr.**

Restitution (eg Victim's Fund)

None

Other:

Special Note: A 5% surcharge is levied on all fines; This surcharge is paid into a crimes compensation trust fund; see §960.25. Alcohol related crash victims are not eligible to receive payments from this fund. Also, \$100 shall be added to any fine imposed (one-quarter of this amount is deposited into the Emergency Medical Services Trust Fund, one-quarter is deposited into the Impaired Drivers and Speeders Trust Fund and one-half is deposited into the Admin. Trust Fund of the Dept. of Law Enforcement); see §316.193(6)
In addition to any other license reinstatement fee, a person, who has been either convicted of a DWI offense or found in violation of the admin. per se law, must pay a special fee of \$105. This fee is paid into the Accident Reports Trust Fund. See §322.12(2).

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes-0.10 A violation-susp. 6 mos (30 dys mand; a restricted hardship license may be issued after the first 30 dys of the susp.); A violation (where there has been a previous susp/rev. for a DWI offense)-**susp. 1 yr** (mand.) §§316.193, 322.2615(1)(a), (1)(b), (8)(b) & (10) and 322.271(12)(a) Note: The admin. per se law is eff. on 10/1/90; see §8 of Ch. 89-525.

Other:

Under §§322.27(a)(1) & 322.28(1), a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st Off¹ (Non injury)-**Rev**; 1st Off¹-Under the influence offs bodily injury or property damage-**Rev**; 2nd Off¹ (All offs)(w/n 5 yrs)-**Rev**; 3rd Off¹ (All offs)(w/n 10 yrs)-**Rev**; 4th off¹-**Rev** §322.28 **Special Note:** Rev is permanent if there is an alcohol off in connection with a veh manslaughter/homicide off; see §322.28(2)(e).

Term of License Withdrawal

(Days, Months, Years, etc.):

1st Off (Non injury)-**180 dys-1 yr**; 1st Off-Under the influence offs where there is any bodily injury or property damage-Not less than **3 yrs**; 2nd Off (All offs)(w/n 5 yrs)-Not less than **5 yrs**; 3rd off (All offs)(w/n 10 yrs)-Not less than **10 yrs.**; and 4th off (all offs)-**Permanently** §322.28

Mandatory Minimum Term of

Withdrawal:

1st Off-Intoxication or under the influence offs-See Footnote No. 2 below; 1st Off-where there is any bodily injury or property damage-**3 yrs**; 2nd Off (All offs)(w/n 5 yrs)-**5 yrs** (after 12 mos a restricted license may be issued); 3rd Off (All offs)(w/n 10 yrs)-**10 yrs** (after 24 mos a restricted license may be issued); 4th Off (All offs)-**Permanently** §§322.271(2)(b) and 322.28

¹Under §316.655(5), a court can susp/rev a driver's license, in addition to any other sanction which may be authorized, for a violation of any law regarding motor vehicles. In considering whether to exercise this privilege, the court considers the "totality of the circumstances", the need to protect the motoring public and the severity of the offense committed.

²A temporary restricted use license for business/employment may be issued for 45 dys following the completion of either a driver training program or substance abuse course; the law is silent as to whether this license can be renewed for additional 45-day periods. §322.271(1) & (2)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if they are convicted of the following offenses: They drive a CMV while (1) have a BAC/BrAC/UrAC level of 0.04 or more, (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent conviction or (2) a combination of two or more convictions of any of the above listed items, the "disqualification" is permanent. A conviction for these offenses is a 2nd degree misdemeanor: Jail-not more than 60 dys; fine-not more than \$500; see the general penalty provisions for Ch. 322. See §§322.01(3), 322.01(8), 322.01(14), 322.01 (29), 322.39, 322.61(3), 322.61(4), 322.61(5), 322.63, 775.082(4)(b) and 775.083(1)(e); the CMV provisions are eff. 4/1/91.

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

Other:

Rehabilitation:

Alcohol Education:

Yes (Under §§316.193(5) and 322.291 a substance abuse course/alcohol treatment program is required for a defendant convicted of any DWI off. Such a course must be successfully completed by defendants who have been convicted of either two DWI offs w/n 5 yrs or 3 such offs w/n 10 yrs before their license can be restored; see §322.03(1)(b))

Alcohol Treatment:

Yes See Alcohol education above.

Alcohol Education/

Treatment as an Alternative to Criminal Licensing Actions (Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

No

Terms Upon Which Vehicle

Will Be Released:

None

Other:

None

Miscellaneous Sanctions

Not Included Elsewhere:

Special Note: Under §322.291 a defendant may be required to complete a driver training course prior to having their license reinstated.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense:

Yes, Manslaughter via Veh and DWI manslaughter -Felony 2nd degree §782.07; Veh Homicide, -Felony 3rd degree §782.071

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Manslaughter via veh and DWI manslaughter-Not more than **15 yrs; Vehicle Homicide, Felony 3rd degree-Not more than **5 yrs**; §775.082(c) & (d)**

Mandatory Minimum Term:

None

Fine (\$ Range):

Manslaughter via veh and DWI manslaughter-Not more than **\$10,000; Veh Homicide-Not more than **\$5,000**; §775.083(1)(b) & (c)**

Mandatory Minimum Fine:

None

§316.193(3)(c)(3)

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:

Licensing Authorized and
Type of Action: Manslaughter via veh, DWI manslaughter and Veh
Homicide-Rev; §322.28(5)

Length of Term of
Licensing Withdrawal: For **any** death related to the operation of a
motor veh, a defendant's license is rev for a
mand period of 3 yrs For DWI manslaughter, rev
could be permanent. §322.28(2)(e) & (5)(a).

Mandatory Action--Minimum

Length of License
Withdrawal: **3 yrs**
Other: See Footnote No. 1

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

Sanction:

Criminal:

Imprisonment (Term): 1st off--Not more than 60 dys (misd 2nd degree);
2nd and subsequent offs §322.34(1)--Not more than
1 yr (misd 1st degree); §775.082

Mandatory Minimum Term
of Imprisonment: **None**

Fine (\$ Range): 1st off--Not more than \$500; 2nd and subsequent
offs--Not more than \$1,000; §775.083

Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev): 1st off--Susp/Rev; 2nd and subsequent
offs--Susp/Rev; §322.28(3)

Length of Term of License

Withdrawal Action: 1st off--An additional 3 mos; 2nd and subsequent
offs--An additional 3 mos

Mandatory Term of License

Withdrawal Action: **No** A rest/hardship lic. may be issued. §322.271

Habitual Offender Laws:

State Has Such Law (Yes/No): **Yes** §322.264

Grounds for Being Declared an
Habitual Offender: 3 serious or 15 normal moving violations within
a 5-yr period

Term of License Rev While

Under Habitual Offender Status: **5-yr--Rev Period;** (Note: After 12 mos, the
offender may have his/her driving privileges
restored; see §322.271(1)(b).) §322.27(5)

¹Under §322.34(3), it is 3rd degree felony for a person to carelessly or negligently cause death or serious bodily injury to another with a motor vehicle while the person's license is susp/rev where the basis of the susp/rev was (1) a 2nd DWI off, (2) veh. manslaughter, (3) veh. homicide or (4) a DWI off. that requires an enhanced sanction; see Footnote No. 1 on p. 3-82.
Sanctions: Jail--not more than 5 yrs (§775.082(3)(d)); fine--not more than \$5,000 (§775.083(1)(c)).

Other Criminal Actions Related to DWI: (continued)

Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	Misd of the 1st degree §322.34(2)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than 1 yr §775.082
Mandatory Minimum Term of Imprisonment:	None
Fine (\$ Range):	Not more than \$1,000 §775.083
Mandatory Minimum Fine (\$):	None
Licensing Actions (Specify):	Rev period extended an additional 3 mos §322.28(3)

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

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

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	21 §562.11(1)(a) & (2) (Year Eff: 1985)
Minimum Age (Years) Possession:	21 (Except for employment purposes) §562.111
Minimum Age (Years) Consumption:	None

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	Yes §768.125 ¹
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	No ²
Dram Shop Actions-Social Hosts:	No Bankston v. Brennan, 507 So.2d 1385 (Fla. 1987)
Other:	None

¹This law limits liability to damages caused by selling alcoholic beverages (1) to persons under the legal drinking or (2) to persons habitually addicted to alcohol; see Barnes v. B.K. Credit Service, Inc., 461 So.2d 217 (Fla. App. 1984)

²Note: The Dram Shop Law places certain limits on this type of liability. It appears that previous case law has been abrogated by this statute. See Migliore v. Crown Liquors of Broward, Inc., 448 So.2d 978 (Fla. 1984).

Other State Laws Related to Alcohol Use: (continued)

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

Type of Criminal Action: **None**¹
Term of Imprisonment: **None**
Fine (\$ Range): **None**

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

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

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

Type of Criminal Action: **Misd (2nd degree) (§562.11(1)(a))**
Term of Imprisonment: **Not more than 60 dys §775.082**
Fine (\$ Range): **Not more than \$500 §775.083**

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

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes Susp or rev² (§561.29(1)(a) and (w))**
Length of Term License Withdrawal: **Time period is not specified in the statute.**

Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No): **Yes §316.1963**
Anti-Consumption Law (Yes/No): **No**

¹Note: Section 562.50 makes it illegal to sell or dispose of, in any way, intoxicating liquors to an individual when the individual, who is selling or disposing of such intoxicating liquor, has written notice that the person receiving such intoxicating liquor is an habitual drunkard. Such an offense is a misdemeanor of the second degree: Jail-not more than 60 days and fine-not more than \$500; see §§775.082 & 775.083.

²Admin. sanctions may be mitigated if the licensee has been certified as a responsible vendor. Such a vendor must have provided special training to their employees/managers in how to sell alcoholic beverages so as not to violated the ABC laws by selling such beverages to minors. See §561.701 et seq. (Ch. 89-107).

STATE:
General Comments:

GEORGIA
See Code of Georgia Annotated (Code of 1981).

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §40-6-391(a)(1)
Illegal Per Se Law (BAC Level):	0.12 §§40-6-391(a)(4) & 40-6-392(a)(4)
Presumption (BAC Level):	0.10 §40-6-392(b)(3)
Types of Drugs/Drugs and Alcohol:	(1) Any Drug & (2) a Combination of Any Drug and Alcohol §40-6-391(a)(2) & (3)
Other:	For Commercial Motor Vehicle Operators, see p. 3-92.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes ¹ §40-5-55
Implied Consent Law Applies to Drugs (Yes/No):	Yes §40-5-55(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §40-6-392(c)
Other Information:	None

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

Blood:	Yes §40-5-55
Urine:	Yes §40-5-55
Other:	Or "other bodily substance" (The code does not specify the substances but only uses general language.) §40-5-55

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	No (Note: Mandatory only in felony cases.)

¹An arrest is not required if there is "reasonable grounds" to believe that a person was DWI and they were involved in an accident that resulted in either serious injury or death; see §40-5-55(a).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

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

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail): **None**
Administrative Licensing Action (Susp/Rev): **Susp-6 mos §40-5-55 & 40-5-63(b) Mandatory Note: The suspension shall be "deleted" if the defendant pleads guilty to a DWI offense w/n 180 dys of arrest; see §40-5-63(b).**
Other: **Special Note: If the refusal is in connection with a DWI- Homicide charge. The susp period is a mandatory 12 mos; see §40-5-63(b)**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment: **1st off (Misd)-10 dys-1 yr; 2nd off (w/n 5 yrs)-90 dys-1 yr; 3rd and subsequent offs (w/n 5 yrs) (Misd)-120 dys-1 yr See Footnote No. 1 below. §40-6-391(c)**
Mandatory Minimum Term: **2nd off (Misd)-48 hrs; 3rd and subsequent offs (w/n 5 yrs) (Misd)-10 dys; (Note: See Community Service)**
Fine:
Amount (\$ Range): **1st off (Misd)-\$300-1,000; 2nd off (w/n 5 yrs) (Misd)-\$600-1,000; 3rd and subsequent offs (all w/n 5 yrs)(Misd)-\$1,000 §40-6-391(c)**
Mandatory Minimum Fine (\$): **None**
Other Penalties:
Community Service: **2nd off (Misd.)-80 hrs; 3rd and subsequent offs (all w/n 5 yrs)(Misd.)-30 dys (alternative sanction to the 48 hr/10 day minimum imprisonment terms) §40-6-391(c)**
Restitution (eg Victim's Fund) **Yes (1) A defendant may have to pay restitution (or other relief to a victim) as a condition of probation; see §17-14-1 et seq. (2) A victims' compensation fund (Awards are limited to a maximum amount of \$1,000.); see §17-15-1 et seq.**
Other: **None**

¹DWI where there is a serious injury (Where a member of a person's body has been deprived, rendered useless or disfigured.) is a felony - imprisonment 1-5 years; see §40-6-394.

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

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law: **None**

Other: **None**

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

1st off-Susp; 2nd off -Susp; 3rd and subsequent
offs (w/n 5 yrs)-Rev §§40-5-70(b)(1)(A)(B)(C),
40-5-58 & 40-5-62

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

1st off-1 yr; 2nd offs-3 yrs; 3rd and subsequent
offs (all w/n 5 yrs)-5 yrs

Mandatory Minimum Term of
Withdrawal:

1st off-License may be restored after 120 dys of
the susp period have passed¹; 2nd off (w/n 5
yrs) License may be restored after 120 dys have
passed²; 3rd and subsequent offs (w/n 5 yrs)-5
yrs

Other:

Rehabilitation:

Alcohol Education:

Yes, for 1st and 2nd DWI offenders, the license
may be restored before the end of the susp
period as indicated provided the defendant
completes an approved alcohol or drug program;
see §40-5-70.

Alcohol Treatment:

Yes

Alcohol Education/
Treatment as an Altern-

ative to Criminal
Licensing Actions

(Describe):

None

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority: **No**

Terms Upon Which Vehicle

Will Be Released: **None**

Other: **None**

Miscellaneous Sanctions

Not Included Elsewhere: **None**

¹Under §40-5-71, a 1st offender may be issued a hardship license for all of the susp. period;
also, under 40-6-391.1 a license susp may be avoided on a 1st DWI off if the defendant pleads
nolo contendere to such off; thus, there is really no "mandatory" susp period for a 1st off.

²See rehabilitation section.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes** 1) Veh homicide where there is no "malice aforethought" but where there is a violation of §§40-6-271; 40-6-390 & 40-6-391 (veh homicide in the first degree-felony)¹

Sanctions:

Criminal Sanction:

Imprisonment (Term): 1) 2-15 yrs² 2) Not more than 12 mos³ 3) 3-15 yrs⁴
Mandatory Minimum Term: 3) 1 yr⁴
Fine (\$ Range): 2) Not more than \$1,000³
Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and Type of Action: **Susp**
Length of Term of Licensing Withdrawal: **3 yrs** §40-5-64(f)
Mandatory Action--Minimum Length of License Withdrawal: **3 yrs**
Other: **None**

¹2) Veh homicide where the death is caused "without an intention to do so" and where driving while violating §§40-6-390,-391 is not involved (Veh Homicide in the Second Degree-Misd.); 3) Veh Homicide where the defendant is an habitual violator, his/her license has been revoked, and there is no "Malice Aforethought" (Veh Homicide in the First Degree-Felony) §§16-1-3(5) & 40-6-393

²Veh homicide where there is no "malice aforethought" via a violation of §§40-6-271, 40-6-390 and 40-6-391 (alcohol offs)

³Veh homicide where the death is caused "without an intention to do so" and where driving while violating §§40-6-390,-391 is not involved (Veh Homicide in the Second Degree)

⁴Veh Homicide where the defendant is an habitual violator, his/her license has been revoked, and there is no "Malice Aforethought" (Veh Homicide in the First Degree) §40-6-393

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC level of 0.04 or more (by weight or more in the blood, breath or urine), (2) are under the influence of alcohol or any drug or (3) refuse to submit to a chemical test for alcohol or drug concentrations. (Comment: The usual standards for alcohol concentrations in the blood, breath or urine are listed in the CMV law but such standards may not apply.) For either (1) a subsequent violation (w/n 5 yrs) or (2) a combination of two or more violations (w/n 5 yrs) of any of the above listed items, the "disqualification" is for life (10 yrs. mandatory). In addition, a CMV operator who has any measurable amount of alcohol in their system must be placed "out-of-service" for 24 hours. See §§40-5-142(2) & (7), 40-5-151, 40-5-152 and 40-5-153.

Other Criminal Actions Related to DWI: (continued)

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

Sanction:

Criminal:

Imprisonment (Term): **Not more than 12 mos (Misd) §40-5-121(a)**

Mandatory Minimum Term
of Imprisonment: **None**

Fine (\$ Range): **Not more than \$1,000 §40-5-121(a)**

Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev): **Susp/Rev §40-5-121(b)(2)**

Length of Term of License
Withdrawal Action: **Original susp or rev period is extended 6 mos**

Mandatory Term of License
Withdrawal Action: **Original susp or rev period is extended 6 mos**

Habitual Offender Laws:

State Has Such Law (Yes/No): **Yes §40-5-58**

Grounds for Being Declared an
Habitual Offender: **3 serious violations within a 5 yr period**

Term of License Rev While
Under Habitual Offender Status: **5-yr rev period §40-5-62(a)(1) Note: A
probationary restricted hardship license may be
issued after two yrs of the rev period have
passed; see §40-5-58(e).**

Type of Criminal Offense if

Convicted on Charges of
Driving While on Habitual
Offender Status: **Felony §40-5-58(c)**

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

Imprisonment (Term): **1-5 yrs**

Mandatory Minimum Term of
Imprisonment: **None**

Fine (\$ Range): **Not less than \$750**

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

Licensing Actions (Specify): **None**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Possible §45-16-27 (Ops. Att. Gen. U79-10 &
U80-56) (Indirect chemical test via coroner.)

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Possible

Vehicle Passengers:

Possible

Pedestrian:

Possible

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1986) §3-3-23(a)(1) & (2)

Minimum Age (Years) Possession:

21 §3-3-23(a)(2) & (b) (Exceptions: Medical
purposes, religious ceremonies, and home use
with parental consent.)

Minimum Age (Years) Consumption:

None

Dram Shop Laws and Related Legal Actions:

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

Yes §51-1-40(b)^{1&2} Note: Action is limited to
the selling, furnishing or serving of alcoholic
beverages either (1) to persons under the legal
drinking age (in a willful, knowing and unlawful
manner) or (2) to persons who are "in a state of
noticeable intoxication". and only for injuries
and damages resulting from the operation of a
motor vehicle "when the sale, furnishing, or
serving is the proximate cause of such injury or
damage."

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

No²

Dram Shop Actions-Social Hosts:

Yes² §51-1-40(b) See Note above.

Other:

None

¹Also, under §51-1-18, a parent has a right to bring an action against any person who sells or furnishes alcoholic beverages to that parent's underage child without the parent's permission.

²The following case law, it appears, has been abrogated, at least in part, by the dram shop law (§51-1-40(b)): Sutter v. Hutchings, 327 S.E.2d 716 (1985); Bishop v. Fair Lanes Bowling, Inc., 633 F.Supp. 1195 (1985); and Tibbs v. Studebaker's of Savannah, 362 S.E.2d 377 (Ga.App. 1987).

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action: **Misd** §§3-1-2(2), 3-3-9, 3-3-22 & 17-10-3
Term of Imprisonment: **Not more than 12 mos**
Fine (\$ Range): **Not more than \$1,000**

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

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes Susp or cancellation** §3-2-3
Length of Term of License Withdrawal: **2 yrs**

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

Type of Criminal Action: 1st off- Misd Subsequent offs- Misd of a high
and aggravated nature. §§3-1-2(2), 3-3-23,
3-3-23.1, 17-10-3 & 17-10-4
Term of Imprisonment: For 1st and subsequent off-Not more than 12 mos
Fine (\$ Range): 1st off- Not more than \$1,000; Subsequent off-
Not more than \$5,000

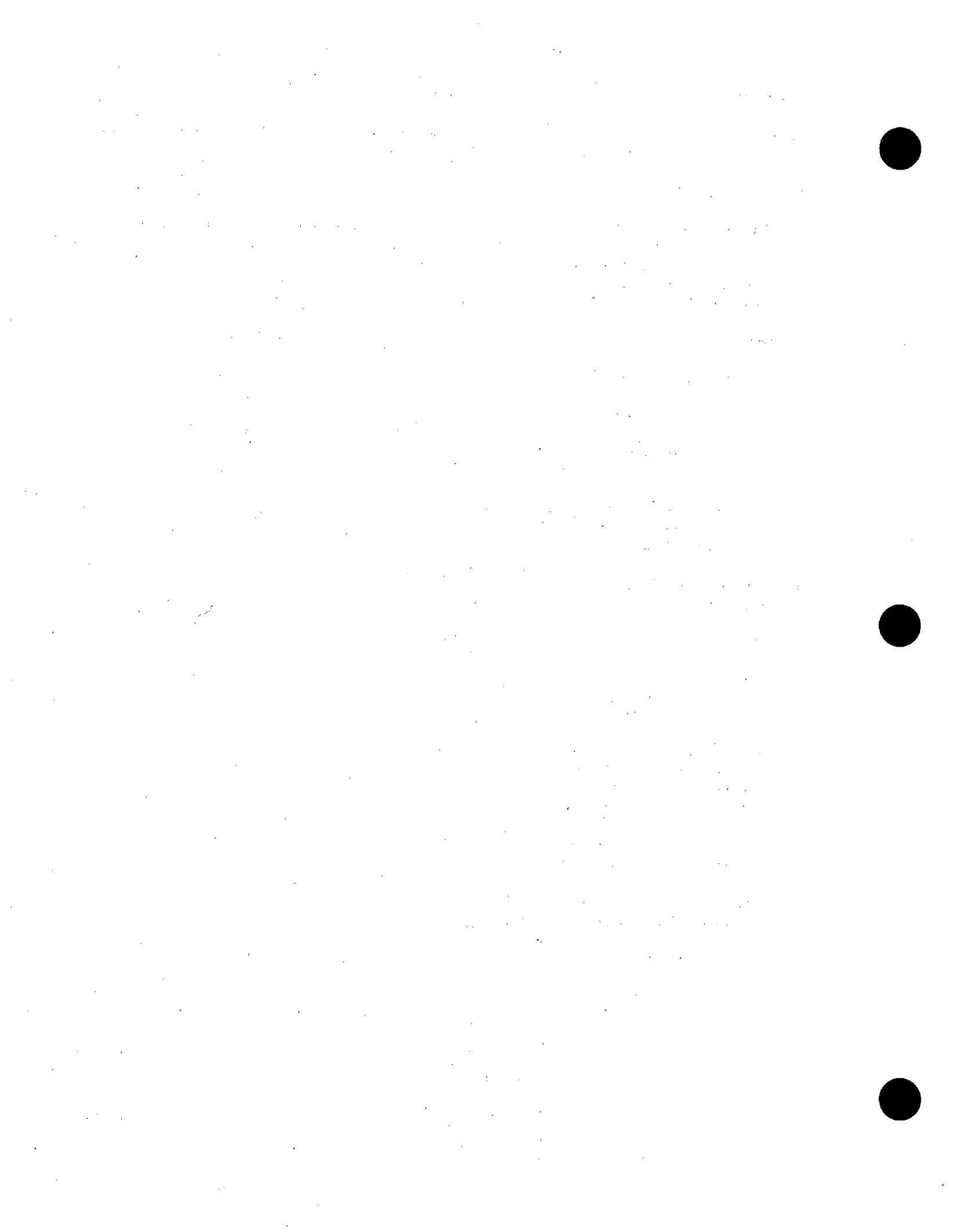
Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes, susp or cancellation** §3-2-3
Length of Term License Withdrawal: **2 yrs**

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

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

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



JURISDICTION:

GUAM

General Comments:

The Government and Penal Codes of Guam (Updated through 1974.)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor
Govt. Code §§23405(a) & 23406

Illegal Per Se Law (BAC Level):

None

Presumption (BAC Level):

Types of Drugs/Drugs and Alcohol:

Other:

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

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:

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Urine:

Other:

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

Anti-Plea Bargaining Statute (Yes/No):

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

Sanction for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):

Administrative Licensing Action
(Suspension/Revocation):

Other:

JURISDICTION - Guam

Adjudication of DWI Charges: (continued)

Refusal to Take Implied Consent

Chemical Test:

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

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

(1) Non-Injury Related DWI Off-Misd-1st & sub.
off-10 dys to 1 yr Govt. Code §23405 (2)
Injury Related DWI off-Felony-1 to 5 yrs Govt.
Code §23406

Mandatory Minimum Term:

(1) Non-Injury Related DWI Off-1st & sub. off-10
dys to 1 yr Govt. Code §23405 (2) Injury
Related DWI off-None

Fine:

Amount (\$ Range):

(1) Non-Injury Related DWI Off-1st & sub.
off-\$100 to \$1,000 Govt. Code §23405 (2)
Injury Related DWI off-\$200 to \$5,000 Govt.
Code §23406

Mandatory Min. Fine (\$):

(1) Non-Injury Related DWI Off-1st & sub.
off-\$100 to \$1,000 Govt. Code §23405 (2)
Injury Related DWI off-None

Other Penalties:

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

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law: **None**

Other:

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Suspension/Revocation):

Rev Govt. Code §23102(e)(2)

Term of License Withdrawal

(Days, Months, Years, etc.):

1 yr

Mandatory Minimum Term of

Withdrawal:

1 yr

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

Other:

- Rehabilitation:
 - Alcohol Education:
 - Alcohol Treatment:
 - Alcohol Education/
Treatment as an Alternative
to Criminal/
Licensing Actions
(Describe):
- Vehicle Impoundment/Confiscation:
 - Authorized by Specific
Statutory Authority:
 - Terms Upon Which Vehicle
Will Be Released:
 - Other:
- Miscellaneous Sanctions
Not Included Elsewhere:

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

Jurisdiction Has Such Law/Type of
Offense:

Yes-Felony Penal Code §§17, 192(3) and 193(3) &
(4)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

(1) Vehicle Homicide without Gross
Negligence-Not more than 1 yr (2) Vehicle
Homicide with Gross Negligence-Not more than 3
yrs.

Mandatory Minimum Term:

None

Fine (\$ Range):

(1) Vehicle Homicide without Gross
Negligence-Not more than \$1,000 (2) Vehicle
Homicide with Gross Negligence-Not more than
\$3,000

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Rev Govt. Code §23102(e)(1)¹

Length of Term of

Licensing Withdrawal:

1 yr

Mandatory Action--Minimum

Length of License

Withdrawal:

1 yr

Other:

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

Other Criminal Actions Related to DWI: (continued)

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

Sanction:

Criminal:

Imprisonment (Term): **Misd-Not more than 6 mos** Govt. Code §23101.1

Mandatory Minimum Term

of Imprisonment: **None**

Fine (\$ Range): **Not more than \$500**

Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action

(Suspension/Revocation): **Susp/Rev** Govt. Code §23102(k)

Length of Term of License

Withdrawal Action:

(1) For Operating While Suspended-Extend period of suspension for a like period (2) For Operating While Revoked-An additional **1 yr** period of revocation

Mandatory Term of License

Withdrawal Action:

(1) For Operating While Suspended-Extend period of suspension for a like period (2) For Operating While Revoked-An additional **1 yr** period of revocation

Other:

Habitual Offender Laws:

Jurisdiction Has Such Law (Yes/No): **No**

Grounds for Being Declared an
Habitual Offender:

Term of License Revocation While
Under Habitual Offender Status:

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

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

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other Laws Related To Alcohol Use:

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

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

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

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

Dram Shop Laws and Related Legal Actions:
Jurisdiction Has

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

Dram Shop Actions--Social Hosts:
Other:

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

Type of Criminal Action: **Misd.** Govt. Code §§25317 & 25517
Term of Imprisonment: **Not more than 1 yr** Govt. Code §25517
Fine (\$ Range): **Not more than \$1,000** Govt. Code §25517

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

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes--Susp/Rev** Govt. Code §25511(b)(1)
Length of Term of License Withdrawal: (1) **Susp**--Time period is not specified in the
statute. (2) **Rev--1 yr** Govt. Code §25206

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

Type of Criminal Action: **Misd.** Govt. Code §25318
Term of Imprisonment: **Not more than 90 dys** Govt. Code §25318
Fine (\$ Range): **Not more than \$500** Govt. Code § 25318

Other Laws Related To Alcohol Use: (continued)

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

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

Yes-Susp/Rev Govt. Code §25511(b)(1)
(1) Susp-Time period is not specified in the statute. (2) Rev-1 yr Govt. Code §25206

Anti-Happy Hour Laws/Regulations:

No (However, Govt. Code §25329 prohibits the service of more than 1 drink at a time to any person.)

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

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

No
Yes (Driver and Passengers) Govt. Code §23405.1

STATE:
General Comments:

HAWAII
See Hawaii Revised Statutes.

Basis for a DWI Charge:

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

Under the influence of intoxicating liquor¹
§291-4(a)(1)
0.10^{1&2} §291-4(a)(2)
None
Controlled Substance §291-7
0.10 or more is considered competent evidence of driving under the influence if the chemical test was taken within 3 hrs of a DWI violation.
§291-5(a)
For Commercial Motor Vehicle Operators, see p. 3-105.

Chemical Breath Tests for BAC Level:

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

No
Yes §286-151
No

Other Information:

No (Specifically prohibited in both criminal and civil cases; see §286-159.)
Special Note: It appears that either a blood or breath test may be given a driver without their consent in order to obtain evidence of their intoxication if they are involved in an accident resulting in either injury or death to another person; see §286-163.

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

Blood:
Urine:
Other:

Yes
No
None

Adjudication of DWI Charges:

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

No
No
Yes 2nd & 3rd DWI offs §291-4(c) & 291-7(c)

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

²Standard: Percent or more, by weight, of alcohol in the person's blood; see §291-4(a)(2).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

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

Refusal to Take Implied Consent

Chemical Test:

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

Other:

Rev 1st refusal 12 mos 2nd and sub. refusals (w/n 5 yrs) 2 to 5 years §286-155) (Mandatory) Persons penalized under §286-155 must under go an assessment for alcohol dependence and the need for treatment. §286-155(d)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

1st alc. off-48 hrs¹; 2nd alc. off (w/n 5 yrs of a previous conviction)-48 hrs of cons imprisonment; 3rd alc. off (w/n 5 yrs of two previous convictions)-10-180 dys §§291-4 & 291-7
2nd Alc. off (w/n 5 yrs of a previous conviction)-48 cons hrs

Mandatory Minimum Term:

Fine:

Amount (\$ Range):

1st alc. off-\$150 to \$1,000¹; 2nd alc. off (w/n 5 yrs of a previous conviction)-\$500 to \$1,000; 3rd alc. off (w/n 5 yrs of two previous convictions)- \$500 to \$1,000 §§291-4 & 291-7

Mandatory Minimum Fine (\$):

None

Other Penalties:

Community Service:

1st alc. off-72 hrs¹; 2nd alc. off (w/n 5 yrs of a previous conviction)-80 hrs as an alternative to imprisonment §§291-4 & 291-7

Restitution (eg Victim's Fund)

Yes Direct compensation by defendants to the victims; see §706-605(d).²

Other:

Home detention may be assigned as a condition of probation; see §706-624(2)(p).

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law: **None**
Other: **None**

¹The Court must sentence a person convicted of a 1st DWI off to at least one of the sanctions listed but it has the authority to sentence such person to more than one such sanction.

²Note: The payment of restitution shall have priority over the payment of the fine; see §706-605(b).

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

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

For alc. offenses only: 1st off-Susp¹; 2nd off-Susp; 3rd off-Rev §§291-4 & 291-7

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

For alc. offenses only: 1st off-90 dys¹; 2nd off-1 yr; 3rd off-1-5 yrs

Mandatory Minimum Term of
Withdrawal:

For alc. offenses only: 1st off-30 dys with a restricted license for 60 dys; 2nd off-1 yr; 3rd off-1 yr

Other:

Rehabilitation:

Alcohol Education:

1st off - A mandatory 14 hr alcohol/drug abuse education/counseling program. §§291-4(b)(1)(A) & 291-7(b)(1)(A)

Alcohol Treatment:

Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority: **No**

Terms Upon Which Vehicle

Will Be Released: **None**

Other: **None**

¹Note: For certain serious traffic law violations, e.g., an alcohol driving offense, a person receives points on their driving record. A license is suspended from 1-6 months if a person accumulates 12 points on their record. For an alcohol driving offense conviction, a person receives from 4 to 8 points. Consequently, for a first conviction for an alcohol driving offense, a person could receive up to a 6 month license suspension if they have accumulated 12 points as a result of this conviction and from other previous traffic law violations. See §§286-128.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr. (1 yr mand.) (not less than 3 yrs 3 yrs (3 yrs mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC level of 0.04 or more, (2) are under the influence of alcohol, a controlled substance or any drug which impairs driving ability or (3) refuse to submit to a chemical test for an alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand.). In addition, a CMV operator who has a BAC/BrAC level or between 0.01 and 0.03 must be placed "out-of-service." See Act 320 of 1989; eff. 1/1/91.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Miscellaneous Sanctions
Not Included Elsewhere:

Serious bodily injury caused by negligent veh operation (negligent injury in the 1st degree)-C1 C felony: Jail-not more than **5 yrs**; fine-not more than **\$10,000**. A mandatory imprisonment term of 1 yr, 8 mos if the person injured was either 60 years old or older, blind, paraplegic, quadriplegic or eight (8) years old or younger: Jail-1 yr, 8 mos. Substantial bodily injury caused by negligent veh operation (negligent injury in the 2nd degree)-misd: Jail-not more than **1 yr**; fine-not more than **\$2,000**. See §§706-620, 706-640, 706-660, 706-660.2, 706-663, 707-705 & 707-706.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense:

Yes--3 types of offs: (1) Death caused by negligent veh operation while DWI (negligent homicide in the first degree) a C1 B felony; (2) death caused by negligent veh operation (negligent homicide in the second degree) a C1 C felony; (3) death caused by simple negligence-(negligent homicide in the third degree) a misd See §§706-620, 706-640, 706-660, 706-660.2, 706-663, 707-702.5, 707-703 & 707-704.

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Death caused by negligent veh operation while DWI (negligent homicide in the 1st degree) a C1 B felony-Not more than **10 yrs**; death caused by negligent veh operation (negligent homicide in the 2nd degree) a C1 C felony-Not more than **5 yrs**; death caused by simple negligence-(negligent homicide in the 3rd degree) a misd-Not more than **1 yr**

Mandatory Minimum Term:

The following mandatory imprisonment sanctions apply if the person killed was either 60 years old or older, blind, paraplegic, quadriplegic or eight (8) years old or younger. Negligent homicide in the first degree-3 yrs, 4 mos; negligent homicide in the second degree-1 yr, 8 mos. §§706.620 & 706-660.2

Other Criminal Actions Related to DWI: (continued)

Fine (\$ Range): Death caused by negligent veh operation while DWI (negligent homicide in the 1st degree) a C1 B felony-Not more than **\$25,000**; death caused by negligent veh operation (negligent homicide in the 2nd degree) a C1 C felony-Not more than **\$10,000**; death caused by simple negligence-(negligent homicide in the 3rd degree) a misd-Not more than **\$2,000**

Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and Type of Action:

Death caused by negligent veh operation while DWI (negligent homicide in the first degree) a C1 B felony-**Rev**¹; death caused by negligent veh operation (negligent homicide in the second degree) a C1 C felony-**Rev**¹; death caused by simple negligence-(negligent homicide in the third degree) a misd-**Rev**¹

Length of Term of Licensing Withdrawal:

Death caused by negligent veh operation while DWI (homicide in the first degree) a C1 B felony-Not less than **1 yr**; death caused by negligent veh operation (homicide in the second degree) a C1 C felony-Not less than **1 yr**; death caused by simple negligence--(homicide in the third degree) a misd-Not less than **1 yr**

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

1 yr¹
None

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

Sanction:

Criminal:

Imprisonment (Term): **3 con days - 30 days** (may be extended to **60 days** for "good cause") §291-4.5

Mandatory Minimum Term of Imprisonment: **3 con days** appears to be mandatory

Fine (\$ Range): **\$250 to \$1,000**

Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev): Susp or rev §291-4.5

Length of Term of License Withdrawal Action: An additional period of **1 yr**²

Mandatory Term of License Withdrawal Action: The above susp. or rev. appears to be mandatory

¹Note: Mandatory rev applies to a conviction of the driver for "manslaughter"; see §§286-124 and 286-126.

²The suspension or revocation period commences upon the person's release from imprisonment.

Other Criminal Actions Related to DWI: (continued)

Habitual Offender Laws:

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

Other State Laws Related To Alcohol Use:

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

State Has Such a Law (Yes/No): **Possible** (§841-3) (There is an indirect
chemical test via the coroner.)

BAC Chemical Test Is Given to the
the Following Persons:

Driver: **Possible**
Vehicle Passengers: **Possible**
Pedestrian: **Possible**

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** (yr eff; 1986) §§281-1, 281-78 & 281-101.5
Minimum Age (Years) Possession: **21** (Employment situations, medical treatment
and religious ceremonies are excluded.)
§§281-1, 281-78, 281-101.5 and 712-1250.5(2(a) &
(b)
Minimum Age (Years) Consumption: **None**

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **No**
"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation): **Yes** Ono v. Applegate, 612 P.2d 533 (1980)
Dram Shop Actions-Social Hosts: **No** (No cases)
Other: **None**

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:

Misd

Term of Imprisonment:

Not more than **6 mos** (§§281-78, 281-91 and
281-102)

Fine (\$ Range):

Not more than **\$500**

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp or rev

Length of Term of License Withdrawal:

Not specified in the statute (Note: A civil
penalty of not more than \$500 may be assessed in
lieu of license susp or rev.)

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

Type of Criminal Action:

Misd¹

Term of Imprisonment:

Not more than **6 mos¹**

Fine (\$ Range):

Not more than **\$500¹** (§§281-78, 281-91 & 281-102
and Ch. 712).

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes, susp or rev

Length of Term License Withdrawal:

Not specified in the statute (Note: A civil
penalty of not more than \$500 may be assessed in
lieu of license susp or rev.) (§§281-78, 281-91
& 281-10 and Ch. 712).

¹Under §712.1250.5, it is a misdemeanor to promote intoxicating liquor to a minor: Jail-not more than 1 yr (§706-663) and fine-not more than \$2,000 (§706-640(4)).

Other State Laws Related To Alcohol Use: (continued)

Anti-Happy Hour Laws/Regulations:

No (Note: Under §281-78.5, the liquor commission is required to promulgate regulations which prohibit practices which promote excessive consumption of alcoholic beverages.)

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

Open Container Law (Yes/No):

Yes §§291-3.1(a) & 291-3.2(a)¹

Anti-Consumption Law (Yes/No):

Yes- Driver and passengers §§291-3.1(b), 291-3.2(b) & 291-3.3¹

¹There is an exception in the case of motor vehicles for hire; see §291-3.4.

STATE:
General Comments:

IDAHO
See General Laws of Idaho Annotated.

Basis for a DWI Charge:

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

Under the influence of alcohol §18-8004(1)(a)
0.10 §18-8004(1)(a)
>0.08 §18-6901
(1) Any Drug, (2) Intoxicating Substance and (3)
a Combination of Any Drug and Alcohol
§§18-8004(1)(a) & 18-8004(5)
For Commercial Motor Vehicle Operators, see
below.

Other:

Chemical Breath Tests for BAC/BrAC Level:

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

No
No
Yes §18-8002(1)

Other Information:

Yes (Criminal Cases)
State v. Bock, 328 P.2d 1065 (1958)
The police need only reasonable grounds of an
alcohol off before the implied consent law is
applicable; See §18-8002(1). However, see
§18-8002(4)(b) which appears to indicate that
probable cause is needed.

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

Blood:
Urine:
Other:

Yes §§18-8002(1) & 18-8004
Yes §§18-8002(1) & 18-8004

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

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials); if, while driving a CMV, they (1) have a BAC/BrAC/UrAC level of 0.04 or more, (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand.). A CMV operator is also subject to DWI criminal sanctions and administrative actions against their regular driving privileges. In addition, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. See §§49-105(6), 49-104(9), 49-335, 18-8002(3)(a), 18-8004(1)(b), 18-8004(4) and 18-8005.

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes (Alcohol Evaluation) §18-8005(5)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

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

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):	No
Administrative Licensing Action (Susp/Rev):	<u>1st Refusal- 180 dys susp (mand.); 2nd Refusal (w/n 5 yrs)-1 yr susp. (mand.) §18-8002(3)(c), (4)(b) & (4)(c)</u>
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:	<u>1st off-Not more than 6 mos; 2nd off (w/n 5 yrs) misdemeanor-10 dys to 1 yr; 3rd & sub off (w/n 5 yrs) Felony-Not more than 5 years; Aggravated DWI where there is bodily harm/ disfigurement-Not more than 5 years See §§18-8005 & 18-8006.</u>
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Mandatory Minimum Term:

1st off Misd-None; 2nd off (w/n 5 yrs) Misd- 10
dys (must serve 48 con. hrs); 3rd & sub off (w/n
5 yrs) Felony-30 dys; Aggravated DWI off where
there is bodily harm/disfigurement-30 dys¹ See
§§18-8005 & 18-8006.

Fine:

Amount (\$ Range):

1st off Misd-Not more than \$1,000²; 2nd off (w/n
5 yrs) Misd-Not more than \$2,000²; 3rd & sub off
(w/n 5 yrs) Felony-Not more than \$5,000²;
Aggravated DWI off where there is bodily
harm/disfigurement-Not more than \$5,000² See
§§18-8005 & 18-8006. (See Footnote No. 3 below.)

Mandatory Minimum Fine (\$):

None

¹In State v. McCoy, 486 P.2d 247 (1971), the Idaho Supreme Court voided a statute requiring mandatory sanctions.

²A defendant is also assessed a special fine of \$10 which is paid into a crime victims' compensation account; see §72-1025.

³Under §18-8010, a surcharge of \$15 is added to all fines for the purpose of purchasing ignition interlock and electronic monitoring devices.

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

Other Penalties:

Community Service:

Restitution (eg Victim's Fund)

None

Yes Aggravated DWI off where there is bodily harm/disfigurement; see §18-8006(1)(e). There is also a victims' compensation fund; see §72-1001 et seq. See Footnote No. 2 on p. 3-112.

Other:

Under §18-8008, if any part of a jail sentence or fine is suspended, the court may impose, in addition to any other penalty, the following requirements. (1) The defendant may only operate a motor vehicle equipped with an **"ignition interlock"** device; an imprint/notice shall be made on/attached to the defendant's license stating that driving privileges are granted only for use on motor vehicles equipped with this device; the court can require use of this device for a period of time not in excess of the defendant's probation period. And, (2) the court may require the defendant to use an **"electronic monitoring"** device to record their movements while they are on probation to insure that they comply with either curfew hours, driving privilege restrictions or home confinement requirements.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Other:

None

Under §49-326(a)(1) & (5), a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., veh. homicide)¹. Such action may be taken without a preliminary hearing.

Post DWI Conviction Licensing Action:

Type of Licensing Action:

(Susp/Rev):

1st off-Susp²; 2nd off-Susp²; 3rd & sub off-Susp²; Aggravated DWI off-Susp §§18-8005 & 18-8006

¹These provisions do not apply to DWI offense convictions since such convictions result in license suspension not revocation.

²If the offender is a minor (a person under 18 years old), their license is suspended or denied for either an additional 1 year or until the person reaches 18 which ever period is longer or following the end of any period of susp or rev; this licensing action appears to be mandatory. See § 18-8005(7).

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

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off-Not more than **180 dys**; 2nd off- **1 yr** after release from confinement; 3rd & sub off- **1-5 yrs** after release from confinement; Aggravated DWI off - **1-5 yrs** after release from confinement §§18-8005 & 18-8006

Mandatory Minimum Term of Withdrawal:

1st off -**None**¹; 2nd off-**1 yr** after release from confinement²; 3rd & sub off-**1 year** after release from confinement; Aggravated DWI off-**1 year** after release from confinement §§18-8005 & 18-8006

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

A DWI offender may be required to participate in an alcohol treatment program by the court; see §18-8005(8).

Alcohol Education/

Treatment as an Alternative to Criminal Licensing Actions
(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

No

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Miscellaneous Sanctions

Not Included Elsewhere:

None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense:

Yes-There are three (3) types of offs for veh manslaughter. Death as a result of either (1) an unlawful act not amounting to a felony where gross negligence is involved (Felony), (2) a DWI off (Felony) or (3) death as a result of an unlawful act not amounting to a felony where there is no gross negligence (Misd.). §§18-111, 18-4006(3) & 20-201 et seq.

¹A restricted license may be issued for reasons of employment.

²After the 30 day mandatory period, a restricted license may be issued for reasons of employment for the balance of the 6 mo minimum susp period.

Other Criminal Actions Related to DWI: (continued)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Death as a result of either (1) gross negligence or (2) a DWI off-Not more than **7 years**; (3) death as a result of an unlawful act not amounting to gross negligence - Not more than **1 year** §18-4007(3)

Mandatory Minimum Term:

None

Fine (\$ Range):

Death as a result of either (1) gross negligence or (2) a DWI off-Not more than **\$7,000**; (3) death as a result of an unlawful act not amounting to gross negligence - Not more than **\$2,000** §18-4007(3)

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Death as a result of either (1) gross negligence or (2) a DWI offs-**Rev** §49-325(1)(a); (3) death as a result of an unlawful act not amounting to gross negligence - **Rev** §49-325(1)(a)

Length of Term of

Licensing Withdrawal:

Death as a result of either (1) gross negligence or (2) a DWI offs-Not less than **1 yr** §49-326(5) (3) death as a result of an unlawful act not amounting to gross negligence - Not less than **1 yr** §49-326(5)

Mandatory Action--Minimum

Length of License

Withdrawal:

Death as a result of either (1) gross negligence or (2) a DWI offs-**1 yr**; (2) Death as a result of an unlawful act not amounting to gross negligence - **1 year** §§49-325(a) & 49-326(5)

Other:

Note: A temporary restricted license cannot be issued following revs based on veh manslaughter; see §49-325(2).

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

1st off Misd-Not less than **2 dys to 6 mos**; 2nd off Misd (w/n 5 years)-**20 dys to 1 yr**; 3rd and subsequent offs (w/n 5 years)(felony)-Not more than **3 yrs** §18-8001

Mandatory Minimum Term

of Imprisonment:

1st off Misd-**2 dys**; 2nd off Misd (w/n 5 years)-**20 dys**; 3rd and subsequent offs (w/n 5 years)(felony)-**30 dys**

Other Criminal Actions Related to DWI: (continued)

Fine (\$ Range): 1st off Misd-Not more than **\$500**; 2nd off Misd (w/n 5 years)-Not more than **\$1,000**; 3rd and subsequent offs (w/n 5 years)(felony)-Not more than **\$3,000**

Mandatory Minimum Fine: **None**
Special Note: If a person is convicted of an alcohol driving off and such person had no driving privileges at the time of arrest, the penalties imposed under §18-8001 are in addition to any penalties imposed for an alcohol driving off conviction. §18-8001(6)

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev): 1st off-**Susp**; 2nd off Misd (w/n 5 years)-**Susp**; 3rd and subsequent offs (w/n 5 years)(felony)-**Susp** §18-8001

Length of Term of License Withdrawal Action: 1st Off-License susp for an additional **6 mos**¹; 2nd Off Misd (w/n 5 yrs)-License susp for an additional **1 yr**; 3rd and subsequent offs (w/n 5 yrs)(felony)-License suspended for an additional **3 yrs** §18-8001

Mandatory Term of License Withdrawal Action: 2nd off Misd (w/n 5 years) additional susp for **1 yr**; 3rd and subsequent offs (w/n 5 years)(felony)-an additional susp for **3 years** §18-8001

Habitual Offender Laws:

State Has Such Law (Yes/No): **No**

Grounds for Being Declared an Habitual Offender:

Term of License Rev While Under Habitual Offender Status:

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

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

Imprisonment (Term):

Mandatory Minimum Term of Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

¹Restricted licenses available for employment reasons or family health needs.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No): **Yes** §49-1016

BAC Chemical Test Is Given to the
the Following Persons:

Driver: **Yes**

Vehicle Passengers: **No**

Pedestrian: **Yes**

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** §§23-312, 23-929, 23-1023 & 23-1334 (Year
Eff: 1987)

Minimum Age (Years) Possession: **21** §23-949 (There is an employment exemption
for persons who are at least 19 years old; see
§§23-1013 & 23-1334.)

Minimum Age (Years) Consumption: **21** §23-949

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes** §23-808 Note: This law limits liability
to situations where the patron/guest was either
(1) obviously intoxicated or (2) intoxicated and
under the legal drinking age.

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

Note: Case law (e.g., Alegria v. Payonk, 619
P.2d 135 (1980)) may have been abrogated by
legislation enacted in 1986; see §23-808.

Dram Shop Actions-Social Hosts:

Yes §23-808 See Note above under Dram Shop Law.

Other:

No

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

Type of Criminal Action:

State alc. liquor dispensary employees (pkg.
sales)-**Misd** §§23-312 & 23-601; State authorized
alc. vendors/distributors (pkg. sales)-**Misd**
§§18-113 & 23-605; Retail alc. liquor by the
drink¹-**Misd** §§23-929 & 23-935; Retail sale of
beer (not more than 4% alc. by volume)-**no**
sanctions; Retail sale of wine (not more than
14% alc. by volume) (pkg sales and by the
drink)-**no sanctions**²

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

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

Other State Laws Related To Alcohol Use: (continued)

Term of Imprisonment:	State alc. liquor dispensary employees (pkg. sales)- 3 mos-1 yr ; State authorized alc. vendors/distributors (pkg. sales)- not more than 6 mos ; Retail alc. liquor by the drink ¹ - 30 dys-6 mos ; Retail sale of beer (not more than 4% alc. by volume)- none ; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)- none ²
Fine (\$ Range):	State alc. liquor dispensary employees (pkg. sales)- \$300-1,000 ; State authorized alc. vendors/distributors (pkg. sales)- not more than \$300 ; Retail alc. liquor by the drink ¹ - \$100-300 ; Retail sale of beer (not more than 4% alc. by volume)- none ; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)- none ²
Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons: License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes , §23-933 (1) Liquor by the drink licenses may pay \$5,000 for a 1st off in lieu of susp.; (2) Liq. vendors/distributors may post a \$1,000 bond for a 1st violation in lieu of license suspension.
Length of Term of License Withdrawal:	Statute has no stated time period.
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age: Type of Criminal Action:	State alc. liquor dispensary employees (pkg. sales)- Misd §§23-312 & 23-601; State authorized alc. vendors/distributors (pkg. sales)- 1st off. Misd, Sub. off.-Felony §§18-112, 18-113 & 23-603 ³ ; Retail alc. liquor by the drink ^{1&3} - Misd §§23-929 & 23-935; Retail sale of beer (not more than 4% alc. by volume)- Misd §§18-113, 23-1013 & 23-1020; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)- Misd ¹ §§18-113, 23-1334(b) & 23-1335

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

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

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

Other State Laws Related To Alcohol Use: (continued)

Term of Imprisonment:

State alc. liquor dispensary employees (pkg. sales)-3 mos-1 yr; State authorized alc. vendors/distributors (pkg. sales)-1st off.-not more than 6 mos, Sub. off.-not more than 5 yrs²; Retail alc. liquor by the drink^{1&2}-30 dys-6 mos; Retail sale of beer (not more than 4% alc. by volume)-not more than 6 mos; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)-not more than 6 mos²

Fine (\$ Range):

State alc. liquor dispensary employees (pkg. sales)-\$300-1,000; State authorized alc. vendors/distributors (pkg. sales)-1st off.-not more than \$300, Sub. off.-not more than 5,000²; Retail alc. liquor by the drink^{1&2}-\$100-300; Retail sale of beer (not more than 4% alc. by volume)-not more than \$300; Retail sale of wine (not more than 14% alc. by volume) (pkg sales and by the drink)-not more than \$300²

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

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

Yes, (1) Liquor by the drink licensees, 4% beer retailers and 14% wine retailers may pay \$5,000 for a 1st off in lieu of susp.; (2) Liq. vendors/distributors may post a \$1,000 bond for a 1st violation in lieu of license suspension/revocation.

Length of Term License Withdrawal:

Indeterminate (statute has no specific time period) §§23-933, 23-1037 & 23-1331

Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No):

Yes³ §§23-505 & 23-1333

Anti-Consumption Law (Yes/No):

Yes³ §23-505 Applies to both driver and passengers

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

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

³Does not include beer; see §§23-505 & 23-105.



STATE:

ILLINOIS

General Comments:

See Smith/Hurd Illinois Annot. Statutes.

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of alcohol Ch. 95%,
¶11-501(a)(2)

Illegal Per Se Law (BAC/BrAC Level):

0.10¹ Ch. 95%, ¶11-501(a)(1)

Presumption (BAC Level):

0.10 Ch. 95%, ¶11-501.2(b)(3)

Types of Drugs/Drugs and Alcohol:

(1) Any Drug and (2) a Combination of Any Drug
and Alcohol See Ch. 95%, ¶11-501(a)(3) & (4).

Other:

For Commercial Motor Vehicle Operators, see p.
3-124.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:

Yes² Ch. 95%, ¶11-501.4

Implied Consent Law:

Arrest Required (Yes/No):

Yes Ch. 95%, ¶11-501.1

Implied Consent Law Applies to

Drugs (Yes/No):

Yes Ch. 95%, ¶11-501.1(a)

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes. (Criminal Cases) Ch. 95%, ¶11-501.2(c)

Other Information:

None

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes Ch. 92%, ¶11-501.1

Urine:

Yes Ch. 95%, ¶11-501.1

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

No³

Pre-Sentencing Investigation Law (PSI)

(Yes/No):

Yes Ch. 95%, ¶11-501(e)

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

²Before the Preliminary Breath Test can be given, a law enforcement officer must have probable cause to believe that the driver is violating the DWI law. The test is given prior to an actual DWI arrest for the purpose of assisting the officer in determining whether to require a chemical (evidentiary) test under the implied consent law.

³Note: A defendant cannot obtain deferred judgement and be placed on supervision if within 5 years they have either (1) been convicted of DWI, (2) pleaded guilty to or stipulated facts supporting the conviction of a DWI off charge, or (3) received supervision for a prior DWI off; see Ch. 38, ¶¶1005-6-1(c) and 1005-6-1(d)).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): **None**
Administrative Licensing Action
(Susp/Rev): **None**
Other: **None**

Refusal to Take Implied Consent

Chemical Test:

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

1st refusal-Susp for **6 mos** (Note: A Judicial Driving Permit is available; see Footnote No. 1 (under Admin. per se) on p. 3-123 for details.); subsequent refusals (w/n 5 yrs)-Susp for **2 yrs**; (**6 mos** mandatory; a restricted license may be issued after this 6 month period.) See Footnote No. 2 on p. 3-123. Ch. 95%, ¶¶116-206(c)(3), 206.1, 208.1 and 11-501.1

Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment: 1st & 2nd offs (Class A misd)-Less than **1 yr**; subsequent offs (Class 4 felony)-**1-3 yrs** Ch. 38, ¶¶1005-8-1(a)(7) & 1005-8-3(a)(1) and Ch. 95%; ¶11-501.

Mandatory Minimum Term: 2nd off (only) (w/n 5 yrs)-**48 cons hrs** (Ch. 38, ¶¶1005-5-3(c)(3) & 1005-6-1(d) (Ref: P.A. 83-204 and P.A. 83-207)

Fine:

Amount (\$ Range): 1st & 2nd offs-Not more than **\$1,000**; subsequent offs-Not more than **\$10,000**; Ch. 38, ¶1005-9-1(a)(1) & (2)

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

Other Penalties:

Community Service: 2nd off (only) (w/n 5 yrs)-**Yes** See Ch. 95%, ¶11-501(c) & Ch. 38, ¶1005-5-3(c)(3), a minimum of **10 dys** (Alternative to the term of 48 cons hrs of mandatory imprisonment)

Special Note No. 1: Driving a school bus while DWI while the bus is occupied by school children is a C1-4 Felony; imprisonment from 1 to 3 yrs and/or a fine of not more than \$10,000; restitution may be required; see Ch. 38, ¶¶1005-8-1(a)(7), 1005-9-1(a)(1) and Ch. 95%, ¶11-501(a) & (d)(2).

Special Note No. 2: Causing a DWI related accident which results in either great bodily harm or permanent disability or disfigurement is also a C1-4 felony; imprisonment from 1 to 3 years and/or a fine of not less than \$10,000; see Ch. 38, ¶¶1005-8-1(a)(7), 1005-9-1(a)(1) and Ch. 95%, ¶11-501(a) & (d)(3).

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

Restitution (eg Victim's Fund) **Yes**, for all offs Paid directly by a defendant to a victim; see Ch. 38, ¶¶1005-5-3(b)(7), 1005-6-3.1(c)(9) and 1005-5-6. There is also a victims' compensation fund; see Ch. 70, ¶72.

Other: **None**

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes 0.10 1st action-3 mos. susp.¹ (not mand.) subsequent action (w/n 5 yrs)²-1 yr. susp.
(90 dys. mand.; a restricted lic. may be issued after this 90 dy. period.) Ch. 95%, ¶¶6-206, 6-206.1, 6-208.1(h) & 11-501.1

Other:

Under Ch. 95%, ¶¶6-206(a)(1) & 6-208, a person's license may be susp/rev for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing; a post action hearing is available. The law establishing this type of action has been held constitutional; see People Ex Rel Eppinga v. Edgar, 492 N.E.2d 187 (Ill. 1986), cert. den., 479 U.S. 914 (1986).

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

Rev Ch. 95%, ¶¶6-205, 6-208 and 11-501

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off-1 yr; 2nd off (w/n 20 yrs)-3 yrs; subsequent off-6 yrs Ch 95%, ¶6-208(b)(1), (2) & (3) (Note: A hardship license may be issued; see Ch. 95%, ¶6-205(c).)

Mandatory Minimum Term of

Withdrawal:

A person, under 21 years old, who is convicted of a DWI offense, must have their license revoked for a mandatory period of 1 yr.³ Ch. 95%, ¶6-205(d)

¹A Judicial Driving Permit (JDP) may be issued after the first 30 days of the susp. period have passed; however, the lic. agency, it appears, can issue a restricted lic. for any part or all of this susp. period. A JDP may be issued following either an admin. per se law violation or an implied consent law chemical test refusal.

²If a person is found not guilty of a DWI offense associated with an admin. per se action (where the driver submitted to a chemical test and was found to have a BAC level of 0.10 or more), the admin. per se action cannot be considered a prior offense in determining enhanced licensing sanctions for implied consent law refusals or subsequent admin. per se actions/DWI offenses. See Ch. 95% ¶11-500.

³Note: After this 1 yr period, such a youthful offender must have their driving privileges restricted for at least 1 additional year; see Ch. 95%, ¶6-205(d).

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

Other:

Rehabilitation:

Alcohol Education:

(Note: Thirty dollars (\$30) of the \$60 license reinstatement fee following an admin. per se suspension is deposited into the Drunk and Drugged Driver Prevention Fund. This fund is used to provide "evaluation and remedial education programs" to indigent persons charged with DWI; see Ch. 95%, ¶118(b) & Ch. 111%, ¶6354-2.)

Alcohol Treatment:

Alcohol Education/

Treatment as an Altern-

ative to Criminal

Licensing Actions

(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Limited Impoundment. Following a DWI arrest, a person's vehicle may be impounded for not more than 6 hrs by law enforcement officers if such officers "reasonably believe" that the arrested person, upon release, will commit another DWI offense; see Ch. 95%, ¶4-203(e).

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Miscellaneous Sanctions

Not Included Elsewhere:

Special Note: Under Ch. 38, ¶¶1005-6-1 & 1005-6-3.1, a DWI offender may be placed in a court supervised diversion program; however, the offender cannot be placed in such a program if they either have had a previous DWI conviction or have been in such a diversion program within 5 yrs of the charged off.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 12 mos (12 mos mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC level of 0.04 or more, (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test or tests for alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand.). In addition, a CMV operator who has any amount of alcohol in their system must be placed "out-of-service" for 24 hours. See Ch. 95%, ¶¶6-500(1), (6) & (9), 6-514, 6-515 and 6-517.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes, C1 3 felony - Reckless homicide Ch. 38, ¶19-3**
(Note: Death must be the result of reckless action of the accused driver. Ch. 38, ¶19-3(b) provides that being under the influence of alcohol or drugs (in the same manner as a DWI offense) at the time of the violation is prima facie evidence of a reckless act.)

Sanctions:

Criminal Sanction:

Imprisonment (Term): **2-5 yrs** Ch. 38, ¶11005-8-1(a)(6)
Mandatory Minimum Term: **None**
Fine (\$ Range): **Not more than \$10,000** Ch. 38, ¶11005-9-1(a)(1)
Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and Type of Action: **Rev** Ch. 95%, ¶16-205(a)(1)
Length of Term of Licensing Withdrawal: **1st off-1 yr; 2nd off (w/n 20 yrs)-3 yrs; subsequent offs-6 yrs** Ch. 95%, ¶16-208(b)(1), (2) & (3)
Mandatory Action--Minimum Length of License Withdrawal: **None** (Note: A restricted license may be issued; see Ch. 95%, ¶16-205(c).)
Other: **None**

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

Sanction:

Criminal:

Imprisonment (Term): **1st off-C1 A misdemeanor-Less than 1 yr; Ch.38, ¶11005-8-3(a)(1), & Ch 95%, ¶16-303; subsequent off-C1 4 felony-1-3 yrs** Ch. 95%, ¶16-303(d) & Ch 38, ¶11005-8-1(a)(7)
Mandatory Minimum Term of Imprisonment: **7 cons dys-All offenses** (Note: Alternatively, the defendant may be sentenced to 30 dys of community service.) Ch. 38, ¶11005-5-3(c)(3) & Ch. 95%, ¶16-303(c).
Fine (\$ Range): **1st off-Not more than \$1,000; Sub off¹ not more than \$10,000** Ch. 38, ¶11005-9-1(a)(1) & (2)
Mandatory Minimum Fine: **None**

¹ Provided the original rev. or susp. was a DWI off. conviction.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Susp or rev Ch. 95%, ¶16-303(b)

Length of Term of License

Withdrawal Action:

If the original charge is based on a susp, the susp is extended an additional period of time equal to that if the original susp. If the original charge is based on a rev, the rev is extended 1 yr. Ch. 95%, ¶16-303(b)

Mandatory Term of License

Withdrawal Action:

Same as above.

Habitual Offender Laws:

State Has Such Law (Yes/No):

No

Grounds for Being Declared an
Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of
Driving While on Habitual
Offender Status:

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

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes Ch. 31, ¶10(e)

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes (16 years old or older)

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: 21 Ch. 43, §§131 & 134a (Year Eff: 1980)

Minimum Age (Years) Possession: 21 Ch. 43, §131 (There are exceptions for reasons of employment or by the order of a parent.)

Minimum Age (Years) Consumption: 21 Ch. 43, §134a (There are exemptions for religious ceremonies and for home use.)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): Yes¹ Ch. 43, §135

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

Yes, Colligan v. Cousar, 38 Ill.App.2d 392, 187 N.E. 2d 292 (1963)

Dram Shop Actions--Social Hosts:

No Zamiar v. Linderman, 478 N.E.2d 534 (App. Ct. 1st Dist., 1985) and Heldt v. Brei, 455 N.E.2d 842 (App. Ct. 1st Dist., 1983)²

Other:

None

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

Type of Criminal Action:

Cl A Misd Ch. 43, §131

Term of Imprisonment:

Not more than 1 yr Ch. 38, §1005-8-3(a)(1)

Fine (\$ Range):

Not more than \$1,000 Ch. 38, §1005-9-1(a)(2)

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

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

Yes, Susp/Rev Ch. 43, §108 (State licenses) and §149 (local licenses)

Length of Term of License Withdrawal: Not specified in the statute. See Footnote No. 1 on p. 3-128.

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

Type of Criminal Action:

Cl A Misd Ch. 43, §131

Term of Imprisonment:

Not more than 1 yr Ch. 38, §1005-8-3(a)(1)

Fine (\$ Range):

Not more than \$1,000 Ch. 38, §1005-9-1(a)(2)

¹Damages for personal injuries or to property are limited to \$30,000; loss of means of support is limited to \$40,000²See also, Miller v. Moran, 421 N.E.2d 1046 (App. Ct. 4th Dist., 1981) and Lowe v. Rubin, 424 N.E.2d 710, (App. Ct. 5th Dist., 1981).

Other State Laws Related To Alcohol Use: (continued)

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

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

Yes, Susp/Rev Ch. 43, ¶108 (State licenses) and ¶149 (local licenses)

Length of Term License Withdrawal:

Not specified in the statute.¹

Anti-Happy Hour Laws/Regulations:

Yes Ch. 43, ¶144d

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

Open Container Law (Yes/No):

Yes Ch. 95½, ¶11-502

Anti-Consumption Law (Yes/No):

No

¹Note: In lieu of revoking/suspending a State license, the licensee may be allowed to pay an administrative fine of \$500 for each violation; however, the maximum or total fine amount that may be imposed for all violations during any licensing period is \$20,000. Also, in lieu of revoking/suspending a local license, the licensee may be allowed to pay an administrative fine of \$1,000 for each violation; however, the maximum or total fine amount that may be imposed during any licensing period is \$10,000.

STATE:

General Comments:

INDIANA

See Burn's Indiana Statutes Annotated.

Basis for a DWI Charge:

Standard DWI Offense

Operating a vehicle while intoxicated IC9-11-2-2 (The term "intoxicated" is defined as under the influence of alcohol, drugs, etc.; see IC9-11-1-5.

Illegal Per Se Law (BAC Level)

0.10¹ IC9-11-2-1(a) or **Any Amount of a Controlled Substance** IC9-11-2-1(b)²

Presumption (BAC Level):

0.10³

Types of Drugs/Drugs and Alcohol:

(1) Any Drug, (2) a Controlled Substance and (3) Any Combination of Alcohol and Drugs See IC9-11-1-5 & IC9-11-2-2.

Other:

0.10 BAC is also prima facie evidence of intoxication. IC9-11-1-7 See Footnote No. 4. For Commercial Motor Vehicle Operators, see p. 3-132.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

No (PBT law, IC9-4-4.5-3, repealed by P.L. 143 enacted in 1983.)

Implied Consent Law:

Arrest Required (Yes/No):

No (See IC9-11-4-2.) (See also Clark v. State, 372 N.E.2d 185 (Ind. 1978) where no arrest is required.)

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

Yes IC9-11-4-1 & 9-11-4-2

Refusal to Submit to Chemical Test
Admitted into Evidence:

Yes (Criminal & Civil Cases) IC9-11-4-3(b)

Other Information:

See Footnote No. 1 on p. 3-130.

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

Blood:

Yes IC9-11-1-3

Urine:

Yes IC9-11-1-3, 9-11-4-1 & IC9-11-4-6

Other:

Any other bodily substance IC9-11-1-3,
IC9-11-4-1 & IC9-11-4-6

¹Standard: Percent by weight of alcohol in the blood; see IC9-11-2-1(a) & 9-11-4-15(b)(2).

²This State's illegal per se law also makes it an offense (Class A Misd) for a person to operate a motor vehicle with any amount of a controlled substance in their blood. Exception: It is a defense to this offense if it is shown that the defendant was using a controlled substance via a valid prescription; see IC9-11-2-1(c).

³Under IC9-11-4-15(b)(2), a chemical test indicating a BAC level of 0.10 is to be taken as presumption of such BAC level.

⁴It is a Class A Misd. to consume either alcohol or a controlled substance within six (6) hours of operating a school bus; see IC20-9.1-3-1.6. Sanctions: Jail-not more than 1 yr; fine-not more than \$5,000 (IC35-50-2-7 & 35.50-3-1).

Adjudication of DWI Charges:

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

Sanctions for Refusal to Submit to a
Chemical Test:

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

Refusal to Take Implied Consent
Chemical Test:

Criminal Sanction (Fine/Jail):	No ¹
Administrative Licensing Action (Susp/Rev):	1-yr susp (May not be mandatory in all cases. ² 9-11-4-9(a) (Note: A driver's license may be reinstated if the DWI charges are dismissed; see IC9-11-4-11(a)(1).)
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:
Imprisonment:
Term (Day, Month, Years,
Etc.):

1. Illegal per se (Cl C misd) - Not more than **60 dys** IC9-11-2-1, IC35-50-3-4; 2. Intoxicated off (Cl A misd) - Not more than **1 yr** IC9-11-2-2, IC35-50-3-2; 3. Either 1 or 2 above if there has been a previous conviction of either off, (Cl D felony³) - A fixed term of **2 yrs** IC9-11-2-3; 4. Violation of either 1 or 2 above where there has been a serious injury, (Cl D felony³) - A fixed term of **2 yrs** IC9-11-2-4, IC35-50-2-7; 5. Violation of either 1 or 2 above where there has been a death (Cl C felony) - A fixed term of **5 yrs** (IC9-11-2-5 and IC35-50-2-6).

¹Refusal to submit to a implied consent test, where there has been an accident in which there has been a death or a serious bodily injury likely to cause death, is a class C Infraction (a fine of not more than \$500); see IC9-4-1-39.1 and IC34-4-32-4(c). In addition, the court may suspend a persons license for not more than 1 yr; see IC9-4-1-39.1.

²This susp. is consecutive to any susp. for a DWI offense. However, if a court finds in the sentence order for a DWI Conviction that it is in the best interest of society, it may terminate all or any part of this suspension; see IC9-11-3-1 & 9-11-3-3.

³A person convicted of a Class D felony may, at the court's discretion, be sentenced as if they had been convicted of a Class A misdemeanor (Jail: Not more than 1 yr; fine: Not more than \$5,000) provided that this was the person's first felony conviction. IC35-50-2-7 & IC35-50-3-1

Sanctions Following a Conviction for a DWI Offense:

(continued)

Mandatory Minimum Term:

A conviction for **ANY** alcohol related driving off, where there has been a previous conviction of such an off (regardless of type) (w/n 5 yrs), there is either a mandatory imprisonment term of 5 dys (of which 48 con. hrs must be served) or mandatory community service of 10 dys.
IC9-11-3-4 See Miscellaneous DWI Sanctions on p. 3-134.

Fine:

Amount (\$ Range):

1. Illegal per se off (C1 C misd) - Not more than **\$500** IC9-11-2-1; 2. Intoxicated off (C1 A misd) - Not more than **\$5,000** IC9-11-2-2; 3. Either 1 or 2 above if there has been a previous intoxicated off (C1 D felony) - Not more than **\$10,000** IC9-11-2-3; 4. Violation of either 1 or 2 above where there is serious injury (C1 D felony) - Not more than **\$10,000** IC9-11-2-4; 5. Violation of either 1 or 2 above where there is a death (C1 C felony) - Not more than **\$10,000** IC9-11-2-5

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

For subsequent alcohol offs (w/n 5 yrs), mandatory community service of 10 dys in lieu of imprisonment. IC9-11-3-4

Restitution

(eg Victim's Fund)

Yes, The court may order a defendant to pay direct compensation to a victim; see IC9-11-3-5a & IC35-50-5-3. There is also a victims' compensation fund; see IC16-7-3.6-1 et seq.

Other:

"Ignition Interlock." A a condition of obtaining probationary driving privileges (1st off), the court may require a defendant to use only vehicles equipped with "ignition interlock" devices. See IC9-11-3-5.

Alcohol and Drug Countermeasures Fee. All DWI offenders are assessed a fee of **\$20** for alcohol and drug countermeasures programs.

Emergency Medical Services Fund. The court may order a defendant to make "restitution" of up to **\$1,000** to the emergency medical services fund for any needed services provided by emergency services personnel as a result of their actions. See IC9-11-3-5a.

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

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes (1st and sub offs) For a **0.10** (prima facie evidence) BAC level; susp up to 180 dys or until the DWI charges have been disposed of which ever occurs first. IC9-11-4-9(b) A person may be issued a restricted license under IC9-5-2-1 et seq. if they have not been convicted of a DWI offense; see IC9-5-2-7. If DWI charges are dismissed or the defendant is found not guilty of the DWI off, the court shall order the driver's license reinstated¹; see IC9-11-4-11(a)(1).

Other:

Under IC9-11-4-8(c), the court may susp. a license at the initial hearing if there is probable cause to believe that the person was driving either while illegal per se or intoxicated. Note: The initial hearing must be held within 10 dys after the arrest (IC35-33-7-1(c)).

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

Susp - All offs IC9-11-3-1.5

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off (Illegal per se/Intoxicated)-**90 dys to 2 yrs**; 2nd or subsequent off (Illegal per se/Intoxicated) (w/n 10 yrs but more than 5 yrs from a first off)-**180 dys to 2 yrs**; 2nd or subsequent off (Illegal per se/Intoxicated) (w/n 5 yrs)-**1 to 2 yrs**; Injury/Death Related off (Illegal per se/Intoxicated)-**2 to 5 yrs**. See IC9-11-1-6.5², IC9-11-3-1.5 & IC9-11-4-12.

¹If a defendant makes a request for an early trial and one is not held within 90 days of the initial hearing, the court may order the driver's license to be reinstated. Note: The reinstatement cannot take effect until 90 days after the initial hearing. See IC9-11-4-11(a)(2) & IC9-11-4-18.

²IC9-11-1-6.5 defines the phrase "previous conviction of operating while intoxicated" to include any DWI offense under IC9-11-2.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC level of 0.04 or more, (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for an alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life. In addition, a CMV operator who has any "measurable" or "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. Note: Under IC9-1-13-5, the State must adopt rules that comply with minimum requirements (i.e., those given) of the Federal Commercial Motor Vehicle Safety Act of 1986 (P.L. 99-570); see 49 USC Appx §§2707 et seq. and 49 CFR §§383.51. and 392.5.

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

Mandatory Minimum Term of
Withdrawal:

1st off (Illegal per se/Intoxicated)-**30 dys**¹;
2nd or subsequent off (Illegal per
se/Intoxicated) (w/n 10 yrs but more than 5 yrs
from a first off)-**180 dys**²; 2nd or subsequent
off (Illegal per se/Intoxicated) (w/n 5 yrs)-**1
yr**²; Injury/Death Related off (Illegal per
se/Intoxicated)-**2 yrs**² See IC9-11-3-1.5 &
IC9-11-4-12.

Other:

Rehabilitation:

Alcohol Education:

Yes³

Alcohol Treatment:

Yes³

Alcohol Education/
Treatment as an Altern-

ative to Criminal/
Licensing Actions
(Describe):

Yes³

¹A probationary (restricted) license may be issued for 180 dys. This restricted license does not take effect until a defendant's license has been suspended for 30 dys under the admin. per se law. See IC9-11-3-2(b) and IC9-11-3-2.5.

²A probationary (restricted) license may be issued for that portion of the suspension period that exceeds the mandatory minimum period. See IC 9-11-3-2.5(b).

³For a first DWI off, the defendant may, as a condition of probation, be evaluated and treated for alcohol-related problems. The law does not specifically extend such evaluation and treatment to subsequent DWI offenders. In addition, for any misd. in which alcohol abuse is a factor, the Court may take judicial notice that an alcohol training/rehabilitation program may reduce antisocial behavior. If a defendant satisfactorily completes such a program the charges against him/her shall be dismissed; however, licensing susps. still apply. A defendant is eligible to participate only once in this type of program. See IC9-11-5-1 et seq and 9-13-6.1-15.1.

License Suspension and DWI Charge Deferral. For 1st offenders, the DWI charges may be deferred. The law provides for two (2) different deferral schemes depending upon the court hearing the case. (1) Under IC9-11-5-3, IC9-11-5-4 & IC9-11-5-5, the charges may be deferred for up to 4 yrs. As part of the deferral, the court may be susp. a defendant's license from 2 to 4 yrs. However, it appears that the court must suspend a defendant's license for 1 yr; the court may grant restricted driving privileges after this 1 yr period. In addition, the defendant may be required to participate in an alcohol treatment program. And, (2) DWI charges may be deferred under IC16-13-6.1-15.1(6). If deferral is made under this section, a driver's license is to be suspended for at least 90 dys but not more than 2 yrs; a 30 dy suspension is mandatory.

License Suspension and Probation Following Conviction. In certain circuit courts, persons convicted of a 1st DWI offense may be placed on probation and referred to an alcohol abuse deterrent program. As part of probation the court may suspend a defendant's license from 90 dys to 4 yrs. However, it appears that a defendant's license must be suspended for 30 dys under the admin. per se law. After this 30 dy period, the court may grant probationary (restricted) driving privileges. See IC9-11-5-3, 9-11-5-4, 9-1-5-6 & 9-11-5-7.

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

Vehicle Impoundment/Confiscation:

Authorized by Specific
Statutory Authority: **No**
Terms Upon Which Vehicle
Will Be Released:
Other:

Vehicle registration plates shall be suspended/revoked for **6 mos** if the defendant was convicted of a felony while using a motor vehicle (e.g., subsequent DWI offenses); see IC9-2-1-5(b)(3) & (d)(1).

Miscellaneous Sanctions Not
Included Elsewhere:

"Home detention" may be ordered in lieu of the minimum imprisonment sentence for certain offenses including DWI. "Home detention" may also be ordered as a part of probation. See IC35-38-1-21, 35-38-2-2(a)(15), 35-38-2.5 & 35-38-3-5. It appears that this sanction, however, does not circumvent the mandatory jail/community service requirements for 2nd and sub. DWI offenders. See IC35-38-3-5(a)(4).

Other Criminal Actions Related to DWI

Homicide by Vehicle:

State Has Such Law/Type of Offense:

Note: For a death related to a DWI offense, see "Sanctions Following a Conviction for a DWI Offense" above.

Sanctions:

Criminal Sanction:

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

Administrative Licensing Action:

Licensing Authorized and
Type of Action: See Footnote No. 1 below.
Length of Term of
Licensing Withdrawal:
Mandatory Action--Minimum
Length of License
Withdrawal:
Other:

Even though this State does not have a vehicle homicide statute, it either suspends or revokes the license (and registration plates) for not less than two (2) no more than five (5) years of any person who has been convicted of either manslaughter or reckless homicide resulting from the operation of a motor vehicle. It appears that these suspensions or revocations are mandatory; see IC9-2-1-5(b)(1), (d)(2) & IC9-4-1-54.5(c).

Other Criminal Actions Related to DWI: (continued)Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term): C1 A Misd - Not less than 2 dys to 6 mos
IC9-1-4-52Mandatory Minimum Term
of Imprisonment: 60 Dys

Fine (\$ Range) Not more than \$500

Mandatory Minimum Fine: None

Administrative Licensing Actions:

Type of Licensing Action:
(Susp/Rev): Susp.Length of Term of License
With drawal Action: 90dys-2 yrs This suspension applies to
convictions of driving while either suspended or
revoked.Mandatory Term of License
Withdrawal Action: 90 dys

Habitual Offender Laws:

State Has Such Law (Yes/No): Yes IC9-12-1-1 et seq., IC9-12-2-1 et seq. &
IC9-12-3-1 et seq.Grounds for Being Declared an
Habitual Offender:2 convictions (w/n 10 yrs) for very severe
offsas in IC9-12-1-4(b); 3 convictions (w/n 10
yrs) for major offs as listed in IC9-12-1-4(c);
10 convictions for any moving violations (w/n 10
yrs) IC9-12-1-4(d) However, one of these must
have been a conviction for an off listed in
either IC9-12-1-4(b) or IC9-12-1-4(c).

Term of License Rev While

Under Habitual Offender Status: For 2 very serious off convictions under
IC9-12-1-4(b) - 10 yr Susp; For 3 major off
convictions under IC9-12-1-4(c) - 10 yr susp¹;
For 10 convictions of moving violations under
IC9-12-1-4(d) - 5 yr susp A probationary
restricted license may be issued under certain
limited conditions for habitual offenders whose
status is based on moving violations, see
IC9-11-2-2-5. See Footnote No. 2 below.Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status:C1 D Felony IC9-12-3-1(a); at the court's
discretion, a 1st offender may be sentenced for a
Class A Misd; see Footnote No. 3 on p. 3-130.¹A probationary restricted license may be issued after 5 yrs of the susp period have passed
under certain limited conditions; see IC9-12-2-5(b) & (c).²An habitual offender cannot obtain hardship driving privileges under IC9-5-2; see
IC9-12-2-9(c).

Other Criminal Actions Related to DWI: (continued)

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

Imprisonment (Term):	CI D Felony-2 yrs; CI A Misd.-Not more than 1 yr IC35-50-2-7 & IC35-50-3-1
Mandatory Minimum Term of Imprisonment:	None
Fine (\$ Range):	CI D Felony-Not more than \$10,000; CI A Misd.-Not more than \$5,000
Mandatory Minimum Fine:	None
Licensing Actions (Specify):	For a CI D Felony conviction-Forfeiture of license for life IC9-12-3-1(b) (After 10 years, a person may petition the court for reinstatement of their license. IC9-12-2-10); For a CI A Misd. conviction-the court on its own discretion may add an additional susp period (time period to be set by the court) to those susps already imposed above.

Other State Laws Related to Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

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

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	21 (Year Eff: 1934) IC7.1-5-7-1 & 7.1-5-7-8
Minimum Age (Years) Possession:	21 IC7.1-5-7-7
Minimum Age (Years) Consumption:	21 IC7.1-5-7-7

Dram Shop Laws and Related Legal Actions:

State has a Dram Shop Law (Yes/No):	Yes IC7.1-5-10-15.5 ¹ (Comment: This statute may have abrogated, at least in part, the case law noted below.)
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¹Under IC7.1-5-10-15.5, a commercial server or a social host is not liable for the actions of intoxicated patrons or guests unless (1) the commercial server/social host had "actual knowledge" that the patron/guest was visibly intoxicated at the time alcoholic beverages were furnished and (2) the intoxicated person was the proximate cause of the injury or damage alleged. Also under IC7.1-5-7-8(b), educational institutions, it appears, are not subject to civil liability unless they sell/furnish alcoholic beverages to a minor.

Other State Laws Related to Alcohol Use: (continued)

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

Yes, Picadilly, Inc. v. Colvin, 519 N.E.2d 1217 (Ind. 1988)¹; Elder v. Fisher, 217 N.E.2d 847 (1966) and Parrett v. Lebamoff, Inc. 408 N.E.2d 1344 (Ind. App. 1980)

Dram Shop Actions--Social Hosts:

Yes¹ Gariup Const. Co. v. Foster, 519 N.E.2d 1224 (Ind. 1988)¹, Ashlock v. Norris, 475 N.E.2d 1167 (Ind. App. 3 Dist., 1985) and IC7.1-5-10-15.5²

Other:

None

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

Type of Criminal Action:

Cl B Misd IC7.1-5-1-8, 7.1-5-10-15 and 35-50-3-3

Term of Imprisonment:

Not more than 180 dys

Fine (\$ Range):

Not more than \$1,000 (Note: An administrative fine of not more than \$500 may also be imposed; see IC7.1-3-23-3.)

Administrative Actions Against Owners or Establishments that Serve Alcoholic Beverages to Intoxicate Patrons:

License of Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes, IC7.1-3-23-2 and 7.1-3-23-5

Length of Term of License Withdrawal:

No period specified in the statute

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

Type of Criminal Action:

Cl C Misd³ IC7.1-5-7-8- and 35-50-3-4

Term of Imprisonment:

Not more than 60 dys

Fine (\$ Range):

Not more than \$500 (Note: An administrative fine of not more than \$500 may also be imposed; see IC7.1-3-23-3.)

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

²See Footnote No. 1 on p. 3-136.

³The law, IC7.1-5-7-8(a), states that "[i]t is a Class C misdemeanor for a person to recklessly sell, barter, exchange, provide, or furnish an alcoholic beverage to a minor."

Other State Laws Related To Alcohol Use: (continued)

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes, IC7.1-3-23-2 and 7.1-3-23-5

Length of Term License Withdrawn:

For revs, no period is specified in the statute;
see IC7.1-3-23-6. For susps, not more than 30
dys; see IC7.1-3-23-7.

Anti-Happy Hour Laws/Regulations:

Yes IC7.1-5-10-20

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

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

No

STATE:
General Comments:

IOWA
Iowa Code Annotated

Basis for a DWI Charge:

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

Operating while intoxicated¹ §321J.2
0.10² §321J.2(1)(b)
None
(1) Any Drug and (2) Any Combination of Drugs
Including Alcohol See §321J.2(1)(a).
None

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):

Yes §321J.5

No (Note: A law enforcement officer only needs "reasonable grounds" and any one of the following: (1) A DWI arrest; (2) an accident resulting in injury or death; (3) a PBT refusal; (4) a PBT reading of 0.10 or (5) a PBT reading of less than 0.10 but the officer has reasonable grounds that the driver was under the influence of drugs or a combination of drugs and alcohol. §321J.6(1))

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

Yes §321J.6

Yes (Criminal & Civil Cases) §321J.16
A person may be req'd to submit to a chem. test via a search warrant issued pursuant to an invest. of invol. manslaughter (§707.5) where a traffic accident has resulted in a death or in a personal injury likely to cause death and there is evidence of a DWI off; see §321J.10

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

Blood:
Urine:
Other:

Yes §321J.6(2)
Yes §321J.6(2)
None

¹Includes driving while under the influence as well as 0.10 illegal per se.

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

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 If BAC level is 0.20 or more; see §321J.3.

Sanctions for Refusal to Submit to a Chemical Test:

<u>Refusal to Take a Preliminary Breath Test:</u>	
Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Other:	None

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	Rev 1st refusal-240 dys; 2nd and subsequent refusals (w/n 6 yrs)-540 dys (360 dys are mandatory) For both 1st and sub. refusals and a defendant is subject to license rev under the implied consent law but pleads guilty to a DUI charge, they may be issued a restricted lic. for the implied consent law rev.; the restricted lic. may only be used for treatment/employment purposes. §§321J.9 & 321J.20.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):

1st off (Serious misd) - Not more than 1 yr.; 2nd off w/n 6 yrs (aggravated misd) - Not more than 2 yrs.; 3rd and sub off w/n 6 yrs (C1 D felony) - Not more than 5 yrs §§321J.2, 902.9 & 903.1

Mandatory Minimum Term:

1st off (Serious misd) None¹; 2nd off w/n 6 yrs (aggravated misd) - 7 dys²; 3rd and sub offs w/n 6 yrs (C1 D felony)-30 dys

Fine:

Amount (\$ Range):

1st off (Serious misd) - \$500 to 1,000; 2nd off w/n 6 yrs (Aggravated misd) - \$750 to 5,000; 3rd and sub offs w/n 6 yrs (C1 D felony) - Not more than \$7,500³

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

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

³There is also a civil penalty of \$100 that is imposed on any person who has had their license revoked under any section of the DWI law; see §321J.17.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Mandatory Min. Fine (\$): 1st off (serious misd) - **\$500**; 2nd off w/n 6 yrs (Aggravated misd) - **\$750**; 3rd and sub offs w/n 6 yrs (Cl D felony) - **\$750**

Other Penalties:

Community Service: 1st off (serious misd) - **Not more than 200 hrs** in lieu of the fine.

Restitution (eg Victim's Fund) A separate additional civil penalty of \$100 is assessed against a defendant who has their license revoked as a result of a DWI conviction; money from these penalties is placed in a victim reparation fund. §321J.17 For any DWI off, the court may order the defendant to make restitution for any damages resulting from the off.; see §321J.2(8).

Other: Special Note: Deferred judgment is allowed for any DWI off; if a defendant is allowed such deferment their license is to be revoked from 30-90 dys; however, a restricted hardship license may be issued. See §§321J.4(2) & 907.3. The defendant may be required to install an **ignition interlock** system in their vehicle(s); see §321J.4(7).

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

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

Other:

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

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

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

¹The maximum amount of restitution damages that can be assessed is \$2,000.

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

Term of License Withdrawal
(Days, Months, Years, etc.): 1st off-180 dys; 2nd off (w/n 6 yrs)²-1 yr; 3rd and sub. off (w/n 6 yrs)-6 yrs DWI off involving serious injury-1 yr³ DWI off where death is involved-6 yrs See Footnote No. 1 below. §321J.4

Mandatory Minimum Term of Withdrawal: 2nd off-1 yr; 3rd and sub. offs-2 yrs DWI death related-6 yrs §§321J.4 & 321J.20⁴

Special Note: A person, who has had their license revoked for a DWI offense and who is not otherwise eligible for a restricted license, may, nevertheless, receive such a license on two (2) conditions: (1) Such a license is needed in order for the person to remain employed and (2) the person installs an **ignition interlock** system in their vehicle(s); see §321J.4(8).

Other:

Rehabilitation:

Alcohol Education:

Yes §§321J.3 & 321J.22

Alcohol Treatment:

Yes if BAC is .20 or more §§321J.3 & 321J.30

Alcohol Education/
Treatment as an Altern-

ative to Criminal
Licensing Actions
(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

No

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Miscellaneous Sanctions

Not Included Elsewhere:

None

¹If a defendant is under 18 years old, the period of revocation shall be either as indicated or until the person reaches 18 whichever is the longer revocation period; see §321J.4(6).

²A previous off includes either an admin. per se action or an implied consent law violation.

³In addition to any other revocation or suspension.

⁴Except as indicated, a person may obtain a temporary restricted license under §321J.20.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes** C1 D Felony if a DWI related death (Note: For vehicle homicide offenses, except those that are related either to DWI or to reckless driving which are C1. D felonies, the defendant has committed an aggravated misd; see §707.6A(2).)

Sanctions:

Criminal Sanction:

Imprisonment (Term): **Not more than 5 yrs^{1&2}**
Mandatory Minimum Term: **None**
Fine (\$ Range): **Not more than \$7,500¹**
Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and Type of Action: **Rev §706.6A(1)(a)**
Length of Term of Licensing Withdrawal: **6 yrs**
Mandatory Action--Minimum Length of License Withdrawal: **6 yrs**
Other: **None**

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term): **Serious misd - Not more than 1 yr §§321J.21 and 903.1**
Mandatory Minimum Term of Imprisonment: **None**
Fine (\$ Range): **Not more than \$1,000**
Mandatory Minimum Fine: **None**

¹Penalties for a C1. D Felony; see §902.9:

²The defendant may be sentenced to serve up to 1 year in the county jail.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev):	Susp or rev
Length of Term of License Withdrawal Action:	Original period of Susp or Rev extended an additional like period
Mandatory Term of License Withdrawal Action:	Original period of Susp or Rev extended an additional like period

Habitual Offender Laws:

State Has Such Law (Yes/No):	Yes 321.55 and 321.560
Grounds for Being Declared an Habitual Offender:	3 serious offs (w/n 6-yr period or 6 minor offs in a 2-yr period)
Term of License Rev While Under Habitual Offender Status:	If based on serious offs - 2 to 6 yrs ; if based on minor offs - 1 yr
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	Aggravated misd
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	Not more than 2 yrs
Mandatory Minimum Term of Imprisonment:	None
Fine (\$ Range):	Not more than \$5,000
Mandatory Minimum Fine (\$):	None
Licensing Actions (Specify):	Same as for driving while revoked.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

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

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** §§123.47A & 123.59 (Year Eff: 1986)
 Minimum Age (Years) Possession: **21** (There are exemptions for medical reasons, employment and home use with parental consent.) §§123.47 & 123.47A
 Minimum Age (Years) Consumption: **None**

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes** §123.92

"Dram Shop Law" Concept Has Been

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

Yes Lewis v. State, 256 N.W. 2d 181 (Iowa 1977), and Haafke v. Mitchell, 347 N.W.2d 381 (Iowa 1984)

Dram Shop Actions—Social Hosts:

Yes—Limited. Liability limited to injuries caused by minors (persons under the legal drinking age) who are served alcoholic beverages by social hosts. See Bauer v. Dann, 428 N.W.2d 658 (1988), and §123.49(1)¹.

Other:

None

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

Type of Criminal Action:

Simple misd §§123.49(1), 123.50(1), 123.59, 123.90 & 903.1(1)(a)

Term of Imprisonment:

Not more than **30 dys**

Fine (\$ Range):

Not more than **\$150**

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes, Susp or rev §§123.40 & 123.50

Length of Term of License Withdrawal:

Term of susp not specified; if the license is revoked, term of rev is 2 yrs.

¹In the Bauer case, the Iowa Supreme Court held that §123.49(1) only abolished social host liability associated with the service of alcoholic beverages to intoxicated adult guests; i.e., previous case law, Clark v. Mincks, 364 N.W.2d 226 (1985), establishing such liability was abrogated by this law.

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:

Simple misd §§123.49(2)(h), 123.50, 123.59, 123.90 & 903.1(1)(a)^{1&2}

Term of Imprisonment:

Not more than **30 dys**

Fine (\$ Range):

Not more than **\$100**

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

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

Yes, 1st off - Susp; 2nd off w/n 2 yrs - **Susp;** 3rd off w/n 5 yrs - **Susp;** 4th off w/n 5 yrs - **Rev** §§123.40 & 123.50³

Length of Term License Withdrawal:

1st off - 14 dys; 2nd off w/n 2 yrs - **30 dys;** 3rd off w/n 5 yrs - **60 dys;** 4th off w/n 5 yrs - **2 yrs**³

Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No):

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

Anti-Consumption Law (Yes/No):

Yes - Driver and passengers §123.46 (The law states that "it is unlawful for any person to use or consume alcoholic liquors or beer upon the public streets or highways....")

¹If the person who receives the alcoholic beverage is either 19 or 20, the only penalty that can be assessed against a licensee is a fine of \$50 for a simple misd.; see §123.47A.

²Note: An "under age" person is defined as one who is 19 years or older; see §123.3(33).

³These licensing sanctions do not apply to licensees if the person who receives the alcoholic beverage is either 19 or 20 years old; see §123.47A.

STATE:
General Comments:

KANSAS
See Kansas Statutes Annotated.

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §8-1567(a)(2)
Illegal Per Se Law (BAC/BrAC Level):	0.10 ¹ §8-1567(a)(1)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Any Drug or a Combination of Alcohol and Drugs §8-1567(a)(3) & (4)
Other:	0.10 is prima facie evidence that the defendant was under the influence of alcohol. §8-1005(b) For Commercial Motor Vehicle Operators, see p. 3-151.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	Yes §8-1012
Implied Consent Law:	
Arrest Required (Yes/No):	Yes ² §8-1001(b)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §8-1001(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §8-1001(f)
Other Information:	None

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

Blood:	Yes ³
Urine:	Yes ³
Other:	Yes , other bodily substance ³

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more. Ref: See §8-1013(a).

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

³See §8-1001(a).

⁴A defendant is not eligible to enter a diversion program if: (1) They have previously participate in such a program; (2) they have been convicted of an alcohol related driving offense; (3) their BAC level at the time of arrest was 0.20 or more; or (4) they were involved in an accident which has resulted in either a death or a bodily injury. See §§12-4415(b) & 22-2908(2)(a). For a description of the diversion program, see §§12-4416 & 22-2909. Note: As part of a diversion program, a person may be required to operate motor vehicles equipped with **ignition interlock** devices.

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	Yes §8-1567(m) (Certain diversion programs are excepted. ⁴)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes §§8-1008 and 8-1567

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test:</u>	
Criminal Sanctions (Fine/Jail):	Yes , -infraction-a fine of not more than \$500 ; see §§21-3105(2) & 21-4503(4) (Thirty dollars (\$30) if a person pleads guilty or no contest under the uniform fine schedule; see §8-2118(c).)
Administrative Licensing Action (Susp/Rev):	None
Other:	None

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):	No
Administrative Licensing Action (Susp/Rev):	<u>1st occurrence</u> ¹ - Susp 180 dys (Mandatory); <u>sub. occurrence</u> ¹ - Susp 1 yr (Mandatory); see §§8-255(b), §8-256(a), 8-1001, 8-1002(a) and 8-1014(a).
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:	<u>1st off</u> - 48 con. hrs-6 mos ² ; <u>2nd off</u> (w/n 5 yrs) - 90 dys-2 yr ; <u>3rd and subsequent offs</u> (w/n 5 yrs) - 90 dys-1 yr §8-1567(d), (e), (f), & (j); <u>Vehicle Battery</u> (Injury related to a DWI or other serious traffic offenses) - C1. A Misd-Not more than 1 yr §21-3405b
Mandatory Minimum Term:	<u>1st off</u> - 48 con. hrs ² ; <u>2nd off</u> (w/n 5 yrs) - 5 con. dys ; <u>3rd and subsequent offs</u> (w/n 5 yrs) - 90 dys ; <u>Vehicle Battery</u> - 90 dys Note: Under §8-1567(g), a 2nd or sub. offender, who is sentenced to "house arrest," must, nevertheless, serve at least 48 con. hrs. of imprisonment. See Miscellaneous Sanctions on p. 3-151.

¹An "occurrence" includes either a test refusal, test failure (admin. per se violations) or a DWI offense conviction; see §8-11013(e).

²Under §§12-4415, 12-4416 or 22-2906 et seq. a defendant may enter a diversion program for 1st off and have the DWI criminal charges dismissed after the program has been successfully completed.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Fine:

Amount (\$ Range):

1st off - \$200-500; 2nd off (w/n 5 yrs)-\$500-1,000; 3rd and subsequent offs (w/n 5 yrs)-\$1,000-2,500; Vehicle Battery-Not more than \$2,500

Mandatory Minimum Fine (\$):

Regular DWI Offenses-None; Vehicle Battery-\$1,000

Other Penalties:

Community Service:

1st off - 100 hrs (in lieu of imprisonment) §8-1567(f); ; 2nd and subsequent offs (w/n 5 yrs)-Yes May be ordered in lieu of fine. A \$5 credit is allowed on the fine for every hr of community service. §8-1567(i)

Restitution (eg Victim's Fund)

Yes - Restitution may be provided in any one of three ways. (1) Direct compensation by defendants to victims; see §§21-4603(2)(c), (d) & (e), 21-4610(4)(a) and 22-3717(1). (2) As a condition of probation, a court may require a DWI offender to pay restitution to persons who have been injured directly or otherwise damaged by the offender's drunk driving; see §8-1019(c). And, (3) 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. See §74-7301 et seq.

Other:

An **ignition interlock** device may be required; see Footnote No. 4 on p. 3-147 and Special Note on p. 3-150.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes 0.10 1st occurrence¹-Susp. 30 dys (Mandatory) & 60 dys restricted driving privileges (Same restrictions as for the first 60 day restriction period for a 1st DWI off.); sub. occurrence¹-Susp. 1 yr (Mandatory) §§8-1001, 8-1002 and 8-1014(b)

Other:

None

¹An "occurrence" includes either a test refusal, test failure (admin. per se violations) or a DWI offense conviction; see §8-11013(e).

Sanctions Following a Conviction for a DWI Offense:

(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st off (occurrence)¹ -Susp/Restriction; sub. off (occurrence)¹ -Susp; Veh. Battery-If DWI related, susp. as for regular DWI offenses (for other serious traffic offenses, rev) §§8-254, 8-1014(c), 8-1567(k) and 21-3405b(b)(4)

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off (occurrence)¹ -30 dys susp and 330 dys restriction² (See the Special Note below.); sub off (occurrence)¹ -1 yr³

Mandatory Minimum Term of Withdrawal:

1st off (occurrence)¹ -30 dys; sub off (occurrence)¹ -1 yr §8-255(b)

Special Note: Under §§8-292 and 8-1015, the following restrictions are placed on a person's driving privileges during the 330 day period. (1) For the first 60 days, the person may only drive (a) to and from either a place of employment or an alcohol education (or treatment program) or (b) certain specified exceptional circumstances; the court may require the person to operate only vehicles equipped with an **ignition interlock** device. (2) For the remaining 270 days, the person may drive (a) for the purposes indicated above, (b) in the course of employment, (c) for medical reasons, (d) for purposes of complying with probation requirements and (e) as ordered by the court. In lieu of or **in addition** to any of the above restrictions, the court may order that during this 270 period that a person not operate a motor vehicle unless it is equipped with an **ignition interlock** device.

¹An "occurrence" includes either a test refusal, test failure (admin. per se violations) or a DWI offense conviction; see §8-11013(e).

²The license is suspended for 30 days or until the person completes an alcohol education/treatment program whichever is the longer susp. period and thereafter restricted driving privileges are granted for 330 days. §§8-1014(c)(1) and 8-1567(1)

³The license is suspended for 1 year or until the person completes an alcohol treatment program whichever is the longer susp. period. §§8-1014(c)(2) and 8-1567(k)

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

Other:

Rehabilitation:

Alcohol Education:

1st and sub. offs-As a condition of probation, parole, etc., a defendant must complete either an alcohol education or treatment program; see §8-1567(c), (d), & (e). Vehicle Battery-As a condition of probation/parole-successfully complete either an alcohol/drug safety program or a treatment program; see §21-3405b.

Alcohol Treatment:

Alcohol Education/

Treatment as an Altern-

ative to Criminal

Licensing Actions

(Describe):

Note: Attendance at an alcohol education or treatment program could be a condition for issuing a restricted license. §8-1015

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

No

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Miscellaneous Sanctions

Not Included Elsewhere:

Under §21-4603b, a defendant may be sentenced to "house arrest". The defendant may be required to use an electronic monitoring system while participating in a "house arrest" program. However, 2nd and sub. DWI offenders must, nevertheless, serve at least 48 con. hrs. of imprisonment; see §8-1567(g).

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC level of 0.04 or more, (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs. mand.). A person, operating a CMV with either an alcohol concentration of 0.04 or while under the influence of alcohol or drugs, is subject to the regular DWI criminal sanctions; however, such person may not be subject to administrative actions against their normal driving privileges. In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. See §§8-1002 and 4(b), 4(f), 4(i), 4(s), 12, 13 and 18 of Ch. 38 of the Session Laws of 1989; the "disqualification" provisions of this law are eff. 4/1/92; otherwise, this law is effective 1/1/91.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes**-(1) Aggravated Vehiclc Homicide (DWI or other serious traffic offense related death)-Class E Felony; (2) death caused by operation of a veh in a manner which causes unreasonable risk-Class A Misd. §§21-3405, 21-3405a, 21-4502, and 21-4503

Sanctions:

Criminal Sanction:

Imprisonment (Term): Class E Felony-1 to 5 yrs; Class A Misd-Not more than 1 yr
Mandatory Minimum Term: **None**¹
Fine (\$ Range): Class E Felony-Not more than \$5,000; Class A Misd-Not more than \$2,500
Mandatory Minimum Fine: Aggravated Vehicle Homicide-\$1,000

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Susp §§8-1014(c) & 21-3405a(3)(d)

Length of Term of

Licensing Withdrawal:

Suspensions/Restrictions are the same as for DWI offenses

Mandatory Action--Minimum

Length of License

Withdrawal:

Suspensions/Restrictions are the same as for DWI offenses

Other:

None

¹For Aggravated Vehicle Homicide, as a condition of either probation, assignment to community corrections, or suspension of sentence, serve at least 90 days in either the county jail or residential confinement (e.g., house arrest) and successfully complete either (1) an alcohol and drug safety action program or (2) a treatment program. See §21-3405a(3)(b) & (c).

Other Criminal Actions Related to DWI: (continued)

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

Sanction:

Criminal:

Imprisonment (Term):

1st off C1 B misd-Not more than 6 mos; 2nd off
C1 A misd-Not more than 1 yr; 3rd and subsequent
off C1 E felony - 1-5 yrs §8-262

Mandatory Minimum Term
of Imprisonment:

90 dys For all offenses (§8-262(a)(4))

Fine (\$ Range):

1st off-Not more than \$1,000; 2nd off-Not more
than \$2,500; 3rd and subsequent off - Not more
than \$5,000;

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

All offs - If convicted of driving while license
suspended, a susp; If convicted of driving while
license revoked, a rev.

Length of Term of License

Withdrawal Action:

Susp period extends and equals that of original
susp period; Rev period is 6 mos and is added
onto the original rev period

Mandatory Term of License

Withdrawal Action:

Susp period extends and equals that of original
susp period; Rev period is 6 mos and is added
onto original rev period

Habitual Offender Laws:

State Has Such Law (Yes/No):

Yes §§8-284 & 8-285

Grounds for Being Declared an
Habitual Offender:

Three serious offs within 5 yrs

Term of License Rev While

Under Habitual Offender Status:

3 yrs

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

C1 E felony

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

Imprisonment (Term):

1-5 yrs

Mandatory Minimum Term of

Imprisonment:

None

Fine (\$ Range):

Not more than \$5,000

Mandatory Minimum Fine (\$):

None

Licensing Actions (Specify):

None

Other State Laws Related To Alcohol Use:

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

State Has Such a Law (Yes/No):

Yes §22a-237 The tests' results can may only be used for statistical purposes that do not reveal the identify of the deceased individuals (§22a-237(c)). The law requires that the blood withdrawal occur w/n 8 hrs after arrest and that it be conducted on either an operator or "a person not a passenger;" see §22a-237(b).

BAC Chemical Test Is Given to the
the following Persons:

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes (Note: A test is not required for persons under 14 years old.)

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1985) §§21-3610, 21-3610a, 41-102(p), 41-727(a), 41-2701(h), & 41-2721(a)

Minimum Age (Years) Possession:

21¹ §§41-727(a) & 41-2721(a) (There is an employment exception.)

Minimum Age (Years) Consumption:

21¹ §§41-727(a) & 41-2721(a)

Dram Shop Laws and Related Legal Actions:

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

No

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

No (For recent cases denying liability, see Ling v. Jan's Liquors, 703 P.2d 731 (1985) & Meyers v. Grubaugh, 750 P.2d 1031 (Kan. 1988).)

Dram Shop Actions-Social Hosts:

No Thies v. Cooper, 753 P.2d 1280 (Kan. 1988)²

Other:

None

¹Except for licensed establishments, persons under the legal drinking age for alcoholic beverages, containing 3.2% or less alcohol, may possess and consume such beverages if they have the consent of and are supervised by a parent or guardian; see §§41-2704(e) & 41-2721.

²This case concerned whether an employer was responsible for injuries caused by an employee who became intoxicated at a social event hosted by the employer. The court held that there was no liability.

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action: Misd §§21-4502(d), 41-320, 41-715, and 77-201¹
Term of Imprisonment: Not more than **30 dys**¹
Fine (\$ Range): **\$100-250**¹ Note: In lieu of or in addition to
any other civil or criminal sanction, a civil
penalty of up to \$1,000 may also be imposed.¹
§§41-328(a) & 41-2633a(a)

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

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes Rev**² §§41-314 & 41-2611
Length of Term of License Withdrawal: Not specified in the statute

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

Type of Criminal Action: Cl B misd (furnishing alcoholic beverages to any
person under 21 yrs of age) §§21-3610 & 21-3610a
Term of Imprisonment: Not more than **6 mos** §21-4502(1)(b)
Fine (\$ Range): Not more than **\$1,000** §21-4503(2)(b)

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

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes Susp or rev** §§41-2611(e) and 41-2708(k)
Length of Term License Withdrawal: Not specified §§41-715 and 41-2615 §41-2708

Anti-Happy Hour Laws/Regulations:

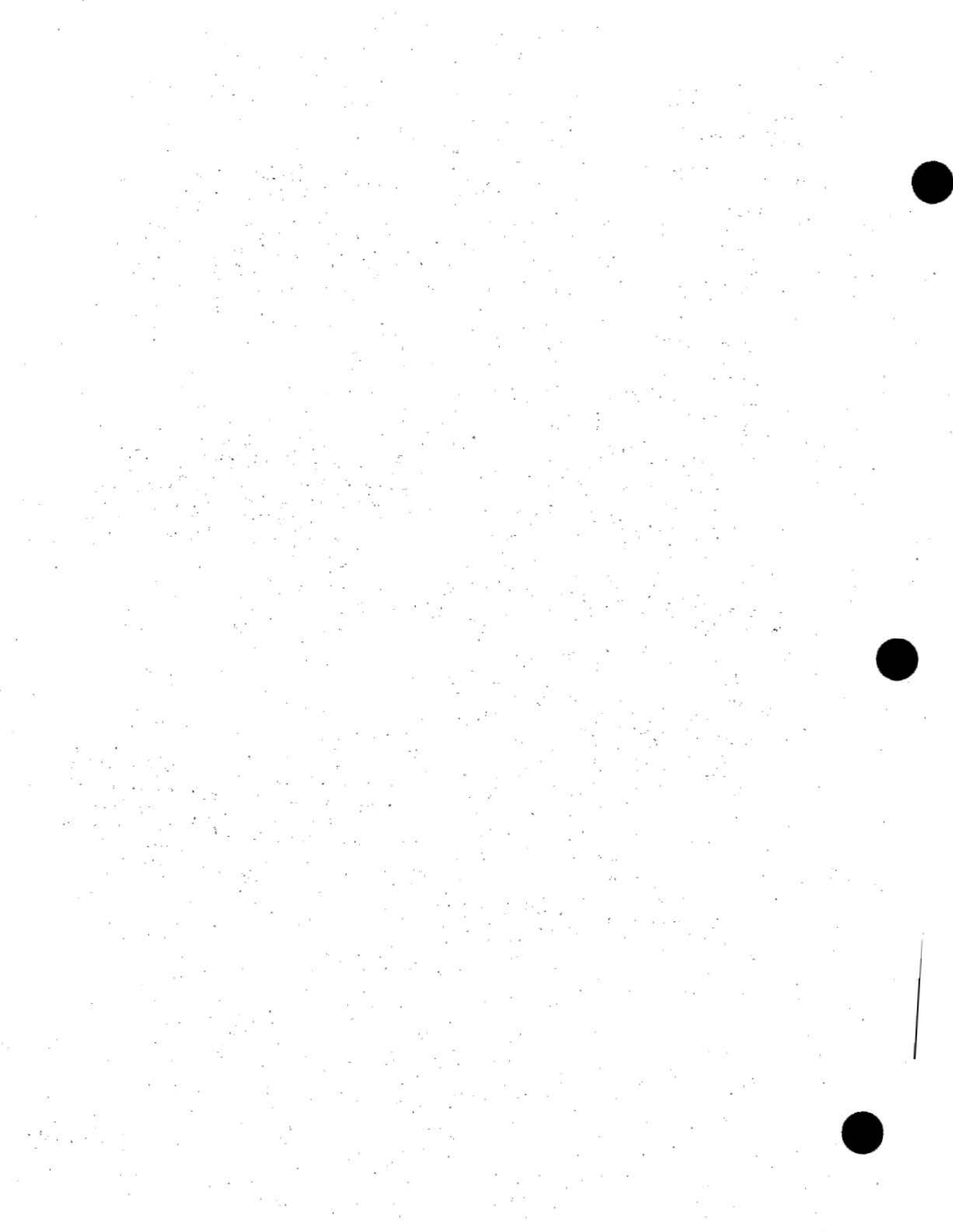
Yes §§41-2640(a)(3) & 41-2722(a)(4)

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

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

¹These sanctions, it appears, only apply to the service of alcoholic beverages containing more than 3.2% alcohol to intoxicated persons. See §§41-102(b) & 41-715.

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



STATE:
General Comments:

KENTUCKY
See Kentucky Revised Statutes.

Basis for a DWI Charge:

Standard DWI Offense:

Under the Influence of Alcohol which may impair one's driving ability §189A.010(1)

Illegal Per Se Law (BAC Level):

No

Presumption (BAC Level):

0.10 §189.520(3)(c)

Types of Drugs/Drugs and Alcohol:

Any Substance See §189A.010(1).

Other:

None

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

Yes §189A.100

Implied Consent Law:

Arrest Required (Yes/No):

Yes §186.565(1)

Implied Consent Law Applies to

Drugs (Yes/No):

No

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) Commonwealth v. Hager, 702 S.W.2d 431 (1986)

Other Information:

Special Note: If a defendant shows a BAC level of 0.15, they must be detained at least 4 hrs following their arrest; see §189.110.

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

Blood:

Yes

Urine:

Yes

Other:

Yes- saliva

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

Yes If a defendant's BAC is **0.15** or more; see §189A.120(2). Note: If a defendant's BAC level is between 0.10 and 0.15, a DWI charge may be changed provided the prosecutor gives reasons for such action to the court. The court records the reasons for such change, if granted, in the record of the case. See §189A.120(1).

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

No

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): **None**
Administrative Licensing Action (Susp/Rev): **None**
Other: **None**

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): **None**
Administrative Licensing Action (Susp/Rev): **Rev-Not more than 6 mos (not mandatory) §§186.565(4) & 189.520(5)**
Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment: 1st off (C1 B misd)-48 hrs-30 dys; 2nd off (w/n 5 years) (C1 A misd)-7 dys-6 mos; 3rd and subsequent offs (w/n 5 years) (C1 A misd)-30 dys-12 mos §189A.010(2)

Mandatory Minimum Term: 1st off-48 hrs¹; 2nd off (w/n 5 years)-7 dys; 3rd and subsequent offs-30 dys §189A.010(3)
Note: A person may be able to serve the mandatory jail sanction via "home incarceration."²

Fine:

Amount (\$ Range): 1st off-\$200-500; 2nd off (w/n 5 years)-\$350-500; 3rd and subsequent offs-\$500-1,000 §189A.010(2) A convicted DWI defendant must pay an \$150 service fee in addition to any other fine; see §189A.050.

Mandatory Minimum Fine (\$): **None¹**

Other Penalties:

Community Service: 1st off-2 to 30 dys¹; 2nd off (w/n 5 years)-10 dys to 6 mos³; 3rd and subsequent offs (w/n 5 years)-10 dys to 12 mos³ §189A.010(2)

Restitution (eg Victim's Fund) **Yes** §348.020 a victim's compensation board (See also §346.010 et seq.) Also, the court may order a defendant to pay restitution directly to a victim as a condition of probation; see §533.030(3).

¹For a 1st off, a defendant has to be sentenced to one of the following minimum sanctions: (1) 48 hrs in jail; (2) a \$200 fine; or (3) 2 dys of community service. However, if a defendant has caused physical injury as a result of the DWI off., they must serve at least 48 hrs in jail. See §189A.010(2)(a) & (4).

²Neither the law authorizing "home incarceration" nor the DWI law preclude a person convicted of a DWI offense from serving their imprisonment sentence via "home incarceration." See §§189A.010(3) & 532.230.

³A defendant may be sentenced to community service in addition to any other sanctions imposed. If the court imposes community service, the minimum term noted must be served. See §189A.010(3).

Sanctions Following a Conviction for a DWI Offense:

(continued)

Other:

Note: (1) For a first DWI offs conviction, at least one of the penalties (prison; fine, community service) must be assessed against defendant; see §189A.010(4) (2) For 1st and 2nd offenders, the imprisonment may be served on weekends provided that the period of incarceration be less than 24 hrs; see §189A.030. "Home Incarceration." For misdemeanor offenses, a defendant could be sentenced to "home incarceration." §532.210

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

None

Other:

A court may suspend a driver's license from 14 to 60 dys following a DWI arrest but prior to adjudication of the DWI charges if there is probable cause that the defendant committed such off and any one of the following circumstances is present. (1) The driver has prior traffic violations (including DWI offs) which demonstrate a lack of regard for the safety of others or (2) there was an accident involving physical injury associated with the DWI charge. If the defendant is convicted of the DWI charge, any susp time is credited towards their license rev following such conviction. See §189A.060.

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st off-Rev or Susp; 2nd & 3rd off - Rev
§189A.070 For persons under 18 years old, see Footnote No. 1 below.

Term of License Withdrawal

(Days, Months, Years, etc.):

The following licensing action is taken by the courts: 1st off-6 mos Rev or a 30 dy (Mandatory) susp and an alcohol education/treatment program; (§189A.040(1)²); 2nd off-12 mo license Rev; 3rd off-24 mo license Rev; see §189A.070. The following licensing action may also be taken by the licensing agency: 1st off-rev-6 mos³ (30 dy susp. mandatory); 2nd off-rev-1yr; sub. off-rev-2 yrs; see §186.560(1)(b), (5), (6) & (7). See also Habitual Offender laws on p. 3-162.

¹Under §189A.070(2), a person under 18 years old has their license revoked until they are 18 or as otherwise provided under §189A.070 whichever sanction will result in the longer revocation period.

²See also §§186.560(5) & 189A.070(1)(a).

³For a 1st DWI off, the law refers to the licensing action as either susp or rev.

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

Mandatory Minimum Term of
Withdrawal:

The following mandatory licensing action is taken by the courts: 1st off-6 mos license Rev or a 30 dy (Mandatory) susp and an alcohol education/treatment program (§186.560(6)); 2nd off-12 mo license Rev (Mandatory); 3rd off-24 mo license Rev (Mandatory); see §189A.070. The following mandatory licensing action may also be taken by the licensing agency: 1st off-30 dy susp. (See Footnote No. 3 on p. 3-159.); 2nd off-1yr; sub. off-2 yrs; see §186.560(1)(b), (5), (6) & (7).

Other:

Rehabilitation:

Alcohol Education;
Alcohol Treatment:

Yes (See alternatives below)

For 2nd, 3rd and subsequent DWI off convictions, the defendant must be sentenced to an alcohol or substance abuse program; see §189A.040(2) & (3)

Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):

For a first DWI off conviction, a defendant may have their license rev reduced from 6 mos to a 30 dy susp if they attend an alcohol of substance abuse education or treatment program; see §189A.040(1).

Vehicle Impoundment/Confiscation:

Authorized by Specific
Statutory Authority:
Terms Upon Which Vehicle
Will Be Released:
Other:

No

None

Miscellaneous Sanctions
Not Included Elsewhere:

None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense:

No (Special Note: "A person is guilty of manslaughter in the second degree when, including, but not limited to, the operation of a motor vehicle, he wantonly causes the death of another person" (§507.040(1)); manslaughter in the second degree is a C1 C felony (§507.040(2). See Footnote No. 1 on p. 3-161.)

Other Criminal Actions Related to DWI: (continued)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

(Note: Even though this state does not have vehicle homicide statute, it, nevertheless provides for mandatory license rev for not less than 5 years for a conviction of manslaughter¹ resulting from the operation of a motor vehicle. §186.560(1)(a) & (4))

Length of Term of

Licensing Withdrawal:

Mandatory Action--Minimum

Length of License

Withdrawal:

Other:

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

Sanction:

Criminal:

Imprisonment (Term):

1st off (C1 B misd)-Not more than **90 dys**; 2nd off (C1 A misd)-Not more than **12 mos**; 3rd and subsequent offs (C1 D felony)-**1-5 yrs**;
§§189A.090(2), 532.060 & 532.090

Mandatory Minimum Term
of Imprisonment:

None

Fine (\$ Range):

1st off-Not more than **\$250**; 2nd off-Not more than **\$500**; 3rd and subsequent offs-Not more than **\$10,000²**; §§534.030 & 534.040

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev):

1st off-Rev; 2nd off-Rev; 3rd and subsequent offs-Rev §189A.090

Length of Term of License
Withdrawal Action:

The driver's license shall be revoked for twice the original period of rev §189A.090(3)

Mandatory Term of License
Withdrawal Action:

Yes, as indicated immediately above

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

²This fine is imposed only if the defendant is granted either a sentence of probation or conditional discharge.

Other Criminal Actions Related to DWI: (continued)

Habitual Offender Laws:

State Has Such Law (Yes/No): **Yes** §186.641 et seq.

Grounds for Being Declared an Habitual Offender: **3 or more serious offs** (w/n 5 yrs) (including DWI offs); **15 moving violations** (w/n 5 yrs) §§186.641 & 186.642

Term of License Rev While

Under Habitual Offender Status: **Rev-5 yrs** if habitual offender status is related to 3 convictions of either DWI or vehicle manslaughter; **rev.-2 yrs** if habitual offender status is based on other violations. §186.646

Type of Criminal Offense if

Convicted on Charges of Driving While on Habitual Offender Status

Misd §§186.992 & 431.060(2)

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

Imprisonment (Term):

Not to exceed **12 mos** §186.992

Mandatory Minimum Term of

Imprisonment:

None

Fine (\$ Range):

None

Mandatory Minimum Fine (\$):

N/A

Licensing Actions (Specify):

None

Other State Laws Related To Alcohol Use:

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

State Has Such a Law (Yes/No):

Possible¹

BAC Chemical Test Is Given to the the Following Persons:

Driver:

Possible

Vehicle Passengers:

Possible

Pedestrian:

Possible

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** §§244.080 & 244.085. (Year Eff: 1938)

Minimum Age (Years) Possession: **21** §244.085 (There is a limited employment exemption; see §244.087.)

Minimum Age (Years) Consumption: **None**

¹Language in §189.590 requiring coroners to report on the circumstances surrounding fatal accidents may impliedly require such tests. *Woolley v. Central Uniform Rental*, 463 S.W. 2d 345 (1971). An investigative officer or a coroner may direct the taking of blood samples from dead individuals if necessary. OAG 73-170 and OAG 73-196.

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes**¹ §413.241

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

Yes, Pike v. George, 434 S.W.2d 626 (Ky. 1968) and Grayson v. Frat. Order of Eagles, 736 S.W.2d 328 (Ky. 1987)

Dram Shop Actions—Social Hosts:

No² (No cases)

Other:

None

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

Type of Criminal Action:

1st off—Misd; 2nd and subsequent off—Misd §§241.010(2), 244.080(2) & 244.990(1)

Term of Imprisonment:

1st off—Not more than 6 mos; 2nd off—Not more than 6 mos

Fine (\$ Range):

1st off—\$100-200; 2nd off—\$200-500

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp or Rev §§243.480, 243.490 & 243.500¹

Length of Term of License Withdrawal: **2 yrs** - §243.100(5)

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

Type of Criminal Action:

1st off—Misd; 2nd off—Misd §§241.010(2), 244.080(1) & 244.990(1)

Term of Imprisonment:

1st off—Not more than 6 mos; 2nd off—Not more than 6 mos

Fine (\$ Range):

1st off - \$100-200; 2nd off—\$200-500

¹This law limits liability if the service of alcoholic beverages was to a person over the legal drinking age. A licensee or any employee thereof is not liable for the actions of a patron "unless a reasonable person under the same or similar circumstances should know that the person served is already intoxicated at the time of serving." The law does not appear to have abrogated the holding in the Pike case since it concerned the damages caused if the service of alcoholic beverages was to a minor.

²See the "caveat" in the Grayson case 736 S.W.2d at 335.

Other State Laws Related To Alcohol Use: (continued)

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp or Rev §§243.480, 243.490 & 243.500[†]

Length of Term License Withdrawal:

2 yrs §243.100(5)

Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

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

[†]Note: For a first violation, in lieu of revocation, the State may suspend a license. The licensee, however, as an alternative to this suspension, may at their discretion pay a fine. For retail "by the drink" and package liquor licensees, the fine is \$25 per day the license would have been suspended; for retail beer licensees such fine is \$10 per day; see §243.480(1). For a second violation (w/n 2 yrs), the license must be revoked or suspended; see §243.500(4).

STATE:
General Comments:

LOUISIANA
See West's Louisiana Statutes Annotated:
Revised Statutes. Note: All citations are to
the Revised Statutes unless otherwise stated.

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol ¹ §14:98(A)(1)
Illegal Per Se Law (BAC Level):	0.10 §14:98(A)(2) ¹
Presumption (BAC Level):	0.10 §32:662(A)(1)(c)
Types of Drugs/Drugs and Alcohol:	Any Controlled Dangerous Substance §14:98(A)(3)
Other:	For Commercial Motor Veh. Operators, see below.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	Yes §32:661
Arrest Required (Yes/No):	Yes §32:661(A)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §32:661(A)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal cases only; prohibited in civil cases except admin. lic. actions) §32:666A(3) Special Note: Under §32:666, a driver may not refuse to submit to a chemical test if they have been involved in a traffic fatality or accident resulting in a serious bodily injury
Other Information:	

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

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

Adjudication of DWI Charges:

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

¹Note: All DWI offenses are classified as the crime of operating a vehicle while intoxicated. **DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for minimum period of 1 yr (1 yr mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC level of 0.04 or more, (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for either alcohol or drugs concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand.). In addition, a CMV operator who has any "measurable" or "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. See §§32:401(14) and 32:414.2.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

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

Refusal to Take Implied Consent Chemical Test

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

1st refusal- Susp for **180 dys**, the first 90 dys are mandatory; 2nd and subsequent refusals- Susp for **545 dys** (Mandatory) §§32:667(B)(2) & 32:668(B)(1), (2), & (3)

Other:

Special Note: A hardship license is only available to drivers for a 1st refusal after the first 90 dys of the susp period have passed.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

1st off-10 dys-6 mos; 2nd off (w/n 5 yrs)-30 dys-6 mos; 3rd off-felony (w/n 5 yrs)-1-5 yrs (with or without hard labor)³; 4th off felony (w/n 5 yrs)-10-30 yrs (w/hard labor) §14:98; DWI related injury-Not more than 6 mos (§§14:2(4) and 14:39.1)

Mandatory Minimum Term:

1st off-¹; 2nd off (w/n 5 yrs)-²; 3rd off-felony (w/n 5 yrs)-6 mos³ See Comment under Miscellaneous Sanctions on p. 3-168.

Fine:

Amount (\$ Range):

1st off-\$125-\$500; 2nd off (w/n 5 yrs)-\$300-\$1,000; 3rd off felony-Not more than \$2,000; 4th off felony - None; DWI related injury (veh. negligent injury)-Not more than \$500

¹Alternatives to the imposition of sentence. The imposition of sentence is mandatory unless one of these alternatives is taken: (1) Serve a minimum of 2 dys in jail and participate in substance abuse and driver improvement programs or (2) perform at least four eight-hr dys of community service and participate in substance abuse and driver improvement programs.

²Alternatives to the imposition of sentence. The imposition of sentence is mandatory unless one of these alternatives is taken: (a) Serve a minimum of 15 dys in jail and participate in substance abuse and driver improvement programs or (b) perform at least 30 eight-hr dys of community service and participate in substance abuse and driver improvement programs.

³If probation is granted for part of the sentence, the defendant must participate in substance abuse and driver improvement programs; however, 6 mos of the sentence is mandatory.

⁴Defendants must also pay a fee of not less than \$50 for felony convictions or one of \$7.50 for misdemeanor convictions, this fee is deposited in the State Treasury for the purpose of funding the crime victims reparations fund. See §46:1816(D)(1)(a).

Sanctions Following a Conviction for a DWI Offense:

(continued)

Note: In the parishes of Caldwell, Catahoula, Concordia, Franklin, LaSalle and Tensas, an additional fine of \$25 is assessed against DWI offenders; see §14:98(J). (See Footnote No. 4. on p. 3-166.)

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

See Footnotes Nos. 1 & 2 on p. 3-166.

Restitution

(e.g. Victim's Fund)

None¹

Other:

A DWI offender must pay a fee of \$50 for the purpose of covering the costs of administering a BAC chemical test. They also must pay a fee of \$50 to defray the expenses of administering any conditions of probation or incarceration. See Code of Criminal Procedure §887(C) & (D).

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes BAC level of 0.10 1st Off-Susp for 90 dys (30 dys mand. unless related to a DWI conviction²; a restricted license may be issued a for the remaining 60 dys of the susp period); 2nd and subsequent offs (w/n 5 yrs)-Susp for 365 dys (mandatory) §§32:667(B)(1) and 32:668(B)(3) Under §32:414(E)(1) & (F)(2), a person's license may be susp, cancelled or revoked for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., 2nd off DWI). The law does not specifically state that licensing action can be taken without a preliminary; however, other provisions would seem to indicate that a preliminary hearing is not required.

Other:

¹A victim of a motor vehicle accident is not eligible for State compensation unless the crime, which caused either the injury or the death, was intentional. See §46:1805(B).

²When a person has been convicted of a 1st DWI off and is subject to the admin. per se law, a district court may issue a restricted hardship license for the entire 90 day period under §32:415.1 notwithstanding the provisions of the admin. per se law that require a 30 day mandatory suspension period. See *Noustens v. State*, 524 So.2d 235 (La.App. 5 Cir. 1988); cert./review denied by the Louisiana Supreme Court, 531 So.2d 476 (La. 1988).

³For persons 13-18 years old, the following additional licensing sanctions may be imposed. 1st off-susp for 1 yr or until the person reaches 17 whichever is the longer susp. period; 2nd & sub. off-revocation for 1 yr or until the person reaches 19 whichever is the longer revocation period. These susp/rev. periods, however, are not mandatory; a restricted hardship license is available for all or any part of these periods. See §32:430.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st off-Susp; 2nd and subsequent offs (w/n 5 yrs)-Rev §32:414 See Footnote No. 3 on p. 3-167.

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off-60 dys (Hardship provision (to earn a livelihood) for 1st off only); 2nd and subsequent offs (w/n 5 yrs)-12 mos §§32:414, 32:415 & 32:415.1.

Mandatory Minimum Term of

Withdrawal:

1st off-No; 2nd and subsequent offs (w/n 5 yrs)-12 mos

Other:

Rehabilitation:

Alcohol Education:

Yes §32:415.1(A)(2). Note: Judges are given the authority to refer first time offenders for education or rehabilitation. Restricted licenses are issued to facilitate attendance in driver improvement schools. Courts grant based on medical evaluation and on recommendations that the convicted DWI offender will benefit from such treatment. §14:98 (c) authorizes the court to order a DWI offender to undergo substance abuse treatment program in lieu of imprisonment.

Alcohol Treatment:

Alcohol Education/

Treatment as an Alternative to Criminal Licensing Actions (Describe):

Yes

Yes

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

Other:

No

None

Miscellaneous Sanctions

Not Included Elsewhere:

Comment: Provisions, relating to the sentencing of criminal law offenders either to community rehabilitation centers or "home incarceration," do not apply to persons convicted of DWI offenses. See §§15:1133 and Code of Criminal Procedure Art. 894.2.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes Felony/Misd¹** Restricted to death caused by a driver while DWI, or under the influence of certain drugs. §14:32.1

Sanctions:

Criminal Sanction:
Imprisonment (Term): **2-15 yrs²**
Mandatory Minimum Term: **None**
Fine (\$ Range): **\$2,000 to \$15,000**
Mandatory Minimum Fine: **None**
Administrative Licensing Action:
Licensing Authorized and Type of Action: **Rev §32:414**
Length of Term of Licensing Withdrawal: **12 mos**
Mandatory Action--Minimum Length of License Withdrawal: **12 mos**
Other:

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

Sanction:

Criminal:

Imprisonment (Term): **Not more than 6 mos; 7 dys-6 mos** if such violation was simultaneous with a second or subsequent DWI conviction² §32:415
Mandatory Minimum Term of Imprisonment: **7 dys** if such violation was simultaneous with a second or subsequent DWI conviction.
Fine (\$ Range): **Not more than \$500; \$300-\$500** if such violation was simultaneous with a second or subsequent DWI conviction §32:415
Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev): **Susp/Rev**
Length of Term of License Withdrawal Action: **Original susp/rev period extended for 1 yr**
Mandatory Term of License Withdrawal Action: **For 2nd and sub. offenses, original susp/rev period extended for 1 yr (mandatory) (Note: A hardship license is available for first offenders; see §32:451.1.)**

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

²As an alternative to either jail or imprisonment, a defendant may be sentenced either to community rehabilitation (provided the defendant was sentenced to a term of imprisonment of not more than 5 yrs without hard labor) (§15:1133) or to "home incarceration" (Code of Criminal Procedure Art. 894.2).

Other Criminal Actions Related to DWI: (continued)

Habitual Offender Laws:

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

Yes

Convictions for 3 or more serious traffic law
 offs w/n a 5 yr period or convictions for 10 or
 more minor and serious offs w/n a 3-yr period
 §32:1472

Term of License Rev While
 Under Habitual Offender Status:

3 yrs (Also, certain financial responsibility
 requirements must be met and petition must be
 made to court which may, upon showing of good
 cause, restore the license; Note: A 1st time
 habitual offender may apply for a hardship
 license under §32:1477(B).)

Type of Criminal Offense if
 Convicted on Charges of
 Driving While on Habitual
 Offender Status
 Sanctions Following a Conviction of
 Driving While on Habitual Offender
 Status:

Misd §14:2(4) & (6)

Imprisonment (Term):

1-5 yrs §32:1480 See Footnote No. 2 on p.
 3-169.

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

None
None
N/A
None

Other State Laws Related To Alcohol Use:

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

State Has Such a Law (Yes/No):

Yes §32:398(E) & (F) (A report is made by the
 coroner.)

BAC Chemical Test Is Given to the
 the following Persons:

Driver:
 Vehicle Passengers:
 Pedestrian:

Yes
Yes
Yes

Laws Establishing the Minimum Ages
 Concerning Alcoholic Beverages:

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

21 §§14:91, 14:91.1, 14:91.2 & 14:91.5 (Year
 Eff: 1987)
21 §§14:91.1, 14:91.2 & 14:91.5
None

¹ It is illegal for a person under 21 years old to purchase alcoholic beverages. Commercial dispensers of alcoholic beverages and their employees, however, are not criminally liable for selling such beverages to minors unless they are less than 18 years old; see §§26:90(A)(1) and 26:286(A)(1).

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **No** (Under §9:2800.1; neither a commercial server nor a social host can be held liable for the actions of an intoxicated patron or guest who is over the legal drinking age.¹)

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

Possible Limited Liability for the actions of minors via previous case law which may have been abrogated in part by §9:2800.1.²

Dram Shop Actions-Social Hosts:

Possible Limited Liability §9:2800.1, Garcia v. Jennings, 427 So.2d 1329 (La.App. 1983)³, and Gresham v. Davenport, 542 So.2d 48 (La.App. 1988)⁴

Other:

None

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

Type of Criminal Action:

A. For alcoholic beverages with an alcohol content of 6% or above-Misd §§ 26:2(1) & 26:90(A)(2) B For alcoholic beverages with an alcohol content of 1/2 of 1% to 6%-Misd §§ 26:241(1) & 26:286(A)(2)

Term of Imprisonment:

A. For alcoholic beverages with an alcohol content of 6% or above-30 dys-6 mos §26:171 B. For alcoholic beverages with an alcohol content of 1/2 of 1% to 6%-30 dys-6 mos §26:521

Fine (\$ Range):

A. For alcoholic beverages with an alcohol content of 6% or above-\$100-\$500 (and/or the following administrative fines: 1st off-\$50-\$500; 2nd off-(w/n 3 yrs)-\$250-\$1,000 3rd off-(w/n 3 yrs)-\$500-\$2,500 §26:96) B. For alcoholic beverages with an alcohol content of 1/2 of 1% to 6%-\$100-\$500 §26:521 (and/or the following administrative fines: 1st off-\$50-\$500; 2nd off (w/n 3 yrs)-\$250-\$1,000; 3rd off-(w/n 3 yrs)-\$500-\$2,500 §26:292)

¹Note: This statute does not address the liability of commercial servers or social hosts with regards to the actions of intoxicated minors who have been served alcoholic beverages.

²See Pence v. Ketchum, 326 So. 2d 831 (La. 1976), Chausee v. Southland, 400 So.2d 1199 (La. App., 1981), and Farrington v. Houston's Inc., 750 F.2d 492 (1985).

³This case concerned the actions of intoxicated minors who were given alcoholic beverages in violation of a statute that prohibits adults from purchasing such beverages for minors.

⁴In this case, a minor social host, during a party, served alcoholic beverages to a minor guest who became intoxicated. The minor guest was involved in an automobile accident. Passengers in the minor guest's vehicle were injured. The passengers were able to maintain a common law dram shop action against the minor guest.

Other State Laws Related To Alcohol Use: (continued)

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

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

Yes, Rev or Susp Not mandatory §§26:90(I) & 26:286(I)¹

Length of Term of License Withdrawal: **Not specified**

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

(Note: See Footnote No. 1 on p. 3-170.)

Type of Criminal Action:

A. For alcoholic beverages with an alcoholic content of 6% or above - **Misd** §§ 26:2(1) & 26:90(A)(1) B. For alcoholic beverages with an alcoholic content of 1/2 of 1% to 6% - **Misd** §§26:241(1) & 26:286(A)(1)²

Term of Imprisonment:

Same as for serving alcoholic beverages to an intoxicated person above.

Fine (\$ Range):

Same as for serving alcoholic beverages to an intoxicated person above.

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

(Note: See Footnote No. 1 on p. 3-170.)

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

Yes, but not mandatory §§26:90(I) & 26:286(I)

Length of Term License Withdrawal:

Not specified

Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

No

¹Under §§26:97 & 26:293, the liquor licensing authority may deny issuing a permit for a premises for one (1) year if such premises were the subject of a revoked license.

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

STATE:
General Comments:

MAINE
See Maine Revised Statutes Annotated (MRSA).

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor 29
MRSA §1312-B(1)(A)

Illegal Per Se Law (BAC Level):

0.08 29 MRSA §1312-B(1)(B)

Presumption (BAC Level):

No¹

Types of Drugs/Drugs and Alcohol:

(1) Intoxicating Drugs or (2) a Combination of
Liquor and Drugs 29 MRSA §1312-B(1)

Other:

For Commercial Motor Vehicle Operators, see
below.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

No

Implied Consent Law:

Arrest Required (Yes/No):

No An actual "arrest" is not required.
However, the police must still have "probable
cause" before a suspected drunk driver has to
submit to a chemical test. 29 MRSA §1312

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

No

Refusal to Submit Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) 29 MRSA §1312(8)
A person shall be required to submit to a
chemical test if they are involved in an
accident that results in death to any other
person and there is probable cause to believe
that they were operating a vehicle under the
influence of alc./drugs. 29 MRSA §1312(11)(D)

Other Information:

¹For purposes of evidence in proceedings other than those arising under §1312-B (DWI offenses), it shall be presumed that a person was under the influence of intoxicating liquor when he has a blood-alcohol level of 0.08 or more by weight; see 29 MRSA §1312(5)(C).

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person shall not operate or attempt to operate a CMV if they (1) have a BAC level of 0.04 or more (percent by weight of alcohol in the blood) or (2) are under the influence of either alcohol or drugs. For a 1st violation, a person's privilege to operate a CMV is suspended for 1 yr (mand.) (3 yrs (mand.) if transporting hazardous materials); for a subsequent violation or a combination of two violations of the above listed items, this suspension is for life. Note: Maine law provides that the suspension periods (i.e., those given) shall be the same as those proscribed for such offenses under the Federal Commercial Motor Vehicle Safety Act of 1986 (P.L. 99-570); see 49 USC Appx §§2707(a) & 2708(a)(15) and 49 CFR §383.51. If a person refuses to submit to a chemical test for either blood or breath where there is probable cause to believe that they were operating a CMV with a BAC level of 0.04 or more, their privilege to operate a CMV is suspended for a mandatory period of 1 yr (3yrs if transporting hazardous materials) for a 1st refusal and permanently for a 2nd or subsequent refusal. See 29 MRSA §1, sub-§ 1-K; 29 MRSA §530-B(2) & (6); 29 MRSA §1312, sub-§ 12; 29 MRSA §1312-D, sub-§ 5; and 29 MRSA §2241, sub-§1(O). CMV provisions are eff. 1/1/91; see §25 of Ch. 514 of the laws of 1989.

STATE - Maine

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

Blood: Yes 29 MRSA §1312
Urine: No
Other: None

Adjudication of DWI Charges:

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

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:

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

Refusal to Take Implied Consent
Chemical Test:

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

1st refusal- Susp for 180 dys¹ (A restricted license may be issued after the first 90 dys which are mandatory; see 29 MRSA §1312-D(5));
2nd refusal (w/n 6 yrs)-Susp for 1 yr (mandatory) 29 MRSA §1312(2) For failure to submit to a mandatory chemical test-Susp for 1 yr² (mandatory) 29 MRSA §1312(11)(D)
Other: For a refusal to submit to a mandatory chemical test, a person's vehicle's registration/certificate of title may be suspended; see 29 MRSA §2241(1)(N).

¹For a first refusal for a person under 21 years old where there is probable cause that they were driving with a BAC level of 0.02 or more, suspension is for 1 year; see 29 MRSA §2241-G(c).

²If negligence was involved in the related death as well as alc./drugs, the suspension for refusal is 3 consecutive yrs (mandatory) and is in addition to any other suspension that may be imposed for refusal to submit to a chemical test; see 29 MRSA §1313-B.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

Class C crime less than 1 yr; 29 MRSA §1312-B See **Special Note** below.

Mandatory Minimum Term:

1st off A DWI conv. where the defendant (1) had a BAC level of 0.15 or more, (2) was driving 30 MPH over the speed limit with a BAC level of 0.10 or more or (3) was eluding a police officer and had a BAC level 0.08 or more or (4) refused to submit to a chemical test-**Not less than 48 hrs.**; 2nd off. (w/n 6 yrs)-**7 days**; sub. offs. (w/n 6 yrs)-**30 dys.** 29 MRSA §1312-B, sub. 2

Fine:

Amount (\$ Range):
Mandatory Min. Fine (\$):

Not more than **\$1,000**
1st off-**\$300**; 2nd off (w/n 6 yrs)-**\$500**; 3rd off (w/n 6 yrs)-**\$750** 29 MRSA §1312-B

Other Penalties:

Community Service:
Restitution
(eg Victim's Fund)

None
Yes, 17-A MRSA §§1204(2-A)(B) & 1321 et seq. Direct compensation by the defendant to a victim usually as a condition of probation.

Other:

None

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes-0.08 BAC level^{1&2} The periods of license susp for 1st and subsequent offs are the same as Post DWI Conviction Licensing Actions (below).³ Under 29 §2241(1), a person's license (or certificate of registration/title) may be rev/susp if they have "committed" (but have not necessarily been convicted of) an off that usually requires license/registration susp or rev (e.g., DWI). Such action may be taken without a preliminary hearing. The time period for this rev/susp is not specified.

Other:

¹Under 29 MRSA §2241-G(B), persons under 21 yrs of age who operate a motor veh while having a BAC level of 0.02 have their licenses suspended of 1 yr; hardship provisional licenses are available.

²The licensing agency may administratively suspend a driver's license for 3 yrs if they negligently caused a death while operating a motor vehicle either while DWI or with a BAC level of 0.08 or more; see 29 MRSA §1313-B.

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

Special Note: Under 29 MRSA §1312-B (2-A), it is a Class C Crime to cause serious bodily injury while operating a vehicle in violation of the DWI laws. Jail-Not more than 5 yrs; fine-not more than \$2,500; maximum period of license suspension is 18 mos. See 17-A MRSA §§1252 & 1301.

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

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

For all offs - **Susp** (See Special Note on p. 3-175 concerning serious bodily injury DWI offenses.)

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

1st off-90 dys; 2nd off (w/n 6 yrs.)-**1 yr**;
Subsequent offs (w/n 6 yrs.)-**2 yrs.**; 29 MRSA §§1312-B & 1312-D(1) Note: The licensing agency may increase the above susp. periods up to 275 dys; see 29 MRSA §1312-D(1-A).

Mandatory Minimum Term of
Withdrawal:

1st off-60 dys; 2nd off-1 yr; sub. off-2 yrs
These are not mandatory in all situations; see the Special Note on p. 3-177.

Conditional License. Under 29 MRSA §1312-D(11), upon issuing a license to a person who has either been convicted of a DWI offense or found to have violated the admin. per se law, the following conditions may be placed on the license: 1st conviction/admin. per se action-for a period of 1 yr from the date of reinstatement the driver cannot operate a motor vehicle after having consumed any alcohol; and 2nd and subsequent convictions/admin per se actions (w/n 6 yrs)-for a period of 6 yrs (after conviction) the driver cannot operate a motor vehicle after having consumed any alcohol. Under 29 MRSA §2241-J, unless longer periods are authorized by law, the following special licensing sanctions apply to persons who operate a motor vehicle in violation of the above conditions: (1) Revocation for 1 yr either if they (a) are convicted of any alcohol or drug driving offense or (b) have operated a motor vehicle with a BAC level of 0.05 or more (Note: If licensing action is based on operating a motor vehicle with a BAC level of 0.05 or more, a "work-restricted" license may be issued upon a showing of necessity and is contingent upon completion of an alcohol treatment (rehabilitation) program.) and (2) for refusal to submit to a chemical test where there is probable cause to believe that the driver has a BAC level of 0.05 or more-susp for not less than 2 yrs.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Alcohol Education/

Treatment as an Altern-
ative to Criminal

Licensing Actions

(Describe):

Special Note: For 1st offenders, after 2/3 of license susp period has passed, a restricted license may be issued provided the offender has completed an alcohol education/treatment program. If the actual license susp period which has expired is less than 90 dys, the license issued must be restricted to going either to employment or to an alcohol education/treatment program; the time period the license was actually suspended plus the time period for the restricted license must equal at least 90 dys; see 29 MRSA §1312-D(2) & (3). In addition, a temporary restricted license may be issued to any offender for the purpose of allowing them to attend an alcohol education/treatment program notwithstanding any other provision of law; see 29 MRSA §1312-D(4).

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Possible Note: (1) The State is given broad authority to suspend a person's vehicle's registration/certificate of title based on "any cause" which is deemed "sufficient"; see 29 MRSA §2241(1). (2) A person's vehicle is subject to forfeiture if they operate their vehicle in violation of the DWI laws and they are still under suspension/revocation of a previous DWI offense; as an alternative, a defendant may elect to have their vehicle impounded until their right to operate a motor vehicle is reinstated. See 29 MRSA §§1312-G & 1312-H.

Terms Upon Which Vehicle
Will Be Released:

Other:

If a person operates a vehicle in violation of the DWI laws and they are still under suspension/revocation of a previous DWI offense, the court must prohibit such person from registering a vehicle until they their right to drive has been restored. See 29 MRSA §1312-G(3).

Miscellaneous Sanctions

Not Included Elsewhere:

None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes**, (Class C Crime) applies only if death is caused by the reckless operation of a veh. or while in violation of the DWI laws. 17-A MRSA §203(3) and 29 MRSA §§1312-B(2-A) & 1313 See Note below.

Sanctions:

Criminal Sanction:

Imprisonment (Term): Not more than **5 yrs** 17-A MRSA §1252

Mandatory Minimum Term: **None**

Fine (\$ Range): Not more than **\$2,500** 17-A MRSA §1301

Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and Type of Action: **Rev**

Length of Term of

Licensing Withdrawal: **5 yrs** 29 MRSA §1313 (For DWI related deaths, the minimum period of suspension is 18 mos; see 29 MRSA §1312-B(2-A).)

Mandatory Action--Minimum

Length of License

Withdrawal: **5 yrs** 29 MRSA §1313 (For DWI related deaths, the minimum period of suspension is 18 mos; see 29 MRSA §1312-B(2-A).)

Other:

Special Note: If alcohol or drugs are involved in a criminal homicide caused by the operation of a motor vehicle, a defendant must complete a driver education program and, if needed, a substance abuse and/or a 2 yr. after care program prior to license restoration. See 29 MRSA §1313-A, para. 3.

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

Sanction:

Criminal:

Imprisonment (Term): Less than **1 yr** (C1 D crime) 29 MRSA §2184 (See Vehicle Impoundment/Confiscation under sanctions for a DWI offense on p. 3-177.)

Mandatory Minimum Term

of Imprisonment: **7 dys**

Fine (\$ Range): Not more than **\$2,500** 29 MRSA §2184

Mandatory Minimum Fine: **\$350**

Note: The Maine Criminal Code (17-A MRSA) does not use the terms "misdemeanor" or "felony" to describe/define crimes. The law describes the offense of vehicle homicide as a Class C crime without further identifying it as a misdemeanor or a felony. It appears, however, that a Class C crime would be considered a felony in most States.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev):	Susp
Length of Term of License Withdrawal Action:	1-3 yrs added to the original susp or rev
Mandatory Term of License Withdrawal Action:	1 yr added to the original susp or rev

Habitual Offender Laws:

State Has Such Law (Yes/No):	Yes 29 MRSA §2292
Grounds for Being Declared an Habitual Offender:	Convictions for 3 serious offs. (e.g. DWI)
Term of License Rev While Under Habitual Offender Status:	The rev period is indefinite but relief from such rev may be granted after 1 yr ¹ .

Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	CI C crime 29 MRSA §§2292, 2298 and 2299
--	--

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

Imprisonment (Term):	Not more than 5 yrs 17A MRSA §1252(2)
Mandatory Minimum Term of Imprisonment:	60 dys ²
Fine (\$ Range):	Not more than \$5,000 29 MRSA §2298(2)
Mandatory Minimum Fine (\$):	None
Licensing Actions (Specify):	Relief from habitual offender status shall not be granted for at least 3 yrs from the date the offender would have been eligible. 29 MRSA §2298(2) (See Footnote No. 1 below.)

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

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

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

²This minimum sanction is imposed only if one of the offenses used to determine habitual offender status was a DWI offense; see 29 MRSA §2298(2).

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: 21 (Year Eff.: 1985) 28-A MRSA §§2051(1)(A) and citations listed under criminal actions for selling alcohol to minors below.

Minimum Age (Years) Possession: 21 (Home and employment exemption) 28-A MRSA §2501(1)(E)

Minimum Age (Years) Consumption: 21 (Except at home in the presence of either parents or legal guardians.) 28-A MRSA §§2051(1)(B)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): Yes 28-A MRSA §2501 et seq. (Note: Except for medical expenses, recovery under the dram shop act is limited to \$250,000 per single accident or occurrence; see 28-A MRSA §2509.)

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

No¹

Dram Shop Actions-Social Hosts:

Yes Liability is limited to situations where the social host served alcoholic beverages (1) to a minor or (2) to a minor or a visibly intoxicated person in a "reckless manner"; see 28-A MRSA §§2503(5), 2505(2), 2506(1) & 2507

Other:

N/A

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

Type of Criminal Action: Class E Crime 28-A MRSA §§1, 62(8), 354, 705(2)(A) & 705(3)(A)

Term of Imprisonment: Not more than 6 mos 17-A MRSA §1252(2)(E)

Fine (\$ Range): For a person, not more than \$500; for an organization, not more than \$5,000 17-A MRSA §1301(1)(C) & (3)(E)

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): Yes Susp or rev 28-A MRSA §§801 & 803(5)

Length of Term of License Withdrawal: For susp.-not specified in the statute; for rev.-1-5 yrs.²

¹The dram shop law indirectly abrogated the holding in *Klingerman v. Sol Corporation of Maine*, 505 A.2d 474 (Me. 1986), that established dram shop liability via common law negligence actions. The dram shop law is now the exclusive remedy for such actions.

²See Footnote No. 1 on p. 3-181.

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:

Class E Crime 28-A MRSA §§1, 2(20), 62(8), 354, 705(2)(E), 705(3)(E), 1901 & 1902

Term of Imprisonment:

Not more than **6 mos.** 17-A MRSA §1252(2)(E)

Fine (\$ Range):

For a person, not more than **\$500**; for an organization, not more than **\$5,000** 17-A MRSA §1301(1)(C) & (3)(E)

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp or Rev 28-A MRSA §§801 & 803(5)

Length of Term License Withdrawal:

For susp.-not specified in the statute; for rev.-**1-5 yrs**^{1&2}

Anti-Happy Hour Laws/Regulations:

Yes 28-A MRSA §709

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

Open Container Law (Yes/No):

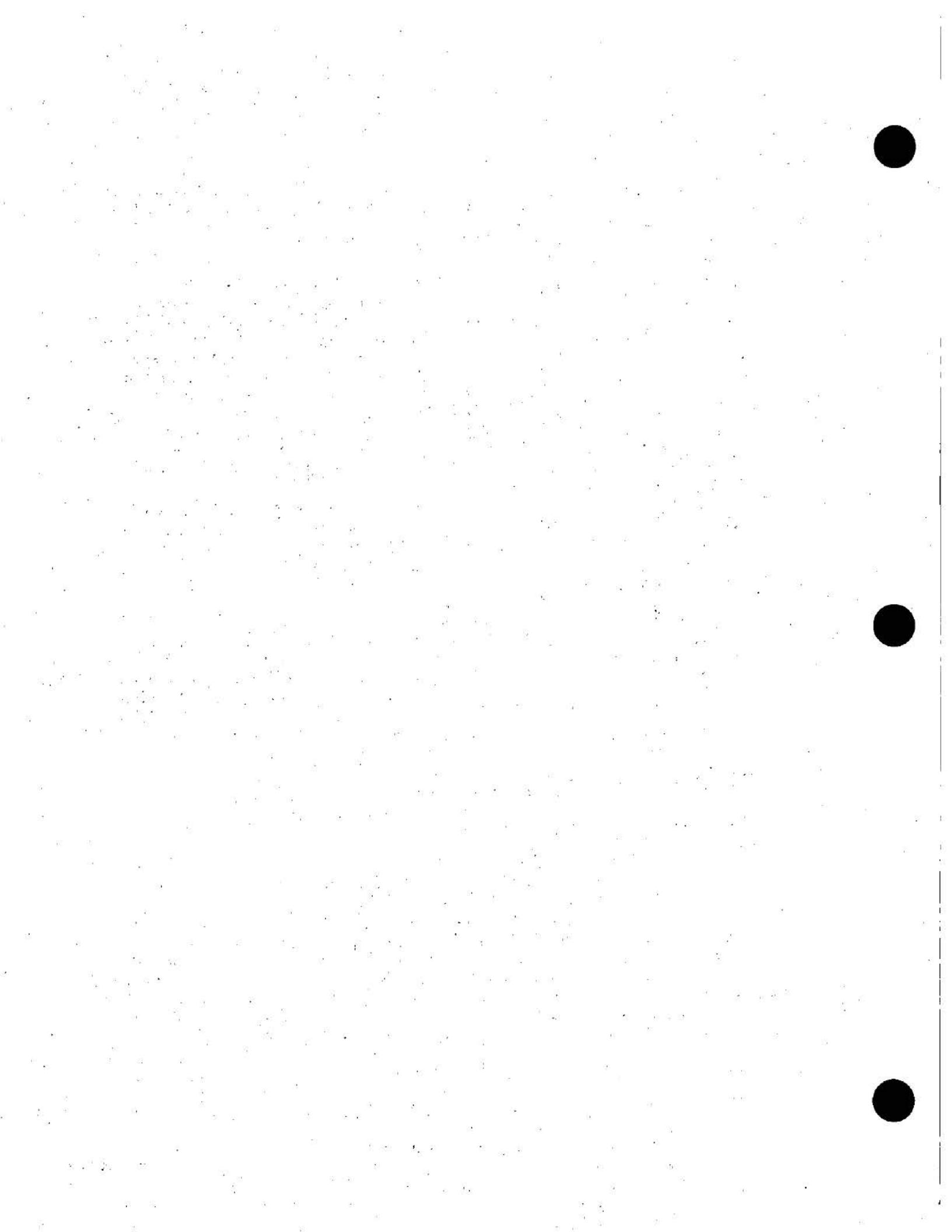
No

Anti-Consumption Law (Yes/No):

Yes (Applies only to drivers) 29 MRSA §1312-F

¹An administrative fine of \$50-\$1,500 may be imposed instead of or in addition to any license suspension or revocation; see 28-A MRSA §803(8).

²An agent of a licensee is subject to a civil forfeiture of not more than \$500 if they sell liquor to a minor; see 28-A MRSA §2084.



STATE:
General Comments:

MARYLAND
See Annotated Code of Maryland.

Basis for a DWI Charge:

Standard DWI Offense:

(1) While intoxicated¹ (Tran. §21-902(a)) and
(2) under the influence of Alcohol (Tran.
§21-902(b))

Illegal Per Se Law (BAC Level):

No²

Presumption (BAC Level):

No

Types of Drugs/Drugs and Alcohol:

Under the influence of (1) Any Drug, (2) Any
Combination of Drugs, (3) a Combination of One
or More Drugs and Alcohol and (4) Any Controlled
Dangerous Substance¹. See §21-902(c)(1) & (d).

Other:

A BAC of **0.07** is prima facie evidence of driving
while under the influence. A BAC of **0.10** is
prima facie evidence of intoxication. C&JP
§10-307 and Trans. §21-902
For Commercial Motor Vehicle Operators, see p.
3-188.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

Yes Tran. §16-205.2

Implied Consent Law:

Arrest Required (Yes/No):

Yes³ Tran. §16-205.1

Implied Consent Law Applies to

Drugs (Yes/No):

No

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) C&JP §10-309(a)

Other Information:

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

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes (Trans §16-205.1)

Urine:

No

Other:

None

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

²Under Tran. §16-113(b)(1), a person under 21 must have a BAC restriction placed on their license. This restriction prohibits the licensee from operating a motor vehicle with a BAC level of 0.02 or more. Note: See Footnote No. 2 on p. 3-186. Under C&JP §10-307(f), it is prima facie evidence of a violation of Tran. §16-113(b) if a person under 21 operates a motor vehicle with a BAC level of 0.02.

³The law uses the term "detained" instead of arrest.

STATE - Maryland

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): No
Anti-Plea Bargaining Statute (Yes/No): No¹
Pre-Sentencing Investigation Law (PSI)
(Yes/No): No (Note: PSI required only for convictions of
felony offs.)

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail): None
Administrative Licensing Action
(Susp/Rev): None
Other: None

Refusal to Take Implied Consent
Chemical Test:

Criminal Sanction (Fine/Jail): None
Administrative Licensing Action
(Susp/Rev): 1st refusal-Susp for 120 dys (mand.); 2nd and
subsequent refusals-Susp for 1 yr (mand.) Tran.
§16-205.1(2)
Other: None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

1.) Driving while under the influence (of
alcohol)² (Misd), 1st off-Not more than 2 mos;
Subsequent off-Not more than 1 yr; 2.) Driving
while intoxicated (Misd), 1st off-Not more than
1 yr; 2nd off-Not more than 2 yrs; 3rd & sub.
off-not more than 3 yrs (Trans. §§21-902 and
27-101); 3.) A person under 21 operating a
vehicle in violation of the 0.02 BAC license
restriction (Misd)-None (Tran. §§27-101(b) &
27-102)

Mandatory Minimum Term:

For a subsequent Intoxicated Off. conviction
(w/n 3 yrs.)-48 con. hrs.^{3&4}

¹Probation before judgment cannot be granted by a court for any second or subsequent alcohol driving offense committee-w/n 5 yrs; see Art. 27, §641(a)(2) and State v. Shilling, 540 A.2d 1184 (Md.App. 1988).

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

³Imprisonment includes confinement in an inpatient rehabilitation or treatment center; see Tran. §27-101(j).

⁴Tran. §27-101(j)

Sanctions Following a Conviction for a DWI Offense:

(continued)

Fine:

Amount (\$ Range):

1.) Driving while under the influence (of alcohol)¹, 1st off-Not more than **\$500**; Subsequent off-Not more than **\$500**; 2.) Driving while intoxicated, 1st off-Not more than **\$1,000**, 2nd off-Not more than **\$2,000**; 3rd & sub. off-not more than **\$3,000**; 3.) A person under 21 operating a vehicle in violation of the 0.02 BAC license restriction (Misd)-Not more than **\$500** (Tran. §§27-101(b) & 27-102)

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

For a subsequent Intoxicated Off. conviction (w/n 3 yrs.) in lieu of the mand. jail sentence-80 hrs. of community service.²

Restitution

(eg Victim's Fund)

The court may order a defendant to pay restitution; see Art. 27, §640.

Other:

(1) As a condition of probation, the court may order a defendant to only operate vehicles equipped with **ignition interlock** devices; see Art 27, §641(a)(1)(ii)(2) and Tran. §§27-107 & 27-108. (2) See Alcohol Education and Treatment below.

Administrative Licensing Actions

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes-0.10 (blood and breath alc. concentrations) 1st violation-susp. **45 dys**; 2nd or sub. violation-susp. **90 dys**. These susps. are mandatory if the licensee has had a previous admin. per se violation (w/n 5 yrs), DWI/DUI³ conviction or implied consent law refusal. Otherwise, a restricted hardship license can be issued. Tran. §16-205.1 and C&JP §10-307(a)(2)

Other:

None

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

²Tran. §27-101(j)

³DWI/DUI=Driving while intoxicated/Driving while under the influence.

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

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1.) Tran. §§16-205 and 16-208. Driving while under the influence (of alcohol or alcohol and drugs), 1st off-Susp; 2nd off (w/n 3 yrs)-Susp; 3rd & sub. off (w/n 3 yrs)-Rev; 2.) Driving while intoxicated (or under the influence of a controlled substance)- Rev: See Note at end of the criminal sanctions section; 3.) A person under 21 operating a vehicle in violation of the 0.02 BAC license restriction-Susp or Rev Tran. §§16-113(e) & 16-208

Term of License Withdrawal

(Days, Months, Years, etc.):

1.) For Driving while under the influence, 1st off-Not more than 60 dys; 2nd off (w/n 3 yrs)-Not more than 120 dys; For Driving while under the influence 3rd & sub. off (w/n 3 yrs) and for all Driving while intoxicated offs., the period of rev. is based on the number of previous revs. a person has regardless of the basis; the periods are as follows: 6 mos for a 1st rev; 1 yr for a 2nd rev; and, 18 mos for 3rd and subsequent revs. See Special Note in Footnote No. 2 below. 2.) A person under 21 operating a vehicle in violation of the 0.02 BAC license restriction-Susp-Not more than 1 yr or Rev-Based on the number of previous revocations; see 1.) above.

Mandatory Minimum Term of
Withdrawal:

None (See Tran. §§16-205, 16-208 & 16-405.)

Other:

Rehabilitation:

Alcohol Education:

Yes--Alcohol education or treatment required as a condition of probation. Health-General §8-404, Tran. §16-212, Art. 27, §639(b) and Art 27, §641(a)(1)(ii)(1).

Alcohol Treatment:

Yes--See Alcohol Education above.

¹I.e., the previous revocations do not have to be alcohol driving offense related.

²Special Note: The licensing agency may when issuing a license and shall when directed to do so by a court, place a restriction on a person's license which prohibits them from operating a motor vehicle with alcohol in their blood. If at the time of an implied consent test, the person has a BAC level of 0.02 or more, such BAC level is prima facie evidence that the person was operating a motor vehicle with alcohol in their body. See Tran. §16-113(a)(2) & (f) and C&JP §10-307(f).

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

Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):

Yes—Under Trans. §16-212, a person convicted of either DUI¹ or DWI¹ may be required to attend a driver improvement or alcohol education program as a condition or reinstatement of their driving privilege.

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:
Terms Upon Which Vehicle
Will Be Released:
Other:

No

If a person drives a motor veh while his or her license is suspended or revoked for an alcohol off, the registration of the motor veh he or she was driving may be suspended for not more than 120 dys. Tran: §13-705.1

Miscellaneous Sanctions
Not Included Elsewhere:

Special Note: (1) A person who has been convicted of an alcohol driving off can have their license suspended/revoked either directly under Tran. §16-205 or via the point system under Tran. §16-401 et. seq. Under the point system, a driver is assessed the following points for alcohol driving off convictions: Driving While Under the Influence (DUI) (of alcohol or drugs and alcohol) - 8 points and Driving While Intoxicated (DWI) (or under the influence of a dangerous controlled substance) - 12 points

(1) Points assessed for any traffic law violation remain on a driver's record for two (2) yrs. A person who accumulates either eight (8) or 12 points at any time may have their license either suspended or revoked. (2) Under certain circumstances a person could have their license revoked via the point system for a second DUI off conviction instead of suspended. Under Tran. §16-205(b), a person convicted of a second DUI off within three (3) yrs may have their license suspended for no more than 120 dys.

¹DUI=Driving while under the influence; DWI=Driving while intoxicated.

Sanctions Following a Conviction for a DWI Offense:

(continued)

However, if such a DUI conviction occurred within two (2) years of a prior one, the driver would have accumulated 16 points on their record (8 points assessed for each DUI conviction) and would be subject to license rev under the point system. Thus, the 120 dy susp period may only apply if the second DUI off conviction is more than two (2) but less than three (3) years after a prior off. (3) And, license susp periods for first and second DUI off convictions appear to be limited to 60 and 120 dys respectively via the provisions of Tran. §16-205(b). This is despite the fact that under Tran. §16-208(a), if a person accumulates eight (8) points, they could have their license suspended for up to one (1) yr.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

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

Sanctions:

Criminal Sanction:

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

Mandatory Minimum Term: **None**

Fine (\$ Range): 1) Death caused by the operation of a veh "in a grossly negligent manner"-Not more than **\$5,000** 2) Death caused by operation of a motor veh while intoxicated-Not more than **\$3,000**

Mandatory Minimum Fine: **None**

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC level of 0.04 or more, (2) have violated Tran. §21-902 or a similar Federal law or (3) refuse to submit to a chemical test for alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand.). A CMV operator is also subject to DWI criminal sanctions and administrative actions against their regular driving privileges. In addition, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. See Tran. §§11-103.1, 11-109, 11-111.1, 16-205, 16-208.1, 16-812 and 16-813. The "disqualification" provisions of the CMV/CDL law are eff. 4/1/92.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Rev via the point system

Length of Term of

Licensing Withdrawal:

6 mos rev, if this is a 1st rev; 1 yr rev, if this is a 2nd rev; and, 18 mos rev, if this is a 3rd rev.

Mandatory Action--Minimum

Length of License

Withdrawal:

None (Note: A restricted license may be issued.)

Other:

None

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

1st off (Misd) - Not more than 1 yr; 2nd and subsequent offs-Not more than 2 yrs; §§16-303 & 27-101

Mandatory Minimum Term

of Imprisonment:

None

Fine (\$ Range):

1st off-Not more than \$1,000; 2nd and subsequent offs-Not more than \$1,000

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

1st off-Rev; 2nd and subsequent offs- Rev (via point system; rev under Tran; §16-303 results in 12 points being assessed against a driver; see Tran. §§16-402 & 16-404) See Vehicle Impoundment/Confiscation on p. 3-187; Trans. §§16-303 and 27-101.

Length of Term of License

Withdrawal Action:

6 mos if a first rev; 1 yr if a second rev; 18 mos if this is a third rev

Mandatory Term of License

Withdrawal Action:

Note: Under Tran. §16-405, a rev may be canceled or modified if a person's employment or opportunity for employment would be adversely affected.

Habitual Offender Laws:

State Has Such Law (Yes/No):

No

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Other Criminal Actions Related to DWI: (continued)

Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status
Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:

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

Other State Laws Related To Alcohol Use:

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

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

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** Art. 2B, §118(a) and Art. 27, §§400 & 403
(Year Eff: 1982)
Minimum Age (Years) Possession: **21** Art. 2B, §118(d) & Art. 27, §400A
(employment exception)
Minimum Age (Years) Consumption: **21¹** Art. 2B, §118(d) which provides that no one
under 21 years old shall possess/consume
alcoholic beverages in a licensed establishment.

Dram Shop Laws and Related Legal Actions:

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

No (Special Note: For cases denying liability
in this area, see Felder v. Butler, 438 A.2d 494
(1981) and Fisher v. O'Connor's, Inc., 452 A.2d
1313 (Md.App. 1982), cert. den. by the Maryland
Court of Appeals, 452 A.2d 1313.)

¹Under Art. 27, §401A, no one may furnish alcoholic beverages to a person under 21 years old except in cases where either such beverages are served by members of the immediate family in a private residence or they are served as part of a religious ceremony.

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Actions-Social Hosts: **No** See *Kuykendall v. Top Notch Laminates, Inc.*, 520 A.2d 1115 (Md.App. 1987), cert. den. by the Maryland Court of Appeals, 526 A.2d 954 (Md. 1987) and *Hebb v. Walker*, 536 A.2d 113 (Md.App. 1988).

Other: **None**

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

Type of Criminal Action: **Misd** (Art. 2B, §§69, 69A, 118, and 200) See Footnote No. 1 on page 3-189.

Term of Imprisonment: **Not more than 2 yrs**

Fine (\$ Range): **Not more than \$1,000**

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

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

Yes Susp or rev (Note: For licenses issued by the Comptroller a monetary compromise of not more than \$2,000 may be paid in lieu of susp or rev.; see Art. 2B, §69A.)

Length of Term of License Withdrawal: **Generally 6 mos**, but for certain counties it may be longer

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

Type of Criminal Action: **Misd** (Art. 2B §§69, 69A, 118, and 200) See Footnote No. 1 below.

Term of Imprisonment: **Not more than 2 yrs**

Fine (\$ Range): **Not more than \$1,000**

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

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

Yes Susp or rev (Note: For licenses issued by the Comptroller, a monetary compromise of not more than \$2,000 may be paid in lieu of susp or rev.; see Art. 2B, §69A.)

Length of Term License Withdrawal: **Generally 6 mos** but for certain counties it may be longer

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

Other State Laws Related To Alcohol Use: (continued)

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

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

Open Container Law (Yes/No): **Yes-** However, this law is limited to certain
public parking areas Art. 2B §§207-214

Anti-Consumption Law (Yes/No): **Yes-** Tran. §21-903; applies only to drivers.

STATE:

MASSACHUSETTS

General Comments:

See Massachusetts General Laws Annotated.

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor Ch. 90 §24(1)(a)(1)

Illegal Per Se Law (BAC Level):

None

Presumption (BAC Level):

0.10 Ch. 90 §24(1)(e)

Types of Drugs/Drugs and Alcohol:

(1) Controlled Substance (such as marihuana, narcotic drugs and certain prohibited stimulantsubstances) & (2) Vapors of Glue See Ch. 90 §24(1)(a)(1).

Other:

None

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

No

Implied Consent Law:

Arrest Required (Yes/No):

Yes Ch. 90 §24(1)(f)

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

No

Refusal to Submit to Chemical Test
Admitted into Evidence:

No (Specifically prohibited in both criminal and civil cases; see Ch. 90 §24(1)(e).)

Other Information:

If person refuses to submit to a chemical test after being arrested, the police officer immediately prepares a written report which is forwarded to the register who then suspends the person's license for 120 dys. Ch. 90 §24(1)(f)

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

None (Unless brought in for treatment. Ch. 90 §24(1)(f))

Urine:

No

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

Yes Ch. 90 §24(g)

Anti-Plea Bargaining Statute (Yes/No):

No

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

Yes Ch. 90 §24(1)(a)(4)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

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

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): **None**
Administrative Licensing Action
(Susp/Rev): **Susp of license for 120 dys Ch. 90 §24(1)(f)**
(Mandatory)
Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

1st off-Not more than 2 yrs; 2nd off (w/n 6 yrs)-14 dys-2 yrs; 3rd off - 90 dys-2 yrs; 4th and subsequent offs (w/n 6 yrs) - 6 mos-2 yrs Ch. 90 §24(1)(a)(1) See Footnote No. 2.

Mandatory Minimum Term:

1st off-No; 2nd off-14 dys¹; 3rd-60 dys¹; 4th and subsequent offs-6 mos¹

Fine:

Amount (\$ Range):

1st off-\$100-1,000; 2nd off -\$300-1,000; 3rd off-\$500-1,000; 4th and subsequent offs-\$500-1,000 Ch. 90 §24(1)(a)(1) See Footnote No. 2.

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

For any off a minimum of 30 hrs may be ordered by the Court as a condition of probation See Ch. 90 §24D

Restitution

(eg Victim's Fund)

None

Other:

None

¹Work release is available for this period; see also the rehabilitation section (Ch. 90 §24(1)(a)(1)).

²DWI serious bodily offs (Ch. 90 §24L): Imprisonment-not more than 2½ yrs; fine-not less than \$3,000 (Ch. 90 §24L(2)). If recklessness is involved in the off: Imprisonment-2½-10 yrs or 6 mos-2½ yrs in a house of correction; fine-not more than \$5,000 (Ch. 90 §24L(1)).

Sanctions Following a Conviction for a DWI Offense:

(continued)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

No

Other:

At the time of arraignment on a DWI charge, the court shall suspend a defendant's license until the case is disposed of (but in no case more than 90 dys), provided the State establishes a prima facie showing that the defendant was operating a motor vehicle with a BAC level of 0.10 or more. See Ch. 90 §24N.

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

Rev for all offs Ch. 90 §24(1)(b) & (1)(c)

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off-1 yr; 2nd off (w/n 6 yrs)-2 yrs; 3rd off (w/n 6 yrs)-5 yrs; 4th and subsequent offs (w/n 6 yrs)-10 yrs

Mandatory Minimum Term of

Withdrawal:

1st off-45 dys susp¹ (If defendant is placed on probation and agrees to participate in an alcohol education program; otherwise the license is revoked; a mandatory 1 yr period; see Ch. 90 §24D); 2nd Off. (w/6 yrs)-1 yr rev; 3rd off (w/6 yrs)-2 yrs rev; 4th and subsequent offs (w/n 6 yrs)-5 yrs rev

Other:

Rehabilitation:

Alcohol Education:

Yes, 1st off-If the defendant consents, he may be placed on 1-yr probation conditioned on attending an alcohol education treatment or rehabilitation program. At the court's discretion such persons must pay \$400 in fees for placement in the program. Ch. 90 §24D; 2nd off - In lieu of imprisonment, defendant may serve at least 14 dys in a residential alcohol treatment program and be placed on 2 yrs probation. Ch. 90 §24

Alcohol Treatment:

Yes see above

Alcohol Education/

Treatment as an Alternative to Criminal

Licensing Actions

(Describe):

Yes see above

¹If the person is under 21 years old, the mandatory license suspension period is 180 dys provided they participate in a specifically designed program for the education and treatment of underage DWI offenders. Ch. 90 §24D

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

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority: **No**
Terms Upon Which Vehicle
Will Be Released:
Other: **None**
Miscellaneous Sanctions
Not Included Elsewhere: **None**

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes** Misd. (Homicide by motor veh) Ch. 90
§24G See Footnote No.1 below.

Sanctions:

Criminal Sanction:
Imprisonment (Term): **30 dys to 2½ yrs** Ch. 90 §24G(b)
Mandatory Minimum Term: **None**
Fine (\$ Range): **\$300 to 3,000** Ch. 90 §24G(b)
Mandatory Minimum Fine: **None**

Administrative Licensing Action:

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

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

Sanction:

Criminal:
Imprisonment (Term): **60 dys to 2½ yrs** Ch. 90 §23
Mandatory Minimum Term
of Imprisonment: **60 dys** (However, a work release program is
available.)
Fine (\$ Range): **\$1,000-10,000**
Mandatory Minimum Fine: **None**

¹Homicide by motor vehicle while under the influence of an intoxicating substance and where there is recklessness-Felony (See Ch. 274 §1): Imprisonment-2½-15 yrs (Mandatory imprisonment of 1 yr; however, work release is available); fine-not more than \$5,000. Ch. 90 §24G(a)

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev): None
Length of Term of License
Withdrawal Action:
Mandatory Term of License
Withdrawal Action:

Habitual Offender Laws:

State Has Such Law (Yes/No): **Yes** Ch. 90 §22F
Grounds for Being Declared an
Habitual Offender: Any combination of three or more serious traffic
offenses (e.g., DWI, reckless driving, ect.)
(w/n 5 yrs).
Term of License Rev While
Under Habitual Offender Status: **4 yrs** (If the defendant has a proven hardship,
a license may be issued after **1 yr.**) Ch. 90 §22F

Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status: **Felony** Ch. 274 §1

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

Imprisonment (Term): **Not more than 2 yrs** Ch. 90 §23
Mandatory Minimum Term of
Imprisonment: **None**
Fine (\$ Range): **\$200-1,000**
Mandatory Minimum Fine (\$): **None**
Licensing Actions (Specify): **Rev**

Other State Laws Related To Alcohol Use:

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

State Has Such a Law (Yes/No): **Yes** Ch. 38 §6(A)

BAC Chemical Test Is Given to the
the Following Persons:

Driver: **Yes** The law requires medical examiners to
submit to the police lab blood samples of
drivers who die of injuries received in auto
accidents within 4 hrs of the accident.

Vehicle Passengers:

Pedestrian:

No

Yes (Same rule as for drivers above. (Ch. 38
§6(A)) Applies to pedestrians 16 yrs or older.

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: 21 Ch. 138 §§34 & 34A (Year Eff: 1985)
 Minimum Age (Years) Possession: 21 (Applies to the transportation of alcoholic beverages by an unattended person under 21; there is an exemption for persons 18 and 19 for employment purposes.) Ch. 138 §34C
 Minimum Age (Years) Consumption: None

Dram Shop Laws and Related Legal Actions:

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

"Dram Shop Law" Concept Has Been

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

Yes, *Adamain v. Three Sons*, 353 Mass. 498, 233 N.E.2d 18 (Mass. 1967), *Cimino v. The Milford Keg, Inc.*, 431 N.E.2d 920 (Mass. 1982), and *Michnik-Zilberman v. Gordon's Liquor, Inc.*, 453 N.E.2d 430 (Mass. 1983)

Dram Shop Actions—Social Hosts:

Yes *Mc Guiggan v. New England Telephone Co.*, 496 N.E.2d 141 (1986) and *Langemann v. Davis*, 495 N.E.2d 847 (1986)¹

Other:

Note: An intoxicated patron may bring an action for personal injury damages against a licensee, if the damages were the result of the patron's having become intoxicated by the licensee; see *O'Hanley v. Ninety-Nine, Inc.*, 421 N.E. 2d 920 (1981) as modified by Ch. 231 §85T

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

Type of Criminal Action:

Misd. (See Ch. 138 §§62 and 69)

Term of Imprisonment:

Not less than 1 mo and not more than 1 yr

Fine (\$ Range):

Not less than \$50 and not more than \$500

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp, rev or cancellation Ch. 138 §64

Length of Term of License Withdrawal:

If revocation is imposed, a licensee is disqualified from receiving a license for 1 year after the expiration of the term of the revoked license. Note: There is no established period for either a suspension or a cancellation.

¹But see *Alioto v. Marnell*, 520 N.E.2d 1284 (Mass. 1988), where the court limited social host liability under certain circumstances.

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:

Misd (See Ch. 138 §34)

Term of Imprisonment:

Not more than 6 mos

Fine (\$ Range):

Not more than \$2,000

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp, rev or cancellation Ch. 138 §64

Length of Term License Withdrawal:

If revocation is imposed, a licensee is
disqualified from receiving a license for 1 year
after the expiration of the term of the revoked
license. Note: There is no established period
for either a suspension or a cancellation.

Anti-Happy Hour Laws/Regulations:

Yes 204 CMR 4.00 (regulation)

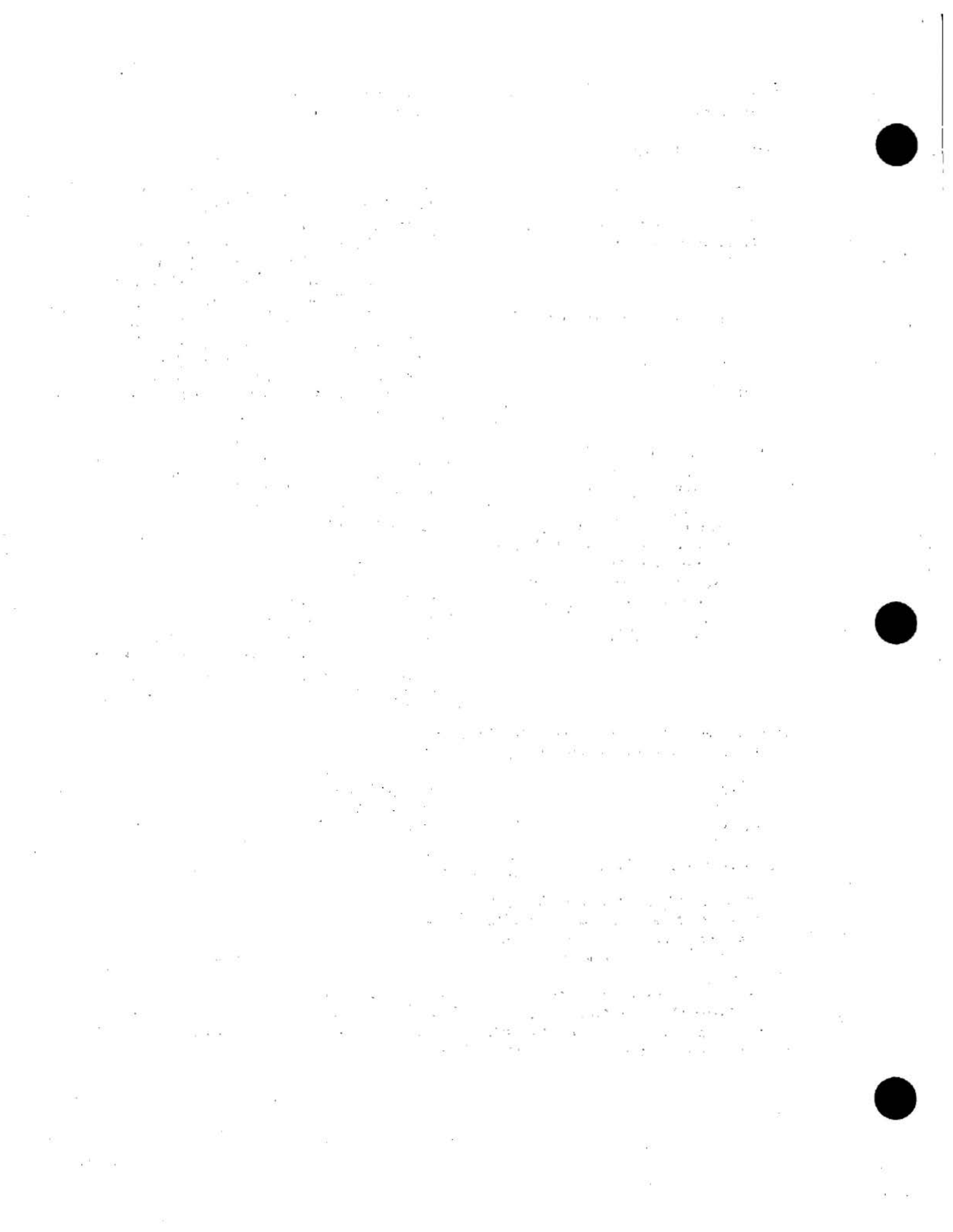
Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

Yes (Applies to drivers only) Ch. 90 §24I



STATE:
General Comments:

MICHIGAN
See Michigan Compiled Laws Annotated.

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor (§257.625(1))/impaired (§257.625b(1))

Illegal Per Se Law (BAC Level):

0.10¹ §257.625(2)

Presumption (BAC Level):

A BAC of greater than **0.07** but less than **0.10** is a presumption of impairment. A BAC of **0.10** or more is a presumption of driving while under the influence §257.625a(3)(b) & (c).

Types of Drugs/Drugs and Alcohol:

(1) A Controlled Substance and (2) a Combination of Liquor and a Controlled Substance. This applies to both under the influence and impaired offenses. See §§257.625(1) & 257.625b(1).

Other:

For Commercial Motor Vehicle Operators, see p. 3-204.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

Yes §257.625h

Implied Consent Law:

Arrest Required (Yes/No):

Yes §257.625c(1)(a)

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

Yes §257.625c(1)

Refusal to Submit to Chemical Test Admitted into Evidence:

No Prohibited via case law; see *People v. Hayes*, 235 N.W.2d 182 (CA, 1975).

Other Information:

Special Note: It appears that a test could be required via a court order; i.e. consent by the driver is not required. See §257.625a(6) and *People v. Wurm*, 404 N.W.2d 235 (Mich.App. 1987).

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes §257.625c(1)

Urine:

Yes §257.625c(1)

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

No

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

Yes² §§257.625(8) & 257.625b(6)

¹Standard: Percent by weight of alcohol in the blood; see §257.625(2).

²For offenses where a defendant may be sentenced to prison for more than 1 yr or where an offense is a felony, a victim has a right to submit a statement and have it made a part of the pre-sentence investigation report; see §§780.763 & 780.764.

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): **None**
Administrative Licensing Action
(Susp/Rev): **None**
Other: Civil infraction-Fine not more than **\$100**
§§257.625h(5), 257.741 et seq. & 257.907

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): **None**
Administrative Licensing Action
(Susp/Rev): 1st refusal- 6 mo susp (Note: A
restricted/hardship license may be issued.); 2nd
and subsequent refusals (w/n 7 yrs)-1 yr
(mandatory susp) §257.323c and §257.625f(1)
Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

1.) Driving while impaired (§257.625b) 1st off
Misd-Not more than **90 dys**; 2nd off (w/n 7 yrs.)
Misd-Not more than **1 yr**; 3rd and subsequent offs
(w/n 10 yrs) -Not more than **1 yr**; Driving while
under the influence (Includes the illegal per se
offense.), 1st off Misd - Not more than **90 dys**;
2nd off Misd - Not more than **1 yr**; 3rd and
Subsequent offs (w/n 10 yrs) **Felony - 1 to 5 yrs**
None

Mandatory Minimum Term:

Fine:

Amount (\$ Range):

1.) Driving while impaired (§257.625b) 1st
off-Not more than **\$300**; 2nd off (w/n 7 yrs)-Not
more than **\$1,000**; 3rd and subsequent offs (w/n
10 yrs)-Not more than **\$1,000**; 2.) Driving
while under the influence¹ (§257.625), 1st
off-**\$100 to \$500**; 2nd off w/n 7 yrs-Not more
than **\$1,000**; 3rd and subsequent off w/n a 10-yr
period - Not more than **\$1,000**

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

All offs - up to **12 dys** §§257.625(7) &
257.625b(5)

Restitution

(eg Victim's Fund)

Yes¹

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

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

Other:

For a 1st alcohol driving offense conviction (either driving while impaired or driving while under the influence), the court may order that a BAC breath **ignition interlock** device be installed on a defendant's vehicle; see §§257.625(4) & 257.625b(2).

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

None

Other:

None

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1.) Driving while impaired 1st off-Susp; 2nd off (w/n 7 yrs)-Susp; 3rd and subsequent off (w/n 10 yrs)-Rev §257.625b(2), (3) & (4) 2.) Driving while under the influence 1st off-Susp; 2nd off-Revoked; 3rd and subsequent offs (felony)-Revoked; §257.625(5) and (6)

Term of License Withdrawal

(Days, Months, Years, etc.):

1.) Driving while impaired 1st off-90 dys-1 yr; 1st off but where there has been a previous driving while under the influence/illegal per se conviction-susp. 6 to 18 mos (see §257.319(5)); 2nd off (w/n 7 yrs)-6-18 mos (Also under §257.319(5), for two driving while impaired convictions-susp-6 to 18 mos); 3rd and subsequent off (w/n 10 yrs)-1 yr (5 yrs²); 2.) Driving while under the influence 1st off-6 mos-2 yrs; 2nd off-1 yr; 3rd and subsequent offs (felony)-5 yrs See Footnote No. 3 below.

Mandatory Minimum Term of

Withdrawal:

1.) Driving while impaired 1st off-(A) restricted/hardship license may be issued; see §257.625b(2)); 2nd off (w/n 7 yrs)-60 dys (A restricted license may be issued after the 60 dy period; see §257.625b(3)); 3rd and subsequent off (w/10 yrs)-1 yr (5 yrs²) §257.303(1)(d) and (e)(ii); 2.) Driving while under the influence³, 1st off-A restricted hardship license may be issued §257.625(4); 2nd off-1 yr §257.303(1)(d)(i); 3rd and subsequent off (felony)-5 yrs §257.303(1)(d)(ii)

¹Includes the illegal per se offense.

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

³Licensing action under the point system. Vehicle manslaughter or driving while under the influence/illegal per se-6 points. Driving while impaired-4 points. Twelve (12) in two (2) years may result in suspension/revocation. A susp cannot be longer than one (1) year. See §§257.320(1)(d), (2) & (4) and 257.320a(1)(a), (b) & (f).

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

Other:

Rehabilitation:

Alcohol Education: Yes §§257.625(8) & 257.625b(6)

Alcohol Treatment: Yes

Alcohol Education/

Treatment as an Altern-
ative to Criminal

Licensing Actions

(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority: No

Terms Upon Which Vehicle

Will Be Released:

Other: None

Miscellaneous Sanctions

Not Included Elsewhere: None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes Misd** Death caused by the operation of a vehicle at an immoderate rate of speed or in a careless, reckless, or negligent manner but not wilfully or wantonly. §750.324

Sanctions:

Criminal Sanction:

Imprisonment (Term): Not more than 2 yrs

Mandatory Minimum Term: None

Fine (\$ Range): Not more than \$2,000

Mandatory Minimum Fine: None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Susp (6 points are also accumulated for each off) §257.319(1)(a)

Length of Term of

Licensing Withdrawal: **90 dys-2 yrs** §257.319(1)(a)

Mandatory Action--Minimum

Length of License

Withdrawal: None

Other: None

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege to operate a CMV is suspended for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC level (percent by weight of alcohol in the blood) of 0.10 or more or (2) are under the influence of or impaired by alcohol or a controlled substance. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the suspension is for life (mand.). In addition, a CMV operator who has any "measurable" or "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. See §§257.1c, 257.4b, 257.7a, 257.312e, 257.319b and 257.319d.

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

1st off Misd-3 to 90 dys; 2nd and subsequent
offs Misd-5 dys to 1 yr §257.904(1) & (3)

Mandatory Minimum Term
of Imprisonment:

None

Fine (\$ Range):

1st off-Not more than \$100; 2nd and subsequent
offs-Not more than \$500 §257.904(1) & (3)

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev):

Susp or rev §257.904(4) & (5)

Length of Term of License
Withdrawal Action:

The original license susp or rev is extended for
a like period.

Mandatory Term of License
Withdrawal Action:

The original license susp or rev is extended a
like period.

Habitual Offender Laws:

State Has Such Law (Yes/No):

No

Grounds for Being Declared an
Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

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

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

¹Note: For 2nd or subsequent offenses, the registration plates of the vehicle involved in the offense shall also be confiscated; see §257.904(1) & (3).

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No): **Yes** §257.625a(10)
BAC Chemical Test Is Given to the
the Following Persons:
Driver: **Yes** §257.625a(10)
Vehicle Passengers: **No**
Pedestrian: **No**

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** (Year Eff: 1978) §§436.33 & 436.33b(1)
Minimum Age (Years) Possession: **21** (Employment exemption) §436.33b(1) & (4)
Minimum Age (Years) Consumption: **21** (Applies to licensed premises) §436.33b(1)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes** §436.22(4) (Applies to personal injuries
caused by serving alcoholic beverages to persons
who are either under 21 years old or visibly
intoxicated.)

"Dram Shop Law" Concept Has Been

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

Yes Jones v. Bourrie, 120 N.W.2d 236 (1963) and
Longstreth v. Fitzgibbon, 335 N.W.2d 677 (Mich.
App. 1983)

Dram Shop Actions—Social Hosts:

Yes—Limited See Longstreth v. Gensel, 377
N.W.2d 804 (Mich. 1985), Trayler v. Kopusky, 384
N.W.2d 819 (Mich. App. 1986) and Gardner v.
Wood, 414 N.W.2d 706 (Mich. 1987); these cases
concerned giving alcoholic beverages to minors.
However, the courts have found no liability to
business social hosts who have furnished
alcoholic beverages to injury causing adult
business guests; see Leszczynski v. Johnson, 399
N.W.2d 70 (Mich.App. 1986), and Millross v. Plum
Hollow Golf Club, 413 N.W.2d 17 (Mich. 1987).

Other:

None

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

Type of Criminal Action: **Misd** §§436.22(3), 436.29 & 436.50
Term of Imprisonment: **Not more than 6 mos**
Fine (\$ Range): **Not more than \$500**

Other State Laws Related To Alcohol Use: (continued)

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

License to Serve Alcoholic Beverages:

Withdrawn (Yes/No):

Yes, susp or rev §§436.20(1) & 436.51

Length of Term of License Withdrawal:

Period of license susp is not specified in the statute; period of license revocation is 2 yrs (Note: A civil fine is of not more than \$1,000 may be assessed in addition to or in lieu of a susp or rev.)

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

Type of Criminal Action:

Misd §§436.22(1), 436.22(3) & §436.33

Term of Imprisonment:

Not more than **6 mos**¹ §436.50

Fine (\$ Range):

Not more than **\$500**¹

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

License to Serve Alcoholic Beverages:

Withdrawn (Yes/No):

Yes, susp or rev §§436.20(1) & 436.51

Length of Term License Withdrawal:

Period of license susp is not specified in the statute; period of license revocation is 2 yrs (Note: A civil fine is of not more than \$1,000 may be assessed in addition to or in lieu of a susp or rev.)

Anti-Happy Hour Laws/Regulations:

Yes R 436.1438 (regulation)

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

Open Container Law (Yes/No):

Yes §436.34a

Anti-Consumption Law (Yes/No):

Yes-Driver and passengers §436.34 (The law states that "[n]o alcoholic liquor shall be consumed on the public highways")

¹These sanctions appear to apply only to licensees but not to licensees' employees. For employees, a violation appears to be a misdemeanor with the following sanctions: Jail-not more than 90 days; fine-not more than \$100. See §§436.33, 436.50 & 750.504.



STATE:
General Comments:

MINNESOTA
See Minnesota Stat. Annotated.

Basis for a DWI Charge:

Standard DWI Offense;

Under the influence of alcohol §169.121, subd. 1(a)

Illegal Per Se Law (BAC/BrAC Level):

0.10¹ §§169.01, subd. 61 & 169.121, subd. 1(d)

Presumption (BAC Level):

None

Types of Drugs/Drugs and Alcohol:

(1) A Controlled Substance, (2) A Listed Hazardous Substance and (3) a Combination of Alcohol, a Controlled Substance or a Listed hazardous Substance See §169.121, subd. 1. For Commercial Motor Vehicle Operators, see below.

Other:

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:

Yes (§169.121, subd. 6)

Implied Consent Law:

Arrest Required (Yes/No):

See Special Note under Other Information below.

Applied Consent Law Applies to

Drugs (Yes/No):

Yes §169.123 subd. 2

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) §169.123 subd. 2(b)(5)

Other Information:

Special Note: A test can be given if: 1) A person has been lawfully placed under arrest under §169.121 2) If a person has refused to take preliminary screening test; 3) If PBT is refused or shows BAC of 0.10 or more; 4) If a person is involved in an accident resulting in property damage, personal injury, or death.

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

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC level of 0.04 or more, (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for 10 yrs. (mand.). A CMV operator is placed "out-of-service" for 24 hrs if they have any alcohol in their system. It is a misdemeanor to operate a CMV with a BAC/BrAC/UrAC of 0.04 or more; the sanctions for this offense are jail for not more than 90 days and/or a fine of not more than \$700. See §§169.01, subds. 50, 61 & 75; 169.1211, subd. 1; 169.1215; 169.123, subds. 2 & 4; 171.01, subd. 22; 171.165, subds. 1, 2, 3(1) & 3(2); and, 609.03(3).

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

Blood: **Yes**
Urine: **Yes**
Other: **None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **Yes**
Anti-Plea Bargaining Statute (Yes/No): **No**
Pre-Sentencing Investigation Law (PSI)
(Yes/No): **Yes** §§169.124, 169.126 (alcohol screening) and
260.193, subd. 8(h)

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:

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

License rev periods are the same as for implied
consent law violations. §§169.121 subd 6 &
169.123 subd 2

Other: **None**

Refusal to Take Implied Consent
Chemical Test:

Criminal Sanction (Fine/Jail):

A driver commits a gross misdemeanor if they
refuse to submit to a chemical test and they
have had a previous license revocation (either
once in 5 yrs or twice in 10 yrs) for either (1)
refusal to submit to an implied consent test,
(2) an admin. per se violation, (3) a DWI
offense conviction or (4) a conviction for
vehicle homicide. Sanctions: Jail-Not more
than **1 yr**; fine-Not more than **\$3,000**.
§§169.121, subds. 1a & 3(c) and 609.03(2)

Administrative Licensing Action
(Susp/Rev):

Rev for not less than **1 yr** (A limited license
may be issued; see §§169.123 subd 9, & 171.30
subd 1 and §169.123 subd 4)

Other:

Special Note: If the person who refused to
submit to the chemical test is under 18, their
license is revoked for **1 yr** or until they are 18
whichever is the greater period of time. (A
limited license may be issued.)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

1st off (Misd)-Up to **90-dys**; 2nd off (w/n 5 yrs) and subsequent offs¹ (w/n 10 yrs)(Gross Misd)-Not more than **1 yr** §§169.121 & 609.03; A DWI off causing injury where there is negligence (Felony) §609.21 subd-2 Not more than **5 yrs**; §609.21, subds. 2 & 4

Mandatory Minimum Term:

2nd and subsequent offs (w/n 5 yrs)-**30 dys** (See community service below.)² §169.121, subd. 3a

Fine:

Amount (\$ Range):

1st off (Misd)-Not more than **\$700**; 2nd off (w/n 5 yrs.) and subsequent offs (w/n 10yrs.)(Gross Misd)-Not more than **\$3,000**; A DWI off causing injury where there is negligence (Felony)-Not more than **\$10,000**

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

In lieu of the 30 dys of imprisonment for 2nd and subsequent offs, 8 hrs of community service may be substituted for each day less than 30 dys that the person would have served in jail. See §169.121, subd. 3a.

Restitution

(eg Victim's Fund)

Yes Victim's Fund (see §§611A.01 et seq.)³ and also direct payment by the defendant to a victim (see §§609.10 & 609.125(4))

Other:

A \$75 chemical dependency assessment charge is also imposed; see §169.121, subd. 5a.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes 0.10 BAC Rev for 90 dys; however, a limited license is available §169.123, subd 4⁴ Under §171.18, a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that requires mandatory license rev (e.g., DWI). Such action may be taken without a preliminary hearing.

Other:

¹A prior offense also includes a conviction for either driving while revoked or vehicle homicide; see §169.121, subd. 3(a).

²The prosecutor may on motion prior to sentencing present reasons why the mandatory imprisonment sanction should not be imposed. The court may grant such motion if "substantial mitigating factors" exist. §169.121, subd.3a.

³Special Note: Payments to all claimants shall not exceed \$50,000 per victim; see §611A.54.

⁴If the person is under 18, the rev period is six (6) mos or until they reach 18 whichever is the longer period of time.

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

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

All offs-Rev §§169.121, subd. 4 & 171.17

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off-Not less than **30 dys**; 2nd off (w/n 5 yrs.)-Not less than **90 dys**; 3rd off (w/n 5 yrs.)-Not less than **1 yr**; 4th and subsequent offs-Not less than **2 yrs** See Footnote No. 1. For persons under 18 years old, see Footnote No. 2.

Mandatory Minimum Term of

Withdrawal:

None (Special Note: Under §171.30 a limited license may be issued (1) for employment purposes, (2) for attendance at an alcohol treatment program or (3) for the needs of a homemaker in order to prevent the substantial disruption of the educational, medical or nutritional needs of the family.)

Other:

Rehabilitation:

Alcohol Education:

Yes 169.124 and 169.126

Alcohol Treatment:

Yes 169.121(5) 169.124 and 169.126

Alcohol Education/

Treatment as an Altern-
ative to Criminal

Licensing Actions

(Describe):

No (Note: The court may stay imposition of fine or jail sentence but not license rev if defendant submits to treatment at an authorized dependency facility, as provided by §§169.121 Subd.5 and 609.135 Subd. 1.)

¹Note: Ninety (90) additional dys are added to the above rev base periods if the DWI off involved either a death or an injury.

²If the defendant is under 18 yrs of age and they are convicted of a DWI off, their license is revoked (1) until they reach 18; (2) for 6 mos; or (3) for the normal period of time for DWI offenders whichever is the greater period of time.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Yes—Under §168.041, subd. 3, for a 1st or 2nd DWI off., the defendant **may be required** to surrender their vehicle's registration plates and certificate. However, for either a 3rd DWI off (w/n 5 yrs) or a 4th DWI off (w/n 10 yrs), the court **shall require** the defendant to surrender such plates and certificate; see §168.041, subd 3a. The registration plates and certificate are reissued when the driver's license is reinstated; see §168.041, subd. 4. Note: Special plates may be issued if the defendant has limited/restricted driving privileges or if a family member has a valid license; see §168.041, subd. 6(a).

Terms Upon Which Vehicle Will Be Released:

Other:

None (See Special Note on p. 3-214.)

Miscellaneous Sanctions

Not Included Elsewhere:

None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense:

Yes (Felony) (Gross negligence causing death while under the influence of alcohol) §609.21 subds. 1 & 3

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Not more than **10 yrs**

Mandatory Minimum Term:

None

Fine (\$ Range):

Not more than **\$20,000**

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Rev 169.11¹

Length of Term of

Licensing Withdrawal:

Not specified by statute (Note: See Footnote No. 1 in the Post-DWI Conviction Licensing Section on p. 3-212.)

Mandatory Action--Minimum

Length of License

Withdrawal:

60 dys §171.30

Other:

Note: A limited license may be issued after the 60 dy minimum license rev period §171.30 Subd. 2.

¹A defendant may also be required to surrender their vehicle's registration plates and certificate during the period of license revocation; see §168.41, subds. 3 and 4.

Other Criminal Actions Related to DWI: (continued)

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

Sanction:

Criminal:

Imprisonment (Term): Misd up to 90 dys¹ §§171.24 & 609.03

Mandatory Minimum Term
of Imprisonment: None

Fine (\$ Range): Up to \$700

Mandatory Minimum Fine: None

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev):

Special Note: A violation of §171.24 shall result in a person having their motor veh registration plates and certificate impounded under §168.041, subds. 1 & 2.²

Length of Term of License

Withdrawal Action: 2nd off-Susp for not more than 1 yr §168.041, subd. 2

Mandatory Term of License

Withdrawal Action: None

Habitual Offender Laws:

State Has Such Law (Yes/No): No

Grounds for Being Declared an
Habitual Offender:

Term of License Rev While
Under Habitual Offender Status:

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

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

Imprisonment (Term):

Mandatory Minimum Term of
Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

¹A person who commits a DWI offense while their license is still suspended or revoked is guilty of a gross misdemeanor. Imprisonment-not more than 1 yr; fine-not more than \$3,000 §§169.129 & 609.03(2)

²See Vehicle Impoundment/Confiscation on p. 3-213.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes §169.09, subd. 11

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes, age 16 or older

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1986) §340A.503, subd. 2(1) & (2)

Minimum Age (Years) Possession:

21 (There is an exemption for the possession of
alcoholic beverages in the home) §340A.503,
subd. 2

Minimum Age (Years) Consumption:

21 (There is an exemption for the consumption
of alcoholic beverages with the consent of a
parent in the home.) §340A.503, subd. 2

Dram Shop Laws and Related Legal Actions:

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

Yes §340A.801

"Dram Shop Law" Concept Has Been

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

Yes *Trail v. Christian*, 298 Minn. 101, 213
N.W.2d 618 (1973) and *Holmquist v. Miller*, 352
N.W.2d 47 (1984)

Dram Shop Actions--Social Hosts:

No See *Cady v. Coleman*, 315 N.W. 2d 593 (1982),
Hoffman v. Wiltscheck, 379 N.W.2d 145 (Ct. App.
1985) and *Holmquist v. Miller*, 367 N.W.2d 468
(Minn. 1985).

Other:

None

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

Type of Criminal Action:

Gross Misd. §§340A.502 and 340A.702(7) and 609.03

Term of Imprisonment:

Up to 1 yr

Fine (\$ Range):

Not more than \$3,000 (An admin. fine of up to
\$500 may also be imposed; see §340A.415.)

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes §340A.415

Length of Term of License Withdrawal:

Suspended for up to 60 days or revoked for an
unspecified period of time.

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:

Gross. Misd §§340A.503, subd. 2(1), &
340A.702(8), & 609.03

Term of Imprisonment:

Up to 1 yr

Fine (\$ Range):

Not more than **\$3,000** (An admin. fine of up to
\$500 may also be imposed; see §340A.415.)

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes §340A.415

Length of Term License Withdrawal:

Suspended for up to **60** days or revoked for an
unspecified period of time.

Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No):

Yes §169.122(2) & (3)

Anti-Consumption Law (Yes/No):

Yes-Driver and passengers §169.122(1)

Note: The Minnesota Supreme Court has held that criminal sanctions cannot be imposed on employers for the illegal actions of their employees who sell/serve alcoholic beverages to persons under the legal drinking age; see State v. Guminga, 395 N.W.2d 344 (1986). See §340A.501 (as amended by §2 of Ch. 152 of the laws of 1987) which eliminates the possibility of such vicarious criminal liability.

STATE:
General Comments:

MISSISSIPPI
See Mississippi Code Annotated.

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor
§63-11-30(1)(a)

Illegal Per Se Law (BAC Level):

0.10 §63-11-30(1)

Presumption (BAC Level):

None

Types of Drugs/Drugs and Alcohol:

Any Substance §63-11-30(1)

Other:

For Commercial Motor Vehicle Operators, see p.
3-218.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

Yes §63-11-5

Implied Consent Law:

No

Arrest Required (Yes/No):

No¹

Implied Consent Law Applies to

Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases)² §63-11-41

Other Information:

Chemical test required on reasonable grounds and
probable cause of DWI §63-11-5.

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes¹ §63-11-5

Urine:

Yes¹ §63-11-5

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

Yes, a DWI charge may not be reduced if the BAC
level of the defendant was 0.10% or more
§63-11-39(3)

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

Yes - Limited §63-11-30(2)(d)

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):

None

Administrative Licensing Action

(Susp/Rev):

None

Other:

None

¹A person may give their consent to tests of either blood or urine for the purpose of
determining if they have any other impairing substance in their body; see §63-11-5.

²Refusal to submit a chemical test cannot be admitted evidence in a civil action; see §63-1-43.

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

Refusal to Take Implied Consent Chemical Test:

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

None

Susp for **90 dys** if there has been no previous conviction for a DWI off (§63-11-30). **Susp** for **1 yr** if there has been a previous conviction for a DWI off (§63-11-30) (These susps are mandatory) §§63-11-5 & 63-11-23

Other:

Special Note: A de novo court trial may be held following administrative hearings on these susps; see §63-11-25.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:
Term (Day, Month, Years,
Etc.):

DWI off-Misd (4th off-Felony) 1st Off-Not more than **24 hrs**¹; 2nd Off (w/5 yrs)-**48 cons hrs**^{1&2}-**1 yr**; 3rd Off (w/n 5 yrs)-**30 dys**¹-**1 yr**; 4th & sub. off (w/n 5 yrs)-**90 dys-5 yrs** Conviction for a DWI off where there has been negligence resulting in disfigurement, disability, etc., (felony) - Not more than **10 yrs** See generally §63-11-30.

Mandatory Minimum Term:
Fine:

No¹

Amount (\$ Range):

1st Off-**\$250-1,000**; 2nd Off (w/n 5 yrs)-**\$600-1,000**; 3rd Off (w/n 5 yrs)-**\$800-1,000**; 4th & sub. off (w/n 5 yrs)-**\$2,000-\$5,000**

Mandatory Min. Fine (\$):

1st off - **\$250**; 2nd off (w/n 5 yrs) - **\$600**; 3rd off (w/n 5 yrs) - **\$800**; 4th & sub. off - **\$2,000** §99-19-25

¹The law does not specifically prohibit suspending or placing persons on probation for the minimum imprisonment term; see also §99-19-23 which allows suspended sentences for misdemeanor offenses.

²See community service on p. 3-219.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC level of 0.04 or more, (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical (breath) test for alcohol. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (or a lesser period as established by Federal law). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. See §§3, 11 & 12 of Ch. 482 of the Laws of 1989.

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

Other Penalties:

Community Service:

Yes 2nd off-Community service from 10 dys to 1 yr as an alternative to imprisonment. §63-11-30(2)(b).

Restitution
(eg Victim's Fund)

Yes¹ A defendant may be ordered by the court to make direct restitution to a victim; see §99-39-1 et seq.

Other:

None

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes, limited to encouraging the speedy trial of DWI cases; where the offender has a BAC level of 0.10 if no trial is requested the license susp periods for implied consent violations apply; an accused offender is issued a temporary license by the police for up to 90 dys following license seizure after arrest; the temporary license if first issued by the arresting officer who takes the original license; the temporary license is initially valid for 30 dys but may be extended for two additional 30 dy periods by the Court. §63-11-23(2)

Other:

Under §63-1-53(1)(a), a person's license may be susp if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., vehicle homicide)². Such action may be taken without a preliminary hearing. The time period for this susp is not specified.

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

Susp - all offs §63-11-30

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off-90 dys-1 yr³; 2nd off (w/n 5 yrs)-2 yrs³; 3rd off (w/n 5 yrs)-5 yrs³; 4th & sub. off (w/n 5 yrs)-5 yrs³ Special Note: DWI off where there has been a chemical test refusal, the above susps are in addition to those imposed for chemical test refusal under the implied consent law. §63-11-30(3)

¹Some victims of criminal activity may receive compensation from a special crime victims' escrow account. Funds for this account are provided via monies received by accused or convicted persons from the news, publicity or entertainment media for the purpose of reenacting the criminal event. A victim, however, must first have a money judgment against a defendant for the injury caused by a criminal action before they can receive funds from the escrow account. See §99-38-1 et seq.

²Note: A DWI offense results in license suspension not revocation.

³Judicial review is not allowed for these susp actions by the licensing agency; see §63-11-26.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Mandatory Minimum Term of
Withdrawal:

1st off-30 dys¹; 2nd off (w/n 5 yrs)-1 yr²; 3rd
off (w/n 5 yrs)-3 yrs³; 4th & sub. off (w/n 5
yrs)-3 yrs³

Other:

Rehabilitation:

Alcohol Education:

1st off - Yes required; See also §63-11-32

Alcohol Treatment:

2nd and 3rd offs - Yes

Alcohol Education/
Treatment as an Altern-

ative to Criminal

Licensing Actions

(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

None

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Miscellaneous Sanctions

Not Included Elsewhere:

None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense:

**Yes, (Felony) where death is a result of a DWI
violation and negligent action by the driver.
§63-11-30(4)**

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Not more than 10 yrs §63-11-30(4)

Mandatory Minimum Term:

None

Fine (\$ Range):

None

Mandatory Minimum Fine:

N/A

¹The county circuit court may reduce the suspension period to 30 days provided the defendant demonstrates that they need their license because of a hardship. The court, if it reduces the suspension period, must require the defendant "attend and complete an alcohol safety education program" as proved by §63-11-32.

²For a 2nd conviction, the suspension period may be reduced provided the defendant is (1) diagnosed as needing alcohol/drug abuse treatment and (2) such person successfully completes such treatment. The license may be reinstated either after the completion of the treatment program or one (1) year whichever is longer. §63-11-30(2)(e)

³For a third or subsequent conviction, a defendant's license may be reinstated after three (3) years provided they successfully complete an alcohol/drug abuse treatment program. §63-11-30(2)(f)

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:

Licensing Authorized and
Type of Action: **Rev §63-1-51**
Length of Term of
Licensing Withdrawal: **1 yr**
Mandatory Action--Minimum
Length of License
Withdrawal: **None**
Other: **None**

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

Sanction:

Criminal:

Imprisonment (Term): **Misd. 48 hrs-6 mos §63-11-40**
Mandatory Minimum Term
of Imprisonment: **None**
Fine (\$ Range): **\$200 to 500 §63-11-40**
Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev): **Susp**
Length of Term of License
Withdrawal Action: **6-mo susp added to the original susp period
§63-11-40**
Mandatory Term of License
Withdrawal Action: **6-mo susp added to the original susp period
§63-11-40**

Habitual Offender Laws:

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

STATE - Mississippi

Other Criminal Actions Related to DWI: (continued)

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

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No): Yes §63-11-7

BAC Chemical Test Is Given to the
the Following Persons:

Driver: Yes

Vehicle Passengers: No

Pedestrian: No

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: 21 (Year Eff: 1986) §§67-1-81, 67-3-53(b) &
67-3-70(1)

Minimum Age (Years) Possession: 21 - (There is an employment exemption; see
§§67-1-81 & 67-3-54.)

Minimum Age (Years) Consumption: 21¹

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): Yes §67-3-73(2) & (4) (Note: Licensees are
liable only for the actions of minors and
visibly intoxicated persons.)

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

Yes, *Munford, Inc. v. Peterson*, 368 So. 2d 213
(Miss. 1979), and *Bryant v. Alpha Entertainment
Corp.*, 508 So.2d 1094 (Miss. 1987)²

Dram Shop Actions--Social Hosts:

Yes-Limited A social host cannot be held liable
if they provide alcoholic beverages to a person
who may lawfully consume such beverages; see
§67-3-73. See also *Boutwell v. Sullivan*, 469
So.2d 526 (Miss. 1985).

Other:

None

¹Note: Persons under 21 may consume light wine and beer in the presence of a parent or legal guardian; see §67-3-54(1).

²These cases appear to have been abrogated by §67-3-73.

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action: **Misd** §§67-1-83, 67-3-53(b) & 67-3-69(1)
Term of Imprisonment: Not more than **6 mos**
Fine (\$ Range): Not more than **\$500**

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

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Rev/Susp** §67-1-71 (Alc. bev. 4% or more alc. by
wgt.) & §67-3-29 (wine and beer not more than 4%
alc. by wgt.)

Length of Term of License Withdrawal: No period of license susp/rev is specified.
However, for licensees holding light wine & beer
(alc. content of not more than 4% alc. by wgt.)
permit, their permit may be revoked for 2 yrs
for wilful neglect or refusal to comply with the
alc. bev. control laws; see §67-3-29(2). Also,
any person, who has had any alc. bev. license
revoked, may not apply for a license to sell
light wine and beer (not more than 4% alc. by
wgt.) for 2 yrs; see §67-3-19(b).

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

Type of Criminal Action: Selling alcoholic beverages (4% or more alc. by
wgt.) to those under 21, 1st off-Misd; 2nd and
subsequent offs- Misd; Selling to a person under
21 beer and wine not more than 4% alcohol by
weight-**Misd** §§67-1-81 & 67-3-53.

Term of Imprisonment: Selling alcoholic beverages (4% or more alc. by
wgt.) to those under 21: 1st off-None; 2nd and
subsequent offs-Not more than 1 yr; Selling to a
person under 21 beer and wine not more than 4%
alcohol by weight-Not more than **6 mos** §§67-1-81
& 67-3-53.

Fine (\$ Range): Selling alcoholic beverages (4% or more alc. by
wgt.) to those under 21, 1st off- \$500-1,000;
2nd and subsequent offs- \$1,000-2,000; Selling
to a person under 21 beer and wine not more than
4% alcohol by weight-Not more than **\$500**¹
§§67-1-81 & 67-3-53.

¹The following additional sanctions may also apply to licensees who sell beer and light wine
(not more than 4% alcohol by weight) to persons under 21: 1st Off-A fine of not more than \$500
and lic. susp. for 3 months; 2nd Off-(w/n 12 mos)-A fine of not more than \$1,000 and lic.
susp. for 6 mos; and 3rd & Subsequent Off-(w/n 12 mos)-A fine of not more than \$500 and a lic.
susp. for 1 yr. See §67-3-69(3).

Other State Laws Related To Alcohol Use: (continued)

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

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

Selling alcoholic beverages (4% or more alc. by wgt.) to those under 21, 1st Off-Rev¹; 2nd and subsequent Off- Automatic Rev; Selling to a person under 21 beer and wine (not more than 4% alcohol by weight)-Rev/Susp^{1&2}

Length of Term License Withdrawal:

Selling alcoholic beverages (4% or more alc. by wgt.) to those under 21, 1st off-Rev. length not specified; 2nd and subsequent offs-Permanently rev.; Selling to a person under 21 beer and wine (not more than 4% alcohol by weight)-Rev. length not specified. However, persons who have had any alc. beverage license revoked may not apply for a license to sell light wine and beer (not more than 4% alc. by wgt.) for 2 yrs; see §67-3-19(b).²

Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

No

¹A limited susp may be imposed in lieu of rev.
²See Footnote No. 1 on p. 3-223.

STATE:
General Comments:

MISSOURI
See Vernon's Annotated Missouri Statutes.

Basis for a DWI Charge:

Standard DWI Offense:

Driving while intoxicated (This includes driving while under the influence of alcohol.)

§§577.001 & 577.010

Illegal Per Se Law (BAC Level):

0.10 §577.012

Presumption (BAC Level):

None

Types of Drugs/Drugs and Alcohol:

Drugged Condition See §577.010.

Other:

A BAC of **0.10** or more is prima facie evidence of intoxication. §577.037

For Commercial Motor Vehicle Operators, see p. 3-228.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

No

Implied Consent Law:

Arrest Required (Yes/No):

Yes §577.020(1)

Implied Consent Law Applies to

Drugs (Yes/No):

Yes §577.020(1)

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes §577.04 (Criminal & Possibly Civil Cases)

Other Information:

None

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes

Urine:

Yes

Other:

Saliva

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

No

Pre-Sentencing Investigation Law (PSI)

(Yes/No):

No

Sanctions for Refusal to Submit to a

Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):

N/A

Administrative Licensing Action

(Susp/Rev):

N/A

Other:

N/A

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

Refusal to Take Implied Consent Chemical Test:

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

None

1st Refusal- Rev-1 yr (A restricted hardship license may be issued.); 2nd Refusal (w/n 5 yrs)-Rev-1 yr (Mandatory) §§302.309(5)(d) & 577.041

Other:

None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):

Intoxicated off, 1st off C1 B Misd-not more than **6 mos**; Per se off, 1st off C1 C Misd-not more than **15 dys**; Intoxicated/illegal per se offs, 2nd off¹ (w/n 5 yrs) C1 A Misd-not more than **1 yr**; "persistent offender"² - C1 D Felony - Not more than **5 yrs** §§577.010, 577.012, 577.023, 558.011, 560.011 & 560.016

Mandatory Minimum Term:

Intoxicated/illegal per se offs, 2nd off (w/n 5 yrs)-**48 cons hrs** §577.023, sub. 2 See Footnote No. 3 below.

Fine:

Amount (\$ Range):

Intoxicated off, 1st off-Not more than **\$500**; Per se off, 1st off-Not more than **\$300**; Intoxicated/illegal per se off, 2nd off¹ (w/n 5 yrs)-Not more than **\$1,000**; "persistent offender"²-Not more than **\$5,000**

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

2nd off-in lieu of imprisonment, the defendant performs at least **10 dys** (involving at least 40 hrs) of community service §577.023, sub. 2

Restitution (eg Victim's Fund)

Victim's compensation fund Defendants pay \$36 to the Court; \$35 is remitted to the State for the fund and \$1 is retained by the Court for admin. expenses. §§595.010 and 595.045 The court may also order direct compensation by defendants to victims; see §§595.200 & 595.203.

¹A "prior offender" is a person who has had two (2) alcohol related driving offense convictions w/n 5 years; see §577.023, sub. 1(2).

²A "persistent offender" is a person who has had three (3) or more alcohol related offense convictions w/n 10 years; see §577.023, sub. 1(2).

³For a "persistent offender", no court shall either suspend the imposition of sentence or allow the payment of a fine in lieu of imprisonment; see §577.023, sub. 1(3). The law does state a minimum sentence.

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

Other: For a first off, the sentence may be suspended provided the defendant is placed on probation for a minimum of two (2) yrs; see §577.010(2)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes-0.13 DAC¹ §302.500 et seq. (1) If there has been no prior alcohol related enforcement conviction w/n 5 yrs, susp for 30 dys with a restricted license for an additional 60 dys²; (2) if there has been such prior admin. per se action or DWI conviction (w/n 5 yrs), Rev for 1 yr³. (Restricted driving privileges may be granted pending the outcome of a trial de novo in the courts on an admin. per se action; see §302.535.) See Footnote No. 4 on p. 3-228.

Other:

None

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

Intoxicated off, 1st off-Point system 8 points; Per se off, 1st off-6 points⁴; Intoxicated/illegal Per se offs, 2nd off-12 points; 3rd and subsequent offs (w/n 5 yrs)-12 points. See **Special Note** on p. 3-228. §302.302, sub. 1 (7), (8) & (9) For persons under 21 who are convicted of any DWI offense-Rev; see §577.500 et seq.

Term of License Withdrawal

(Days, Months, Years, etc.):

Intoxicated off, 1st off-30-90 dys²; Per se off, 1st off-30-90 dys⁴; Intoxicated/illegal per se offs, 2nd off-1 yr; 3rd and subsequent offs (w/n 5 yrs)-1 yr. For persons under 21 who are convicted of any DWI offense-1 yr; see §577.010.

¹A DWI arrest at a road block cannot be used as the basis for an admin. per se action, unless there is independent evidence of probable cause to make a such an arrest; see §302.510(4).

²A court may grant restricted driving privileges for employment reasons; see §302.309 sub sec. 3. If the Court doesn't grant such privileges, the licensing agency must suspend the driver's license for a 30 dy mandatory period followed by restricted licensing/privileges for 60 dys; see §302.304(4).

³For second or subsequent (1) illegal per se offs under §577.012 (Not intoxicated offs under §577.010) or (2) admin. per se actions under §302.505 (read carefully §302.309 sub sec. 3), a court may grant restricted driving privileges for employment purposes provided the defendant has not received such privileges within the past 5 yrs.

⁴License susp action would occur only if the defendant had at least 2 more points on his/her record from some other driving off: i.e., a first illegal per se off conviction alone would not result in a license susp action. §§302.302, 302 and 302.304(4) and 302.304(b). However, if the defendant has accumulated sufficient points together with an illegal per se conviction, their license is suspended by the licensing agency for a mandatory 30 dy period which may be followed by restricted hardship driving privileges for 60 dys; see §302.304 sub. 4.

Exception: A court may still grant restricted hardship driving privileges for the entire susp period; see §302.309, sub. 3.

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

Mandatory Minimum Term of
Withdrawal:

Intoxicated off (except drugged driving) 1st off - None; 1st drugged driving off¹ - 30 dys; Per se off 1st off - None; Intoxicated (except drugged driving)/illegal per se offs 2nd off 1 yr²; 3rd and subsequent offs (except drugged driving) (w/n 5 yrs.) 1 yr². For a 2nd or sub drugged driving off¹ - 1 yr (Note: A person under 21, who is convicted of a DWI offense, has their driver's license revoked for 1 yr. However, a hardship license is available under certain conditions. See §§577.500 & 577.510.)

Special Note: Under the point system, 8 points equals a susp. For a first suspension the time period is 30 dys; for a 2nd, it is 60 dys; and, for a 3rd, it is 90 dys. Also, under the point system, 12 points in 12 mos, 18 points in 24 mos or 24 points in 36 mos equals rev for 1 yr.

Other:

Rehabilitation:

Alcohol Education:

Intoxicated off, 1st off-Yes^{3&4}; Per se off - 1st off-Yes^{3&4} Required for persons under 21 years old who have committed an alcohol offense, see §577.525.

Alcohol Treatment:

Intoxicated off, 1st off-Yes^{3&4}; Per se off, 1st off-Yes^{3&4}

¹Note: A restricted license is not available to persons who have been convicted of a drugged driving offense; see §302.309(5)(c).

²For second or subsequent (1) illegal per se offs under §577.012 (Not intoxicated offs under §577.010) or (2) admin. per se actions under §302.505 (read carefully §302.309 sec. 3), a court may grant restricted driving privileges for employment purposes provided the defendant has not received such privileges within the past 5 yrs.

³For a 1st intoxicated/per se off - Alternative to criminal sanctions; see §577.049.

⁴Note: A person, who has had their license susp/rev for an admin. per se violation, cannot have their driving privileges restored until they have completed an alcohol/drug education/treatment program; see §302.540.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr. (1 yr mand.) (not less than 3 yrs (3 yrs mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC level of 0.04 or more, (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand.). In addition, a CMV operator who has any "measurable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. Finally, it is a Class B misd to drive A CMV with either BAC/BrAC/UrAC of 0.04 or while under the influence of alcohol/controlled substance. The sanctions for this offense are imprisonment for not more than 6 mos and/or a fine of not more than \$500. See §§302.700, 302.745, 302.755 and 302.780.

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

Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):
Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority: **No**
Terms Upon Which Vehicle
Will Be Released:
Other: **None**
Miscellaneous Sanctions
Not Included Elsewhere: **None**

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes** (C) C felony) Veh homicide where death is caused by operating a motor vehicle while in an intoxicated condition or under the influence of controlled substances or drugs. §577.005

Sanctions:

Criminal Sanction:
Imprisonment (Term): **Not more than 7 yrs; §577.005**
Mandatory Minimum Term: **None**
Fine (\$ Range): **Not more than \$5,000**
Mandatory Minimum Fine: **None**
Administrative Licensing Action:
Licensing Authorized and
Type of Action: **Rev - (12 points)**
Length of Term of
Licensing Withdrawal: **1 yr**
Mandatory Action--Minimum
Length of License
Withdrawal: **1 yr**
Other: **Victim's compensation fund; see §§595.010 et seq.**

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

Sanction:

Criminal:
Imprisonment (Term): **Not more than 1 yr (C) A misd) 302.302 and 302.321**
Mandatory Minimum Term
of Imprisonment: **48 cons hrs (In lieu of imprisonment, the defendant performs at least 10 dys (involving at least 48 hrs of community service.)**
Fine (\$ Range): **Not more than \$1,000**
Mandatory Minimum Fine: **None**

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev): Rev (12 points)
Length of Term of License
Withdrawal Action: 1 yr
Mandatory Term of License
Withdrawal Action: 1 yr

Habitual Offender Laws:

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

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No): Yes §§58.445, 58.447 and 58.449
BAC Chemical Test Is Given to the
the Following Persons:
Driver: Yes
Vehicle Passengers: Yes
Pedestrian: Yes

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: 21 - §§311.310, 311.325, 312.400 & 312.407
(Year Eff: 1945)
Minimum Age (Years) Possession: 21 - §§311.325 & 312.407
Minimum Age (Years) Consumption: None

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes** §537.053¹ A cause of action for personal injuries or death may only be brought against a liquor by the drink licensee who has been convicted of the offense of selling alcoholic beverages by the drink either to a person under 21 years old or to an obviously intoxicated individual provided such sale was the proximate cause of the injury or death. See Childress v. Sams, 736 S.W.2d 48 (Mo.banc 1987).

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

No (Prior case law abrogated via statute; see §537.053.)

Dram Shop Actions--Social Hosts:

No Childress v. Sams; 736 S.W.2d 48 (Mo.banc 1987) and Andres v. Alpha Kappa Lambda Fraternity, 730 S.W.2d 547 (Mo banc 1987)

Other:

None

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

Type of Criminal Action:

Misd §§311.310, 311.720, 311.880, 312.400, 312.500 & 312.510

Term of Imprisonment:

Not more than 1 yr

Fine (\$ Range):

\$50-1,000

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes, Rev §§311.720 & 312.510

Length of Term of License Withdrawal:

For licensees who sell alc. bev. over 3.2% alc. by wgt.--Length of rev. is not specified in the statute; for licensees who sell non-intoxicating beer (over 0.5% but not more than 3.2% alc. by wgt.)--**1 yr rev.**

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

Type of Criminal Action:

Misd §§311.310, 311.880, 312.400, 312.500 & 312.510

Term of Imprisonment:

Not more than 1 yr

Fine (\$ Range):

\$50-1,000

¹Section 537.053 was held to be constitutional under both State and Federal constitutions; see Simpson v. Kilcher, 749 S.W.2d 386 (Mo.banc 1988).

Other State Laws Related To Alcohol Use: (continued)

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

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

Yes, Rev §§311.720 & 312.510

For licensees who sell alc. bev. over 3.2% alc. by wgt.-Length of rev. is not specified in the statute; for licensees who sell non-intoxicating beer (over 0.5% but not more than 3.2% alc. by wgt.)-1 yr rev.

Anti-Happy Hour Law/Regulations:

No

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

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

No

STATE:
General Comments:

MONTANA
See Montana Code Annotated.

Basis for a DWI Charge:

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

Under the influence of alcohol §61-8-401(1)(a)
0.10¹ §§61-8-406 & 61-8-407
0.10 §61-8-401(3)(c)
(1) Any Drug, (2) a Narcotic Drug and (3)
alcohol and any drug See §61-8-401(b), (c) &
(d).

Other:

For Commercial Motor Vehicle Operators, see p.
3-235.

Chemical Breath Tests for BAC/BrAC Level:

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 §61-8-402
No
Yes (Criminal Cases) §61-8-404(2)²
None

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:
Urine:
Other:

Yes §61-8-402(1)
Yes §61-8-402(1)
None

Adjudication of DWI Charges:

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

No
No
No (Note: A PSI given if the crime carries a
prison sentence of 1 yr or more.) §46-18-111

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration level of 0.10 or more or (2) a urine alcohol concentration of 0.10 or more (grams of alcohol per 75.3 milliliters of urine).

²See State v. Jackson, 672 P.2d 255 (Mont. 1983), which upheld the constitutionality of this provision on both Federal and State grounds.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

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

Refusal to Take Implied Consent

Chemical Test:

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

1st Refusal - Mandatory **susp for 90 dys**; 2nd or subsequent refusals w/n 5 yrs of a previous one; mandatory **rev for 1 yr**. No restricted probationary license can be issued. The peace officer shall immediately seize the defendant's drivers license and it shall be forwarded to the driver licensing division §61-8-402

Comment: Sec. 61-8-402 clearly provides that no restricted probationary license can be issued following susp/rev for an implied consent law violation. However, it may be possible to "stay" any licensing action if the person participates in a driver rehab/improvement program. See §61-2-302 and Footnote No. 3 on p. 3-236.

Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:
Term (Day, Month, Years,
Etc.):

DWI Off¹, 1st Off-24 cons hrs-60 dys; 2nd Off (w/n 5 yrs)-7 dys-6 mos; 3rd or sub. off (w/5 yrs)-30 dys-1 yr; §§61-8-401 & 61-8-714; Illegal Per Se Offs, 1st Off - Not more than **10 dys**; 2nd Off (w/n 5 yrs) - **48 cons hrs to 30 dys**; 3rd and subsequent offs (w/n 5 yrs) - **48 cons hrs to 6 mos**; 61-8-722. Neg. Veh. Assult²-**Not more than 1 yr**; see §45-5-205. See Special Note below.

Special Note: For persons under 18, the following sanctions apply to both regular DWI and illegal per offenses. (1) A fine may be imposed; this fine cannot exceed that which could be imposed on an adult. (2) Their license may be susp/rev; the period of susp/rev probably cannot exceed 1 yr (§61-5-208(2)). And, (3) The vehicle owned by or used by the minor may be impounded for 60 days. A person under 18 cannot be incarcerated for these offenses. See §61-8-723.

¹DWI offenses except illegal per se.

²Negligent Vehicle Assult-Driving while under the influence of alcohol that results in a serious bodily injury accident.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Mandatory Minimum Term:

DWI Offs¹, 1st Off-24 cons hrs (may only be suspended for the defendant's physical and mental well-being); 2nd Off (w/n 5 yrs)-**3 dys**, 48 hrs of which must be served cons (may not be suspended except for the defendant's physical or mental well-being); 3rd or subsequent offs (w/n 5 yrs) - **10 dys, 48 hrs** of which must be served cons (may not be suspended if the 3rd off occurred w/n 5 yrs of the first off) §61-8-714

Fine:

Amount (\$ Range):

DWI Off (except illegal per se), 1st Off-\$100-500; 2nd Off-(w/n 5 yrs)-**\$300-500**; 3rd and subsequent Off-(w/n 5 yrs)-**\$500-1,000**; Illegal Per Se Off, 1st Off-\$100-500; 2nd Off (w/n 5 yrs)- **\$300-500**; 3rd and subsequent Off-(w/n 5 yrs)-**\$500-1,000** Neg. Veh. Assult-**Not more than \$1,000**

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

Yes §46-18-201(a)(ix) (Note: This section allows the court to impose community service but such service is not in lieu of the mandatory imprisonment sanctions noted above for a DWI off.)

Restitution
(eg Victim's Fund)

Yes² Paid by the defendant to a victim. §46-18-201(a)(iv)

Other:

None

¹These mandatory sanctions do not apply to illegal per offenses.

²Note: Montana has a victims' compensation fund but it does not normally apply to injuries resulting from violations of the motor vehicle laws such as DWI; see §53-9-101 et seq.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "suspended" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they either (1) have a BAC level of 0.04 or more or (2) refuse to submit to a chemical test for alcohol concentration. For a separate subsequent violation either (1) of operating a CMV with a BAC level of 0.04 or more or (2) of refusing to submit to a chemical test, the "suspension" is for 10 yrs. (mand.). See §§61-1-134 and 5, 6 & 11 of Ch. 378 of the Laws of 1989.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

None

Other:

Under §61-5-206 & 61-5-208, a person's license can be susp for not more than 1 yr if they are involved in an accident resulting in either a death, personal injury or serious property damage. Such action may be taken without a preliminary hearing.

Post-DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

All DWI offs^{1&2}, 1st Off-Susp; 2nd off (w/n 5 yrs)-Rev; 3rd and subsequent off (w/n 5 yrs)-Rev §61-5-205(2) & 61-5-208 & 61-8-722(4) For persons under 18, their licensees may be Susp/Rev Neg. Veh. Assault-Rev

Term of License Withdrawal

(Days, Months, Years, etc.):

All DWI Offs¹, 1st Off-6 mos; 2nd off (w/n 5 yrs)-1 yr; 3rd and subsequent off (w/n 5 yrs)-1 yr Neg. Veh. Assault-1 yr §61-5-205 and 61-5-208 For persons under 18 the period of susp/rev probably cannot exceed 1 yr §61-5-208(2)

Mandatory Minimum Term of

Withdrawal:

All DWI Offs¹, 1st Off-None (Under §61-11-101, a restricted probationary license may be issued in lieu of a susp on the condition that the person attends an alcohol treatment program if available³); 2nd and subsequent off (w/n 5 yrs)-See Special Note under Rehabilitation below and Footnote No. 3 below. Neg. Veh. Assault-See also Footnote No. 3 below.

¹Includes illegal per se offs.

²Under §61-11-203(2)(d) a person receives 10 points on their driving record for either a regular DWI or an illegal per se off conviction.

³Under §61-2-302, a person, who has had their driving privileges susp. or rev., may have such action stayed (or may be issued a restricted probationary license); if they participate in a driver rehab. or improvement program. A person is eligible to participate in such a program if they meet one of the following two conditions. (1) They are subject to susp/rev because of a violation of the traffic laws or (2) they have completed 3 mos of a 1 yr rev (or have completed 1 yr of a 3 yr rev) and otherwise met the requirements for "reobtaining" a driver's license.

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

Other:

Rehabilitation:

Alcohol Education:

Yes all offs Either an alcohol education or alcohol treatment program is required. 61-8-714(4); Illegal Per Se offs - For any illegal Per Se off there is a mandatory requirement for the defendant to participate in either an alcohol education or treatment program. See §61-8-722(5).

Special Note: Under §61-5-208(2), for 2nd and sub. offs (w/n 5 yrs), a person's license is rev for 1 yr or until they complete an alcohol education/treatment program whichever is longer.

Yes See Alcohol Education above.

Alcohol Treatment:

Alcohol Education/

Treatment as an Altern-

ative to Criminal

Licensing Actions

(Describe):

1st DWI Off-Yes (See §61-11-101.)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

No

Terms Upon Which Vehicle

Will Be Released:

Other:

Yes-Limited For persons under 18, The vehicle owned by or used by the them may be impounded for 60 days. §61-8-723.

Miscellaneous Sanctions

Not Included Elsewhere:

None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Off:

No

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

Fine (\$ Range):

Mandatory Minimum Fine:

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Length of Term of

Licensing Withdrawal:

Mandatory Action--Minimum

Length of License

Withdrawal:

Other:

See Footnote No. 1 below.

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

Misd - 2 dys to 6 mos; §61-5-212

Mandatory Minimum Term

of Imprisonment:

None

Fine (\$ Range):

Not more than \$500; §61-5-212

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Susp or rev; §61-5-212

Length of Term of License

Withdrawal Action:

The period of such susp or rev is extended for an additional like period; §61-5-212

Mandatory Term of License

Withdrawal Action:

(Note: There may be no mandatory licensing action; see §61-2-302(9))

Habitual Offender Laws:

State Has Such Law (Yes/No):

Yes

Grounds for Being Declared an

Habitual Offender:

Accumulation of 30 points in a 5 yr period

Term of License Rev While

Under Habitual Offender Status:

3 yrs If a driver participates in a driver rehabilitation and improvement program, a restricted probationary license may be issued after 1 yr of the revocation period has passed; see §61-2-302(9).

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Misd §§61-11-201 and 61-11-215

Special Note: Even though this State does not have a vehicle homicide statute, it nevertheless, provides for a 1 yr license rev following a conviction for manslaughter resulting from the operation of a motor vehicle. §61-5-205(1) Only 3 mos of this action is mandatory. A probationary restricted license may be issued for the remaining portion of the revocation period if a person complies with the terms of a driver improvement program. See §61-2-302(9).

Other Criminal Actions Related to DWI: (continued)

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

Imprisonment (Term):	Not more than 1 yr
Mandatory Minimum Term of Imprisonment:	None
Fine (\$ Range):	Not more than \$1,000
Mandatory Minimum Fine (\$):	None
Licensing Actions (Specify):	None

Other State Laws Related To Alcohol Use:

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

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

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	21 §§16-3-301(3)(a) & (4) and 16-6-305 (Year Eff: 1987)
Minimum Age (Years) Possession:	21 §45-5-624 (There is an employment exemption.)
Minimum Age (Years) Consumption:	21 ¹ (Exemptions for medical purposes and for parents giving alcoholic beverages to their children who are under 21. §16-6-305)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	Yes §27-1-710 ^{2&3} (Note: The case law indicated below may have been abrogated by this law.)
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"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Yes *Hehring v. La Counte*, 712 P.2d 1329 (Mont. 1986) and *Bissett v. DMI, Inc.*, 717 P.2d 545 (Mont. 1986). Note: These cases may have been indirectly abrogated by §27-1-710.²

Dram Shop Actions-Social Hosts:	Yes §27-1-710 ²
Other:	None

¹The law provides that no one shall permit a person under 21 to consume an alcoholic beverage; see §16-6-305.

²Under §16-6-305(1)(b) & (c), a person over 21 can be held liable for the tortuous actions of a minor if such person sold/gave alcoholic beverages to the minor in an "intoxicating quantity." An "intoxicating quantity" is an amount of alcohol that could produce either (1) a BAC level of 0.05 or more or (2) substantial/visible mental/physical impairment.

³See *Jevning v. Skyline Bar*, 726 P.2d 326 (Mont. 1986).

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:

Misd §§16-3-301(3)(b), 16-6-304, 16-6-314 &
46-18-212(3)(b)

Term of Imprisonment:

Not more than **6 mos**

Fine (\$ Range):

Not more than **\$500** (Note: A civil fine may be
assessed by the licensing agency and such fine
is not to exceed \$1,500; see §16-4-406.)

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp or rev §16-4-406

Length of Term of License Withdrawal:

Not be more than 3 mos, the period of rev is not
specified in the statute.

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

Type of Criminal Action:

Misd 16-3-301(3)(a), 16-6-305, 16-6-314, and
46-18-212

Term of Imprisonment:

Not more than **6 mos**

Fine (\$ Range):

Not more than **\$500** (Note: A civil fine may be
assessed by the licensing agency and such fine
is not to exceed \$1,500; see §16-4-406.)

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp or rev §16-4-406

Length of Term License Withdrawal:

The period of susp may not be more than 3 mos;
The period of rev. is not be specified in the
statute.

Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No):

Yes¹ §16-3-106(2)

Anti-Consumption Law (Yes/No):

Yes - Driver and passengers §16-3-106(2)

¹The law states that "no common carrier or any other person shall open, break, or allow to be opened or broken any package or vessel containing liquor or drink or allow to be drunk or used any liquor there from while being carried or conveyed."

STATE:
General Comments:

NEBRASKA
See Revised Statutes of Nebraska.

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcoholic liquor §39-669.07(1)
Illegal Per Se Law (BAC/BrAC Level):	0.10¹ §39-669.07(2) & (3)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Any Drug §39-669.07(1)
Other:	For Commercial Motor Vehicle Operators, see p. 3-243.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	Yes §39-669.08(3)
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §39-669.08(2)
Implied Consent Law Applies to Drugs (Yes/No):	No
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) State v. Romell, 204 N.W.2d 573 (1973)
Other Information:	Note: A surviving driver (or pedestrian under 16 years old), who is involved in an accident where there has been a fatality, shall be required to submit to a BAC chemical test. The results of such test, however, can only be used for statistical purposes. §§39-6,104.08 & 39-6,104.09

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

Blood:	Yes
Urine:	Yes
Other:	None

Adjudication of DWI Charges:

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

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	Class V misd. \$100 fine ; No imprisonment §528-106 & 39-669.08(3)
Administrative Licensing Action (Susp/Rev):	None
Other:	None

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

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

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):

C1 W misds 1st off-30 dys & \$500 (Maximum); 2nd off (w/n 10 yrs)-30 dys (48 hrs mand. minimum¹); 3rd and subsequent (w/n 10 yrs)-3 mos-6 mos (maximum) (7 dys mand. minimum¹) §§28-106 & 39-669.08 Note: The court must impose the minimum sanction even if it suspends sentence or places a person on probation.

Administrative Licensing Action (Susp/Rev):

1st off-Rev 6 mos (60 dy minimum); 2nd off-Rev 1 yr (6 mos minimum); 3rd off-Rev 15 yrs (1 yr minimum) §§28-106 and 39-669.08 Note: The Court must impose the minimum license revocation periods even if it suspends sentence or places a person on probation.²

Other:

None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):

C1 W misd 1st off-30 dys; 2nd off (w/n 10 yrs)-30 dys; 3rd and subsequent offs (w/n 10 yrs)-3 to 6 mos §28-106; §39-669.07 DWI w/serious bodily injury-C1. II Misd-**Not more than 6 mos**; see §39-669.39.

Mandatory Minimum Term:

For C1 W misds 1st off- None; 2nd off (w/n 10 yrs)-48 hrs¹; 3rd and subsequent offs (w/n 10 yrs)-7 dys¹ The court must impose these minimum criminal sanctions even if it suspends sentence or places a person on probation.

Fine:

Amount (\$ Range):

1st off- \$500; 2nd off (w/n 10 yrs)-\$500; 3rd and subsequent offs (w/n 10 yrs)- \$500; DWI w/serious bodily injury-C1. II Misd.-**Not more than \$1,000**; see §39-669.39.

Mandatory Min. Fine (\$):

None

¹The minimum period of imprisonment, it appears, must be served consecutively; see State v. Texel, 433 N.W.2d 541 (Neb. 1989).

²These revocations are based upon a conviction under §39-669.08. However, under §39-669.16, the licensing agency can independently impose a 1 yr license rev for any chemical test refusal; this rev shall be dismissed if the person pleads guilty or no contest to a DWI offense.

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

Other Penalties:

Community Service: **None**

Restitution

(eg Victim's Fund)

Other:

Yes Victims' compensation fund §81-1801 et seq. Persons must attend and successfully complete a driver's education program of at least 8 hrs duration. §39-669.27

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law: **None**

Other:

None

None

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

Rev¹ §39-669.07 (See also §60-424.)

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off-6 mos; 2nd off (w/n 10 yrs)-1 yr; 3rd & sub. off (w/n 10 yrs)-15 yrs §39-669.07

Mandatory Minimum Term of

Withdrawal:

1st off-60 dys; 2nd off (w/n 10 yrs)-6 mos; 3rd & sub. off (w/n 10 yrs)-1 yr; §39-669.07 (The court must impose these minimum license revocation periods even if it suspends sentence or places a person on probation.)

Other:

Rehabilitation:

Alcohol Education:

Yes Convicted persons may be required to attend an alcoholism treatment program as a term of probation. §39-669.07

Alcohol Treatment:

Yes see above

¹There is also license revocation under the point system: 1st DWI off-6 points; 2nd DWI off-6 points; 3rd DWI off-12 points. An accumulation of 12 or more points w/n a 2 yr period from all traffic offenses requires revocation for at least 6 mos (or longer as the court may direct such as in DWI offenses). See §§39-669.26 & 39-669.27.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC (UrAC = grams of alcohol per 100 milliliters of urine) level of 0.04 or more, (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand.). In addition, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. See §§88, 113, 114 and 118 of LB-285 enacted in 1989.

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

Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):
Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority: **No**
Terms Upon Which Vehicle
Will Be Released:
Other: **None**
Miscellaneous Sanctions
Not Included Elsewhere: **None**

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes**¹ (1) Veh. Code §39-669.20 and (2) Crim. Code §§28-105, 28-106, & 28-306 which provide respectively for a C1 I Misd (unintentional death caused while operating a motor veh in violation of law except as noted) and a C1 IV Felony (if homicide was the result of DWI, reckless driving or willful reckless driving)

Sanctions:

Criminal Sanction:
Imprisonment (Term): (1) Veh. Code off-6 mos; (2) Crim. Code offs-C1 I Misd-1 yr and C1 IV Felony-5 yrs
Mandatory Minimum Term: **None**
Fine (\$ Range): (1) Veh. Code off-\$500; (2) Crim. Code offs-C1 I Misd-\$1,000 and C1 IV Felony-\$10,000
Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and
Type of Action: (1) Veh. Code off-Rev; (2) Crim. Code offs-C1 I Misd-Rev and C1 IV Felony-Rev; (A person must also attend and successfully complete a driver's education course of at least 8 hrs duration; see §39-669.27.) §§39-669.26, 39-669.27 & 60-424.

Length of Term of

Licensing Withdrawal: 6 mos from the date of revocation or after the date of release from confinement whichever is later.²

¹Special Note: There are two veh homicide laws; one in the rules of road sec. of the Veh. Code and the other in the Criminal Code.

²This revocation period is via the point system. A vehicle homicide offense results in an assessment of 12 points. An accumulation of 12 or more points w/n a 2 yr period results in a 6 mo. revocation. §§39-669.26 & 39-669.27

Other Criminal Actions Related to DWI: (continued)

Mandatory Action--Minimum Length of License Withdrawal: (An employment driving permit may be issued; see §§39-669.27 & 39-669.34.)

Other: **None**

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

Sanction:

Criminal:

Imprisonment (Term): 1st off-C1 III Misd-3 mos; 2nd off-C1 III Misd-3 mos; 3rd or subsequent off-Class IV felony-5 yrs §§60-430.01, 39-669.07 & 39-667.08

Mandatory Minimum Term of Imprisonment: **None**

Fine (\$ Range): 1st off-C1 III Misd-\$500; 2nd off-C1 III Misd-\$500; 3rd or subsequent off-C1 IV felony-\$10,000

Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev): 1st & sub offs-Driver ordered not to operate any motor veh.¹ (Special Note: Under §60-430.06, a motor veh, operated by any person whose license has either been revoked or suspended, may be impounded for a period of time not exceeding 30 dys.)

Length of Term of License Withdrawal Action: 1st off-1 yr; sub. off-2 yrs §60-430.01

Mandatory Term of License Withdrawal Action: 1st off-1 yr; sub. off-2 yrs §60-430.01

Habitual Offender Laws:

State Has Such Law (Yes/No): **No**

Grounds for Being Declared an Habitual Offender:

Term of License Rev While Under Habitual Offender Status:

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

¹Sanctions for driving while revoked under the point system. Criminal sanctions--Class III Misd: Jail-3 mos; fine-\$500. Admin. Actions: (1) The license revocation as given under the point system must remain in effect for 1 yr. (2) However, if the license revocation as given under the point system was a person's second revocation under such system w/n a 5 year period, such revocation must remain in effect for 3 years. See §39-669.30.

Other Criminal Actions Related to DWI: (continued)

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

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

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

- State Has Such a Law (Yes/No): **Yes** §39-6,104.07
- BAC Chemical Test Is Given to the the Following Persons:
 - Driver: **Yes**, if dead within 4 hrs of the accident.
 - Vehicle Passengers: **No**
 - Pedestrian: **Yes**, if at least 16 yrs old and died within 4 hrs of the accident.

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

- Minimum Age (Years) Sale/Purchase: **21** (Year Eff: 1985) §§53-103(23), 53-180 & 53-180.01
- Minimum Age (Years) Possession: **21** (Exemptions for possession in minor's "permanent place of residence" and for certain employment purposes by those 19 yrs old or older) §§53-102, 53-103(2), 53-103(23), & 53-180.02
- Minimum Age (Years) Consumption: **None**

Dram Shop Laws and Related Legal Actions:

- State Has a Dram Shop Law (Yes/No): **No**
- "Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation): **No** (Note: For a case denying liability, see Holmes v. Circo, 244 N.W.2d 65 (1976))
- Dram Shop Actions-Social Hosts: **No** (No Cases)
- Other: **None**

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

- Type of Criminal Action: **C1 I Misd; §53-180 §53-180.05 §28-106**
- Term of Imprisonment: **Not more than 1 yr**
- Fine (\$ Range): **Not more than \$1,000**

Other State Laws Related To Alcohol Use: (continued)

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

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes; §53-128 §53-1,104**
Length of Term of License Withdrawal: **Indeterminate**

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

Type of Criminal Action: **Cl I Misd; §53-180 §53-180.05 §28-106**
Term of Imprisonment: **Not more than 1 yr**
Fine (\$ Range): **Not more than \$1,000**

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

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes; §53-128, §53-1,104**
Length of Term License Withdrawal: **Indeterminate**

Anti-Happy Hour Laws/Regulations:

Yes (regulation)
(Note: This regulation does not regulate the price of "single" drinks. It does, however, prohibit the selling of an unlimited quantity of drinks at one price or two or more drinks at the same price.)

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

Open Container Law (Yes/No): **No**
Anti-Consumption Law (Yes/No): **Yes - Driver and passengers; §53-186 (The consumption of alcoholic liquors inside vehs on public roadways is unlawful "unless authorized" by the State or local government having jurisdiction over the particular public roadway where the consumption is to take place.)**



STATE:
General Comments:

NEVADA
See Nevada Revised Statutes.

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §484.379(1)(a)
Illegal Per Se Law (BAC/BrAC Level):	0.10 ¹ §484.379(1)(b)
Presumption (BAC Level):	0.10 §484.381(2)(c)
Types of Drugs/Drugs and Alcohol:	(1) A Controlled Substance or a Combination of Intoxicating Liquor and a Controlled Substance and (2) Any Chemical, Poison, Organic Solvent and Any Compound or a Combination of These. See §484.379(2).
Other:	For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	Yes §484.382
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §484.383(1)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §484.383(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §484.389
Other Information:	Note: A BAC chemical test may be given without consent if (1) there was a death or substantial bodily harm to another person or (2) the driver to be tested was convicted of a previous DWI offense w/n 7 yrs; see §484.383(8).

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

Blood:	Yes §484.383(1)
Urine:	Yes §484.383(1) ²
Other:	Or other unspecified bodily substances §484.383(1)

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more. §1 of Ch. 136 of the laws of 1989

²A urine test can only be requested under two conditions. (1) A driver has been arrested for an alcohol driving offense and it is determined that they have hemophilia or a heart condition which would exempt them from a blood test or (2) a driver has been arrested for a drug driving offense. §484.383(4), (6) & (7)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): The State's licensing agency/department is required to promulgate regulations that specify the grounds (e.g., alcohol concentration levels) and sanctions for "disqualifying" a person from operating a CMV. These regulations cannot be more restrictive than the Federal CMV/CDL regulations adopted pursuant to 49 USC Appx §2901 et seq. See §483.908.

STATE - Nevada

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No**
Anti-Plea Bargaining Statute (Yes/No): **Yes** (Note: A DWI charge cannot be exchanged for a lesser charge unless there is no evidence to support such a DWI charge. §484.3792(3))
Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes** For 1st DWI offs. (§484.3792(1)) and for felony offs (§176.135.)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail): **None**
Administrative Licensing Action (Susp/Rev): **Rev-90 dys** §484.384(3)
Other: **None**

Refusal to Take Implied Consent Chemical Test:
Criminal Sanction (Fine/Jail): **None**
Administrative Licensing Action (Susp/Rev): **1st Refusal - Rev 1 yr mandatory; 2nd or subsequent Refusals (w/n 7 yrs) - Rev 3 yrs mandatory; §§484.384(1) & (2) and 484.385.**
Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:
Imprisonment: 1st & 2nd DWI offs are misdys; 3rd DWI offs are felonies (§193.120)²
Term (Day, Month, Years, Etc.): 1st off-2 dys-6 mos; 2nd off (w/n 7 yrs) - 10 dys-6 mos; 3rd and subsequent off (w/n 7 yrs)-1-6 yrs (State prison); §§484.379 and 484.3792.
Mandatory Minimum Term: 1st off- 2 dys (1 dy if rehabilitation is taken³); 2nd off (w/n 7 yrs) - 10-dys¹ (5 dys if rehabilitation is taken³); 3rd and subsequent off (w/n 7 yrs)-1 yr¹
Fine:
Amount (\$ Range): 1st off-\$200-\$1,000; 2nd off (w/n 7 yrs)-\$500-\$1,000; 3rd and subsequent off (w/n 7 yrs)-\$2,000-\$5,000; Special Note: 1st off and 2nd off (w/n 7 yrs)-If rehabilitation is taken, the fine can be no more than the minimum fine indicated.
Mandatory Min. Fine (\$): **None**

¹At least 48 hrs. must be served cons; see §484.3792(4).

²If there is substantial bodily harm related to a DWI offense, the sanctions imposed are the same as for DWI vehicle homicide (§484.3795); see pp. 3-252 & 3-253.

³See §484.3794.

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

Other Penalties:

Community Service:

1st off-48 hrs (alternative to imprisonment) or, if rehabilitation is taken, 24 hrs

Restitution

(eg Victim's Fund)

Yes (1) As a condition for a suspended sentence, the court may order a defendant to pay compensation to a victim (§§4.373 & 5.055) and (2) via a victims' compensation fund (§217.010 et seq.).

Other:

Residential Confinement. The court may order that the defendant be confined to his/her home for a conviction of a misd. off. This sentence may be supervised by means of electronic devices. See §§4.430, 4.440, 5.053 & 5.054.

Ignition Interlock. The court may require a defendant to install an "ignition interlock" device on their vehicle. A defendant, however, still has to serve any minimum mandatory imprisonment sentence. The court can require a defendant to install this device as a condition either to suspend a sentence or to reinstatement a license. See §4 of Ch. 742 of the laws of 1989. Note: The law is not specific on whether the installation of this device has any impact on mandatory licensing actions.

A **Civil Fine** of **\$35** must be imposed. This fine is paid into a victims' compensation fund. See §484.3797.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes-0.10 BAC Level; rev 90 dys (Mandatory; however, see **Note** below.) §§484.383, 484.384 & 484.385.

Note: If a license rev for a DWI off conviction follows one for an admin. per se action, the admin. per se rev is cancelled. The driver shall be given credit towards any DWI off conviction rev period for any time he/she was not eligible for a license under the admin. per se rev. Also, following the cancellation of the administrative per se rev, the legal provisions, concerning min. mandatory terms of license withdrawal and issuance of restricted licenses after a DWI off conviction, would apply.

Other:

Under §§483.473(1)(a) & 483.490(1), a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing.

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

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st off-Rev; 2nd off (w/n 7 yrs)-Rev; 3rd and subsequent offs (w/n 7 yrs)-Rev; §483.460.

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off-90 dys¹ (restricted license allowed); 2nd off (w/n 7 yrs)-1 yr; 3rd and subsequent off (w/n 7 yrs.)-3 yr¹ §483.460

Mandatory Minimum Term of Withdrawal:

1st off-45 dys¹; 2nd off (w/n 7 yrs)-1 yr (§§483.460(1)(b)(5) & 483.490(2)); 3rd and subsequent offs (w/n 7 yrs)-1 1/2 yrs (483.490(2))

Other:

Rehabilitation:

Alcohol Education:

Yes A temporary alcohol education program may be established; see §5 of Ch. 583 of the laws of 1987.

Alcohol Treatment:

Yes For 1st & 2nd offs §484.3794

Alcohol Education/

Treatment as an Alternative to Criminal Licensing Actions (Describe):

Yes¹ for all offs except death or bodily injury offs

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

No

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Miscellaneous Sanctions

Not Included Elsewhere:

None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense:

Yes, (1) Death caused by reckless driving where there is wanton disregard for the safety of others-felony (§193.120) §484.377 and (2) death caused by a DWI off-felony (§193.120) §484.3795 (See Special Note under "Sanctions: Other" below.)

¹ 1st off-After half of the rev period has passed and the DWI offender has completed treatment a treatment program, a restricted license may be issued; see §§483.460(3) & 483.490(2).

Other Criminal Actions Related to DWI: (continued).

Sanctions:

Criminal Sanction:

Imprisonment (Term): 1 to 6 yrs-Reckless driving; 1 to 20 yrs¹-DWI related offs.³ §§484.377 & 484.3795
Mandatory Minimum Term: For a DWI related death-1 yr^{1&2}
Fine (\$ Range): Not more than \$5,000-reckless driving; \$2,000 to \$5,000¹-DWI related offs.
Mandatory Minimum Fine: For a DWI related death-\$2,000^{1&2}

Administrative Licensing Action:

Licensing Authorized and Type of Action: Rev §483.460 (Applies to either reckless driving or DWI related deaths.)

Length of Term of Licensing Withdrawal: For a DWI related death, 3 yrs (Note: For any non-alcohol related death or other manslaughter off. not noted above caused by veh operations, the driver's license is revoked for 1 yr; see §483.460(1)(b)(1))

Mandatory Action--Minimum

Length of License Withdrawal:

1½ yrs (Death related DWI offs.); 6 mos (Non-alcohol related death offs.) §§483.460(1) & 483.490(2)

Other:

A person, who has been convicted of DWI related vehicle homicide, may be required to serve a ten (10) period of probation; see §484.3795(3)(b).

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

Sanction:

Criminal:

Imprisonment (Term): Misd - 30 dys-6 mos §483.560
Mandatory Minimum Term of Imprisonment: 30 dys
Fine (\$ Range): \$500 to \$1,000
Mandatory Minimum Fine: \$500

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev):

For driving on a suspended license--a susp; For driving on a revoked license--Rev; §483.560

¹This sanction also applies to person who cause substantial bodily harm as a result of a DWI offense; see §484.3795(1).

²This minimum sanction may not be suspended nor may probation be granted.

³For DWI related vehicle homicide, the prosecuting attorney may not dismiss that charge unless such charge cannot either be supported by probable cause or proved at the time of trial; see §484.3795(2).

Other Criminal Actions Related to DWI: (continued)

Length of Term of License

Withdrawal Action:

The original susp period extended a like period
The original rev extended 1 yr §483.560

Mandatory Term of License

Withdrawal Action:

The original susp period extended a like period;
The original rev extended 1 yr; §483.560;
(Note: The restricted license provisions of
§483.490(2), as noted in the Sanction After
DWI/Pre-Sentencing - DWI Term of License
Withdrawal heading may apply.)

Habitual Offender Laws:

State Has Such Law (Yes/No):

No

Grounds for Being Declared an
Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes §484.394

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes

Vehicle Passengers:

Yes

Pedestrian:

Yes

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1933) §§202.020 & 202.055

Minimum Age (Years) Possession:

21 (In a public place) §202.020

Minimum Age (Years) Consumption:

21 Applies to any place where alcoholic
beverages are sold. §202.020

Other State Laws Related To Alcohol: (continued)

Dram Shop Laws and Related Legal Actions:

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

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

No (Note: For cases denying liability, see
Hamm v. Carson City Nugget, 450 P.2d 358 (Nev.
1969), and Yoscovitch v. Wasson, 645 P.2d 975
(Nev. 1982))

Dram Shop Actions--Social Hosts:

No¹

Other:

None

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

Type of Criminal Action:

No (Note: The State allows local governments
broad power to license and regulate liquor
retail establishments. Therefore, local laws
may have been enacted to control the sale of
alcoholic beverages to intoxicated persons.)

Term of Imprisonment:

N/A

Fine (\$ Range):

N/A

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

N/A

Length of Term of License Withdrawal:

N/A

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

Type of Criminal Action:

Misd §§193.150 & 202.055

Term of Imprisonment:

Not more than **6 mos**

Fine (\$ Range):

Not more than **\$1,000**

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

(Note: Controlled by local law.)

Length of Term License Withdrawal:

(Note: Controlled by local law.)

¹See Bell v. Alpha Tau Omega Fraternity, 642 P.2d 161 (Nev. 1982), where the court held that there was no social host liability in a situation where a minor guest was injured after consuming alcoholic beverages at a party given by the host.

STATE - Nevada

Other State Laws Related To Alcohol: (continued)

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

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

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

Yes, driver only §484.448 (The law states that
"it is unlawful for any person to drink any
intoxicating liquor in a motor veh while such
person is driving such motor veh upon a
highway.")

STATE:

NEW HAMPSHIRE

General Comments:

See New Hampshire Revised Statutes Annotated.

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor
§§265:82(I)(a) & 265:82a(I)(a)

Illegal Per Se Law (BAC/BrAC Level):

0.10¹ §§265:82(I)(b) & 265:82-a(II)

Presumption (BAC Level):

None

Types of Drugs/Drugs and Alcohol:

(1) Any Controlled Drug and (2) any Combination
of Intoxicating Liquor and Controlled Drugs See
§§265:82(I)(a) & 265:82-a(I)

Other:

A BAC/BrAC level of **0.10** is prima facie evidence
of intoxication. §265:89

For Commercial Motor Vehicle Operators, see p.
3-260.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:

Yes §265:92-a

Implied Consent Law:

Arrest Required (Yes/No):

Yes §265:84

Implied Consent Law Applies to

Drugs (Yes/No):

Yes §265:84

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal & Civil Cases) §265:88-a

Other Information:

None

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes §265:84

Urine:

Yes §265:84

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

No (Note: The law requires the filing of
reports on plea bargaining agreements; since
these reports are public records, they are
available for public inspection; see §265:82-c.)

Pre-Sentencing Investigation Law (PSI)

(Yes/No):

No (Note: Under §651:4, a pre-sentence
investigation is not required in misdemeanor
cases.)

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration level of 0.10 or more or (2) a urine alcohol concentration of 0.10 or more; see §259:3-a.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): **None**
Administrative Licensing Action (Susp/Rev): **None**
Other: **None**

Refusal to Take Implied Consent Chemical Test:

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

1st refusal where there has been no previous DWI off-**Rev for 90 dys**; 2nd refusal or a 1st refusal where there has been a previous DWI off-**Rev for 1 yr**; 265:92

Other: Special Note: These Revs are mandatory. See the Footnote No. 1 below.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:
Term (Day, Month, Years, Etc.):

1st off-Violation; No term of imprisonment 2nd and subsequent offs (w/n 7 yrs.) Misd-Not more than **1 yr**; 265:82 & 265:82-b, I(b) & 651:2; Aggravated DWI²-Misd.-Not more than **1 yr**; 265:82-a, 265:82-b, II & 651:2 Aggravated DWI²-Serious Bodily Injury-C1 B Felony-Not more than **7 yrs** §§265:82-b, II & 651:2, II 2nd and subsequent off (w/n 7 yrs)-Misd, **10 cons dys**³

Mandatory Minimum Term:

¹A person holding an "at risk" probationary license whom police have reasonable cause to believe is driving with a BAC/BrAC level of 0.03 and who refuses to take a BAC test, shall have their license suspended for 90 days. See §263:14-a(III). See also, Miscellaneous Sanctions on p. 3-260.

²Aggravated DWI (§265:82-a) is a DWI offense where there is either speed in excess of 30 MPH over the speed limit or a 0.20 BAC/BrAC level.

³The 10 con. dys are to be served as follows: 3 con. 24 hour periods in the county house of corrections and 7 con. 24 hour periods in a State operated multiple DWI offender intervention detention center. See §265:82-b(I)(b)(1) & (III).

Special Note: Any person who has completed a multiple DWI offender intervention program and who is subsequently convicted of a DWI offense shall be imprisoned for 30 con. 24 hour periods. In addition, they must complete, at their own expense, a 28 day treatment program before their license may be restored. See §265:82-b, II-a.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Fine:

Amount (\$ Range):

1st off-Not more than \$1,000; 2nd and subsequent offs (w/n 7 yrs) Misd-Not more than \$1,000; Aggravated DWI¹-Misd- \$350-1,000 Aggravated DWI¹-Serious Bodily Injury-\$500-\$2,000 (§265:82-b, III)

Mandatory Min. Fine (\$):

Aggravated DWI¹-Misd-\$350 (265:82-b, III)
Aggravated DWI¹-Serious Bodily Injury-\$500 (§265:82-b, III)

Other Penalties:

Community Service:

None

Restitution

(eg Victim's Fund)

Payment by the defendant to the victim; see §651:62 et seq.

Other:

There are two (2) special assessments (1) An assessment of either \$2 or 10% of the fine imposed; this assessment is used to fund police training. And, (2) an assessment of 2% of the fine imposed; this assessment is used to fund local victim assistance programs. See §188-F:31.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

None

Other:

Under §§263:56(I)(a) & 263:56(III), a person's license may be susp/rev for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that requires mandatory license rev (e.g., DWI). A preliminary hearing is required before such action can be taken.

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st off-Rev; 2nd off (w/n 7 yrs.)-Rev; 3rd and subsequent offs (w/n 10 yrs)-Rev; Aggravated DWI²-Rev; (Note: See the rehabilitation section for this State.) §§263:65 & 265:82-b

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off-90 dys-2 yrs; 2nd off (w/n 7 yrs)-3 yrs; 3rd and subsequent offs (w/n 10 yrs)-Indefinitely; Aggravated DWI²-1 yr

Mandatory Minimum Term of

Withdrawal:

1st off-90 dys; 2nd off (w/n 7 yrs)-3 yrs; 3rd and subsequent offs (w/n 10 yrs)-3 yrs; Aggravated DWI²-1 yr; 265:82-b(III)

¹See Footnote No. 2 on p. 3-258.

²Aggravated DWI (§265:82a): A DWI offense where there is either serious bodily injury, speed in excess of 30 MPH over the speed limit or a 0.20 BAC level.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Other:

Rehabilitation:

Alcohol Education:

Yes (Must be completed before license can be restored for any alcohol related driving off; §263:65a)

Alcohol Treatment:

Alcohol Education/
Treatment as an Alternative to Criminal Licensing Actions.
(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

None

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Miscellaneous Sanctions

Not Included Elsewhere:

Any person who shall apply for reissuance of their license following an alcohol offense conviction is an "at risk" driver and their license shall be probationary for 3 yrs. Such probationary license may be suspended from **90 to 180 days** if the driver operates a motor vehicle with BAC/BrAC level of 0.03. See §263:14a(I) & (II). Note: This suspension may not be mandatory.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Off:

Yes - Negligent Homicide-C1 A felony-if death results from the operation of a motor veh while DWI §630:3, II

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Not more than **15 yrs** §651:2, II(a)

Mandatory Minimum Term:

None

Fine (\$ Range):

Not more than **\$2,000** §651:2, IV(a)

Mandatory Minimum Fine:

None

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's privilege to operate a CMV is suspended for at least 1 yr. (1 yr mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) are under the influence of alcohol with a BAC/BrAC/UrAC level of 0.04 or more or (2) are under the influence of a controlled substance. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the suspension is for life (10 yrs mand.). In addition, a CMV operator who has any alcohol in their system must be placed "out-of-service" for 24 hours. See §§259:3-b, 259:12-e, 259:14, 259:20-a, 263:94, 263:95 and 263:96.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:

Licensing Authorized and
Type of Action: **Rev** §630:3, III
Length of Term of
Licensing Withdrawal: **Up to 7 yrs** §630:3, III
Mandatory Action--Minimum
Length of License
Withdrawal: **None**
Other: **None**

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

Sanction:

Criminal:

Imprisonment (Term): **Misd - Not more than 1 yr** §263:64
Mandatory Minimum Term
of Imprisonment: **7 cons 24 hrs periods**
Fine (\$ Range): **Not more than \$1,000**
Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev): **Rev** §263:64(IV)
Length of Term of License
Withdrawal Action: **An additional 1 yr**
Mandatory Term of License
Withdrawal Action: **An additional 1 yr**

Habitual Offender Laws:

State Has Such Law (Yes/No): **Yes** §259:39
Grounds for Being Declared an
Habitual Offender: **3 serious offs. (w/n 5 yrs), 12 moving
violations (w/n 5 yrs) or 1 serious off. and 8
moving violations (w/n 5 yrs)**

Term of License Rev While

Under Habitual Offender Status: **Rev. 4 yrs** 262.19, III

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

Note: Type of off is not specified in the
statute. It is probably a C1 B felony with
modifications in the penalty as provided in the
habitual offender law. See §625:9, III(a)(2)

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

Imprisonment (Term): **1-5 yrs** §262:23

Mandatory Minimum Term of
Imprisonment:

1 yr

Fine (\$ Range):

No fine stated in the statute

Mandatory Minimum Fine (\$):

N/A

Licensing Actions (Specify):

**No specific licensing action provided for this
off**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

Yes, see §262-A:69-1. Required, see §265:93

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1985) §§175:6, 175:7 & 175:13-a

Minimum Age (Years) Possession:

21 (There are employment exemptions; see §175-8
for details.) §175:8-a

Minimum Age (Years) Consumption:

None

Dram Shop Laws and Related Legal Actions:

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

Yes §507-F:1 et seq.¹ (Note: This statute
appears to have abrogated previous case law
concerning dram shop liability; see §507-F:8.)

"Dram Shop Law" Concept Has Been

Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State. (Case
Citation):

No (The following case law appears to have been
abrogated by §507-F:1 et seq. (the dram shop
statute). Burns v. Bradley, 419 A.2d 1069
(1980) which held that New Hampshire permits a
plaintiff to maintain a common law action
against a liquor licensee for injuries received
as a result of being served additional liquor
while in an intoxicated state, 419 A.2d 1069,
1071 and Ramsey v. Anctil, 211 A.2d 900 (1965).)

Dram Shop Actions-Social Hosts:

No (No Cases)

Other:

None

¹New Hampshire's Dram Shop Law is similar to the Model Alcoholic Beverage Retail Licensee Liability Act of 1985. This model law was developed via a grant for the National Institute on Alcohol Abuse and Alcoholism.

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action: **Misd** (For corporations-Felony) §§175.6, and
651:a(II)(c), (IV)(a) & (IV)(b)
Term of Imprisonment: **Not more than 1 yr**
Fine (\$ Range): **Not more than \$1,000** (For corporations-not more
than \$10,000)

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

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes** §178:11
Length of Term of License Withdrawal: **Susp**, time period is not specified in the statute

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

Type of Criminal Action: **Misd** (For corporations-Felony) §§175:6, 182:1
and 651:2(II)(c), (IV)(a) & (IV)(b)
Term of Imprisonment: **Not more than 1 yr**
Fine (\$ Range): **Not more than \$1,000** (For corporations-not more
than \$10,000)

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

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes** §178:11
Length of Term License Withdrawal: **Susp**; time period is not specified in the statute

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

Other State Laws Related To Alcohol Use: (continued)

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

Open Container Law (Yes/No):

No Note: A person under 20 years of age, except when accompanied by a parent or legal guardian, shall not have an open container of an alcoholic beverage in a motor vehicle. See §265:81

Anti-Consumption Law (Yes/No):

Possible - driver and passengers; §177:4 (The law states that "...liquor sold in a state store shall not be consumed in a public place."

Note: The state is the only seller of sealed packaged alcoholic beverages; however, this would, it appears, not apply to packages purchased outside of the state.)

STATE:
General Comments:

NEW JERSEY
See New Jersey Statutes Annotated.

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §39:4-50(a).
Illegal Per Se Law (BAC Level):	0.10 §39:4-50(a)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	(1) Narcotic, (2) Hallucinogenic or (3) Habit-Producing Drug. See §39:4-50(a).
Other:	None

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Probably Yes However, see §39:4-50.2(a) where only "reasonable grounds" seem to be required. Under §39:4-50.4a, a driver's license can only be revoked when the refusal is based on an arrest.

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

No

Yes (Criminal Cases) See State v. Tabisz, 322 A.2d 453 (Super. 1974)

Other Information:

Tests for alcohol shall be made on automobile drivers who survive traffic accidents fatal to others; see §26:2B-24 and State v. Figueroa, 515 A.2d 242 (A.D. 1986), certif. den. 516 A.2d 204.

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

Blood:	No
Urine:	No
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes §39:4-50(b)

Sanctions for Refusal to Submit to a
Chemical Test:

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

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

Refusal to Take Implied Consent

Chemical Test:

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

Fine: **\$250-500** §39:4-50.4a

Rev for 6 mos (Mandatory); **Rev period is two (2)**
yrs (Mandatory) if the driver has had a prior
refusal; §§39:4-50.2 and 39:4-50.4a

Other:

None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

1st off-Not more than 30 dys; 2nd off (w/n 10
yrs)-48 cons hrs-90 dys; 3rd and subsequent offs
(w/n 10 yrs)-Not less than 180 dys; 39:4-50

Mandatory Minimum Term:

1st off-(See Rehabilitation on p. 3-267.); 2nd
off (w/n 10 yrs)-48 cons hrs (See Rehabilitation
on p. 3-267.); 3rd and subsequent offs (w/n 10
yrs)-90 dys³ (See Rehabilitation on p. 3-267.)

Fine:

Amount (\$ Range):

1st off-\$250-400²; 2nd off (w/n 10 yrs)
-\$500-1,000²; 3rd and subsequent offs (w/n 10
yrs)-\$1,000² §39:4-50

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

2nd off-30 dys¹; 3rd and subsequent off (w/n 10
yrs)-Not more than 90 dys as an alternative to
imprisonment; i.e. not more than 90 dys of the
180 dy sentence may be served performing
community service.

Restitution

(eg Victim's Fund)

Yes⁴ §§2C:1-5(b), 2C:43-2, 2C:43-3, & 2C:44-2
(Paid by the defendant to a victim)

Other:

None

¹May be mandatory and in addition to the minimum term of imprisonment.

²In addition to any fine, defendants must pay the following fee and surcharge. Defendants must pay an \$80 fee to the Alcohol Education and Enforcement Fund (§39:4-50(b)), and are charged a \$100 surcharge which goes into a Drunk Driving Enforcement Fund (§39:4-50.8).

³Statute not specific; suspended sentence/probation may still be possible under various provisions of the criminal justice code.

⁴A victim might also be able to receive compensation from the Violent Crimes Compensation Board. The Board is authorized to make payments to persons who suffer injuries as a result of "any ... crime of violence" (§52:4B-11(b)); see generally §52:4B-1 et seq.

Comment: DWI offenses are not "crimes" but "petty offenses;" see State v. Dively, 458 A.2d 502 (N.J. 1983).

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

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

None

Other:

For an "alleged" DWI relate injury or death (as well as for other serious driving offenses), the licensing agency may issue a preliminary suspension without a hearing. When the agency notifies the driver of the preliminary action, it also advises them of any final licensing action that is to be taken. The driver can, of course, request a hearing prior to the final action being taken, see §39:5-30(e). Also, under §39:5-30(a), the licensing agency can suspend, revoke or prohibit the driving privileges of a person for any violation of the traffic laws or on "other reasonable grounds."

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

Rev (probably) The statute uses the terminology "forfeit his right to operate a motor veh." §39:4-50

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off-6 mos-1 yr; 2nd off-2 yrs; 3rd and subsequent offs-10 yrs

Mandatory Minimum Term of

Withdrawal:

1st off-6 mos; 2nd off-2 yrs; 3rd and subsequent offs-10 yrs

Note: A person convicted of a DWI offense must satisfy the requirements of a program of alcohol education and rehabilitation approved by the Director of the Division of Motor Vehicles. Failure to satisfy such requirements shall result in a driver's license rev or susp or continuation of rev or susp until such requirements are satisfied (unless stayed by Court Order in accordance with Rule 7:8-2 of the N.J. Court Rules, 1969, or §39:5-22). See §39:4-50(b).

Other:

Rehabilitation:

Alcohol Education:

Yes

Alcohol Treatment:

1st Off-Yes¹; 2nd Off-Yes²; 3rd and subsequent offs-Yes³ §39:4-50

¹There appears to be a mandatory treatment of from 12 to 48 hrs (spent during two consecutive days of not less than six hours each day) which is to be spent in an intoxicated driver resource center.

²The imprisonment term may be served in an intoxicated driver resource center.

³The imprisonment term may be served in an inpatient rehabilitation facility but not an intoxicated driver resource center.

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

Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe): See Note on p. 3-267.

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority: **No**
Terms Upon Which Vehicle
Will Be Released:
Other: **None**

Miscellaneous Sanctions
Not Included Elsewhere: A DWI offender must pay the following insurance
surcharges: 1st & 2nd offs-not less than
\$1,000³; and, 3rd off (w/n 3 yrs)-not less than
\$1,500³. See §17:29A-35(b)(2).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such Law/Type of off: **Yes** Crime of the third degree.¹ Death must
have resulted from the reckless operation of the
veh. "Death by auto" §2C:11-5

Sanctions:
Criminal Sanction:
Imprisonment (Term): **3 to 5 yrs** §2C:43-6(a)(3)
Mandatory Minimum Term: **270 dys**² (or as an alternative 270 dys of
community service) if offense was DWI related.
Fine (\$ Range): Not more than **\$7,500** §2C:43-3(b)
Mandatory Minimum Fine: **None**
Administrative Licensing Action:
Licensing Authorized and
Type of Action: **None**
Length of Term of
Licensing Withdrawal:
Mandatory Action--Minimum
Length of License
Withdrawal:
Other: **Restitution** §2C:43-3

¹This offense is not specifically classified as either a "felony" or a "misdemeanor." I.e., the criminal code (Title 2C) does not define these terms. To cope with this lack of definitions, the N.J. Supreme Court has held that a crime can be considered "equatable" to a "common law felony" if a defendant can be sentenced to the State prison for more than 1 yr; see State v. Doyle, 200 A.2d 606 (N.J. 1964); for a later case, see Kaplowitz v. State Farm Mutual Auto. Ins. Co., 493 A.2d 637 (N.J. Super. L. 1985). However, §2C:43-1(b) provides that any crime, not listed in Title 2C and classified as a "high misdemeanor," is considered to be a crime of the Third Degree. As a result, a conflict appears to exist in the law.

²The 270 days may be served in either confinement, community service or a combination of the two; see §2C:11-5 and State v. Pineda, 546 A.2d 578 (A.D. 1988).

³This surcharge must be paid annually for three (3) years.

Other Criminal Actions Related to DWI: (continued)

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

Sanction:

Criminal:

Imprisonment (Term): Not more than **90 dys** §39:3-40

Mandatory Minimum Term
of Imprisonment: **None**

Fine (\$ Range): **\$500**

Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev): **Susp; §39:3-40**

Length of Term of License
Withdrawal Action: **An additional period of not less than 1 yr nor
more than 2 yrs; §39:3-40**

Mandatory Term of License
Withdrawal Action: **1 yr**

Habitual Offender Laws:

State Has Such Law (Yes/No): **No**

Grounds for Being Declared an
Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

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

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No): **Yes §26:2B-24**

BAC Chemical Test Is Given to the
the Following Persons:

Driver: **Yes**

Vehicle Passengers: **No**

Pedestrian: **Yes**

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: 21¹ §§33:1-77 & 33:1-81 (Year Eff: 1983)
Minimum Age (Years) Possession: 21¹ §2C:33-15 (employment exemption)
Minimum Age (Years) Consumption: 21¹ §2C:33-15, 9:17B-1 & 33:1-81(b)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): Yes §2A:22A-1 et seq. In order to be held liable, it must be shown that the licensee served alcoholic beverages to either a "minor" or a "visibly intoxicated" person.

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

No (Note: Previous case law (e.g., Rappaport v. Nichols, 156 A.2d 1 (1959)) has been abrogated by the above dram shop statute.)

Dram Shop Actions-Social Hosts:

Yes §2A:15-5.5 et seq. These provisions provide the exclusive remedy against a social host who has served alcoholic beverages to an injury causing guest where the guest (1) is over the legal drinking age and (2) is visibly intoxicated; furthermore, the injuries must be the result of negligent operation of a vehicle by the guest (§2A:15-5.6). Previous case law concerning "adult" guests appears to have been abrogated by these sections; see Kelly v. Gwinnell, 476 A.2d 1219 (N.J. 1984). However, common law liability against social hosts who serve alcoholic beverages to persons under the legal drinking age does not appear to have been affected by the above sections; see Linn v. Rand, 356 A.2d 15 (N.J. Super.A.D. 1976).

Other:

See Footnote No. 2 below.

¹Possession or consumption in a public place.

²Under a New Jersey regulation, NJAC 13:2-23-1, a bartender can be held liable for the injuries of either an intoxicated patron or a person the patron injured if the bartender continued to serve alcoholic beverages to the patron when it should have been known that such person was intoxicated. Note: This regulation may have been abrogated by the dram shop statute.

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:

Probably a petty disorderly persons offense¹
(See Regulation NJAC 13:2-23:1 which was
promulgated under §33:1-39) See Special Note
below.

Term of Imprisonment:

Not more than **30 days** under §33:1-92; **None** under
§33:1-12.37

Fine (\$ Range):

Not more than **\$500** under §33:1-92; **\$50-250** under
§33:1-12.37

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

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

Yes, Susp/Rev §33:1-31

Length of Term of License Withdrawal:

Susp—Length of suspension is not specified in
the statute; Rev—1st off-2 yrs; sub.
off-Permanent revocation (Note: A compromise
sum of money may be paid in lieu of a
suspension.)

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

Type of Criminal Action:

Disorderly Person Off² §§2C:43-3(c), 2C:43-8,
and 33:1-77

Term of Imprisonment:

Not more than **6 mos**

Fine (\$ Range):

Not more than **\$1,000**

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

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

Yes, Susp/Rev §33:1-31

Length of Term License Withdrawal:

Susp—Length of suspension is not specified in
the statute; Rev—1st off-2 yrs; sub.
off-Permanent revocation (Note: A compromise
sum of money may be paid in lieu of a
suspension.)

Special Note: Sec. 33:1-92 gives the sanctions for a "violation of this act" (i.e., the Alcoholic Beverage Control (ABC) Law. Sec. 33:1-12.37 gives a fine sanction for "violating any provision of this act (i.e., the ABC Law) or of any rule or regulation issued pursuant to this act;" however, this section does not preclude the imposition of the sanctions under §33:1-92.

¹See §2C:1-4, 2C:1-5b, 2C:43-1, 2C-43-3 & 2C:43-8.

²See §2C:33-17.

Other State Laws Related To Alcohol Use: (continued)

Anti-Happy Hour Laws/Regulations:

Yes (regulation - NJAC 13:2-23.16) (Note: This regulation does not regulate the price of "single" drinks. It does, however, prohibit the selling of an unlimited quantity of drinks at one price or the charging of one price for two or more drinks.)

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

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

Yes - Drivers and passengers; prohibits the consumption of alcoholic beverages by either a driver or passenger while the veh is being operated; there are exceptions for certain vehs for hire. §39:4-51a

STATE:
General Comments:

NEW MEXICO
See New Mexico Statutes 1978 Annotated.

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor
§66-8-102(A)

Illegal Per Se Law (BAC Level):

0.10 §66-8-102(C)

Presumption (BAC Level):

None

Types of Drugs/Drugs and Alcohol:

Any Drug §66-8-102(B)

Other:

For Commercial Motor Vehicle Operators, see p.
3-275.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

No

Implied Consent Law:

Arrest Required (Yes/No):

Yes §66-8-107

Implied Consent Law Applies to

Drugs (Yes/No):

Yes §66-8-107

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal & Civil (Possible) Cases)
See McKay v. Davis, 653 P.2d 860 (1982)

Other Information:

Special Note: A driver may be required to
submit to a chemical test based on a search
warrant issued by a court upon probable cause
that the driver has killed or greatly injured
another person while operating a motor veh while
under the influence of alcohol. §66-8-111A

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes §66-8-107

Urine:

No

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No (Special Note: The police officer must
charge a driver with committing a DWI off if the
driver's BAC level is 0.10 or more; see
§66-8-110(C).

Anti-Plea Bargaining Statute (Yes/No):

Yes §66-8-102.1 If a guilty plea is entered,
it must be to one of subsections of the DWI
statute when BAC=0.15.

Pre-Sentencing Investigation Law (PSI)

(Yes/No):

Yes Note: DWI-PSI screening is discretionary;
see §66-8-102(G).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

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

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): None
Administrative Licensing Action (Susp/Rev): 1 yr rev mandatory §66-8-111B
Other: None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):

1st off-30-90 dys; 2nd and subsequent offs-90 dys - 1 yr §66-8-102; Great bodily injury where driver was intoxicated, 3rd degree felony - 3 yrs; §§66-8-101 & 31-18-15 (Could be 4 yrs if §31-18-15.1 is applied)

Mandatory Minimum Term:

1st off-No; 2nd and 3rd offs-48 cons hrs¹; 4th off-not less than 6 mos. §66-8-102; Great bodily injury where driver was intoxicated, 3rd degree felony 1 yr §31-18-15.1

Fine:

Amount (\$ Range):

1st off-\$300-500; 2nd and subsequent offs-Not more than \$1,000 §66-8-102; Great bodily injury where driver was intoxicated, 3rd degree felony-Not more than \$5,000

Mandatory Min. Fine (\$):

1st off-No; 2nd and subsequent offs-No

¹This mandatory sanction applies only if the second or subsequent off occurred within five (5) yrs of a first or prior offense.

Note: A person who, while operating a vehicle while under the influence of alcohol/drugs or while violating §66-8-113, injuries to a pregnant woman is guilty of a third degree felony; see §§66-8-101.1 & 31-18-15.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Other Penalties:

Community Service:

None

Restitution

(eg Victim's Fund)

Yes, §31-17-1 (Restitution is to be paid by the defendant.¹)

Other:

A fee of \$35 is assessed against each defendant to defray the costs of BAC and other chemical tests for DWI; see §31-12-7.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

1. For persons 18 yrs old and above who have a BAC level of **0.10** or more - **90 dys mandatory license rev** (§66-8-111(C)(1)); for an admin. per se off where a person (1) has failed to complete a rehabilitation program for a 1st DWI off or (2) has been convicted of a second or subsequent DWI off - **1 yr mandatory license rev** (§66-5-29(C)); 2. For persons under 18 yrs of age who have a BAC level of **0.05** or more: 1st Admin. Per Se off - **6 mos mandatory license rev** §66-8-111(C)(2); 2nd Admin Per Se off - **1 yr mandatory license rev** §66-8-111(C)(3)

Other:

Under §§66-5-29, 66-5-30(A)(1) & 66-5-32(A), for certain 1st DWI offs and all sub. ones, a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., DWI). Such action may be taken without a preliminary hearing.

¹Restitution appears to be required if a sentence is either suspended or deferred; see §§31-17-1B & 31-20-6.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they either (1) have a BAC level of 0.10 or more, (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs. mand.). See §3(B) and 17 of Ch. 14 of the laws of 1989.

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

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st off-Rev; 2nd off-Rev §§66-5-29 & 66-5-32(B);
3rd off-Rev §66-5-5(D)

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off-1 yr; 2nd off-1 yr; 3rd off-5 yrs

Mandatory Minimum Term of

Withdrawal:

1st off-(See Special Note); 2nd off-1 yr; 3rd
off-5 yrs

Special Note: If a person has been convicted of a 1st DWI off but not subject to the mandatory license provisions of the admin per se law, they may obtain a restricted license. Such a license, however, is not available where there has been a consent decree based on a filing of any DWI charge. §66-5-35A.

Other:

Rehabilitation:

Alcohol Education:

1) Yes §66-5-29, §43-2-1 et seq. After presentence investigation, a trial court, in its discretion, may order a first offender to attend a "driving-while-intoxicated school," also called the driver rehabilitation program, approved by both the Court and the Division of Motor Vehicles. 2) A 1st offender may be allowed to attend driver rehabilitation program and if successfully completed Court may dismiss DWI charge and it is not a conviction, but does not constitute a first off.

Alcohol Treatment:

Alcohol Education/

Treatment as an Altern-

ative to Criminal

Licensing Actions

(Describe):

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

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Yes §66-8-102(I) - Impoundment - 1st off-None; 2nd off-30 dys; 3rd off-60 dys (As an alternative, the vehicle may be "immobilized" for the periods indicated.) This action is not mandatory; see State v. Barber, 778 P.2d 456 (CA 1989), cert. den. by the N.M. Supreme Court, 778 P.2d 911 (N.M. 1989).

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Miscellaneous Sanctions

Not Included Elsewhere:

None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of off:

Yes-Misd or Death where the driver was intoxicated-3rd degree felony §66-8-101

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Misd-Not more than 90 dys; 3rd degree felony-3 yrs (Could be 4 yrs if §31-18-15.1 is applied.) §§31-18-15 & 66-8-78

Mandatory Minimum Term:

3rd degree felony-1 yr (See §31-18-15.1)

Fine (\$ Range):

Misd-Not more than \$100; 3rd degree felony-Not more than \$5,000

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Misd-Susp; 3rd degree felony-Susp §§66-5-29 & 66-5-20

Length of Term of

Licensing Withdrawal:

Misd-1 yr; 3rd degree felony-1 yr

Mandatory Action--Minimum

Length of License

Withdrawal:

3rd degree felony-1 yr

Other:

Misd - Restitution; 3rd degree felony-Restitution (Victim restitution is either via the offender or via a State reparations fund; see §§31-17-1 & 31-22-1 et seq.)

Other Criminal Actions Related to DWI: (continued)

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

Sanction:

Criminal:

Imprisonment (Term): **Misd 2 dys-6 mos** §66-5-39

Mandatory Minimum Term
of Imprisonment: **96 con. hrs.**

Fine (\$ Range): **Not more than \$500** §66-5-39

Mandatory Minimum Fine: **\$300** §66-5-39(A)

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev): **Rev** §66-5-39

Length of Term of License
Withdrawal Action: For driving while suspended - an additional
suspension period equal to the original period.
For driving while revoked - an additional
revocation period of one (1) year.

Mandatory Term of License
Withdrawal Action: The above additional suspension/revocation
periods appear to be mandatory.

Habitual Offender Laws:

State Has Such Law (Yes/No):

No (However, §66-5-5 does prevent anyone who
has been convicted of DWI 3 or more times since
1955 from having or applying for a drivers
license for 5 yrs.)

Grounds for Being Declared an
Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender
Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):	Yes §24-11-6(B)
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	Yes
Vehicle Passengers:	Yes
Pedestrian:	Yes

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	21 (Year Eff: 1934) §§60-3A-3(0), 60-7B-1 & 60-7B-1.1
Minimum Age (Years) Possession:	21 (Exemption when the minor is accompanied by a parent or guardian.) §§60-3A-3(0), 60-7B-1 & 60-7B-1.1
Minimum Age (Years) Consumption:	None

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	Yes §41-11-1 See Footnotes Nos. 1 & 2 below.
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"Dram Shop Law" Concept Has Been

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

Yes, Lopez v. Maze, 651 P.2d 1269 (N.M. 1982)³

Dram Shop Actions-Social Hosts:

Yes §41-11-1(E)² Liability is based upon the
host providing alcoholic beverages to the guest
in reckless disregard of the rights of others
including the guest. See Walker v. Key, 686
P.2d 973 (N.M.App. 1984).³

Other:

None

¹Law (1) limits liability for social hosts to cases involving serving alcoholic beverages in reckless disregard of the rights of others and (2) increases the burden of evidence needed to hold liquor license establishments liable for serving alcoholic beverages to intoxicated persons.

²Note: For each transaction or occurrence, damage awards are subject to the following limits: (1) For one person, \$50,000 for injuries/death and \$20,000 for property damage; and, (2) for two or more persons, \$100,000 for injuries/death and \$20,000 for property damage. See §41-11-1(I). **Caution:** In a case of limited application, the New Mexico Supreme Court has held that, as applied to certain specific facts before the court, the above limits on liability were unconstitutional; see Richardson v. Carnegie Library Restaurant, Inc., 763 P.2d 1153 (N.M. 1988).

³Note: §41-11-1(H) may have abrogated the holding in a previous social host liability case decided by the New Mexico Supreme Court; see MRC Prop. v. Gries, 652 P.2d 732 (N.M. 1982).

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action: **Misd** §§60-7A-16 & 60-7A-25
Term of Imprisonment: **0-7 mos**
Fine (\$ Range): **\$0-300** (If corporation, \$0-1,000)

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

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes** §60-7A-25
Length of Term of License Withdrawal: **2 yrs**

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

Type of Criminal Action: **Misd** §§60-7A-25, 60-7B-1 & 60-7B-1.1
Term of Imprisonment: **0-7 mos**
Fine (\$ Range): **\$0-300** (If corporation, \$0-1,000)

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

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes** §60-6C-1
Length of Term License Withdrawal: **2 yrs** §60-6C-8

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

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

Open Container Law (Yes/No): **Yes** §66-8-138(B) & (C)
Anti-Consumption Law (Yes/No): **Yes** Driver and passengers §66-8-138(A)

STATE:

General Comments:

NEW YORK

See McKinney's Consolidated laws of New York. Most citations are to the Vehicle and Traffic Law (V&T Law).

Basis for a DWI Charge:

Standard DWI Offense:

(1) Ability to operate a vehicle is impaired by the consumption of alcohol V&T Law §1192(1); (2) operate a motor vehicle while in an intoxicated condition V&T Law §1192(3)¹

Illegal Per Se Law (BAC Level):

0.10² V&T Law §1192(2)

Presumption (BAC Level):

None

Types of Drugs/Drugs and Alcohol:

A Controlled Substance³. See V&T Law §§114-a & 1192(4) and Public Health Law §3306. See Footnote No. 1 below.

Other:

A BAC of **0.05-0.07** is relevant evidence of being impaired; and a BAC of **0.07-0.10** is prima facie evidence of impairment; see V&T Law §1195(2)(b) & (c).

For Commercial Motor Vehicle Operators, see Footnote No. 5 on p. 3-283.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

Yes (Note: This test is mandatory and applies to drivers involved in accidents and traffic law violations. V&T Law §1194(1)(b))

Implied Consent Law:

Arrest Required (Yes/No):

No⁴ V&T Law §1194(2)

Implied Consent Law Applies to

Drugs (Yes/No):

Yes V&T Law §1194(2)(a)

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal and Civil Cases) V&T Law §1194(2)(f)

Other Information:

Special Note: Under V&T Law §1194(3), a driver may be compelled via court order to submit to a chemical test of their blood for alcoholic content if they have been involved in an accident in which there has been a fatality or serious physical injury related to a DWI off.

¹The law provides that no one shall operate a motor vehicle while in an intoxicated condition; this could include other drugs as well as alcohol.

²Standard: Percent by weight of alcohol in the blood; see V&T Law §1192(2).

³The law provides that no one shall drive while impaired by drugs as defined in the motor vehicle law.

⁴A DWI arrest is one basis for requiring a person to submit to an implied consent chemical test (V&T Law §1194(2)(a)(1)). However, an arrest is not required in all situations. If a PBT indicates that alcohol has been consumed, a request to submit to a chemical test under the implied consent law may be made without the need of a formal arrest; see V&T law §1194(2)(a)(2).

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

Blood:	Yes V&T Law §1194(2)(a)
Urine:	Yes V&T Law §1194(2)(a)
Other:	Yes , Saliva V&T Law §1194(2)(a)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	Yes Unless available evidence determines otherwise, plea bargaining is allowed only to another DWI offense. V&T Law §1192(8)
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes (Required for felony convictions.) Criminal Procedure Law §390.20

Sanctions for Refusal to Submit to a
Chemical Test:

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

Infraction¹ - 1st Refusal: Jail-not more than **15 dys**; fine-not more than **\$50**; **2nd Refusal** (w/n 18 mos): Jail-not more than **45 dys**; fine-not more than **\$100**; **3rd Refusal** (w/n 18 mos): Jail-not more than **90 dys**; fine-not more than **\$250** V&T Law §1800(b)

Administrative Licensing Action
(Susp/Rev):
Other:

None
None

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

None

Rev for at least **6 mos** (at least 1 yr if under 21)²; **Rev** for at least **1 yr** for a **2nd or subsequent refusal** (w/n 5 yrs) or a **1st refusal** where there has been a previous DWI off conviction (w/n 5 yrs); Special Note: These revs are mandatory. V&T Law §1194(2)(d) See 15 NYCRR (New York Code Rules and Regulations) 13.113 & 139.4 for a temporary lic. susp. prior to a hearing on an implied consent refusal.

¹See People v. Steves, 459 N.Y.S.2d 402 (Sup. 1983).

²For persons under 21 who have refused to submit to a chemical test and who have had a previous alcohol/drug driving offense conviction, revocation for 1 year or until they reach 21 whichever is the longer revocation period.

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

Other:

(1) Under V&T Law §1194(2)(b), a person who refuses to submit to a chemical test may have their license suspended at the time of arraignment based upon a sworn written police report. (2) A Civil Penalty of **\$100**; Civil Penalty of **\$250** for a 2nd or subsequent refusal (w/n 5 yrs) or for a 1st refusal where there has been a previous DWI off conviction (w/n 5 yrs) V&T Law §1194(2)(d)(2)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

"Impaired" status offs (Traffic Infraction) V&T Law §§1192(1) & 1193(1)(a); 1st off-Not more than **15 dys**; 2nd off¹ (w/n 5 yrs)-Not more than **30 dys**; 3rd and any subsequent off¹ (w/n 10 yrs)-Not more than **90 dys**; Per Se and Intoxicated status offs², 1st off (Misd)-Not more than **1 yr** V&T Law §1193(1)(b); 2nd and any subsequent offs³ (w/n 10 yrs) C1 E Felony-Not more than **4 yrs**⁴ V&T Law §§1192 & 1193(1)(c) See Footnote No. 5 below for DWI offenses related to the operation of certain commercial vehicles.

Mandatory Minimum Term:

None

¹ A previous alcohol offense conviction (of any type) is considered a previous offense.

² Includes driving while impaired by drugs.

³ A previous offense also includes vehicle assault (Penal Law §§120.03 & 120.04) and vehicle homicide (Penal Law §§125.12 & 125.13).

⁴ See Penal Law §§66.10, 70.00 and 80.00.

⁵ Under V&T Law §§1192 and 1193(1)(d) & (2), a person who is operating certain commercial vehicles (e.g., a taxicab, a bus, a truck over 18,000 pounds or a school bus) while "impaired," intoxicated or illegal per se is subject to the following sanctions: 1st off (Misd)-Imprisonment-**Not more than 1 yr**, Fine-**\$500-1,500**, Lic. Action-**Rev. 1 yr**; subsequent off (w/n 10 yrs) (Felony)-Imprisonment-**Not more than 4 yrs**, Fine-**\$1,000-5,000**; Lic. Action-**Rev. 1 yr** and the person is disqualified from operating commercial vehicles for at least 5 years. See also V&T Law §1193(2) and Penal Law §§55.10(1)(b), 55.10(2)(b), 70.00(2)(c) & 70.15(1)(a).

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

Fine:

Amount (\$ Range):

"Impaired" status offs, 1st off-\$250; 2nd off (w/n 5 yrs)-\$350-500; 3rd and any subsequent offs (w/n 10 yrs)-\$500-1,500 V&T Law §1193(1)(a); Per se and intoxicated status off¹, 1st off (Misd)-\$350-500 V&T Law §1193(1)(b); 2nd and subsequent offs (w/n 10 yrs) C1 E Felony-\$500 to 5,000 V&T Law §1193(1)(c)

Mandatory Min. Fine (\$):

"Impaired" status offs, 1st off-\$250; 2nd off (w/n 5 yrs)-\$350; 3rd and any subsequent offs (w/n 10 yrs)-\$500; Per se and intoxicated off¹, 1st off (Misd)-\$350; 2nd and any subsequent offs (w/n 10 yrs) C1 E felony-\$500²

Other Penalties:

Community Service:

None

Restitution

(eg Victim's Fund)

Yes The court may require restitution by a defendant to a victim; see §60.27 of the Penal Law. There is also a Victims' compensation fund; see §620 et seq. of the Executive Law. Special Note: NY has an off known as "Vehicle Assault". A person is guilty of such an off if they injure another in a criminally negligent manner while in violation of the DWI law; such an off is a C1 E Felony; see Penal Law §120.03. In a pilot program to be conducted in six counties, the court may require a person convicted of a DWI offense (driving while impaired or intoxicated) and sentenced to probation to only operate vehicles equipped with an **ignition interlock** device; see V&T Law §1198.

Other:

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

None

Other:

Temporary susp is mandatory where a person is charged with a violation of V&T Law §1192(2), (3) & (4) and they have a previous alcohol/drug driving conviction of any type w/n 5 yrs; see V&T Law §1193(2)(e)³. See "Other" under Sanctions for Refusal to Submit to an Implied Consent Test.

¹Includes driving while impaired by drugs.

²This fine (for a felony conviction) may not be mandatory; see People v. Porter, 522 N.Y.S.2d 88 (Co.Ct. 1987).

³There must be "reasonable cause" to believe that the offender violated V&T Law §1192(2), (3) & (4) before the court can impose this suspension.

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

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

"Impaired" status offs¹, 1st off-Susp (Rev if person is under 21 years old); 2nd off (w/n 5 yrs of any alcohol driving off)-Rev; Per se and intoxicated offs², 1st off-Rev; 2nd and any subsequent offs (w/n 10 yrs)-Rev V&T Law §1193(2) See Footnote No. 3 and the Special Note No. 1 below.

Term of License Withdrawal

(Days, Months, Years, etc.):

"Impaired" status offs, 1st off-90 dys; 2nd off (w/n 5 yrs of any alcohol driving off)-6 mos; Per se and intoxicated offs, 1st off-At least 6 mos; 2nd and any subsequent offs² (w/n 10 yrs)-At least 1 yr V&T Law §1193(2)(a) & (b)

Mandatory Minimum Term of

Withdrawal:

See Footnote No. 3 and Special Note No. 2 below. After 1/11/88, the license revocations listed above for subsequent DWI offenses will be mandatory.

¹If a person is convicted of an "impaired" offense while operating a motor vehicle on a probationary license, such license is suspended for 60 days (mandatory) see V&T Law §510-b(1).

²Also includes driving while impaired by drugs under V&T Law §1192(4).

³Under V&T Law §1196(7), except for persons convicted under V&T Law §1192(2), (3) & (4) while operating a commercial vehicle (V&T Law §§1193(1)(d) & 1193(2)(b)(8)), a person may be issued a conditional license while participating in a rehabilitation program. However, a person is not permitted to take part in such a program and obtain a conditional license (1) if, prior to 11/1/88, they have participated in such a program w/n a five yr period or (2) if, after 11/1/88, they have been convicted of a subsequent alcohol driving offense. Successful completion of the program shall satisfy any sentence of imprisonment and allow an offender to apply for reinstatement of his/her driver's license. V&T Law §1196(4)

Special Note No. 1: A person under 21 yrs old, who is convicted of any alcohol driving offense shall for a 1st offense have their license revoked for 1 year and for a subsequent offense revocation for 1 year or until they reach 21 which ever is the greater period of time. A conditional license is not available. See V&T Law §1193(2)(b)(5), (6) & (8).

Special Note No. 2: Under V&T Law §1193(2)(c), if a person is convicted of two (2) violations of V&T Law §1192(3) & (4) where a personal injury has resulted in each offense, their license is permanently revoked.

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

Other:

Rehabilitation:

Alcohol Education: Yes for all offs V&T Law §1196
Alcohol Treatment: Yes for all offs V&T Law §1196
Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe): Yes (with the Court's permission)

Vehicle Impoundment/Confiscation:

Authorized by Specific
Statutory Authority: None
Terms Upon Which Vehicle
Will Be Released:
Other: Yes The registration of a defendant's vehicle
may be susp/rev. Registration susp/rev periods
are the same as the license susp/rev periods for
DWI offense convictions. V&T Law §1193(2).

Miscellaneous Sanctions

Not Included Elsewhere: None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: Yes Vehicle Manslaughter in the 2nd degree--Cl D
felony Death of another based on criminally
negligent action while in violation of the DWI
laws; see Penal Law §125.12. See Footnote No. 1
below.

Sanctions:

Criminal Sanction:

Imprisonment (Term): Not more than 7 yrs; Penal Law §70.00(2)(d)
Mandatory Minimum Term: None
Fine (\$ Range): Not more than \$5,000; Penal Law §80.00(1)(a)
Mandatory Minimum Fine: None

Administrative Licensing Action:

Licensing Authorized and
Type of Action: Rev; V&T Law §510(2)(a)(i)
Length of Term of
Licensing Withdrawal: At least 6 mos V&T Law §510(6)
Mandatory Action--Minimum
Length of License
Withdrawal: 6 mos V&T Law §510(6)

If a person kills another while operating a motor vehicle while their license is
suspended/revoked for either an alcohol/drug driving offense conviction or for refusal to
submit to a chemical test, they have committed Vehicle Manslaughter in the 1st degree a Class C
Felony: Jail--Not more than 15 yrs; fine--Not more than \$5,000. Penal Law §§70.00(2)(c),
80.00(1)(a) & 125.13

Other Criminal Actions Related to DWI: (continued)

Other:

Special Note: Persons convicted of either 1st or 2nd degree (See Footnote No. 1 on 3-286.) Vehicle Manslaughter are not eligible for the shock incarceration program. See Correction Law §§865(1), 866 & 867.

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

Sanction:

Criminal:

Imprisonment (Term):

Misd¹, 7 to 180 dys V&T Law §511(2)(a)(iii) & (2)(b) See Footnote No. 2 below.

Mandatory Minimum Term
of Imprisonment:

None

Fine (\$ Range):

\$500-1,000

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

None

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

Habitual Offender Laws:

State Has Such Law (Yes/No):

No

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

¹Aggravated unlicensed operation of a motor vehicle in the second degree. As either an alternative or an additional sanction, the court may require a defendant to participate in an either alcohol or drug treatment program; see V&T Law §511(6).

²A person operating a motor vehicle while DWI and while their license has either been suspended or revoked for a previous DWI conviction commits the offense of aggravated unlicensed operation of a motor vehicle in the first degree which is a Class E Felony and they are subject to the following sanctions: Imprisonment-Not more than 4 yrs; fine-\$500-5,000. As either an alternative or an additional sanction, the court may require a defendant to participate in an either alcohol or drug treatment program. See V&T Law §511(3) & (6).

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No): **Yes** N.Y. County Law §674(3)(b)¹

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes (if 16 yrs or older)

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** (Year Eff: 1985) Alcoholic Beverage
Control Law §§65 & 65-b & 82 and Penal Law
§260.20(4)

Minimum Age (Years) Possession: **21**²

Minimum Age (Years) Consumption: **21**²

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes**, N.Y. Gen. Oblig. Law §§11-100 & 11-101

"Dram Shop Law" Concept Has Been

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

Berkeley v. Park, 262 N.Y.S. 2d 290 (1965)

Dram Shop Actions--Social Hosts:

Yes--Limited Liability applies only in situations
where the person being served alcoholic
beverages is under 21 years old.³ N.Y. Gen.
Oblig. Law §11-100 Note: In Joly v. Northway
Motor Car Corp., 517 N.Y.S.2d 595 (A.D. 3 Dept.
1987), the court found no social host liability
at a party given by a business where alcoholic
beverages were furnished to adult guests.

Other:

None

¹The test shall not be made if there is reason to believe that the decedent is of a religious faith which is opposed to such test on religious or moral grounds; see N.Y. County Law §674(3)(b).

²Unlawful possession with intent to consume by persons under 21 years old. See Alcohol Beverage Control Law §65c. Exceptions: (1) Either a person under 21 year old is required as part of an educational curriculum to consume/taste alcoholic beverages or (2) such person has been provided alcoholic beverages by a parent/guardian.

³Note: In Montgomery v. Orr, 498 N.Y.S.2d 968 (Sup. 1986), The court held a social host liable on a factual situation, concerning the service of alcoholic beverages to persons under 21 years old, arising prior to the enactment of N.Y. Gen. Oblig. Law §11-100. The court based its decision on common law negligence principles.

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:

Class A Misd; §§65 & 130(5) of the Alcoholic Beverage Control Law and §§55.10(2)(b), 70.15(1) and 80.05(1) of the Penal Law

Term of Imprisonment:

Not more than 1 yr

Fine (\$ Range):

Not more than \$1,000 (For corporations, the fine is not more than \$5,000; see §80.10(1)(b) of the Penal Law.

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

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

Yes, suspended, cancelled, or revoked Alcoholic Beverage Control Law §17(3)

Length of Term of License Withdrawal: Not specified in the statute

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

Type of Criminal Action:

Class A or B Misd^{1&2} §§65 & 130 of the Alcoholic Beverage Control Law and §§55.10(2)(b), 70.15(1), 70.15(2), 80.05(1), 80.05(2), 80.10(1)(b), 80.10(1)(c) & 260.20 of the Penal Law

Term of Imprisonment:

Cl A Misd-Not more than 1 yr; Cl B Misd-Not more than 3 mos

Fine (\$ Range):

Cl A Misd-Not more than \$1,000 (Not more than \$5,000 for corporations); **Cl B Misd-Not more than \$500** (Not more than \$2,000 for corporations)

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

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

Yes, Alcoholic Beverage Control Law §17(3) suspended, cancelled, or revoked

Length of Term License Withdrawal:

Not specified in the statute

¹Penal Law §260.20(4), concerning the selling or giving of alcoholic beverages to a person under 21 years old, does not apply to the parent or guardian of such a person.

²Under N.Y. law, there are two provisions making it illegal to sell alcoholic beverages to persons under 21 years old. One is in the Alcoholic Beverage Control Law (§65); the other is in the Penal Law (§260.20). A violation of §65 of the Alcoholic Beverage Control Law is a Class A misdemeanor (See §130 of the Alcoholic Beverage Control Law); a violation of §260.20 of the Penal Law is a class B misdemeanor. See also §55.10(2)(b) of the Penal Law.

Other State Laws Related To Alcohol Use: (continued)

Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

Yes - Driver and passengers V&T Law §1227

STATE:

NORTH CAROLINA

General Comments:

See Gen. Stat. of North Carolina.

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of an impairing substance §20-138.1(a)(1)
Illegal Per Se Law (BAC/BrAC Level):	0.10 ^{1&2} §20-4.01(0.2)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Any Impairing Substance §20-138.1(a)(1)
Other:	For Commercial Motor Vehicle Operators, see p. 3-292.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	Yes §§20-16.2(i) & 20-16.3
Implied Consent Law:	
Arrest Required (Yes/No):	Yes (Implied) §20-16.2(a)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §§20-16.2 & 20-139.1
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §20-16.2(a)(3)
Other Information:	None

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:	Yes (The taking of blood appears to be limited to unconscious persons or to those who are incapable of refusing a test; see §20-16.2(a) & (b).)
Urine:	No
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No However, the law does require the prosecutor to explain a reduction or dismissal of a DWI charge; see §20-138.4.
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes §§20-179(m) & 20-179.1

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

²Special Note: It is illegal for a provisional licensee, a person between the ages of 16 and 18, to operate a motor veh with any alcohol in their body; see §20-138.3.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): **No**
Administrative Licensing Action (Susp/Rev): **No**
Other: **None**

Refusal to Take Implied Consent

Chemical Test:

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

1st refusal-Rev-12 mos (6 mos mand. with 10 dy immediate mand. rev); 2nd or sub. refusal (w/n 7 yrs)-Rev.-12 (12 mos mand. with 10 dy immediate mand. rev)) §§20-16.2(c) & 20-16.5¹

Other:

Special Note: A limited driving privilege license may be issued after 6 mos of the rev period have passed provided the driver has not had either a previous chemical test refusal (w/n 7 yrs) or a DWI conviction (w/n 7 yrs) or the charge did not involve either death or critical injury to another person. §20-16.2(e)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:
Term (Day, Month, Years,
Etc.):

Level 1 Punishment - 14 dys-24 mos; Level 2 Punishment - 7 dys-12 mos; Level 3 Punishment - 72 hrs-6 mos²; Level 4 Punishment - 48 hrs-120 dys²; Level 5 Punishment - 24 hrs to 60 dys²
§20-179 See Special Note on p. 3-293.

¹For persons 16-18, provisional licensees, a rev of 45 dys or until the person reaches 18 whichever is the longer period (mandatory); this rev is in addition to and runs concurrently with any other licensing action authorized by law for an implied consent law violation; see §20-13.2.

²The term of imprisonment may be suspended on the condition that the defendant either (1) serve the minimum term of imprisonment as a special condition of probation, or (2) perform the indicated community service, or (3) have their license withdrawn for the period of time shown under Post-DWI Conviction Licensing Action or (4) any combination of the above.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC level of 0.04 or more, (2) are under the influence of an impairing substance or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs. mand.). It is a misdemeanor to operate a CMV (1) while appreciably under the influence of an impairing substance or (2) with a BAC/BrAC level of 0.04 or more. The sanctions for this offense are jail for not more than 2 yrs and a fine of not less than \$1,000. See §§20-4.01(0.2)(3d), (5a) & (25a), 20-17-4(a) & (b) and 20-138.2.

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

Mandatory Minimum Term: Level 1 Punishment - **14 dys**; Level 2 Punishment - **7 dys**

Fine:
Amount (\$ Range): Level 1 Punishment -Not more than **\$2,000**; Level 2 Punishment -Not more than **\$1,000**; Level 3 Punishment -Not more than **\$500**; Level 4 Punishment -Not more than **\$250**; Level 5 Punishment -Not more than **\$100** §20-179

Mandatory Min. Fine (\$): **None**

Other Penalties:
Community Service: Level 3 Punishment -72 hrs; Level 4 Punishment -48 hrs; Level 5 Punishment - 24 hrs See Footnote No. 1 below. §20-179

Restitution (eg Victim's Fund) **Yes**, Direct compensation by the defendant to a victim (§15B-24.²) Also via a victims' compensation fund (§15B-1 st seq; see especially §15B-2(5))

Other: **None**
Special Note: The level of punishment to be given a DWI defendant is determined by weighing the aggravating and mitigating factors as specified in §20-179; however, (1) the Court must impose level 2 punishment if there has been a previous DWI conviction w/n a 7 yr period; (2) the Court must impose level 2 punishment if there has been an injury related to a DWI off; and (3) the Court must impose level 1 punishment if there has been a previous DWI conviction w/n a 7 yr period and either the previous conviction or the present offense were injury related.

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law: **Yes** **0.10 BAC/BrAC²-Rev for 10 dys** (No limited license following a rev under this section; see §20-16.5(f)) Note: If the driver is late in surrendering or does not surrender their license to the court when ordered to do so, the rev period is 30 dys. §20-16.5(f)

Other: **None**

¹Community service is imposed as a condition of probation.

²For commercial motor vehicle operators, the BAC/BrAC level is **0.04**; see §20-16.5).

Sanctions Following a Conviction for a DWI Offense:

(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st DWI off-Rev; 2nd DWI off (w/n 3 yrs)- Rev;
3rd DWI off (where the 2nd DWI off was w/n 5 yrs
of the 3rd)-Rev; §§20-17, 20-19 & 20-179¹

Term of License Withdrawal

(Days, Months, Years, etc.):

1st DWI off-1 yr (See levels of
punishment)²; 2nd DWI off-4 yrs;
3rd DWI off (where the 2nd
DWI off was w/n 5 yrs of the 3rd) Permanent;
Levels 1 & 2 Punishment-See the revs above for
multiple DWI convictions and the special note
under Other Penalties; Level 3 Punishment-90
dys; Level 4 Punishment-60 dys; Level 5
Punishment-30 dys

Mandatory Minimum Term of

Withdrawal:

2nd DWI off-2 yrs (After 2 yrs., a conditional
license may be issued); 3rd DWI off- 3 yrs
(After 3 yrs., a conditional license may be
issued) (Note: For Levels 3, 4, & 5
Punishment: Temporary license withdrawal as a
condition of probation.)

Other:

Rehabilitation:

Alcohol Education:

Yes See §20-179.2.

Alcohol Treatment:

Yes Under §20-179.1, treatment may be order by
the court as a condition of probation. Also,
under §29-179(k1), the court may order that a
term of imprisonment imposed as a condition of
probation be served in an inpatient alcohol
treatment facility.

Alcohol Education/

Treatment as an Altern-

ative to Criminal

Licensing Actions

(Describe):

¹For persons who have provisional licenses, persons 16-18 yrs old, the following sanctions apply:

1) For the offs of driving with any alcohol in their body but where such amount would not result in a normal DWI charge and conviction (see §20-138.3), - a rev for 45 dys or until the person reaches 18 whichever is the longer rev period; this revocation period is mandatory.

2) For a DWI conviction - a rev for 45 dys or until the person reaches 18 whichever is the longer rev period (this revocation period is mandatory) plus a regular DWI rev. These revs, however, are to run concurrently; see §20-13.2.

²Special Note: Under §20-179.3, a limited driving privilege may be granted for essential purposes as specified in the section (e.g., employment) provided a driver has not had either a previous conviction w/n 7 yrs or a previous DWI injury related conviction; the privilege is not effective until after the Court ordered license withdrawal period, if any, has been completed as a part of probation requirements:

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

Vehicle Impoundment/Confiscation:

Authorized by Specific
Statutory Authority: **None**
Terms Upon Which Vehicle
Will Be Released:

Other: A driver's veh may be subject to forfeiture if the driver was operating a veh (1) while DWI and (2) while his/her license has been revoked for a previous DWI off, implied consent refusal, or other mandatory rev. that involved alcohol. §20-28.2

Miscellaneous Sanctions
Not Included Elsewhere: **None**

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes**, Death by Vehicle (Cl 1 felony if death is DWI related) **Misd** (If death is not DWI related) §20-141.4

Sanctions:

Criminal Sanction:

Imprisonment (Term): Cl 1 felony-Not more than 5 yrs (§14-1.1)
Misd-Not more than 2 yrs (§20-141.4(b))
Mandatory Minimum Term: **None**
Fine (\$ Range): Cl 1 felony-Fines authorized but not specified in the statute; see §14-1.1. Misd-Not more than \$500 (§20-141.4(b))
Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and
Type of Action: **Rev**
Length of Term of
Licensing Withdrawal: 1 yr unless the trial judge issues a limited driving privilege to the person convicted containing a condition that the defendant successfully completes a course of instruction at an Alcohol Drug, Ed. Traffic School. If the defendant complies with these provisions, the Division must restore his/her license within 6 mos. §§20-17(1) and 29-19(c)

Mandatory Action--Minimum
Length of License
Withdrawal: **None**

Other: **None**

Other Criminal Actions Related to DWI: (continued)

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

(See "Other" under Vehicle Impoundment/
Confiscation.)

Sanction:

Criminal:

Imprisonment (Term):

1st off-Not to exceed **2 yrs**; 2nd off-Not to exceed **2 yrs**; 3rd off-Not to exceed **2 yrs** §20-28(a); If a person's license has been permanently revoked and they thereafter drive they commit a misd-**30 dys to 2 yrs** §20-28(b)

Mandatory Minimum Term
of Imprisonment:

If a person's license has been permanently revoked and they thereafter drive they commit a misd - **30 dys**

Fine (\$ Range):

1st off-Not less than **\$200**; 2nd off-Not less than **\$200**; 3rd off-Not less than **\$200**, 20-28(a); If a person's license has been permanently revoked and they thereafter drive they commit a misd-Not more than **\$1,000**

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev):

1st off-**Susp or Rev**; 2nd off-**Susp or Rev**; 3rd off-**Rev** §§20-28 & 20-28.1

Length of Term of License
Withdrawal Action:

1st off-**1 yr** (additional to original term); 2nd off-**2 yrs** (additional to original term); 3rd off-**Permanently**

Mandatory Term of License
Withdrawal Action:

1st off-**90 dys**; 2nd off-**12 mos**; 3rd off-**3 yrs**; (The licensing agency may issue a new license with or without conditions after these terms of license withdrawal.)

Special Note: If a person is convicted of a DWI off and they were at the time of such off driving while their license was revoked for a previous DWI off conviction (w/n 7 yrs), the Court must impose Level 1 punishment; see §20-179(c).

Habitual Offender Laws:

State Has Such Law (Yes/No):

No (Note: The habitual offender law (§§20-220 to 20-231) was repealed by Session Laws 1977, Ch. 243, §1.)

Grounds for Being Declared an
Habitual Offender:

Other Criminal Actions Related to DWI: (continued)

Term of License Rev While
Under Habitual Offender Status:
Type of Criminal off if
Convicted on Charges of
Driving While on Habitual
Offender Status

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

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

Other State Laws Related To Alcohol Use:

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

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

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: 21 (Year Eff: 1986) §§18B-302(a) & (b)
Minimum Age (Years) Possession: 21 §§18B-301(f)(4) & 18B-302(b) (employment
exemption)
Minimum Age (Years) Consumption: 21 §18B-301(f)(4)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes, §§18B-120 et seq.¹ (Law limits recovery to
\$500,000)**

¹ These statutory provisions create a Dram Shop type of liability to situations involving minors (those persons under 19 yrs old) who cause damages while DWI and places limitations on damage amounts which can be awarded in such actions under such statutory provisions. However, the law specifically does not limit or prohibit other types of Dram Shop civil actions which are based either on other statutes or on case law.

Other State Laws Related To Alcohol Use: (continued)

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

Yes, *Hutchens v. Hankins*, 303 S.E.2d 584 (N.C. App. 1983) and *Chastain v. Litton Systems, Inc.*, 694 F.2d 957 (CA4, 1982).¹

Dram Shop Actions—Social Hosts:

No (Note: There are no State cases directly on this issue; however, see *Chastain v. Litton, Systems, Inc.*, 694 F.2d 957 (CA 4th Cir., 1982).¹)

Other:

None

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

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

Misd §§14-3, 18B-102 & 18B-305

Not more than **2 yrs**

A fine is authorized but is not specified; see Footnote No. 2.

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

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

Yes³ (Left to the Board's discretion as to whether to suspend or to revoke.) §§18B-104 & 18B-305

Length of Term of License Withdrawal:

Susp—Not more than **3 yrs**; rev period is not specified in the statute.

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

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

Misd §§14-3, 18B-102 & 18B-302

Not more than **2 yrs**

A fine is authorized but is not specified; see Footnote No. 2 below.

¹Cert. den., 462 U.S. 1106 (1983).

²The following administrative fines may also be imposed on a permittee: 1st off—up to \$500; 2nd off—up to \$750; 3rd off—up to \$1,000. See §18B-104.

³In lieu of either suspension or revocation, the permittee may agree to pay a penalty of not more than \$5,000; see §18B-104.

Other State Laws Related To Alcohol Use: (continued)

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

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

Yes¹ (Left to the Board's discretion as to
whether to suspend or to revoke.) §§18b-104 &
18B-302

Length of Term License Withdrawal:

Susp-Not more than 3 yrs; rev period is not
specified in the statute.

Anti-Happy Hour Laws/Regulations:

Yes (Regulation) T04: 02S.0200²

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

Open Container Law (Yes/No):

Yes³ §18B-401(a)

Anti-Consumption Law (Yes/No):

Yes³ driver only §18B-401(a)

¹See Footnote No. 3 on p. 3-298.

²North Carolina Administrative Code

³The law states that "it shall be unlawful for a person to transport fortified wine or spiritous liquor in the passenger area of a motor veh in other than the manufacturer's unopened original container. It shall be unlawful for a person who is driving a motor veh on a highway or public veh area to consume in the passenger area of that veh any malt beverage or unfortified wine."



STATE:
General Comments:

NORTH DAKOTA
See North Dakota Century Code Annotated.

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §39-08-01(1)(b)
Illegal Per Se Law (BAC/BrAC Level):	0.10 §39-08-01(1)(a) and 39-20-07(3) & (4)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	(1) Any Drug or Substance, (2) Any Combination of Drugs or Substances and (3) a Combination of Intoxicating Liquor and Any Drug or Substance §39-08-01(1)(c) & (d)
Other:	For Commercial Motor Vehicle Operators, see p. 3-303.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	Yes §39-20-14
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §39-20-01
Implied Consent Law Applies to Drugs (Yes/No):	Yes §39-20-01
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §39-20-08 Admissible provided the defendant testifies.
Other Information:	In any accident in which there is either a death or a serious bodily injury and there is probable cause showing that a driver is DWI, such driver may be compelled to submit to a chemical test; see §39-20-01.1.

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

Blood:	Yes §39-20-01
Urine:	Yes §39-20-01
Other:	Saliva §39-20-01

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes §39-08-01

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

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

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): **No**
Administrative Licensing Action
(Susp/Rev):

Same as for Implied Consent Refusal §§39-20-04
& 39-20-14

Other: **None**

Refusal to Take Implied Consent

Chemical Test:

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

1st refusal Rev.-**1 yr**; 2nd refusal (w/n 5 yrs.)
Rev.-**2 yrs**; 3rd or sub. refusal (w/n 5 yrs.)
Rev.-**3 yrs**. These license revocations are
mandatory; i.e., no temporary restricted license
may be issued. See Footnote No. 1. See
39-06.1-11(2) & 39-20-04.

Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

1st off (C1 B Misd)-Not more than **30 dys**; 2nd
off (w/n 5 yrs) (C1 B Misd)-Not more than **30
dys**; 3rd (w/n 5 yrs) (C1 A Misd)-Not more than **1
yr**; 4th and subsequent offs (w/n 7 yrs) (C1 A
Misd)-Not more than **1 yr** §39-08-01(2) & (4)
1st off-**No**; 2nd off (w/n 5 yrs)-**4 dys** of which
48 hrs must be served cons²; 3rd off (w/n 5
yrs)-**60 dys** of which 48 hrs must served cons²;
4th and subsequent off (w/n 7 yrs)-**180 dys** of
which 48 hrs must be served cons.² See Special
Note under Miscellaneous Sanctions on p. 3-304.

Mandatory Minimum Term:

Fine:

Amount (\$ Range):

1st off-Not more than **\$500**; 2nd off (w/n 5
yrs)-Not more than **\$500**; 3rd offs (w/n 5
yrs)-Not more than **\$1,000**; 4th and subsequent
off-Not more than **\$1,000**

Mandatory Min. Fine (\$):

1st off-**\$250**²; 2nd off (w/n 5 yrs)-**\$500**²; 3rd
and subsequent offs (w/n 5 yrs) **\$1,000**²

Other Penalties:

Community Service:

1st off-**No**; 2nd and subsequent off (w/n 5
yrs)-**10 dys** as an alternative to imprisonment

¹Special Note: Previous DWI convictions are considered as previous refusals for the purpose of determining license enhancement sanctions under the Implied Consent Law.

²The mandatory fine and imprisonment sanctions may be either suspended or deferred if the defendant was only "in actual physical control of a motor vehicle." This exclusion, however, does not apply if the defendant was "driving" a vehicle. See §39-08-01(4)(e)(1).

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

Restitution
(eg Victim's Fund)

Yes By the defendant for all offs (§§5-01-06, 12.1-32-02 & 12.1-32.08) and via a victims' compensation fund (§65-13-01 et seq.).

Other:

The court may order a defendant to install an "ignition interlock" device on their vehicle; see §§39-06.1-11 & 39-08-01.3.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes-0.10 BAC and the person was arrested for violating §§39-20-03.1, 39-06.1-10, 39-06.1-11 & 39-20-04.1 1st off-91 dy susp (30 dys are mandatory); 2nd off (w/n 5 yrs)-**364 dy susp** (mandatory); and 3rd and sub. off (w/n 5 yrs.)-**2 yrs. susp.** (mandatory)

Other:

None

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st off-Susp; 2nd off (w/n 5 yrs)- **Susp**; 3rd off (w/n 5 yrs)-**Susp**; Note: 4th off (w/n 7 yrs)-**Susp**, treated as a 1st off. §§39-06-35 & 39-06.1-10

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off-91 dys; 2nd off (w/n 5 yrs)-**364 dys**; 3rd off (w/5 yrs)-**728 dys**

Mandatory Minimum Term of
Withdrawal:

1st off-30 dys (A temporary license may be issued after the 30 dy mandatory period; see §39-06.1-11.); 2nd off (w/5 yrs)- **364 dys**; 3rd off (w/n 5 yrs)-**728 dys** §39-06.1-11

Other:

Rehabilitation:

Alcohol Education:

Yes

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they either (1) are under the influence of alcohol or a controlled substance or (2) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs. mand.). See §§39-06:2-02 and 39-06.2-10.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Alcohol Treatment: **Yes** For 1st, 2nd and 3rd alcohol-driving off convictions, the sentence must include referral to a treatment program; see §39-08-01(5).

Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority: **No**
Terms Upon Which Vehicle
Will Be Released:
Other: License plates may be impounded following a conviction for an alcohol driving off; see §39-08-01(3)
For three or more DWI convictions, a defendant's vehicle may be subject to forfeiture; see §39-08-01.3.

Miscellaneous Sanctions
Not Included Elsewhere:

Special Note: Mandatory imprisonment sanctions apply if either a death or a serious injury is DWI related. If a person is convicted of a homicide which is related to DWI (e.g., manslaughter (§12.1-16-02), negligent homicide (§12.1-16-03)), there is a mandatory penalty of **1 yr.** imprisonment. If a person is convicted of DWI where there is a serious injury caused by the defendant, there is a mandatory penalty of **90 dys** imprisonment. See §§39-06-31(1) & 39-08-01.2.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of off:

No See Special Note note above under Miscellaneous Sanctions for DWI offenses.

Sanctions:

Criminal Sanction:
Imprisonment (Term):
Mandatory Minimum Term:
Fine (\$ Range):
Mandatory Minimum Fine:

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Special Note: Even though this State does not have a veh homicide statute, it, nevertheless, provides for mandatory license rev from 30 dys to 1 yr for a conviction of manslaughter resulting from the operation of a motor veh. §39-06-31-(1)

Length of Term of

Licensing Withdrawal:

Mandatory Action—Minimum

Length of License

Withdrawal:

Other:

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

C1 B Misd Not more than **30 dys**; §39-06-42; Note: Under §39-06-42(3), license plates may also be impounded for the duration of the driver's license susp/rev.

Mandatory Minimum Term

of Imprisonment:

4 con. dys See §§39-06-42(2) & 37-08-01

Fine (\$ Range):

Not more than **\$500**

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Additional mandatory susp for a like period¹, a person driving while his license is revoked would incur a mandatory 1-yr extension of the period of Rev. Note: Special licensing actions apply for a violation of the conditions of a restricted license; see 39-06.1-11, 39-06-43 and 39-08-01.

Length of Term of License

Withdrawal Action:

See above.

Mandatory Term of License

Withdrawal Action:

Same as above; see §39-06.1-11(2)

¹If the actual suspension was for an indefinite or unstated period of time, the additional suspension shall be for a period of six (6) months.

Other Criminal Actions Related to DWI: (continued)

Habitual Offender Laws:

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

Other State Laws Related To Alcohol Use:

**Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic**

Accidents:

State Has Such a Law (Yes/No): **Yes** §39-20-13
BAC Chemical Test Is Given to the
the Following Persons:
Driver: **Yes**
Vehicle Passengers: **Yes**
Pedestrian: **Yes**

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** (Year Eff: 1936) §§5-01-08, 5-01-09 &
5-02-06
Minimum Age (Years) Possession: **21**¹ §5-01-08
Minimum Age (Years) Consumption: **None**

¹There is any employment exemption for persons who are 19-20 years old, see §5-02-06.

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes** §5-01-06.1 Special Note: The law prohibits an adult passenger, who is injured while riding with an intoxicated driver, from bringing a dram shop cause of action.

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

No

Dram Shop Actions-Social Hosts:

Yes §5-01-06.1

Other:

None

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

Type of Criminal Action:

C1 A **Misd** §5-01-09

Term of Imprisonment:

Not more than **1 yr** §12.1-32-01

Fine (\$ Range):

Not more than **\$1,000** §12.1-32-01

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

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

Yes, rev or susp §§5-02-10 and 5-02-11

Length of Term of License Withdrawal:

Time period is not specified in the statute. §5-02-11

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

Type of Criminal Action:

C1 A **Misd** §§5-01-09 & 5-02-06

Term of Imprisonment:

Not more than **1 yr** §12.1-32-01

Fine (\$ Range):

Not more than **\$1,000** §12.1-32-01

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

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

Yes, rev or susp §§5-02-10 and 5-02-11

Length of Term License Withdrawal:

Time period is not specified in the statute. §5-02-11

Other State Laws Related To Alcohol Use: (continued)

Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No):

Yes §39-08-18

Anti-Consumption Law (Yes/No):

Yes Driver and passengers §37-08-18 (The law states that "no person shall drink or consume alcoholic beverages ... in or on any motor veh when such veh is upon a public highway or in an area used principally for public parking.")

STATE:
General Comments:

OHIO
See Ohio Revised Code Annotated.

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §4511.19(A)(1)
Illegal Per Se Law (BAC/BrAC Level):	0.10¹ §4511.19(A)(2); (3) & (4)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	(1) Any Drug or (2) Combination of These and Alcohol §4511.19(A)(1)
Other:	For Commercial Motor Vehicle Operators, see p. 3-312.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §4511.191(A)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §4511.191(A)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) City of Westerville v. Cunningham, 239 N.E.2d 40 (1968)
Other Information:	None

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §4511.191(A)
Urine:	Yes §4511.191(A)
Other:	Probably no ("Other bodily" substance is applicable to §4511.19 but is not mentioned in §4511.191 which is the Implied Consent Statute.) §§4511.191(A) & 4511.19

Adjudication of DWI Charges:

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

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> : Criminal Sanctions (Fine/Jail):	N/A
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¹This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration level of 0.10 or more or (2) a urine alcohol concentration of 0.14 or more (grams of alcohol per 100 milliliters of urine).

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

Administrative Licensing Action
(Susp/Rev): **N/A**
Other: **N/A**

Refusal to Take Implied Consent
Chemical Test:

Criminal Sanction (Fine/Jail): 1st Refusal--Not more than **\$100**; 2nd refusal (w/n 1 yr)--**30 dys** and not more than **\$250**; 3rd and subsequent refusals (w/n 1 yr. of 1st)--not more than **60 dys** and not more than **\$500**; §§4511.99(E) and 2929.21

Administrative Licensing Action
(Susp/Rev): For any Refusal Susp-1 yr §4511.191(D)
(Occupational driving privileges may be granted; see §4511.191(G)(5).)
Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:
Term (Day, Month, Years, Etc.): Misd of the first degree, 1st Off - Not more than **6 mos**; 2nd Off (w/n 5 yrs) - Not more than **6 mos**; Subsequent offs (w/n 5 yrs) - **30-dys-1 yr** §§2929.21 & 4511.99(A)
Mandatory Minimum Term: 1st Off - **3 dys**¹; 2nd off (w/n 5 yrs) - **10 dys**; Subsequent offs (w/n 5 yrs) - **30 dys** These dys are to be served consecutively.

Fine:
Amount (\$ Range): 1st Off -**\$150-1,000**; 2nd off (w/5 yrs) - **\$150-1,000**; Subsequent offs (w/5 yrs)- **\$150-1,000**
Mandatory Min. Fine (\$): **\$150 for all offenses**

Other Penalties:

Community Service: **None**
Restitution (eg Victim's Fund) **Yes** (Compensation by the defendant for property damage to a victim; see §2929.21(E).)
Other: Driver's intervention program; see §3720.66.
Ignition Interlock. As a condition of probation by the court.² §§2951.02(I), 4507.16(C), 4511.83 & 4511.99(L)

¹In lieu of this 3 day jail sanction, the court may place a defendant on probation and order them to attend a driver's intervention program for 3 consecutive days; see §§4511.99(A)(1) and 3720.66.

²If such a condition is imposed, the defendant must also obtain a specially marked driver's license indicating that he/she may only operate a vehicle equipped with such a device. It is first degree misd. for any person to circumvent or to tamper with an ignition interlock device. A defendant who is convicted of such an offense shall have their license withdrawn as follows: 1st off-susp for not more than 1 yr; sub off-susp for not more than 5 yrs.

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

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

None

Other:

At the initial court appearance, following a DWI arrest, the court shall immediately suspend a driver's license if the driver, at the time of arrest, either refused to submit to a chemical test or, having submitted to such a test, was found to have a BAC level of 0.10 or more and one of the following: 1) The driver has had a previous DWI conviction; 2) the driver's license is either revoked or suspended; 3) the driver has caused either death or serious harm to another person; 4) the driver fails to appear for the hearing; or 5) the court determines that the driver's continued operation of a motor veh will be a threat to the public safety. This susp continues until the DWI charge is adjudicated; this usually takes 90 dys after the DWI arrest. It appears that occupational driving privileges may be granted during this susp period. Note: A law enforcement officer may sieze a driver's license after a DWI arrest if the driver refuses to submit to a chemical test or if the driver's BAC level is 0.10 or more. See §§4511.191(E), (G), (J), and (K).

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

1st Off-Susp; 2nd off (w/n 5 yrs) Susp;
Subsequent offs (w/n 5 yrs) - Susp; §4507.16(B)
See Special Note below.

Term of License Withdrawal

(Days, Months, Years, etc.):

1st Off -60 dys-3 yrs; 2nd off (w/n 5 yrs)-120
dys-5 yrs; Occupational driving privileges may
be granted for 1st and 2nd offs; see
§4507.16(D); Subsequent off (w/n 5 yrs)-180
dys-10 yrs See Footnote No. 1 below.

¹For persons under 18 years old, susp until they either are 18 or complete an alcohol/drug abuse education/treatment program. However, for a 3rd off (w/n 2 yrs), susp for 1 yr. (mand.). See §§2151.354(B), 2151.355(B), 2151.356(B), 4507.021(D)(2)(a) and 4507.162(A).

Special Note: A driver's license can also be revoked for any DWI offense conviction under §4507.16(B). This section does not provide for a specific period of time for such revocation. However, §4507.34 provides that revocation periods shall not exceed 1 year for the operation of a vehicle relating to "recklessness." In *City of Columbus v. Tyson*, 484 N.E.2d 155 (Ohio App. 1983), the court held that the term "recklessness" in this particular section included other offenses and not just strictly the offense of operating a vehicle in a reckless manner. As a result, DWI or vehicle homicide might be included in this term. Further court decisions, no doubt, will be necessary in order to resolve this issue.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Mandatory Minimum Term of
Withdrawal:

1st Off-60 dys¹; 2nd Off-120 dys¹; 3rd &
Subsequent Off (w/n 5 yrs)-180 dys §4507.16(E) &
(G); For a 3rd or sub. off., after the
mandatory minimum term of 180 dys, occupational
driving privileges may be granted. §4507.16(E)

Special Note: A license may be suspended via a
point system under §4507.40. In brief, under
this section a DWI conviction results in as
assessment of 6 points; if a driver accumulates
12 or more points from traffic violations within
a 2 yr period, their license may be suspended
for 6 mos.

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Yes May be imposed if defendant is an alcoholic
or suffering from acute alcohol intoxication.
This treatment may be imposed in place of a jail
term. Confinement shall be for at least 3 dys
and no more than length of maximum prison
sentence. §2935.33

Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):

It is uncertain whether this suspension is mandatory. Under §4507.16(G), the court cannot suspend this denial of driving privileges. However, §4507.16(E) does permit the court to grant occupational driving privileges.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC (UrAC = grams of alcohol per 100 milliliters of urine) level of 0.04 or more, (2) are under the influence of a controlled substance or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand.). In addition, a CMV operator who has any "measurable" or "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. See §§4506.01(A), (E), (G), (H) & (V), 4506.15, 4506.16(A) & (B) and 4506.17(A).

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

Vehicle Impoundment/Confiscation:

Authorized by Specific
Statutory Authority: **No**
Terms Upon Which Vehicle
Will Be Released:
Other:

Special Note: A vehicle's registration certificate and license plates may be impounded if the owner thereof has had their driver's license either suspended or revoked; see §4507.164. Note: This applies not only to DWI susps/revs but also to susps/revs for other types of traffic law offenses.

Miscellaneous Sanctions
Not Included Elsewhere:

None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Off:

Yes Aggravated Vehicle Homicide-felony (§2903.06) and Negligent vehicle homicide-1st off -misd; sub. off-felony (§2903.07)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Aggravated Vehicle Homicide: 1st off (felony 4th degree)-18 mos-5 yrs; sub. off (felony 3rd degree)-2-10 yrs Vehicle Homicide: 1st off (misd. 1st degree)-not more than 6 mos; sub. off (felony 4th degree)-18 mos-5 yrs §§2929.11 & 2929.21 See Footnote No. 1 below.

Mandatory Minimum Term:

See Footnote No. 2 below.

Fine (\$ Range):

Aggravated Vehicle Homicide: 1st off (felony 4th degree)-not more than \$2,500; sub. off¹ (felony 3rd degree)-not more than \$5,000 Vehicle Homicide: 1st off (misd. 1st degree)-not more than \$1,000; sub. off¹ (felony 4th degree)-not more than \$2,500 §§2929.11 & 2929.21

Mandatory Minimum Fine:

See Footnote No. 2 below.

Administrative Licensing Action:

Licensing Authorized and
Type of Action:

For either Aggravated Vehicle Homicide or Vehicle Homicide-Susp or rev See §§2903.06(B), 2903.07(B), 4507.16(A), 4507.16(D) & 4507.34 and City of Columbus v. Tyson, 484 N.E.2d 155 (Ohio App. 1983) and Special Note on p. 3-311.

¹A previous offense includes either either a §2903.06 or a §2903.07 offense.

²For either type of offense, either a second offender or a 1st offender who has had a previous DWI conviction is not eligible for probation; see §§2903.06(C) & 2903.07(C).

Other Criminal Actions Related to DWI: (continued)

Length of Term of Licensing Withdrawal: For either Aggravated Vehicle Homicide or Vehicle Homicide-susp-**30 dys-3 yrs** or rev-not more than **1 yr** For either offense, if alcohol or drugs were involved, the driver's license is **permanently revoked**; see §4507.16(D).

Mandatory Action--Minimum Length of License Withdrawal: For either Aggravated Vehicle Homicide or Vehicle Homicide-susp-**30 dys** §4507.16(G) For either offense, if alcohol or drugs were involved, the driver's license is **permanently revoked**; see §4507.16(D).

Other: For either offense, 6 points are assessed against a driver's record; see §4507.021(G)(3). A driver's license may be suspended for 6 mos if a person has accumulated 12 points w/n a 2 year period.

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

Sanction:

Criminal:

Imprisonment (Term): Not more than **6 mos** (Misd of the first degree)¹ §§4507.02 & 4507.99

Mandatory Minimum Term of Imprisonment: **None**

Fine (\$ Range): Not more than **\$1,000** §4507.99

Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev): Susp points gained §4507.02(F)

Length of Term of License Withdrawal Action: (1) **Discretionary susp** for not more than **1yr** or (2) mandatory 6 points on 12-point susp system - 12 points w/n 2 yrs will result in a **6 month susp**. §§4507.99 and 4507.021 See Special Note below.

Mandatory Term of License Withdrawal Action: **None**

Habitual Offender Laws:

State Has Such Law (Yes/No): **No**

Grounds for Being Declared an Habitual Offender:

¹Driving while suspended for an implied consent law violation (refusal)-Misd. of the first degree: Imprisonment-not more than 6 mos (§2929.21(B)(1)); fine-not more than \$1,000 (§2929.(C)(1)); and license revocation-not more than 1 year (§4511.99(B)); see generally §§4511.192 & 4511.99.

Special Note: Certificate of registration and license plates in defendant's name may be impounded for duration of license susp time; see §4507.164.

Other Criminal Actions Related to DWI: (continued)

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

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

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

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **Z1** §§4301.63 & 4301.69 (Year Eff: 1987)
 Minimum Age (Years) Possession: **Z1** §4301.632
 Minimum Age (Years) Consumption: **Z1** §§4301.631, 4301.632 & 4301.69

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes** §§4399.01, 4399.02 & 4399.18

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

Yes, Mason v. Roberts, 244 N.E. 2d 844 (1973)¹

Dram Shop Actions-Social Hosts:

Yes-Limited A social host is not liable for the
 actions of an intoxicated adult guest; see
 Settlemyer v. Wilmington Veterans Post No. 49,
 American Legion, Inc., 464 N.E.2d 521 (1984)¹.
 However, a social host may be held liable for
 the death or an intoxicated minor guest; see
 Mitseff v. Wheeler, 526 N.E.2d 798 (Ohio 1988).

Other: **None**

¹See also Terry v. Markoff, 497 N.E.2d 1133 (Ohio App. 1986), and Great Central Insurance Co. v. City of Bowling Breen, 523 N.E.2d 354 (Ohio 1988).

Other State Laws Related To Alcohol Use: (continued)Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action: 3rd Degree - **Misd** §§4301.22(B) & 4301.99(E)
 Term of Imprisonment: Not more than **60 days**; §2929.21(B)(3)
 Fine (\$ Range): Not more than **\$500**; §2929.21(C)(3)

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

License to Serve Alcoholic Beverages
 Withdrawn (Yes/No): **Yes** §§4301.25 and 4301.27
 Length of Term of License Withdrawal: **Indeterminate**

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

Type of Criminal Action: **Misd**¹ 1st or 3rd Degree
 Term of Imprisonment: 1st Degree Misd.: Not more than **6 mos**
 §2929.21(B)(1); 3rd Degree Misd.: Not more than
60 days §2929.21(B)(3)
 Fine (\$ Range): 1st Degree Misd.: Not more than **\$1,000**
 §2929.21(C)(1); **Misd.** 3rd Degree Misd.: Not
 more than **\$500** §2929.21(C)(3)

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

License to Serve Alcoholic Beverages
 Withdrawn (Yes/No): **Yes** §§4301.25 and 4301.27
 Length of Term License Withdrawal: **Indeterminate**

Anti-Happy Hour Laws/Regulations:

Yes 4301:1-1-50 (regulation)

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

Open Container Law (Yes/No): **No**
 Anti-Consumption Law (Yes/No): **Yes** Drivers and passengers §4301.64 (The law
 states that "No person shall consume any beer or
 intoxicating liquor in a motor veh.")

¹A person may be charged with a misd. of either the 1st or 3rd degree; see §§4301.22(A),
 4301.69, 4301.99(C) & §4301.99(E).

STATE:
General Comments:

OKLAHOMA
See Oklahoma Statutes Annotated.

Basis for a DWI Charge:

Standard DWI Offense:	(1) Under the influence of alcohol (47 §11-902(A)(2)) and (2) Impaired by the consumption of alcohol (47 §761(A))
Illegal Per Se Law (BAC/BrAC Level):	0.10 ¹ 47 §11-902(A)(1)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	(1) Intoxicating Substances or (2) a Combination of These and Alcohol ² 47 §11-902(A)(3) & (4)
Other:	0.10 BAC level is also <u>prima facie</u> evidence that a person was under the influence of alcohol 47 §756(c) > 0.05 and < 0.10 is evidence of Driving While Impaired 47 §756(b)

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes 47 §751
Implied Consent Law Applies to Drugs (Yes/No):	Yes 47 §751(A)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) 47 §756
Other Information:	Note: The law authorizes a mandatory chemical test in situations where there is probable cause that a person has been operating a motor vehicle while DWI and such operation has caused either death or serious physical injury to another person. See 47 §753.

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

Blood:	Yes 47 §751
Urine:	No
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes (2nd and subsequent offs) 22 §982

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

²The impaired offense applies only to the use of alcohol (not other drugs). The sanctions given for driving while under the influence includes both alcohol and drug driving violations.

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:

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

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): None

Administrative Licensing Action
(Susp/Rev):

1st Refusal-Rev-180 dys (90 dys mandatory)¹; 2nd Refusal (w/n 5 yrs)-Rev.-1 yr (mandatory); Sub. Refusal (w/n 5 yrs)-Rev.-3 yrs (mandatory) 47 §§ 6-205.1, 6-211(i), 753, 754.1 & 755
See Footnote No. 3 on p. 3-319.

Other: None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

Driving While Under the Influence/Illegal Per Se
1st Off (Misd)-10 dys to 1 yr; 2nd & subsequent offs (w/n 10 yrs-felony)-1 yr to 5 yrs 47
§11-902 Personal Injury Accident (Driving While Under the Influence/Illegal Per Se)-1st Off (Misd)-90 dys to 1 yr; 2nd Off (felony)-1 to 5 yrs 47 §11-904(A) Great Bodily Harm (Driving While Under the Influence/Illegal Per Se) (felony)-not more than 5 yrs 47 §904(B)
Limited Circumstances: For a 2nd or subsequent illegal per se/under the influence offense where a person is not sentenced to a term of imprisonment, they must either (1) serve not less than ten (10) days of community service or (2) undergo inpatient rehabilitation/treatment for not less than 48 consecutive hours; see 47 §11-902(C).²

Mandatory Minimum Term:

¹A restricted hardship license is available after the mandatory 90 day period.

²Except as just noted, the court has the power to suspend a sentence and/or place a defendant on probation; see 22 §991a.

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

Fine:

Amount (\$ Range):

Driving While Impaired, 1st off-\$100 to 300; 2nd & subsequent offs-\$100 to 300 47 §761; Driving While Under the Influence/Illegal Per Se, 1st Off (Misd)- Not more than \$1,000; 2nd & subsequent offs (w/n 10 yrs-felony)-Not more than \$2,500 47 §11-902; Personal Injury Accident (Driving While Under the Influence/Illegal Per Se)-1st off (Misd)-Not more than \$2,500; 2nd off (Felony)-Not more than \$5,000 47 §11-904(A) Great Bodily Harm (Driving While Under the Influence/Illegal Per Se) (felony)-not more than \$5,000 47 §904(B)

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

For all offs - **Yes**; see 22 §991a. For a 2nd or sub. illegal per se/driving while under the influence offense if jail is not served, a defendant may be required to serve ten (10) days of community service; see 47 § 11-902(C).

Restitution

(eg Victim's Fund)

Yes Paid by a defendant to a victim as part of a probation/suspended sentence. See 22 §991a.

Other:

None

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes-0.10 BAC level 1st Action-Rev-90 dys (30 dys mandatory)²; 2nd Action (w/n 5 yrs)-Rev-1 yr (mandatory); Sub. Action (w/n 5 yrs)-Rev-3 yrs (mandatory) 47 §§6-205.1, 6-211(i), 754, 754.1, & 755

See Footnote No. 3 below.

Other:

None

¹The revs for a violation of 47 §11-902 would, it appears, apply also to violations of 47 §11-904 (See 47 §§6-205, 6-205.1 and 756); however, there are no specific licensing actions in 47 §11-904.

²After the 30 day period, a hardship license may be issued; see 47 §§754.1 & 755.

³For license sanction enhancement purposes only, a previous offense includes prior revocations based on either DWI offenses, admin. per se violations or implied consent test refusals; see 47 §6-205.1(a)(3) & (4).

Special Note: In addition to any other suspension/revocation for an impaired, under the influence, or illegal per se offense, a person 17 years old or younger shall have their driving privileges denied/cancelled as follows: 1st off-for 1 yr or until the person reaches 17 whichever is longer (90 dys are mandatory); 2nd or subsequent off-for 1 yr or until the person reaches 18 whichever is longer (1 yr is mandatory). The person may also be required to complete an alcohol/drug abuse program. 47 §§6-107.1 & 6-107.2

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

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

For driving while impaired (47 §761)- 1st Off- No licensing action is taken for a 1st off; 2nd and subsequent offs-Susp 47 §761; For Driving While Under the Influence/Illegal Per Se (47 §11-902)¹; 1st Off-Rev; Sub. off.-Rev.
See Footnote No. 3 and Special Note on p. 3-319.

Term of License Withdrawal

(Days, Months, Years, etc.):

For driving while impaired, 2nd and subsequent offs-6 mos; For driving While Under the influence/illegal Per Se, 1st Off-90 dys; 2nd Off (w/n 5 yrs)- Rev 1 yr; sub off (w/n 5 yrs)- Rev 3 yrs; 47 §§6-205, 6-205.1, & 6-211(i) See Special Note on p. 3-319.

Mandatory Minimum Term of
Withdrawal:

For driving while impaired 2nd and subsequent offs-6 mos; For Driving While Under the Influence/Illegal Per Se, 1st Off-30 dys¹; 2nd Off-1 yr; sub Off-3 yrs See Special Note on p. 3-319.

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Yes

Yes Nonprofit educational institutions of higher learning, governmental or nonprofit organizations offer courses for drinking driver retraining; a court may (with defendant's consent), upon DWI defendant's plea of guilty or nolo contendere, but before judgement is entered, commit defendant to undertake these courses. Further judicial proceedings are deferred only upon conditions that defendant attend and successfully complete courses at their own expense. A defendant could be assigned to an alcohol treatment program while they are serving their imprisonment sanctions; see 47 §§11-902(c), (d), & (e), 11-902.1, 11-902.2 and 11-902.3. In addition, under 47 §6-212.2, a 1st DWI defendant must complete an alcohol and substance abuse course before their license can be reinstated. For a 2nd or sub. illegal per se/driving while under the influence offense, the defendant may be required to participate in an inpatient rehabilitation/treatment program for 48 consecutive hours if they are not sentence to serve a jail term; see 47 §11-902(C). See Special Note on p. 3-319.

¹After the 30 day period, a restricted hardship license may be issued; see 47 §§754.1 & 755.

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

Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions:
(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific
Statutory Authority: **No**

Terms Upon Which Vehicle
Will Be Released:

Other: **None**

Miscellaneous Sanctions

Not Included Elsewhere: **None**

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes** Misd. 21 §§5 & 6 and 47 §11-903

Sanctions:

Criminal Sanction:

Imprisonment (Term): **Not more than 1 yr in the county jail**

Mandatory Minimum Term: **None**

Fine (\$ Range): **\$100-1,000**

Mandatory Minimum Fine: **None**

Special Note: The Oklahoma Courts have decided that if a veh homicide is proximately caused by an alcohol driving law offender, for a first off the charge may be Manslaughter 1 and for a second off the charge may be Murder II. See respectively para. 1 of sec. 711 of Title 31 (McConnell v. State, 485 P.2d.764 (1971) and White v. State 483 P.2d 751 (1971) and para 2 sec. 701.8 of Title 21 (Isom v. State, 646 P.2d 1288 (1982)).

Administrative Licensing Action:

Licensing Authorized and

Type of Action: **Rev**

Length of Term of

Licensing Withdrawal: **1st off-6 mos; 2nd off-2 yrs 47 §§6-205(1), 6-208(b)(1) & (3) and 11-903(c)**

Mandatory Action--Minimum

Length of License

Withdrawal: **6 Mos**

Other: **None**

Other Criminal Actions Related to DWI: (continued)

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

Sanction:

Criminal:

Imprisonment (Term): Misd. Not more than 1 yr 47 §6-303(b)

Mandatory Minimum Term
of Imprisonment: None

Fine (\$ Range): \$100 to \$500 47 §6-303(b)

Mandatory Minimum Fine: None

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev): Susp or rev 47 §6-303(c)

Length of Term of License
Withdrawal Action: Period of susp/rev extended not more than 12
mos 47 §6-303(c)

Mandatory Term of License
Withdrawal Action: Period of susp/rev extended not more than 12
mos 47 §6-303(c)

Habitual Offender Laws:

State Has Such Law (Yes/No): No

Grounds for Being Declared an
Habitual Offender:

Term of License Rev While
Under Habitual Offender Status:

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

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

Imprisonment (Term):

Mandatory Minimum Term of
Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

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

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21¹** 37 §241 & 37 §537 (A)(1) & 528(E) (Year
Eff: 1983)
Minimum Age (Years) Possession: **21** 21 §1215 & 37 §246(A) See the special note
below.
Minimum Age (Years) Consumption: Special Note: Under 37 §537(a)(8), no one may
consume alcoholic beverages containing more than
3.2% alcohol in public. Under 37 §246,
alcoholic beverages containing less than 3.2%
alcohol may be consumed in public but not in a
licensed establishment by a person under 21 yrs
old unless the person is being directly
supervised by either a parent or guardian.

Dram Shop Laws and Related Legal Actions:

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

Yes Brigance v. The Velvet Dove Restaurant, et
al., 725 P.2d 300 (Ok1. 1986)

Dram Shop Actions--Social Hosts: **No** (No Cases)
Other: **None**

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

Type of Criminal Action:

For alcoholic beverages except nonintoxicating
beverages² **Felony** 37 §506(3), §537(A)(2) &
§538(G)

Term of Imprisonment:

Not more than **1 yr** 37 §538(G)

Fine (\$ Range):

\$500-1,000 37 §538(G)

¹ Sale age applies to all alcoholic beverages; purchase age applies only to alcoholic beverages above 3.2% alcohol.

² A person who serves a nonintoxicating alcoholic beverage (alcoholic beverages with an alcoholic content of $\frac{1}{2}$ of 1% to 3.2% alcohol) to an intoxicated person may not have committed an offense under 37 §§537(A)(2) & 538(G); see 37 §§506(3) and 506(13). This matter is not addressed in the laws covering nonintoxicating beverages; see 37 §§163.1 et seq.

Other State Laws Related To Alcohol Use: (continued)

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Rev 37 §528(C)(1)

Length of Term of License Withdrawal: At the discretion of the Alcoholic Beverage Control Board

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

Type of Criminal Action:

For alcoholic beverage 3.2% and above - **Felony** 37 §§537(A)(1) & 538(F); for alcoholic beverages 1/2 of 1% to 3.2% **Misd** 37 §§163.1, 163.11, 163.20, & 241 and 21 §§ 10 & 21

Term of Imprisonment:

For felony off - Not more than **5 yrs** For misd off - Not more than **1 yr**

Fine (\$ Range):

For felony off - **\$2,500 - \$5,000** For misd off - Not more than **\$500**

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Rev 37 §§163.11(H)(3), 244, 528(C)(1) & 538(F)

Length of Term License Withdrawal:

For alcoholic beverages 3.2% or more - in the discretion of the alcoholic beverage control board-period of rev not stated in the statute; for nonintoxicating alcoholic beverages of 1/2 of 1% to 3.2% - Rev by the district court for **12 mos**

Anti-Happy Hour Laws/Regulations:

Yes 37 §537(B)(4)

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

Open Container Law (Yes/No):

Yes 37 §537(A)(7)

Anti-Consumption Law (Yes/No):

Yes, driver and passengers 37 §537(A)(8) (The law states that "It shall be unlawful to drink intoxicating liquor ... in a public place.")

STATE:

OREGON

General Comments:

See Oregon Revised Statutes.

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor¹
§813.010(1)(b)

Illegal Per Se Law (BAC Level):

0.08¹ §813.010(1)(a)

Presumption (BAC Level):

None

Types of Drugs/Drugs and Alcohol:

(1) A Controlled Substance or (2) a Controlled Substance and Intoxicating Liquor
§813.010(1)(b) & (c)

Other:

A BAC level of not less than **0.08** constitutes being under the influence of intoxicating liquor; see §813.300(2).

For Commercial Motor Vehicle Operators, see p. 3-329.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

No

Implied Consent Law:

Arrest Required (Yes/No):

Yes §813.100

Implied Consent Law Applies to

Drugs (Yes/No):

No

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal and Civil Cases) §813.310

Other Information:

None

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

No

Urine:

No

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

Yes §813.170 Special Note: There is a diversion program for DWI offenders who have not been convicted of a DWI off w/n a 10-yr period; see §813.200 et seq.

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

Yes §813.020(1)(b)

¹For persons under 18 years old, any amount of alcohol in the blood constitutes being under the influence of intoxicating liquor; see §813.300(3).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

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

Refusal to Take Implied Consent

Chemical Test:

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

1. **Susp for 1 yr** if there have been no previous susps for either a test refusal or a DWI off (90 dys are mandatory)¹
2. **Susp for 3 yrs** if there has been either a previous test refusal or a previous DWI off/admin. per se violation based license susp w/n 5 yrs (1 yr mand)¹ §§813.100, 813.410, 813.420, 813.430 & 813.520 **Important:** See Special Note on p. 3-329.

Other: None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):

A DWI off is a C1 A Misd - Not more than 1 yr §§813.010(3) & 161.615(1)

Mandatory Minimum Term:

48 hrs §813.020(2)

Fine:

Amount (\$ Range):

Not more than \$2,500 ORS §161.635(1)(a)²

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

80-250 hrs (As an alternative to imprisonment) §§813.020(2) & 137.129(4)

Restitution

(eg Victim's Fund)

Yes Direct compensation to victims by the defendant (§§137.102 to 137.109) and also via a victims' compensation fund (§147.005 et seq.)

Other:

A \$195 fee is charged in addition to any fine imposed; the fee is used to pay for intoxicated driver programs and for police training; see §§813.020(1)(a) & 813.030.

¹A restricted hardship license may be issued after this mandatory period; see §813.520(1) & (3). This mand. period is reduced by any mand. susp. period that may be imposed for either a 2nd or sub. DWI off conviction (w/n 5 yrs) based on the same occurrence; see §813.520.

²There is also a special assessment of \$40 which must be imposed by the court not withstanding other fines (indigent persons are not required to pay this assessment); see §147.259(1).

Sanctions Following a Conviction for a DWI Offense:

(continued)

Ignition Interlock. A pilot is being conducted program in a number of counties. Persons convicted of DWI offenses shall have this device installed in their vehicles prior to being issued a hardship license. This program terminates on June 30, 1991. See Ch. 576, Oregon Laws 1989.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes - BAC Level of **0.08** 1. A **90 dy susp (30 dys** are mandatory^{1&2}) if there has been no previous susp for either a chemical test refusal, or an admin. per se violation, or a DWI off

2. A **1 yr susp (mandatory)**² §§813.100, 813.420, 813.430 & 813.520 **Important:** See Special Note on p. 3-329.

Other:

None

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st Off-Susp; 2nd and subsequent offs (w/n 5 yrs)-**Susp**; Special Note: The State issues special licenses to persons 14-17 yrs old for the purpose of attending educational institutions; the State, it appears, issues such licenses notwithstanding a DWI conviction and the mandatory licensing sanctions provided for such an off if veh transportation is needed by the minor to attend such institutions; see §§807.230, 809.420 & 813.400.

Term of License Withdrawal

(Days, Months, Years, etc.):

1st Off-1 yr; 2nd and subsequent offs (w/n 5 yrs)-**3 yrs**. §§809.420(2) & 813.400(2) Under §§809.260 & 809.280(7), a person under 17 but not younger than 13 who is convicted of a DWI offense is subject to the following licensing action: 1st off.-a susp. for **1 yr** or until the person reaches 17 whichever is the longer susp. period; 2nd or sub. off.-a susp. for **1 yr** or until the person reaches 18 whichever is the longer susp. period.

¹A restricted hardship license may be issued after this mandatory period; see §813.520(2).

²This mand. susp. is reduced by any mand. susp. imposed for either a 2nd or sub. off (w/n 5 yrs) if based on the same occurrence; see §813.520.

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

Also, under §4(4) of Ch. 715 of the laws of 1989, a person under 18 who has been convicted of a DWI offense must have their license suspended until they are 18 or are otherwise eligible for license reinstatement.

**Mandatory Minimum Term of
Withdrawal:**

1st Off-see Footnote No. 1; 2nd Off (w/n 5 yrs)-**90 dys**²; 3rd and subsequent offs (w/n 5 yrs)-**1 yr**². For persons under 17 but not younger than 13, 1st off-**90 dys**; 2nd or sub off-**1 yr**
Important: See Special Note on p. 3-329.

Other:

Rehabilitation:

Alcohol Education:

Note: For second or subsequent DWI offense convictions, a restricted hardship license can be issued only following an examination of the DWI offender by the mental health division to determine if the offender is a problem drinker. If he or she is determined to be a non-problem drinker, the offender must enroll in an alcohol education program. However, if the offender is determined to be a problem drinker, he or she must enroll in a rehabilitation program. The offender must enroll in either of these programs before such a license may be issued. See §813.500.

Yes, See Note above.

**Alcohol Treatment:
Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):**

Yes.

Vehicle Impoundment/Confiscation:

**Authorized by Specific
Statutory Authority:**

Yes, Impoundment for 2nd or subsequent DWI
offs. §809.700.

**Terms Upon Which Vehicle
Will Be Released:**

After a period of impoundment of not more than **120 dys** and after paying the costs of the veh's removal and storage. See ORS §809.700(2)

¹A restricted hardship license may be issued; see §§807.240 & 813.520. Note: A 30 dy susp is mandatory if the defendant within the previous yr has been convicted of a major traffic off. See §813.520(8).

²A restricted hardship license may be issued after this mandatory period; see §813.520(4) & (5). Note: This mand. period is reduced by any mand. susp. period imposed for either an implied consent law test refusal or an admin. per se law violation if based on the same occurrence; see §813.520.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Other:

Special Note: This sanction also applies where a person has been driving while their driver's license is either suspended or revoked; see §809.700(1)(a).

Under §809.010(1)(b) & (3), the registration of a defendant's vehicle may also be suspended for not more than 120 dys for a 2nd or subsequent DWI conviction.

Miscellaneous Sanctions

Not Included Elsewhere:

None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **No**

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

Fine (\$ Range):

Mandatory Minimum Fine:

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's CDL privilege is suspended if while operating a CMV they either (1) are convicted of a DWI offense (§813.010 offense), (2) had a 0.04 alcohol concentration by weight in their blood or (3) refused to submit to a chemical test for alcohol concentration. For a 1st refusal, the CDL is suspended for 3 yrs (mand.); however, if the person was carrying hazardous materials, the suspension is for 5 yrs (mand.). For either a 1st DWI conviction or 0.04 violation, the CDL is suspended for 1 yr (mand.); however, if the person was carrying hazardous materials, the suspension is for 3 yrs (mand.). For either (1) a subsequent refusal, DWI conviction or 0.04 violation or (2) a combination of these, the CDL privilege is suspended is for life (mand.). See §§813.120, 813.410 and 40 & 41 of Ch. 636 of the Laws of 1989.

Special Note: Under §807.220, a person may be issued an emergency driver's license if they are at least 14 years old. Except for restrictions that may be placed on the emergency license such as when and where a vehicle may be operated, it appears that such a license could be issued for any emergency situation **regardless** of whether the person being issued this license has had their regular one either suspended or revoked for either (1) an implied consent law refusal, (2) an administrative per se law violation, (3) a DWI conviction or (4) convictions for other traffic law offenses. This section further provides that for persons 17 years old or younger, an emergency includes the situation where the person has to use a vehicle to travel to and from school.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:
Licensing Authorized and
Type of Action:

Note: Even though this State does not have a veh homicide statute, it, nevertheless, provides for mandatory license rev for **5 yrs** for manslaughter etc. resulting from the operation of a motor veh (§809.410(1)). Important: See Special Note below. Note: §807.240 on hardship occupational licenses applies only to persons who have had their licenses suspended not revoked; see especially §807.240(1).

Length of Term of
Licensing Withdrawal:
Mandatory Action—Minimum
Length of License
Withdrawal:
Other:

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

Sanction:

Criminal:

Imprisonment (Term): Not more than **5 yrs** (C1 C felony) §§811.175 & 161.605
Mandatory Minimum Term of Imprisonment: **None**
Fine (\$ Range): Not more than **\$100,000** §161.625
Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev):

Rev Note: For a violation of §811.175, a defendant's veh may be impounded for not more than 120 dys under either §809.700 or §809.010(1)(a) & (3); the vehicle's registration can also be suspended under §809.010(1)(a).

Length of Term of License
Withdrawal Action:
Mandatory Term of License
Withdrawal Action:

None
N/A

Habitual Offender Laws:

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

Yes §809.600 et seq.

(1) Three serious traffic offs (w/n 5 yr period) or (2) A combination of 20 minor and serious traffic offs w/n a 5-yr period)

Term of License Rev While
Under Habitual Offender Status:

5 yrs. (1 yr probationary and renewable license is available if certain conditions are met) §§807.270 and 809.650 Important: See Special Note on p. 3-329.

Other Criminal Actions Related to DWI: (continued)

Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status C1 C felony See §811.185(3).

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

Imprisonment (Term): 5 yrs §161.605

Mandatory Minimum Term of
Imprisonment: None

Fine (\$ Range): \$100,000 §161.625

Mandatory Minimum Fine (\$): No

Licensing Actions (Specify): None

Other State Laws Related To Alcohol Use:

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

State Has Such a Law (Yes/No): Yes §146.113

BAC Chemical Test Is Given to the
the Following Persons:

Driver: Yes (If over 13 yrs of age and within 5 hrs of
accident) §146.113

Vehicle Passengers: Yes (If over 13 yrs of age and within 5 hrs of
accident) §146.113

Pedestrian: Yes (If over 13 yrs of age and within 5 hrs of
accident) §146.113

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: 21 (Year Eff: 1933) §§471.410 & 471.430

Minimum Age (Years) Possession: 21 Exemption for either the possession or the
consumption of an alcoholic beverage in a
private residence accompanied by or with the
consent of a parent. §§471.410 & 471.430

Minimum Age (Years) Consumption: See above under "Minimum Age (Years) Possession"

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): Yes §§30.950 & 30.960 Note: In order to be
liable, it must be shown that the licensee
provided alcoholic beverages to a "visibly
intoxicated" patron.

Other State Laws Related To Alcohol Use: (continued)

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

Dram Shop Actions-Social Hosts:

Other:

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

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

No¹

Yes §§30.950 & 30.960 Note: In order to be
liable, it must be shown that the social host
provided alcoholic beverages to a "visibly
intoxicated" guest.

None

C1 A Misd - Applies to the sale of (1) wine and
beer sold by the drink by certain types of
licensees and (2) all types of pkg alc.
beverages by licensed stores; see §471.410; **Misd**
- Applies to the sale of distilled spirits, wine
and beer sold by the drink by (1) private clubs
or (2) specially licensed restaurants or other
commercial establishments where food is prepared
and served; §§472.310 & 472.990
See **Special Note** below.

C1 A Misd - Not more than **1 yr Misd 1st off**-
Not more than **6 mos**; **2nd or subsequent offs** -
Not more than **1 yr**

C1 A Misd - Not more than **\$2,500**; **Misd 1st off** -
Not more than **\$500**; **2nd or subsequent offs** - Not
more than **\$1,000**

¹Previous case law, that established common law negligence actions, appears to have been
abrogated by the dram shop statute. Ref: Cambell v. Carpenter, 566 P.2d 893 (Or. 1977);
Chartrand v. Coos Bay Tavern, Inc., 696 P.2d 513 (Or. 1985); Davis v. Billy's Con-Teena, Inc.,
587 P.2d 75 (Or. 1978); and, Solberg v. Johnson, 760 P.2d 867 (Or. 1988).

Special Note: Under §2 of Ch. 785 of the laws of 1989, no licensee shall knowingly serve
alcoholic beverages to a visibly intoxicated person. However, notwithstanding any other
provision of law, the alcoholic beverage control commission shall only issue letters of
reprimand for three (3) violations w/n a 2 yr period.

Other State Laws Related To Alcohol Use: (continued)

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

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

Length of Term of License Withdrawal: Any licensed establishment, that either sells liquor by the drink or packaged alcoholic beverages and that violates the liquor laws concerning sales to intoxicated persons, may have their license revoked/suspended for an indeterminate period of the time and/or be fined via administrative action; see §§471.315, 471.322, 472.180 & 472.187.

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

Type of Criminal Action:

Cl A Misd - Applies to the sale of (1) wine and beer sold by the drink by certain types of licensees and (2) all types of pkg alc. beverages by licensed stores; see §471.410; **Misd** - Applies to the sale of distilled spirits, wine and beer sold by the drink by (1) private clubs or (2) specially licensed restaurants or other commercial establishments where food is prepared and served; §§472.310 & 472.990

Term of Imprisonment:

Cl A Misd - Not more than **1 yr** Misd 1st off - Not more than **6 mos**; 2nd or subsequent offs - Not more than **1 yr**

Fine (\$ Range):

Cl A Misd - Not more than **\$2,500**; Misd 1st off - Not more than **\$500**; 2nd or subsequent offs - Not more than **\$1,000**

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

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

Length of Term of License Withdrawal: Any licensed establishment, that either sells liquor by the drink or packaged alcoholic beverages and that violates the liquor laws concerning sales to persons under the minimum legal drinking age, may have their license revoked/suspended for an indeterminate period of the time and/or be fined via admin. action; see §§471.315, 471.322, 472.180 & 472.187.

Other State Laws Related To Alcohol Use: (continued)

Anti-Happy Hour Laws/Regulations: No

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

Open Container Law (Yes/No):

Yes §811.170(1)(b) & (c)

Anti-Consumption Law (Yes/No):

Yes, driver and passengers §811.170(1)(a)
(Excludes passengers riding in a veh used to
carry persons for hire.)

STATE
General Comments:

PENNSYLVANIA
See Pennsylvania Statutes Annotated.

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol 75 §3731(a)(1)
Illegal Per Se Law (BAC Level):	0.10 75 §3731(a)(4)
Presumption (BAC Level):	None
Type of Drugs/Drugs and Alcohol:	(1) A Controlled Substance or (2) a Controlled Substance and Alcohol 75 §3731(a)(2) & (3)
Other:	None

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	Yes 75 §1547(k)
Implied Consent Law:	
Arrest Required (Yes/No):	No ¹
Implied Consent Law Applies to Drugs (Yes/No):	Yes 75 §1547(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) 75 §1547(e)
Other Information:	None

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

Blood:	Yes 75 §1547
Urine:	Yes 75 §1547
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No ²
Anti-Plea Bargaining Statute (Yes/No):	No , but see footnote below
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes 75 §1548

¹The implied consent law would seem to indicate that an arrest is necessary before licensing sanctions for refusal could be imposed. However, a recent court decision appears to hold that only "reasonable grounds" not an actual arrest is all that is needed. See Magill v. Com., 522 A.2d 172 (Pa.Cmwlth. 1987).

²Accelerated Rehabilitation Disposition (A.R.D.) may not be allowed if: (1) defendant was convicted or accepted A.R.D., because of DWI charge within last 7 yrs; (2) present off violated habitual offender statute; (3) if any person other than defendant was seriously injured or killed. Also, a judge may not lessen the charge at preliminary hearing.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): **None**
Administrative Licensing Action (Susp/Rev): **None**
Other: **None**

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): **None**
Administrative Licensing Action (Susp/Rev): **Susp-12 mos** 75 §1547(b)(1) (Mandatory)
Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment: Any DWI off is a 2nd degree misd
Term (Day, Month, Years, Etc.): All offs - not more than 2 yrs; 18 §1104
Mandatory Minimum Term: 1st off-48 con hrs¹; 2nd off (w/n 7 yrs)-30 dys¹; 3rd off (w/n 7 yrs)-90 dys¹; 4th off (w/n 7 yrs)-1 yr¹ 42 §9721 and 75 §3731(e)

Fine:

Amount (\$ Range): Not more than **\$5,000**; 18 §1101
Mandatory Min. Fine (\$): 1st off² - **\$300**; 2nd off (w/n 7 yrs.)³ - **\$300**; 3rd off (w/n 7 yrs.)³ - **\$300**; 4th off (w/n 7 yrs.)³ - **\$300** 75 §3731(e)

Other Penalties:

Community Service: 1st off² - Possible under A.R.D.
Restitution (eg Victim's Fund) **Yes** 18 §1106 Restitution is to be paid by a defendant to a victim. Note: Restitution is required under A.R.D.²; see 75 §3731(e)(6)(iii). See Footnote No. 4 below.

¹Work release is allowed for the purpose of litter collection from either public or private property; see 75 §3731(h).

²Accelerated Rehabilitation Disposition (A.R.D.). (75 §1552 & Pa. Cr. Pro. Rule 175 et seq.)
1) Acceptance into and satisfactory completion of program may lead to dismissal of DWI charge.
2) Acceptance determined by judge after hearing relevant facts of prosecutor, defendant and any victims. Judge also announces terms of A.R.D. 3) "Conditions of program may be such as may be imposed with respect to probation after conviction ..., including restitution and costs, and may include other conditions agreed to by parties, except that a fine may not be imposed." 4) Programs duration shall not exceed 2 yrs. 5) If defendant is found by Judge, at a hearing, to have violated A.R.D. terms the program will be terminated and the prosecutor may proceed with the DWI charge(s). 6) When defendant enters A.R.D. program because of a DWI charge the Pa. D.O.T. shall keep a record for 7 yrs.

³Acceptance of A.R.D. shall be considered a 1st conviction for purposes of computing any subsequent violations. A.R.D. applies only to first offs.

⁴Note: The State's victims' compensation fund does not normally cover damages (e.g. personal injuries) resulting from motor vehicle law violations (e.g., DWI); see 71 §180-7 et seq. and Price v. Crime Victim's Comp. Bd., 546 A.2d 763 (Pa.Cmwlth. 1988)

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

Other: If a person is in A.R.D. court supervision for at least 6 mos if counseling/treatment not necessary and for not less than 12 mos if counseling or treatment is necessary. 75 §3731

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law: **None**
Other: **None**

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev): **Susp** 75 §1532(b)(3)
Term of License Withdrawal
(Days, Months, Years, etc.): **12 mos** or if accepted into A.R.D. program - 1 mo to 12 mos¹
Mandatory Minimum Term of
Withdrawal: **12 mos** or if accepted into A.R.D. program¹ - 1 mo

Other:

Rehabilitation:

Alcohol Education: **Yes**²
Alcohol Treatment: **Yes**²
Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe): **Yes**²

Vehicle Impoundment/Confiscation:

Authorized by Specific
Statutory Authority: **No**
Terms Upon Which Vehicle
Will Be Released:
Other: **None**

Miscellaneous Sanctions

Not Included Elsewhere: **None**

¹ See Habitual Offender Laws on p. 3-339.

² 1) Every convicted person must take and pass an approved alcohol highway safety class. 2) A Court may order participation (successful) in an individual or group outpatient intervention program to treat substance abuse. Participation may be ordered for up to 2 yrs. 3) If a convicted person is found to be a "chronic" abuser, who represents a "demonstrated and serious" threat, he may be ordered (committed) into treatment at a D.O.H. approved facility. 75 §1548 Required counseling or treatment under A.R.D.; see 75 §3731(e)(6).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes** See the following provisions of Pa. law: 18 §§1101, 1103, & 1104 and 75 §§3732 & 75 3735.

Sanctions:

Criminal Sanction:

Imprisonment (Term): Misd 1st degree (non-alcohol related death 75 §3732)-Not more than **5 yrs**; Felony 3rd degree (alcohol related death 75 §3735)-Not more than **7 yrs**

Mandatory Minimum Term: Misd 1st Degree (non-alcohol related death)-**None**; Felony 3rd Degree (Alcohol related death)-**3 yrs** (75 sec. 3735(b))

Fine (\$ Range): Misd 1st Degree (Non-alcohol Related Death) - not more than **\$10,000**; Felony 3rd Degree (Alcohol related death)-Not more than **\$15,000**

Mandatory Minimum Fine: **None**

Administrative Licensing Action: (See Habitual Offender Laws on p. 3-339.)

Licensing Authorized and Type of Action: Misd 1st Degree (Non-Alcohol Related Death)-**Rev**; Felony 3rd Degree (Alcohol Related Death)-**Rev**

Length of Term of Licensing Withdrawal: Misd 1st Degree (Non-Alcohol Related Death)-**1 yr**; Felony 3rd Degree (Alcohol Related Death)-**1 yr** 75 §1532

Mandatory Action--Minimum Length of License Withdrawal: Misd 1st Degree (Non-Alcohol Related Death)-**1 yr**; Felony 3rd Degree (Alcohol Related Death)-**1 yr**

Other: **None**

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

Sanction:

Criminal:

Imprisonment (Term): 1st off-Not less than 90 dys¹; 2nd and subsequent offs-Not more than 1 yr¹ 75 §§1543(b) & 6503

Mandatory Minimum Term of Imprisonment: 1st & sub. offs-90 dys^{1&2} 75 §§1543(b)

Fine (\$ Range): 1st & sub. offs-\$1,000¹ 75 §§1543(b)

Mandatory Minimum Fine: 1st & sub. offs-\$1,000^{1&2} 75 §§1543(b)

¹These sanctions also apply if a person drives in violation of either a susp or rev imposed either as a condition of A.R.D. or as a result of a refusal to submit to a chemical test under the implied consent law.

²See also Com. v. Hill, 549 A.2d 583 (Pa.Super. 1988), and Com. v. Hoover, 494 A.2d 1131 (Pa.Super. 1985).

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev):

1st off-Rev; 2nd off-Rev 75 §1543

Length of Term of License
Withdrawal Action:

If based on a susp-6 mos (additional); If based on a rev-1 yr (additional) 75 §1543(c)¹

Mandatory Term of License
Withdrawal Action:

Same as above

Habitual Offender Laws:

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

Yes

3 convictions of any one or more of the following w/n a 5-yr period: 1) veh homicide when DWI; 2) DWI; 3) other offs listed in 75 §1532; 4) operation following registration's susp; 5) using a veh w/out knowledge or consent of owner; 6) using veh for unlawful sale of alcohol or controlled substance; 7) any felony in which veh was essentially involved. 75 §1542

Term of License Rev While
Under Habitual Offender Status:

5 yrs 75 §1542 (Note: For another offense committed w/n 5 yrs, an additional rev. of 2 yrs.)

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

Summary off 75 §1543

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

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

1 yr 75 §6503
None
\$200 to \$1,000 75 §6503
None
2 yrs additional Rev period 75 §6503

Other State Laws Related To Alcohol Use:

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

State Has Such a Law (Yes/No):

Yes 75 §3749

¹Applies also to A.R.D. susp/rev violations.

Other State Laws Related To Alcohol Use: (continued)

BAC Chemical Test Is Given to the
the Following Persons:

Driver:	Yes (if driver 15 yrs old and died within 4 hrs of the accident)
Vehicle Passengers:	Yes , but only if the driver of the veh cannot be determined
Pedestrian:	Yes (if over 15 yrs old and died within 4 hrs of the accident)

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	21 (Year Eff. 1935) 1 §1991, 18 §6308 and 47 §4-493(1)
Minimum Age (Years) Possession:	21 18 §6308
Minimum Age (Years) Consumption:	21 18 §6308

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes** 47 §4-497

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

Yes, *Jardine v. Upper Darby Lodge No. 1973 Inc.*, 413 Pa. 626, 198 A.2d 550 (1964)

Dram Shop Actions-Social Hosts:

Yes (Limited) *Congini v. Porterville Valve Co.*, 470 A.2d 515 (1983); this case limited liability of social hosts to the actions of intoxicated minor guests.¹ See also *Klein v. Raysinger*, 470 A.2d 507 (1983)², where the court found no social host liability for the actions of adult guests.

Other:

None

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

Type of Criminal Action:

Misd 47 §§4-493(1) and 4-494(a)

Term of Imprisonment:

1st off-1 to 3 mos (for failure to pay fine);
2nd and subsequent offs-3 mos to 1 yr

Fine (\$ Range):

1st off - \$100 to \$500; 2nd and subsequent offs - \$300 to \$500 (Note: There is also a possible civil fine of from \$50 to \$1,000, see 47 §4-471)

¹See also *Macleary v. Hines*, 817 F.2d 1081 (3rd Cir. 1987) and *Orner v. Mallick*, 527 A.2d 521 (1987).

²See also *Bemis v. Gumbeski*, 534 A.2d 1099 (Pa.Super. 1987).

Other State Laws Related To Alcohol Use: (continued)

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

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

Yes or liquor control board may impose a fine of \$50 to \$1,000. (1 yr for location unless ownership changes hands, including immediate family members.)

Length of Term of License Withdrawal: 3 yrs if revoked (1 yr for location unless ownership changes hands, including immediate family members.) If suspended: indeterminate 47 §4-471

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

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Misd¹ 47 §§4-493(1) and 4-494(a)
1st off-1 to 3 mos (for failure to pay fine);
2nd and subsequent offs-3 mos to 1 yr
1st off-\$100 to \$500; 2nd and subsequent
offs-\$300 to \$500 (Note: There is also a possible civil fine of from \$50 to \$1,000; see 47 §4-471)

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

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

Length of Term License Withdrawal:

Yes 47 §4-471

3 yrs if revoked (1 yr for structure unless ownership changes hands, including immediate family); if Susp: indeterminate or Liquor Control Board may impose a fine; see fine range on previous page of \$50 to \$1,000.

Anti-Happy Hour Laws/Regulations:

No

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

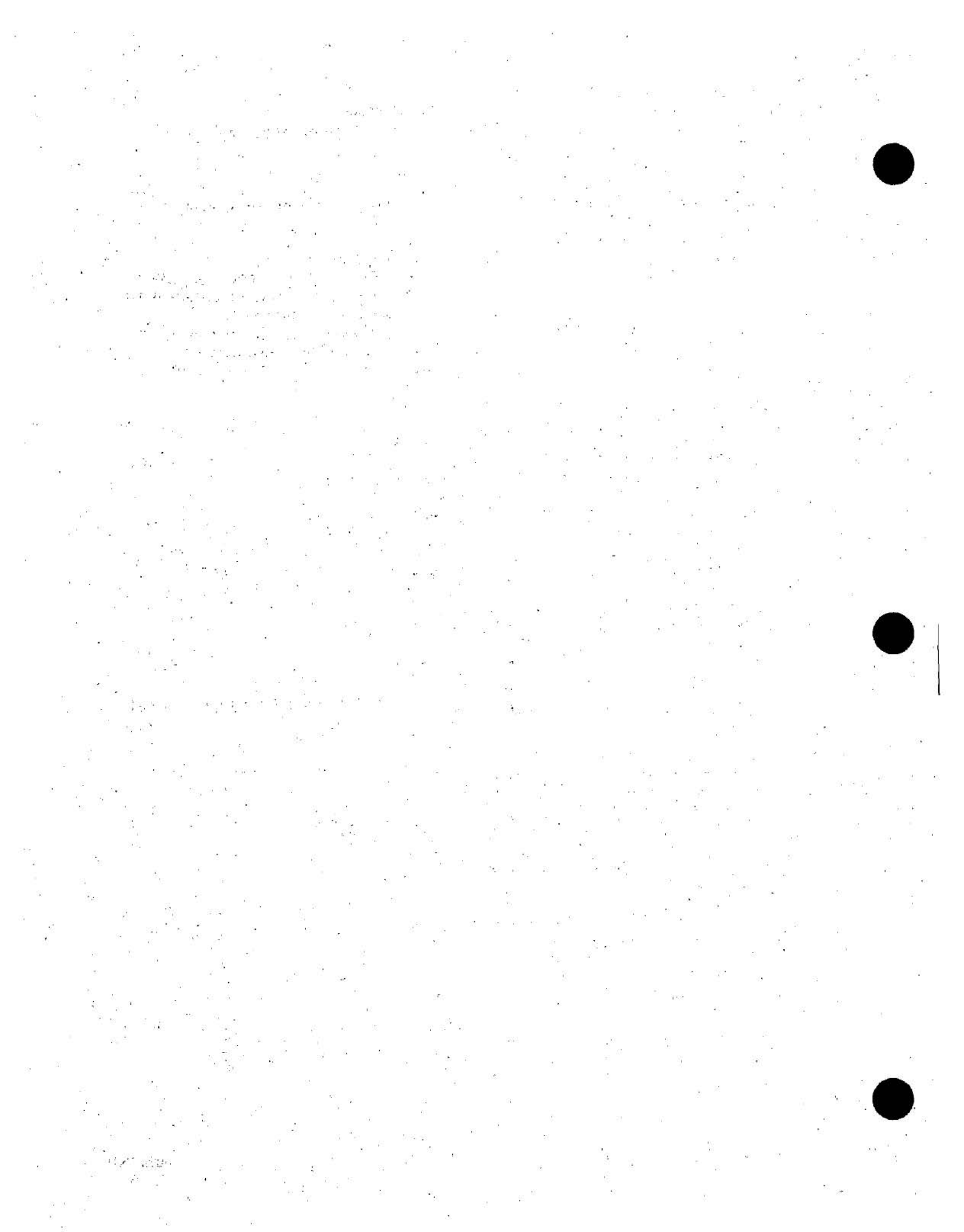
Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):

No

Yes-driver only 75 §3715

¹There is a separate offense of "knowingly selling" alcoholic beverages to a minor; see 18 §6310.1.



STATE:
General Comments:

PUERTO RICO
See Laws of Puerto Rico Annotated.

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating drinks 9 §1041(a)
Illegal Per Se Law (BAC Level):	None
Presumption (BAC Level):	0.10 9 §1041(b)(2) 0.05 for operators of trucks, busses, school busses, heavy motor vehicles and public service motor vehicles 9 §1041(b)(3)
Types of Drugs/Drugs and Alcohol:	(1) Any Narcotic Drug, (2) Marihuana and (3) a Depressing or Stimulating Substance 9 §1045
Other:	None

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	Yes 9 §1043
Implied Consent Law:	
Arrest Required (Yes/No):	Yes 9 §1043
Implied Consent Law Applies to Drugs (Yes/No):	No
Refusal to Submit to Chemical Test Admitted into Evidence:	n.a.
Other Information:	None

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

Blood:	Yes 9 §1043
Urine:	No ¹
Other:	"Any other substance of his body" 9 §1043

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes 9 §1042(d)

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	None
Other:	None

¹The law states that for "any substance of his body except urine"; see 9 §1043.

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

Refusal to Take Implied Consent

Chemical Test:

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

None

Susp - 6 mos to 2 yrs 1st refusal - mand susp for 6 mos; sub. refusal - mand susp. for 1 yr 9 §1044

Other:

None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

Non-Injury DWI Off (Misd.): 1st off-not more than 15 dys¹; 2nd off (w/n 5 yrs)-10 to 30 dys; 3rd off-30 to 60 dys; subsequent off-60 dys to 6 mos; Injury related DWI off: 1st off (Misd.)-30 to 90 dys¹; 2nd off (Misd.) (w/n 5 yrs)-90 dys to 6 mos; 3rd and subsequent off (Felony)-fixed jail term of 1 yr³ Serious injury related DWI off (Felony): fixed jail term of 1 yr³ 9 §1042

Mandatory Minimum Term:

Non-Injury DWI Off (Misd.)-1st off-None¹; 2nd off (w/n 5 yrs)-24 con. hrs²; 3rd off-30 dys; subsequent off-60 dys; Injury related DWI off: 1st off (Misd.)-None¹; 2nd off (Misd.) (w/n 5 yrs)-24 con. hrs²; 3rd and subsequent off (Felony)-6 mos and 1 dy³ Serious injury related DWI off (Felony): 6 mos and 1 dy³ 9 §1042

¹For 1st offenses, "The effects of the sentence" may be "suspended" if the defendant meets the following three (3) conditions. (1) They have not refused to submit to a BAC chemical test. (2) Their BAC level was of between 0.10 and 0.14 (or 0.05 and 0.10 if operating either a truck, bus, school bus, heavy motor vehicle or public service motor vehicle). And, (3) they agree to participate in an alcohol/drug rehabilitation program. 9 §1042(f)

²For 2nd offenses, "The effects of the sentence" of imprisonment may be "suspended" if the defendant meets the following three (3) conditions. (1) They have not refused to submit to a BAC chemical test. (2) Their BAC level was of between 0.10 and 0.14 (or 0.05 and 0.10 if operating either a truck, bus, school bus, heavy motor vehicle or public service motor vehicle). And, (3) they agree either (1) to serve "non-domiciliary" confinement for an uninterrupted" 24 hr period or (2) to participate in 10 dys of community service. 9 §1042(m)

³For aggravating circumstances, the imprisonment sanction may be increased to 3 yrs. For extenuating circumstances, the imprisonment sanction may be reduced to 6 mos and 1 dy. 9 §1042(b)(1) & (2)

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

Fine:

Amount (\$ Range):

Non-Injury DWI Off (Misd.)-1st off-not more than \$100 to \$300¹; 2nd off (w/n 5 yrs)-\$200 to \$400; 3rd off-\$300 to \$500; subsequent off-\$400 to \$500 Injury related DWI off: 1st off (Misd.)-\$200 to \$500¹; 2nd off (Misd.) (w/n 5 yrs)-\$300 to \$500; 3rd and subsequent off (Felony)-None Serious injury related DWI off (Felony): **None** 9 §1042

Mandatory Min. Fine (\$):

All offs - **None**

Other Penalties:

Community Service:

Yes For 2nd off (either non-injury or injury DWI offs)-**10 dys** of community service in lieu of imprisonment. 9 §1042(m) See Footnote No. 2 on p. 3-344.

Restitution

(eg Victim's Fund)

Yes, Paid by the defendant² 33 §3212

Other:

A defendant may be ordered to take and pass a driver improvement course. 9 §1042(h)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

None

Other:

None

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

Susp, Restriction or Rev 9 §1042(n)

Term of License Withdrawal

(Days, Months, Years, etc.):

For either non-injury, injury or serious injury DWI offs: 1st off-up to 3 mos¹; 2nd off (w/n 5 yrs)-3 mos-2 yrs; 3rd off-3 yrs; 4th off-permanent rev 9 §1042(n)

Mandatory Minimum Term of
Withdrawal:

See Rehabilitation below. Note: There is a hardship licensing provision; see 9 §1042(i).

Other:

Rehabilitation:

Alcohol Education:

License susp, restriction or rev until the defendant participates in and passes a driver improvement course or until the agency in charge of rehabilitation certifies that the defendant is qualified to drive. 9 §1042(h)

¹See Footnote No. 1 on p. 3-344.

²Payment cannot be more than \$500.

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

Alcohol Treatment:
Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority: **No**
Terms Upon Which Vehicle
Will Be Released:
Other: **None**
Miscellaneous Sanctions
Not Included Elsewhere: **None**

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes** There are two vehicle homicide offs. (1) Involuntary manslaughter while operating a motor vehicle (Misd.) 33 §4005; (2) Death caused by gross or willful negligence in driving a motor vehicle (Felony) 33 §§3044 & 4006

Sanctions:

Criminal Sanction:
Imprisonment (Term): **Misd. off—a fixed term of 1 yr** (3 yrs if there are aggravating circumstances; 6 mos and 1 dy if there are extenuating circumstances.); **felony off—a fixed term of 6 yrs** (10 yrs if there are aggravating circumstances; 4 yrs if there are extenuating circumstances.)
Mandatory Minimum Term: **None**
Fine (\$ Range): **Misd. off—\$3,000; felony off—None**
Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and
Type of Action: **Rev 33 §4007**
Length of Term of
Licensing Withdrawal: **1 yr 33 §4007**
Mandatory Action—Minimum
Length of License
Withdrawal: **1 yr 33 §4007**
Other: **Restitution** A defendant may be ordered to pay restitution. The following maximum payments may be imposed: For a misd.—\$500 and for a felony—\$5,000. 33 §3212

Other Criminal Actions Related to DWI: (continued)

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

Sanction:

Criminal:

Imprisonment (Term): 1st off (Misd)-1 to 3 mos; sub. off (Misd)-3 to 6 mos 9. §§721(13) & 722(d)

Mandatory Minimum Term
of Imprisonment: **None**

Fine (\$ Range): 1st off-\$200 to \$500; sub. off-none

Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev): **None**

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

Habitual Offender Laws:

State Has Such Law (Yes/No): **No**

Grounds for Being Declared an
Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No): **Yes** 9 §1043

BAC Chemical Test Is Given to the
the Following Persons:

Driver: **Yes**

Vehicle Passengers: **No**

Pedestrian: **Yes**

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **18** 13 §6083 (Sales only) (Year Eff: 1969)

Minimum Age (Years) Possession: **None**

Minimum Age (Years) Consumption: **None**

Dram Shop Laws and Related Legal Actions:

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

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

No

Dram Shop Actions-Social Hosts: **No**

Other: **None**

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

Type of Criminal Action: **None**

Term of Imprisonment:

Fine (\$ Range):

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

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **None**

Length of Term of License Withdrawal:

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:

Misd 13 §6107 (See Footnote No. 1 below.)

Term of Imprisonment:

30 dys to 6 mos²

Fine (\$ Range):

\$100 to 500²

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes 13 §6093

Length of Term License Withdrawal:

Indeterminate

Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

No

¹There are two other provisions under Puerto Rico law that make it an offense to sell alcoholic beverages to a person under the legal drinking age. Sanctions against any person: Misd. - jail - 25 dys - 6 mos; fine - \$25 - 500 (33 §§1021 & 3035). Sanctions only against dealers: Misd. - jail - 30 dys - 1 yr; fine - \$100 - \$1,000 (13 §§6083 & 6116).

²An administrative fine of not more than \$2,000 may be imposed at any time before a misd. trial of an alcohol offense.



STATE:
General Comments:

RHODE ISLAND
See General Laws of Rhode Island.

Basis for a DWI Charge:

Standard DWI Offence:

Under the influence of intoxicating liquor
§31-27-2(a)

Illegal Per Se Law (BAC/BrAC Level):

0.10^{1&2} §31-27-2(b) Persons under 18 who have a BAC level of between 0.04 and 0.10 are considered to have been driving while impaired which is not a criminal offense; see §31-27-2.5(d) & (g).

Presumption (BAC Level):

None

Types of Drugs/Drugs and Alcohol"

(1) Any Drug, (2) Toluene, (3) any Controlled Substance and (4) Any Combination of These Substances and Intoxicating Liquor §31-27-2(a)

Other:

None

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

Yes §31-27-2.3

Implied Consent Law:

Arrest Required (Yes/No):

Yes (Implied) §31-27-2.1

Implied Consent Law Applies to

Drugs (Yes/No):

Yes §31-27-2.1

Refusal to Submit to Chemical Test

Admitted into Evidence:

(Note: There is no law, statute or case, on this subject.)

Other Information:

None

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes (exception on religious grounds) §§31-27-2 & 31-27-2.1

Urine:

Yes §§31-27.2 and 31-27.2.1

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

No

Pre-Sentencing Investigation Law (PSI)

(Yes/No):

Yes, Alcohol assessment §31-27-2(d)(7)

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

²Standard: 0.01 percent or more by weight of alcohol in the blood, breath or urine; see §31-27-2(b).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):

None

Administrative Licensing Action (Susp/Rev):

None

Other:

Administrative fine-\$15; see §§31-27-2.3(B) & 31-41-4.

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):

1st refusal-**\$200 to \$500 and 10-60 hrs of public service**; 2nd refusal (w/n a 5 yr period)-**\$300 to \$500**; 3rd and subsequent refusal (w/n a 5 yr period)- **\$400 to \$500** (Special Note: In addition to the above fines, an assessment fee of \$250 is charged to the defendant.) The imposition of these fines, assessments and/or public community service is mandatory.) §31-27-2.1

Administrative Licensing Action (Susp/Rev):

1st Refusal-**3-6 mos susp** (For persons under 18 years old-mandatory susp for 6 mos; see §31-27-2.5a); 2nd refusal (w/n 5 yr period)-**1-2 yrs Susp**; 3rd and subsequent refusal (w/n 5 yr period)-**2-3 yrs Susp**; (These susps are mandatory) §31-27-2.1

Other:

1st Refusal-Attendance at a DWI class or alcohol/drug treatment program; 2nd refusal (w/n 5 yr period)-Attendance at an alcohol/drug treatment program; 3rd and subsequent refusal (w/n 5 yr period)-Attendance at an alcohol/drug treatment program (Attendance at these classes or programs is required.)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):

1st off-Not more than **1 yr**; 2nd off (w/n 5 yrs)-**10 dys-1 yr**; 3rd and subsequent offs (w/n 5 yrs)-**6 mos-1 yr**; §31-27-2(d) (Note: A DWI off is a misd) DWI serious bodily injury offs: 1st off-not more than 5 yrs; 2nd and sub. off (w/n 5 yrs)-**1-10 yrs** §31-27-2.6 The sanctions for persons under 18 who committ a DWI offense are contained in the Misc. Sanctions section below on p. 3-354.

Mandatory Minimum Term:

1st off-None; 2nd off (w/n 5 yrs)-**10 dys containing at least 48 cons hrs**; 3rd and subsequent offs (w/n 5 yrs)-**6 mos containing at least 48 cons hrs** For DWI serious injury offs-none

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

Fine:

Amount (\$ Range): 1st off-\$100; 2nd off (w/n 5 yrs)-\$400; 3rd and subsequent offs (w/n 5 yrs)-\$400¹ .DWI serious injury offs: 1st off-\$250 to \$2,500; 2nd and sub. off (w/n 5 yrs)-\$500 to \$5,000 §31-27-2.6

Mandatory Min. Fine (\$): 1st off-\$100; 2nd off (w/n 5 yrs)-\$400; 3rd and subsequent offs (w/n 5 yrs)-\$400; (In addition to the above fines, an assessment fee of \$250 is charged to the defendant.) §31-27-2(d) For DWI serious injury off-none

Other Penalties:

Community Service: 1st off - 10-60 hrs

Restitution
(eg. Victim's Fund)

Yes, Victim's compensation fund; see §12-25-1 et seq.²

Other: None

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

None

Other:

Under §31-11-7(a), a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev/susp (e.g., DWI). Such action may be taken without a preliminary hearing.

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

Susp all non-injury DWI offs For DWI serious injury offs-Rev. For persons under 18, see Misc. Sanctions on p. 3-354. See Footnote No. 3 below.

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

DWI non-injury offs: 1st off-3-6 mos; 2nd off-1-2 yrs; 3rd off-2-3 yrs; §31-27-2(d) DWI serious injury offs: 1st off-2 yrs; 2nd and sub. off (w/n 5 yrs)-4 yrs §31-27-2.6

Mandatory Minimum Term of
Withdrawal:

DWI non-injury offs: 1st off-3 mos; 2nd off-1 yr; 3rd off-2 yrs; §31-27-2(d) DWI serious injury offs: None

¹The defendant must also pay a fee of either \$20 or 10% of the fine imposed which ever is the greater amount. This fee is for the purpose of supporting the fund which compensates victims of violent crimes such as DWI related deaths or injuries; see §12-25-12(c).

²Award limited to \$25,000 plus attorney's fees; see §12-25-6(b).

³In addition to the licensing action indicated, a person convicted of driving while under the influence of a "controlled substance" may have their license revoked for 1 year; see §31-11-6.

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

Other:

Rehabilitation:
Alcohol Education: 1st off - Alcohol (DWI)/drug education course and/or treatment program (Required)
Alcohol Treatment: 2nd off-Yes (Required); 3rd off-Yes (Required)
Alcohol Education/
Treatment as an Alternative to Criminal
Licensing Actions
(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific
Statutory Authority: **Yes** 4th or sub. DWI off (w/n 5 yrs)-A person's vehicle may be forfeited (confiscated) by the State; see §31-27-2(d).

Terms Upon Which Vehicle
Will Be Released:

Other: **None**

Miscellaneous Sanctions

Not Included Elsewhere: For persons under 18 years old who have been found to have been driving while impaired (BAC level between 0.04 and 0.10), an assessment fee of \$150 or community service (§31-27-2.5(d)(1)) and the following licensing sanctions: 1st violation-6 mos susp; 2nd violation-susp until the person is 21 years old; 3rd and subsequent violations-suspension until the person is 21 years old plus an additional 2 yr susp (§31-27-2.5(d)(2), (3) & (4)). These license suspensions are mandatory. In addition, the following sanctions apply to persons convicted of DWI who are under 18 years old: 1st off.-a highway assessment fine of not more than \$250, 10-60 hrs. of community service & a 6 mon. lic. susp. (mandatory); 2nd and sub. off.-confinement in a training school for not more than one (1) yr., a fine of not more than \$500 & a one (1) yr. lic. susp. (mandatory). See §31-27-1(d)(a) & (b).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of off: **Yes**

Criminal Sanction:

Imprisonment (Term): 1) Death related DWI offs-felony-1st off - **6 mos-10 yrs**; 2nd and subsequent (w/n 5 yrs) - **5-20 yrs** §§31-27-2.2 & 11-1-2; 2) Non-DWI related driving causing death-felony-Not more than **10 yrs** §§31-27-1 & 11-1-2

Mandatory Minimum Term: **None**

Other Criminal Actions Related to DWI: (continued)

<p>Fine (\$ Range):</p>	<p>Death related DWI offs, <u>1st off - \$500 to \$5,000</u>; <u>2nd and subsequent</u> (w/n 5 yrs) - <u>\$800 to \$5,000</u> Non-DWI related deaths - <u>None</u></p>
<p>Mandatory Minimum Fine:</p>	<p><u>None</u></p>
<p>Administrative Licensing Action:</p>	<p></p>
<p>Licensing Authorized and Type of Action:</p>	<p>Death related DWI offs, <u>1st off-Rev</u>; <u>2nd and subsequent</u> (w/n 5 yrs)-<u>Rev</u>; Non-DWI related driving causing death-<u>Rev</u> §31-11-6</p>
<p>Length of Term of Licensing Withdrawal:</p>	<p>Death related DWI offs, <u>1st off-3 yrs</u>; <u>2nd and subsequent offs</u> (w/n 5 yrs)-<u>5 yrs</u>; Non-DWI related driving causing death-<u>3 yrs</u></p>
<p>Mandatory Action--Minimum Length of License Withdrawal:</p>	<p>Death related DWI offs, <u>1st off-3 yrs</u>; <u>2nd and subsequent offs</u> (w/n 5 yrs)-<u>5 yrs</u>; Non-DWI related driving causing death-<u>3 yrs</u></p>
<p>Other:</p>	<p><u>None</u></p>
<p>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:</p>	
<p>Sanction:</p>	
<p>Criminal:</p>	
<p style="padding-left: 40px;">Imprisonment (Term):</p>	<p>Where susp or rev is due to either a DWI conviction; a refusal to submit to chemical test, reckless driving, motor veh manslaughter or 3 moving violations in one yr.¹ <u>1st off (Misd)-10 dys</u>; <u>2nd off</u> (w/n 5 yrs) (Misd)-<u>6 mos-1 yr</u>; <u>3rd and subsequent offs</u> (w/n 5 yrs) (felony)-<u>1 yr</u> §31-11-18.1</p>
<p style="padding-left: 40px;">Mandatory Minimum Term of Imprisonment:</p>	<p><u>1st off-10 dys</u>; <u>2nd off</u> (w/n 5 yrs)-<u>6 mos</u>; <u>3rd and subsequent offs</u> (w/n 5 yrs)-<u>1 yr</u>; §31-11-18.1(d)</p>
<p style="padding-left: 40px;">Fine (\$ Range):</p>	<p><u>1st off-\$500</u>; <u>2nd off</u> (w/n 5 yrs)-<u>\$500</u>; <u>3rd and subsequent offs</u> (w/n 5 yrs)-<u>\$1,000</u>; §31-11-18.1</p>
<p style="padding-left: 40px;">Mandatory Minimum Fine:</p>	<p><u>1st off-\$500</u>; <u>2nd off</u> (w/n 5 yrs)-<u>\$500</u>; <u>3rd and subsequent offs</u> (w/n 5 yrs)-<u>\$1,000</u>; §31-11-18.1(d)</p>
<p>Administrative Licensing Actions:</p>	
<p style="padding-left: 40px;">Type of Licensing Action (Susp/Rev):</p>	<p>For Driving While Susp: <u>1st & 2nd off-Susp</u>; <u>sub. off-Rev</u> For Driving While Rev: <u>1st & sub. off-Rev</u> §31-11-18.1</p>

¹For sanctions while driving while either susp or rev for other traffic law violations, see §31-11-18.

Other Criminal Actions Related to DWI: (continued)

Length of Term of License

Withdrawal Action:

For Driving While Susp: 1st & 2nd off-An additional susp period as the licensing agency "**deems proper**"; sub. off-Rev-1 yr For Driving While Rev: 1st & sub. off-Rev-1 yr §31-11-18.1

Mandatory Term of License

Withdrawal Action:

For Driving While Susp: 1st off-3 mos; 2nd off-6 mos; sub. off-1 yr For Driving While Rev: 1st & sub. off-1 yr §31-11-18.1

Habitual Offender Laws:

State Has Such Law (Yes/No):

Yes §30-40-1 et seq.

Grounds for Being Declared an Habitual Offender:

Three or more convictions within 3 yrs for any of the following: 1) Motor veh manslaughter; 2) DWI (alcohol or drugs); 3) Driving while license suspended or revoked; 4) Willfully operating a motor veh without a license; 5) any felony off using a motor veh; 6) failure to stop and report death/injury after accident driver was involved in; 7) failure of driver to stop and report accident where damages = \$150 or more; or 8) a combination of six (6) traffic off. convictions where any one conviction could result in license susp/rev for 30 dys or more. §31-40-2

Term of License Rev While

Under Habitual Offender Status:

1-5 yrs §31-40-7

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

Felony §11-1-2

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

Imprisonment (Term):

Not more than 5 yrs §31-4-8

Mandatory Minimum Term of Imprisonment:

The **5 yr** sentence may not be suspended except in cases where the defendant operated a vehicle in order to save life or limb. §31-40-8

Fine (\$ Range):

None

Mandatory Minimum Fine (\$):

None

Licensing Actions (Specify):

None¹

¹Note: Under §31-11-18, if a person operates a motor vehicle after their license has been revoked, the revocation is extended for 1 yr.

Other State Laws Related To Alcohol Use:

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

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

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** (Year Eff: 1984) §§3-8-1, 3-8-5 &
3-8-6(a)(2)
Minimum Age (Years) Possession: **21** §3-8-10
Minimum Age (Years) Consumption: **21** (Applies to licensed premises) §3-8-6(a)(2)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes** §3-14-1 et seq.¹

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

No
No cases
None

Dram Shop Actions-Social Hosts:
Other:

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

Type of Criminal Action: 1st off-Petty Misd; 2nd off-Petty Misd; 3rd and
Subsequent offs-Misd; §§ 3-8-1, 3-11-5 & 11-1-2
Term of Imprisonment: 1st off-3 mos; 2nd off-6 mos; 3rd and subsequent
offs-Not more than 1 yr
Fine (\$ Range): 1st off-Not more than \$200; 2nd off-Not more
than \$300; 3rd and subsequent offs-Not more than
\$500

¹Rhode Island's Dram Shop Law is similar to the Model Alcoholic Beverage Retail Licensee Liability Act of 1985. This model law was developed via a grant for the National Institute on Alcohol Abuse and Alcoholism.

Other State Laws Related To Alcohol Use: (continued)

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp/Rev §3-5-23

Length of Term of License Withdrawal: Susp. - Length is not specified §3-5-23; Rev. - 5 yrs (under §3-5-23)¹

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

Type of Criminal Action:

Violations² §§3-8-5 & 11-1-2

Term of Imprisonment:

None

Fine (\$ Range):

1st off-\$250; 2nd off-\$500; 3rd and subsequent offs-\$750 (If no offs in 3 successive yrs, next off shall be treated as 1st.)

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp/Rev §3-5-23

Length of Term License Withdrawal:

Susp. - Length is not specified §3-5-23; Rev. - 5 yrs (under §3-5-23)¹

Anti-Happy Hour Laws/Regulations:

Yes §3-7-26

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

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

Yes - Driver §31-22-21

¹If the revocation is under §3-5-22, the length would be 1 yr.

²A licensee who sells alcoholic beverages to one under the legal drinking age can also be charged with a violation of §3-8-1 (as well as §3-8-5). The sanctions for violating §3-8-1 are as follows: 1st off. (petty misd.)-imprisonment not more than 3 mos; a fine of not more than \$200; 2nd off. (petty misd.)-imprisonment for not more than 6 mos; a fine of not more than \$300; 3rd and sub. offs. (misd.)-imprisonment for not more than 1 yr; a fine of not more than \$500. See §§3-11-5 & 11-1-2.

STATE:
General Comments:

SOUTH CAROLINA
See Code of Laws of South Carolina Annotated.

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquors
§56-5-2930

Illegal Per Se Law (BAC Level):

None

Presumption (BAC Level):

0.10¹ §56-5-2950(b)(3)

Types of Drugs/Drugs and Alcohol:

(1) Narcotic Drugs, (2) Barbiturates,
(3) Paraldehydes and (4) Drugs, Herbs et al.
Note: The term "drug" is defined as an "illicit
or licit drug, a combination of alcohol and an
illicit drug or a combination of alcohol and a
licit drug" §56-5-2930.

Other:

For Commercial Motor Vehicle Operators, see p.
3-363.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

No

Implied Consent Law:

Arrest Required (Yes/No):

Yes §56-5-2950(a)

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

Yes §56-5-2950(a)

Refusal to Submit to Chemical Test
Admitted into Evidence:

Yes (Criminal Cases) State v. Miller, 185
S.E.2d 359 (1971)

Other Information:

None

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes² Only required if a breath sample cannot be
obtained §56-5-2950(a)

Urine:

Yes² Only required if drugs other than alcohol
are involved §56-5-2950(a)

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

No

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

Yes §56-5-2990

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):

N/A

Administrative Licensing Action

(Susp/Rev):

N/A

Other:

N/A

¹South Carolina law uses the term "inferred" instead of "presumed".

²These tests are not authorized if the driver has registered a BAC level of 0.10 or more on a
breath test device; see §56-5-2950(a).

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

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	90-dy susp of license ¹ (Mandatory) §56-5-2950(d)
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):

1st off-48 hrs-30 dys; 2nd off (w/n 10 yrs)-48 hrs-1 yr; 3rd off (w/n 10 yrs)-60 dys-3 yrs; 4th and subsequent off (w/n 10 yrs)- 1-5 yrs
§56-5-2940 DWI where there is great bodily injury-felony, 30 dys-10 yrs §56-5-2945
1st off-48 hrs; 2nd off-48 hrs; 3rd off-60 dys; 4th and subsequent offs-1 yr; DWI where there is great bodily injury-30 dys²

Mandatory Minimum Term:

Fine:

Amount (\$ Range):

1st off-\$200; 2nd off-\$2,000 to \$5,000; 3rd off-\$3,500 to \$6,000; 4th off-None; DWI where there is great bodily injury-\$5,000-10,000

Mandatory Min. Fine (\$):

1st off-\$200; 2nd off-\$1,000³; 3rd off-\$3,500; 4th off-None; DWI where is great bodily injury-\$5,000 See Footnote No. 2 below.

Other Penalties:

Community Service:

1st off-A minimum of 48 hrs in lieu of imprisonment; 2nd off-Not less than 10 dys in lieu of imprisonment

Restitution

(eg Victim's Fund)

Yes, Victims' Compensation Fund §16-3-1110 et seq.

Other:

None

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

No

Other:

None

¹For 1st offenders, no susp. will be imposed for a refusal if they plead guilty to a DWI offense w/n 30 dys of arrest.

²These minimum sanctions are mandatory and, therefore, cannot be either suspended or probated; see §§56-5-2940 & 56-5-2945(A)(2).

³For a 2nd off only, \$250 of the fine must be remitted to the Victims' Compensation Fund; see §56-5-2940(2).

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

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

1st off¹-Susp; 2nd off¹ (w/n 10 yrs)-Susp; 3rd off¹ (w/n 10 yrs)-Susp; 4th off¹ (w/n 10 yrs)-Susp; 5th and subsequent offs¹ (w/n 10 yrs)-Rev §56-5-2990 DWI off where there is great bodily injury-Susp §56-5-2945

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

1st off-6 mos; 2nd off (w/n 10 yrs)-1 yr; 3rd off (w/n 10 yrs)-2 yrs; 4th off (w/n 10 yrs)-3 yrs; 5th and subsequent offs (w/n 10 yrs)-Permanent; DWI off where there is great bodily injury-Term of imprisonment plus 3 yrs (§56-5-2945)

Mandatory Minimum Term of
Withdrawal:

1st off - For a 1st DWI off, a provisional license may be issued for the 6-mo susp period provided the defendant participates in an alcohol/drug education/treatment program (see §§56-1-1320 and 56-1-1330); 2nd off (w/n 10 yrs)-1 yr; 3rd off (w/n 10 yrs)-2 yrs; 4th off (w/n 10 yrs)-3 yrs; 5th and subsequent offs (w/n 10 yrs)-5 yrs; DWI off where there is great bodily injury-Term of imprisonment plus 3 yrs

Other:

Rehabilitation:
Alcohol Education:

(1) For suspended licensed drivers, a successful completion of an Alcohol and Drug Safety Action Program prior to license reinstatement (or a special recommendation by the Medical Advisory Board before the license is restored; and (2) For revoked licensed drivers, the license may be reinstated after 5 yrs provided such drivers have been rehabilitated. See §56-5-2990.

Alcohol Treatment:
Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):

Yes see above

Yes 1st off only §56-1-1320 & 56-1-1330

¹Note: An off is considered either a §56-5-2930, §56-5-2945 or other alcohol use and driving related law violation. §§56-1-1320 & 56-5-2990.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Yes Either for a 4th DWI off (w/n 10 yrs) or a 4th off (w/n 10 yrs) of driving while license is susp/rev, the driver's vehicle **must be forfeited**; see §56-5-6240(A).

Terms Upon Which Vehicle

Will Be Released:

Other:

Miscellaneous Sanctions

Not Included Elsewhere:

None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of offense:

Yes There are two offenses. (1) Felony if death is based on a DWI off and (2) Misd if death is caused by the reckless (non-DWI related) operation of a vehicle. §§16-1-10, 16-1-20, 56-5-2910 & 56-5-2945.

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Felony off-**1-25 yrs**; misd off-not more than **5 yrs**

Mandatory Minimum Term:

Felony off-**1 yr**¹

Fine (\$ Range):

Felony off-**\$10,000 to \$25,000**; misd

off-**\$1,000-5000**

Mandatory Minimum Fine:

Felony off-**\$10,000**¹

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Felony off-**Susp** §56-5-2945; misd off-**Rev**

§56-5-2910

Length of Term of

Licensing Withdrawal:

Felony off-**Term of imprisonment plus 3 yrs**; misd

off-**5 yrs**

Mandatory Action--Minimum

Length of License

Withdrawal:

Felony off-**Term of imprisonment plus 3 yrs**; misd

off-**5 yrs** §56-5-2910

Other:

None

¹§56-5-2945(A)(2)

Other Criminal Actions Related to DWI: (continued)

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

Sanction:

Criminal:

Imprisonment (Term): 1st off-10-30 dys; 2nd off (w/n 5 yrs)-60 dys-6 mos; 3rd and subsequent off (w/n 5 yrs)-6 mos-3 yrs; §56-1-460

Mandatory Minimum Term of Imprisonment: 1st off-10 dys; 2nd off-60 dys; 3rd and sub off-6 mos

Fine (\$ Range): 1st off-\$200; 2nd off-\$500 §56-1-460¹

Mandatory Minimum Fine: None

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Susp/Rev (See Vehicle Impoundment/Confiscation on p. 3-362.)

Length of Term of License

Withdrawal Action:

Susp for a like period of time if the original susp was for a definite period of time. If not, then a susp for 3 mos. If license was revoked, a new license shall not be issued for an additional 1 yr from the date such person would have otherwise been entitled to apply for a new license. §56-1-460.

Mandatory Term of License

Withdrawal Action:

None

Habitual Offender Laws:

State Has Such Law (Yes/No):

Yes §56-1-1010 et seq.

Grounds for Being Declared an
Habitual Offender:

3 or more serious off convictions or 10 or more convictions for violations rated at 4 points or more under the point system within a period of 3 yrs §56-1-1020(a) & (b)

¹It is not clear whether a fine sanction can be imposed on a person who has been convicted of driving while suspended or revoked where the license suspension or revocation was based on a DWI offense conviction.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr. (1 yr mand.) (not less than 3 yrs (3 yrs mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC level of 0.04 or more, (2) have an alcohol concentration of 0.04 or more in "other bodily substances (fluids) as determined by the Law Enforcement Division, (3) are under the influence of alcohol, a controlled substance or a drug which impairs driving ability or (4) refuse to submit to a chemical test for either an alcohol concentration. Note: The disqualification section (§56-1-2110(A)(5)) appears to only apply to a refusal to submit to a chemical test for alcohol concentration; however, the CMV implied consent section (§56-1-2130) applies to tests for both alcohol concentration and the presence of other drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand.). In addition, a CMV operator who has any "measurable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. See §§56-1-2030(2), (6), (9), (10) & (21), 56-1-2110, 56-1-2120 and 56-1-2130.

Other Criminal Actions Related to DWI: (continued)

Term of License Rev While
Under Habitual Offender Status: **5 yrs** and until the court thereafter restores the driving privilege. After 1 yr, this period may be reduced to 2 yrs upon a showing of "good cause." §56-1-1090(a) & (c)

Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status **Misd** §56-1-1100

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

Imprisonment (Term): **1 yr to 5 yrs** §56-1-1100

Mandatory Minimum Term of
Imprisonment: **None**

Fine (\$ Range): **None**

Mandatory Minimum Fine (\$): **N/A**

Licensing Actions (Specify): **None**

Other State Laws Related To Alcohol Use:

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

State Has Such a Law (Yes/No): **Yes** §17-7-80

BAC Chemical Test Is Given to the
the Following Persons:

Driver: **Yes**

Vehicle Passengers: **No**

Pedestrian: **Yes** (16 years old or older)

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** (Year Eff. 1986) §§20-7-370, 20-7-380, 61-3-990(3), 61-9-40(A), 61-9-410(1) & 61-13-290

Minimum Age (Years) Possession: **21** (Exemptions for home, religious ceremonies and employment (the employment exemption applies only to persons over 18 years old).) §§20-7-320, 20-7-370 & 20-7-380

Minimum Age (Years) Consumption: **None**

Dram Shop Laws and Related Legal Actions:

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

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation): **Possible case law; see Chritiansen v. Cambell, 328 S.E.2d 351 (CA 1985)**

Dram Shop Actions-Social Hosts: **No** See Garren v. Cummings & McCrady, Inc., 345 S.E.2d 508 (CA 1986).

Other: **None**

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:

For alcoholic liquors¹-(Misd) See §§66-3-990, 61-5-30, 61-5-110, 61-13-210 & 61-13-430; For nonintoxicating beverages-(Misd)¹ See §§61-9-410 & 61-13-870.

Term of Imprisonment:

Alc. Beverages: (1) a violation of §61-3-990 via §61-13-210-1st off-6 mos; 2nd off-1 yr; 3rd and sub. off-2 yrs §61-3-430(3); (2) a violation of §61-5-30 (a) for persons-not more than 30 dys; for licensees-None §61-5-110.

Non-intoxicating Beverages: §61-9-410 Not less than 3 mos §61-13-870.

Fine (\$ Range):

Alc. Beverages: (1) a violation of §61-3-990 via §61-13-210-1st off-Not less than \$600; 2nd off-\$1,500; 3rd and sub. off-\$3,000 §61-3-430(3); (2) a violation of §61-5-30 (a) for persons-not more than \$100; for licensees-1st off-\$200-500; 2nd off (w/n 3yrs)-\$200-500; 3rd off (w/n 3 yrs)-Not less than \$500 §61-5-110. Non-intoxicating Beverages: §61-9-410 Not less than \$100 §61-13-870 See admin. fines below under Admin. Actions.

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

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

Yes, Alcoholic Beverages-Susp/Rev;
Non-intoxicating Beverages-Susp/Rev.

Length of Term of License Withdrawal:

Alcoholic Beverages: (1) Rev. under §61-13-500 for a violation of §61-3-999 via §61-13-210: 1st off-Rev for 1 yr (or pay an admin. fine of \$200); sub. off-Rev for 2 yrs (or pay an admin. fine of \$500); (2) Rev under §61-5-110 for a violation of §61-5-30: 1st off-Susp for 30 dys; 2nd off-Susp for 180 dys; 3rd off-Permanent Rev Note: Under §61-13-510, an admin. fine of from \$100-1,500 may be paid in lieu of susp/rev. Non-intoxicating Beverages: Susp/Rev under §61-9-410 et seq.-Length of susp/rev is not specified (an admin. fine of from \$25-1,000 may be paid in lieu of susp/rev; see §61-13-510.

¹The term "non-intoxicating beverages" applies to beer (and other malt beverages) not in excess of 5% alcohol and wine not in excess of 21% alcohol; see §61-9-10. The term "alcoholic liquors" applies to all other alcoholic beverages; see §61-3-20(1).

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Alcoholic Liquors¹-(Misd); Non-intoxicating
beverages-(Misd)

Alcoholic Beverages: (1) A violation of
§61-3-990 via 61-13-210 1st off-6 mos; 2nd off-1
yr; 3rd and sub offs-2 yrs §61-13-430(3); (2) A
violation of §61-13-290--30 to 60 dys

Non-intoxicating Beverages: (1) A violation of
§61-9-40--30 to 60 dys; (2) A violation of
§61-9-410--Not less than 3 mos §61-13-870

Alcoholic Beverages: (1) A violation of
§61-3-990 via 61-13-210 1st off-Not less than
\$600; 2nd off-\$1,500; 3rd and sub offs-\$3,000
§61-13-430(3); (2) A violation of
§61-13-290--\$100 to \$200 Non-intoxicating
Beverages: (1) A violation of §61-9-40--\$100 to
\$200; (2) A violation of §61-9-410--Not less
than \$100 §61-13-870 See Admin. fines under
Admin. Actions below.

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes Susp/Rev

Alcoholic Beverages: (1) A violation of
§61-3-990 via §61-13-210--1st off-Rev for 1 yr
(or pay an admin. fine of \$200); sub off-Rev for
2 yrs (or pay an admin. fine of \$500) Note:
Under §61-13-510, an admin. fine of from \$100 to
\$1,500 may be paid in lieu of susp/rev.

Non-intoxicating Beverages: Susp/rev §61-9-410
et seq.-Length of susp/rev is not specified (an
admin. fine of \$25 to \$1,000 may be paid in lieu
of the susp/rev; see §61-13-510.)

¹See Footnote No. 1 on p. 3-365.

Other State Laws Related To Alcohol Use
And Driving:(continued)

Anti-Happy Hour Laws/Regulations:

Yes (Limited) §61-13-875¹

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

Open Container Law (Yes/No):

Yes §§61-5-20 & 61-9-87

Anti-Consumption Law (Yes/No):

Possible Driver and passengers §61-13-360 The
law states that "[a]ny person who drinks
alcoholic liquors in any public conveyance shall
be deemed guilty of a misd." This provision does
not apply to railroad dining or club cars or to
commercial aircraft.

¹This law prohibits the selling of alcoholic beverages (1) for free (there are exceptions), (2) for less than half price or on a "two for one" basis and (3) for less than the regular price except between the hours of 4 and 8 p.m.



STATE:

SOUTH DAKOTA

General Comments:

See South Dakota Codified Laws.

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of an alcoholic beverage
§32-23-1(2)

Illegal Per Se Law (BAC Level):

0.10 §32-23-1(1)

Presumption (BAC Level):

0.10 §32-23-7 (Note: §32-23-7 applies this
presumption to the veh homicide off.)

Types of Drugs/Drugs and Alcohol:

(1) Any Substance, (2) Any Controlled Drug, (3)
Marijuana or (4) a Combination of These
Substances and an Alcoholic Beverage
§32-23-1(3) & (4)

Other:

For Commercial Motor Vehicle Operators, see p.
3-371.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

Yes §32-23-1.2

Implied Consent Law:

Arrest Required (Yes/No):

Yes §32-23-10

Implied Consent Law Applies to

Drugs (Yes/No):

Yes §32-23-10

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes §32-23-10 (Criminal Cases)

Other Information:

Chemical test required for persons who have been
arrested for a third DWI offense which
constitutes a felony; see §32-23-10.

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes §32-23-10

Urine:

No §32-23-10

Other:

"Other bodily substances" §32-23-10

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

No (Note: An illegal per se charge may be
reduced or dismissed only when written reasons
for such have been filed with the Court; see
§32-23-1.3.)

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

No¹

¹No specific requirements for alcohol screening. However, the courts have general authority to order discretionary pre-sentence investigation reports; see §23A-27-5.

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): **None**
Administrative Licensing Action
(Susp/Rev): **None**
Other: **None**

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): **None**
Administrative Licensing Action
(Susp/Rev): **Rev 1 yr¹** (A restricted hardship license is
available.) §32-23-11
Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

1st off C1 I Misd-1 yr (county jail); 2nd off
(w/n 5 yrs) C1 I Misd-1 yr (county jail); 3rd
off C1 6 Felony (w/n 5 yrs) - Not more than 2
 yrs (State penitentiary); 4th & sub. off C1 5
Felony - Not more than 5 yrs (State
penitentiary) §§22-6-1, 22-6-2, 32-23-2,
32-23-3, 32-23-4 & 32-23-4.1

Mandatory Minimum Term:

None

Fine:

Amount (\$ Range):

1st off-**\$1,000**; 2nd off (w/n 5 yrs)- **\$1,000**; 3rd
off (w/n 5 yrs)- **\$2,000**; 4th & sub. off - Not
more than **\$5,000**

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

None

Restitution

(eg Victim's Fund)

Yes §§22-6-2 & 23A-28-1 et seq. (Restitution
is to be paid by the defendants to the victims.)

Other:

None

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

None

Other:

None

¹Under §32-23-11.1, a driver's license is not subject to revocation for refusal to submit to a chemical test under the implied consent law if the driver pleads guilty to a DWI offense and such plea occurs either (1) prior to a licensing agency hearing on the refusal issue, or (2), if a hearing is not requested, prior to a revocation order being issued.

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

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st off-Prohibit driving or rev; 2nd and sub off-Rev (Special Note: Susp-If 15 points accumulated in 12 cons mos or 22 points in 24 cons mos; DWI=10 points)

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off-30 dys-1 yr; 2nd off-1 yr; 3rd off-For such a period as determined "by the court but in no event less than **one [1] year** from the date sentence is imposed or one [1] year from the date of discharge from incarceration, whichever is later;" 4th and sub. off-For such a period as determined "by the court but in no event less than **two [2] years** from the date sentence is imposed or two [2] years from the date of discharge from incarceration, whichever is later." (Under the point system susp 1 yr) §§32-23-2, 32-23-3, 32-23-4 and 32-23-__

Mandatory Minimum Term of
Withdrawal:

1st off-None¹; 2nd off-1 yr; 3rd off-1 yr; 4th and sub. off-2 yrs (Under the point system susp-None) §§32-23-2, 32-23-3 and 32-23-4

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Alcohol Education/

Treatment as an Altern-
ative to Criminal

Licensing Actions

(Describe):

¹A restricted hardship license is available. See §§32-23-2, 32-23-3 and 32-23-4

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr. (1 yr mand.) (not less than 3 yrs (3 yrs mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a blood alcohol level of 0.04 or more by weight, (2) are under the influence of alcohol or a controlled drug or (3) refuse to submit to a chemical test for alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand.). In addition, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. See §§1(5), 1(9), 1(20), 23, 23A, 23B and 25 of Ch. 267 of the Laws of 1989.

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

Vehicle Impoundment/Confiscation:

Authorized by Specific
Statutory Authority: **None**
Terms Upon Which Vehicle
Will Be Released:
Other:

For **any** offense conviction, where a driver's license can be revoked or suspended, the registration of all vehicles owned by the driver shall also be suspended; see §32-35-44.

Miscellaneous Sanctions
Not Included Elsewhere:

None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes**, C1 4 felony where death is caused by veh operation while under the influence of alcohol or drugs. §22-16-41

Sanctions:

Criminal Sanction:

Imprisonment (Term): **Not more than 10 yrs**
Mandatory Minimum Term: **None**
Fine (\$ Range): **Not more than \$10,000**
Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and
Type of Action: **Rev §22-16-41**
Length of Term of
Licensing Withdrawal: **2 yrs** (Subsequent to release from incarceration)
Mandatory Action--Minimum
Length of License
Withdrawal: **2 yrs**
Other: **See DWI Vehicle Impoundment/Confiscation above.**

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

Sanction:

Criminal:

Imprisonment (Term): **For driving while revoked, C1 1 Misd - Not more than 1 yr For driving while suspended, C1 2 Misd - Not more than 30 dys See Footnote No. 1 below. §§22-6-2, 32-12-65 & 32-23-5**

Mandatory Minimum Term
of Imprisonment:

3 days if the original licensing (revocation) action was for a 2nd DWI offense (§32-23-3) and **10 days** if the original licensing (revocation) action was for a 3rd DWI offense (§32-23-4). **20 dys** if the original lic. actions was for a 4th or sub. DWI off. (§32-23-)

¹Note: For either a Class 1 or 2 Misd. conviction (§22-6-2), the court may order the defendant to pay restitution to a victim of the offense pursuant to §23A-28-1 et seq.

Other Criminal Actions Related to DWI: (continued)

Fine (\$ Range): For driving while revoked, C1 1 Misd - Not more than \$1,000 For driving while suspended, C1 2 Misd - Not more than \$100

Mandatory Minimum Fine: **None**

Administrative Licensing Actions:
Type of Licensing Action
(Susp/Rev): Susp-if the conviction was based on driving while suspended; Rev-if the conviction was based on driving while revoked §32-12-66 Note: See DWI Vehicle Impoundment/Confiscation on p. 3-372.

Length of Term of License
Withdrawal Action: If the conviction was based on driving while suspended, an additional susp period equal to the original period of susp. If the conviction was based on driving while revoked the original rev period extended for 1 yr. §32-12-66

Mandatory Term of License
Withdrawal Action: If the conviction was based on driving while suspended, an additional susp period equal to the original period of susp. §32-12-66

Habitual Offender Laws:

State Has Such Law (Yes/No): **No**

Grounds for Being Declared an
Habitual Offender:
Term of License Rev While
Under Habitual Offender Status:
Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status
Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:
Imprisonment (Term):

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

¹Mandatory licensing withdrawal actions apply only to the offense of driving while suspended. There is no additional mandatory licensing action (i.e., 1 yr. additional revocation period) for driving while revoked.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic¹

Accidents:

State Has Such a Law (Yes/No): **Yes** §34-25-22.1
BAC Chemical Test Is Given to the
the Following Persons:
Driver: **Yes**
Vehicle Passengers: **Yes**
Pedestrian: **Yes**

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** (Year Eff: 1988) §§35-4-78, 35-9-1 & 35-9-2
Minimum Age (Years) Possession: **21** There is an exemption for the possession
alcoholic beverages by persons under 21 yrs of
age for religious ceremonies. §§35-4-78, 34-9-1
& 35-9-2
Minimum Age (Years) Consumption: **21** There is an exemption for the consumption of
alcoholic beverages by persons under 21 yrs of
age for religious ceremonies. §§35-4-78, 35-9-1
& 35-9-2

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **No**¹ §§35-4-78 & 35-11-1
"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation): **No**¹
Dram Shop Actions-Social Hosts: **No** §35-11-2
Other: **None**

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

Type of Criminal Action: **Cl 1 Misd** §§22-6-2 & 35-4-78
Term of Imprisonment: **Not more than 1 yr** (County jail)
Fine (\$ Range): **Not more than \$1,000**

¹Case law establishing civil liability, Walz v. City of Hudson, 327. N.W.2d 12 (S.D. 1982), was specifically abrogated by statute.

Other State Laws Related To Alcohol Use: (continued)

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No): **Yes** §35-2-10

Length of Term of License Withdrawal: **1 yr** §35-2-20

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

Type of Criminal Action:

Cl 2 Misd (generally); **Cl 1 Misd** (for licensees); §§22-6-2, 35-4-78 & 35-9-1

Term of Imprisonment:

Cl 2 Misd-Not more than **30 dys** (county jail); **Cl 1 Misd**-Not more than **1 yr** (county jail)

Fine (\$ Range):

Cl 2 Misd-Not more than **\$100**; **Cl 1-Misd** Not more than **\$1,000**

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No): **Yes** §35-2-10

Length of Term License Withdrawal: **1 yr** §35-2-20

Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No): **Yes** §35-1-9.1

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



STATE:
General Comments:

TENNESSEE
See Tennessee Code Annotated.

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of any intoxicant §55-10-401(a) ^{1&2}
Illegal Per Se Law (BAC Level):	0.04 Limited to Commercial Motor Vehicle Operators ^{1&2} §§55-50-405(a) & 55-50-408
Presumption (BAC Level):	0.10 §55-10-408(b)
Types of Drugs/Drugs and Alcohol:	(1) Any Intoxicant, (2) Marijuana, (3) Narcotic Drug and (4) Stimulating Drugs (listed in §55-10-401(b)) §55-10-401(a) For commercial motor vehicle operators—Under the influence of controlled substances ¹ §55-50-405(a)
Other:	None

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §55-10-406(a)(3)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §55-10-406(a)(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes State v. Smith, 681 S.W.2d 569 (Tenn.Cr.App. 1984) (Criminal Cases)
Other Information:	None

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

Blood:	Yes §55-10-405(5)
Urine:	Yes §55-10-405(5)
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	Yes §§55-10-403(b)(1) and 55-7-116
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	No

¹The law makes it illegal to drive "a commercial motor vehicle under the influence of alcohol with a BAC of .04 or greater, or other controlled substance". Note: A commercial motor vehicle operator is a person licensed to operate a motor vehicle either (1) that has a gross vehicle weight of 26,001 pounds or more, (2) that carries 15 or more persons including the driver or (3) that transports hazardous substances. §55-50-102(12)

²A commercial motor vehicle operator who violates the regular DWI laws (§55-10-401) is considered to have violated §55-50-405; see §55-50-408.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

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

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): None
Administrative Licensing Action (Susp/Rev): **Susp - Not more than 6 mos** §55-10-406(a)(3) A restricted license may be issued; see §55-10-406(d)
Other: None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):

1st off-48 hrs-11 mos 29 dys; 2nd off (w/n 10 yrs)-45 dys-11 mos 29 dys; 3rd and subsequent off (w/n 10 yrs) - 120 dys-11 mos 29 dys §55-10-403 See Footnote No. 1 below. DWI Aggravated Assult² (Felony)-2 to 10 yrs §39-2-101(b) & (d)

Mandatory Minimum Term:

1st off-48 hrs; 2nd off (w/n 10 yrs)-45 dys; 3rd and subsequent off (w/n 10 yrs)-120 dys DWI Aggravated Assult-None

Fine:

Amount (\$ Range):

1st off-\$250-1,000; 2nd off (w/n 10 yrs)-\$500-2,500; 3rd and subsequent off (w/n 10 yrs)-\$1,000-5,000 §55-10-403 DWI Aggravated Assult-None

Mandatory Min. Fine (\$):

1st off-\$250; 2nd off (w/n 10 yrs)-\$500; 3rd and subsequent off (w/n 10 yrs)-\$1,000 (Note: These fines are mandatory unless a judge determines that a defendant is indigent; see §55-10-403(b)(2).) DWI Aggravated Assult-N/A

¹These criminal sanctions for a DWI offense also apply to commercial motor vehicle operators who violate §55-50-405(a); see §§55-50-405(a)(6)(A) and 55-10-403.

²Serious bodily injury to another person as a proximate result of operating a vehicle while in violation of §55-10-401.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Other Penalties:

Community Service:

After serving the minimum sentence, a judge may order the defendant to remove litter from various public areas or work in a recycling center or "other appropriate location" for any period of time in lieu of or in addition to other penalties. The community service work may be accomplished during non-working hrs. §55-10-104(a)(1)

Restitution:

(eg Victim's Fund):

Yes - A victim's compensation fund; see §§29-13 101 et seq. and 40-24-107(a)(3). Also, the defendant shall be ordered to pay restitution as a condition of probation (probation may commence only after minimum jail sentence has been served) if defendant can afford it; §55-10-403

Other:

Upon conviction all defendants, in counties with a population of 318,000 or more and in counties with a metropolitan form of government, must pay a BAC test fee of \$17. This fee is paid to the county. §55-10-403(h)

"Ignition Interlock" In addition to any other penalties provided for a DWI offense conviction, a defendant may be required to operate vehicles equipped with "ignition interlock" devices. See §55-10-412(d). Note: The law provides that the use of such devices could be required for up to one (1) year after a person's license is no longer suspended/revoked.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

None

Other:

The licensing agency can suspend a person's license if they have committed but have not necessarily been convicted of an offense which requires mandatory license revocation; see §55-50-502(a).

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

Prohibition/Rev^{1&2} §§55-10-403, 55-7-501(a)(2) & 55-7-502 For commercial motor vehicle operators-**Susp** §55-7-106(e)

¹The Tennessee Code uses various terms to describe the licensing action that is to be taken against DWI offenders. Under §55-10-403, the courts "prohibit" the offender from driving. However, §55-7-501 provides that the licensing agency shall "revoke" the offender's license.

²Under §§55-7-501(a)(2) and 55-7-502(e)(3) & (4), the licensing agency can also take the following action against a DWI offender. 1st off-rev for 6 mos; sub. off-rev for 1 yr.

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

Term of License Withdrawal

(Days, Months, Years, etc.): The following action is by the courts (See Footnote No. 1 on p. 3-379): 1st off - 1 yr; 2nd off (w/n 10 yrs) - 2 yrs; 3rd and subsequent offs (w/n 10 yrs) - 3 to 10 yrs; §§55-10-403 & 55-7-112 See Footnote No. 2 on p. 3-379. For commercial motor vehicle operators (These actions are via the licensing agency): 1st off-1 yr (3 yrs if operating a vehicle that was carrying hazardous materials); sub off-For life (or a period of not less than 10 yrs according to U.S. Dept. of Tran. Regulations) §55-7-106(e)

Mandatory Minimum Term of Withdrawal:

1st off - 1 yr¹ 2nd off - 2 yrs; 3rd and subsequent offs - 3 yrs §55-10-403(d)(2) & (3) For commercial motor vehicle operators-1st off-1 yr (3 yrs if operating a vehicle that was carrying hazardous materials); sub off-For life (or a period of not less than 10 yrs according to U.S. Dept. of Tran. Regulations) §55-50-405(a)

Other:

Rehabilitation:

Alcohol Education:

Yes See below.

Alcohol Treatment:

Yes Participation in an alcohol safety DWI prog. is required as part of probation (probation can begin only after serving the min. imprisonment term). For 2nd and subsequent convictions, a condition of probation is participation in a rehab prog. treatment facility.²

Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

No (Note: See State v. Bouldin, 717 S.W.2d 584 (Tenn. 1986), where a temporary vehicle forfeiture provision of a DWI plea bargaining/probation agreement was voided by the Tennessee Supreme Court.)

¹Hardship license for employment available after 1st conviction if no one was killed or seriously injured as a result of the DWI off. See §§55-10-403 and 55-7-113.

²For 2nd and subsequent convictions rev will be lifted only upon showing that defendant has participated in a program of rehabilitation at an alcohol treatment facility. See §55-10-403.

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

Terms Upon Which Vehicle
Will Be Released:
Other: **None**
Miscellaneous Sanctions
Not Included Elsewhere: **None**

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Off: **Yes Felony §§39-1-103 & 39-2-231**

Sanctions:

Criminal Sanction:

Imprisonment (Term): **Not more than 5 yrs; if the death is DWI related, 1 to 21 yrs §39-2-232**

Mandatory Minimum Term: **There may be a mandatory minimum prison term of a 1 yr for a DWI related death.¹**

Fine (\$ Range): **None**

Mandatory Minimum Fine: **N/A**

Administrative Licensing Action:

Licensing Authorized and
Type of Action: **Rev/Prohibition §§39-2-232 & 55-50-501(1)**

Length of Term of

Licensing Withdrawal: **There are two (2) separate driving privilege withdrawal schemes. (1) For all vehicle homicide offenses, the licensing agency revokes the driver's license for period that equals the term of the sentenced received²; see §55-7-501(1) (2) For DWI related vehicle homicide offenses, the court prohibits the driver from operating a motor vehicle from **3 to 10 yrs**; see §39-2-232.**

Mandatory Action--Minimum

Length of License

Withdrawal:

If the vehicle homicide offense is DWI related, 3 yrs (§39-2-232)³

Other: **None**

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

Sanction:

Criminal:

Imprisonment (Term): **1st off - 2 dys to 6 mos; 2nd off - 45 dys to 11 mos 29 dys; §55-50-504(a)**

¹ See State v. Landers, 723 S.W.2d 950 (Tenn. 1987) and State v. Lampert, 741 S.W.2d 127 (Tenn.Cr.App. 1987).

² If paroled, the defendant may have their license reissued upon satisfactory completion of a licensing exam and on petition of the defendant's parole officer; see §55-50-501(1).

³ For vehicle homicide offenses that not related to DWI, the mandatory period of license withdrawal appears to be just the time the offender served in prison; see §55-50-501(1).

Other Criminal Actions Related to DWI: (continued)

Mandatory Minimum Term of Imprisonment:	<u>1st off - 2 dys; 2nd off - 45 dys</u> §50-55-504(f)
Fine (\$ Range):	<u>1st off - \$0 - 500; 2nd off - \$500 to 1,000;</u> §55-50-504(a)
Mandatory Minimum Fine:	None
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Susp - if the conviction was based on driving while suspended; Rev - if the conviction was based on driving while revoked. §55-50-504(b)
Length of Term of License Withdrawal Action:	An additional susp period which is equal to the original period; The original rev period extended 1 yr. §55-50-504(b)
Mandatory Term of License Withdrawal Action:	An additional susp period which is equal to the original period; The original rev period extended 1 yr. §55-50-504(b)
Habitual Offender Laws:	
State Has Such Law (Yes/No):	Yes §§55-10-601 to 55-10-617
Grounds for Being Declared an Habitual Offender:	Three (3) convictions for serious traffic offenses, such as any of the following, w/n 3 yrs: 1) committing voluntary or involuntary motor veh homicide; 2) committing DWI; 3) failing to stop at the scene of an accident; 4) violating the statute on meeting and overtaking school buses; 5) driving on a revoked, cancelled or suspended license.
Term of License Rev While Under Habitual Offender Status:	3 yrs §55-10-615
Type of Criminal Off if Convicted on Charges of Driving While on Habitual Offender Status	Felony §55-10-616
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	1 to 10 yrs §§39-1-201 & 55-10-616
Mandatory Minimum Term of Imprisonment:	1 yr ¹ §55-10-616
Fine (\$ Range):	Not more than \$1,000 §55-10-616
Mandatory Minimum Fine (\$):	None
Licensing Actions (Specify):	None

¹One (1) year of imprisonment is mandatory unless the habitual offender operated a motor vehicle in order to save life or limb; see §55-10-616.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

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

Discretionary See §38-7-109.

Discretionary
Discretionary
Discretionary

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

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

21 (Year Eff. 1984) §§1-3-113, 57-3-406(d), 57-4-203(b)(1) & (2)(A) and 57-5-301(a) & (d)(1)
21 There is an employment exemption §§1-2-113, 57-3-412(a)(3), 57-4-203(b)(2)(A) & (b)(3) and 57-5-301(e)(1)
21 §1-3-113

Dram Shop Laws and Related Legal Actions:

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

Yes §57-10-101 et seq.¹ (Comment: This law may have abrogated, at least in part, the case law noted below.)

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

Yes Mitchell v. Ketner, 54 Tenn. App. 656, 393 S.W.2d 755 (CA 1964)

Dram Shop Actions-Social Hosts:
Other:

No See §§57-10-101 & 57-10-102
None

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

Type of Criminal Action:

Misd §§57-3-204, 57-3-406(c), 57-3-412(a)(1), 57-4-203(c) & 57-4-203(j)(1)

Term of Imprisonment:

Pkg sales of alc. bev (More than 5% alc. by wgt)-30 dys to 6 mos; Pkg. sales of alc. bev (5% or less alc.)-None; On premises consumption of all alc. bev-30 dys to 6 mos; On premises consumption of alc. bev of only alc. bev. 5% or less alc.-None

¹Before a commercial server can be held liable for the actions of their intoxicated patrons, the following must be proven. The court must determine "beyond a reasonable doubt" that the sale of alcoholic beverages was the proximate cause of the injury sustained and that such beverages were sold either to a person under 21 years old or to an obviously intoxicated person whose consumption thereof was the direct cause of the injury.

Other State Laws Related To Alcohol Use: (continued)

Fine (\$ Range):

Pkg sales of alc. bev (More than 5% alc. by wgt)-\$25 to \$500; Pkg. sales of alc. bev (5% or less alc.)-None; On premises consumption of all alc. bev-\$500 to \$1,000; On premises consumption of alc. bev of only alc. bev. 5% or less alc.-None

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

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

Yes Susp/Rev §§57-3-104(c)(1)(A), 57-3-214, 57-3-215(a), 57-4-202(a) & 57-4-203(j)(3)

Length of Term of License Withdrawal:

Pkg sales of alc. bev (more than 5% alc. by wgt)-Susp length not specified; Rev.-1 yr; Pkg sales of alc. bev 5% or less alc.-None; On premises consumption of all alc. bev-1st off-Length of susp/rev is not specified; 2nd off-Permanent rev; On premises consumption of alc. bev 5% or less alc.-None

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

Type of Criminal Action:

Misd/Felony §§57-3-406(d), 57-3-412(a)(1), 57-4-101(a), 57-4-203(b)(1), 57-4-203(j)(1) & (4), 57-5-101, 57-5-301(a) and 57-6-102(2)

Term of Imprisonment:

Pkg sales of alc. bev more than 5% alc. by wgt-30 dys to 6 mos (misd); Pkg sales of alc. bev 5% of less alc-1st off-30 dys to 6 mos (misd); 2nd off-1 to 3 yrs (felony); On premises consumption of all alc. bev-1st off-30 dys to 6 mos (misd); 2nd off-1 to 3 yrs (felony); On premises consumption of only alc. bev of 5% or less alc-1st off-30 dys to 6 mos (misd); 2nd off-1 to 3 yrs (felony)

Fine (\$ Range):

Pkg sales of alc. bev more than 5% alc. by wgt-\$25 to \$500 (misd); Pkg sales of alc. bev 5% of less alc-1st off-\$25 to \$500 (misd); 2nd off-\$500 to \$3,000 (felony); On premises consumption of all alc. bev-1st off-\$500 to \$1,000 (misd); 2nd off-\$500 to \$3,000 (felony); On premises consumption of only alc. bev 5% or less alc-1st off-\$25 to \$500 (misd); 2nd off-\$500 to \$3,000 (felony)

Other State Laws Related To Alcohol Use: (continued)

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

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

Yes **Sups/Rev** §§57-3-104(c)(1)(A), 57-3-214, 57-3-215(a), 57-4-202(a), 57-4-203(j)(4), 57-5-109(c), 57-5-109(k) & 57-5-303(c)

Length of Term License Withdrawal:

Pkg sales of alc. bev more than 5% alc. by wgt-Susp length is not specified; Rev-1 yr; Pkg. sales of alc. bev 5% or less alc.-1st off-Susp length is not specified; Rev-1 yr; 2nd off-Permanent Rev; On premises consumption of all alc. bev-1st off-Susp/Rev length is not specified; 2nd off-Permanent Rev; On premises consumption of only alc. bev 5% or less alc.-1st off-Susp length is not specified; Rev-1 yr; 2nd off-Permanent Rev

Anti-Happy Hour Laws/Regulations:

No

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

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

No

If the sale is to a person over 18 but under 21 who (1) presents some type of identification of their age or (2) otherwise appears to be over the legal drinking age, the license cannot be revoked. However, the license may be suspended for not more than ten (10) days. See §57-5-109(b).



STATE:
General Comments:

TEXAS
All citations are to Vernon's Texas Civil Statutes unless otherwise indicated.

Basis for a DWI Charge:

Standard DWI Offense:	Intoxicated while driving ¹ Art. 67011-1
Illegal Per Se Law (BAC/BrAC Level):	0.10¹ Art. 67011-1(a)(1) & (2)(B)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	(1) Any Drug, (2) a Controlled Substance or (3) a Combination of These and Alcohol Arts. 67011-1(a)(2)(A)
Other:	For Commercial Motor Vehicle Operators, see p. 3-390.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes Art. 67011-5
Implied Consent Law Applies to Drugs (Yes/No):	Yes Art. 67011-5, §1
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) Art. 67011-5, §3(g)
Other Information:	None

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

Blood:	Yes Art. 67011-5
Urine:	No
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Required only for a 1st DWI (non-injury) off §§4(h) & 6b(g), Article 42.12 Code of Criminal Procedure

Sanctions for Refusal to Submit to a Chemical Test:

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

¹The term "intoxicated" means not having normal use of mental or physical faculties by reason of the introduction of alcohol into the body or having a BAC level of 0.10 or more. This term also includes operating a motor vehicle with either (1) a breath alcohol concentration level of 0.10 or more or (2) a urine alcohol concentration of 0.10 or more (grams of alcohol per 67 milliliters of urine).

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

Administrative Licensing Action
(Susp/Rev): N/A
Other: N/A

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail): None
Administrative Licensing Action
(Susp/Rev): Susp-90 dys Art. 67011-5, §2(f) (Hardship licenses may be issued; see Art. 6687b, §23A)
Other: None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

1st off-72 hrs to 2 yrs; 2nd off (w/n 10 yrs)-15 dys to 2 yrs 67011-1; Subsequent offs (w/n 10 yrs)-Not less than 30 dys nor more than 2 yrs in county jail or not less than 60 dys nor more than 5 yrs in the State penitentiary. See Footnote No. 2 below.

Mandatory Minimum Term:

1st off-None; 2nd off (w/n 10 yrs)-72 hrs¹; Subsequent offs (w/n 10 yrs)-10 dys¹ Art. 67011-1(c), (d) & (e)

Fine:

Amount (\$ Range):

1st off-\$100 to \$2,000; 2nd off (w/n 10 yrs)-\$300 to \$2,000; Subsequent offs (w/n 10 yrs)-\$500 to \$2,000 Art. 67011-1(c), (d) & (e)

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

Yes 1st and Subsequent offs Art. 42.12, §6(c) & 10A Code of Criminal Criminal Procedure

Restitution

(eg Victim's Fund)

Yes-Limited As a condition of Probation Art. 42.12, §6(a)(14) Note: A victim of a DWI offense can receive payments from a State victims' compensation fund only if the defendant's actions were intended to cause personal injury or death. Art. 8309 See especially §3(4)(D) of this article.

¹As a part of probation; see §6b, Article 42.12 of the Code of Criminal Procedure.

²Under Art. 67011-1, §f, a person convicted of a DWI offense may be subject to special enhanced sanctions, if at the time of the offense they had in their immediate possession an open container of an alcoholic beverage. 1st DWI off.-min. term of confinement increased 3 dys; min and maximum fines increased \$100. 2nd DWI off.-min term of confinement increased 6 dys; min and maximum fines increased \$200. Sub. off.-min term of confinement increased 12 dys; min and maximum fines increased \$400.

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

Other:

Special Note - If there has been bodily injury of another person as a result of the defendant's actions for each of these offenses the min. term of imprisonment is increased by 60 dys (30 dys are mandatory¹) and min. and max. fines are increased by \$500. Art. 67011-1(f)
For second or sub. DWI or DWI related homicide offenses, the court may require that a defendant install an alcohol breath sensitive **ignition interlock** device on their vehicle. Art. 6687b, §§23A(f) & 25(a) and Code of Criminal Procedure Art. 42.12, §6f(b) (Note: It is a Class B Misd. to tamper with such a device; see §38.15 of the Penal Code.)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

None

Other:

None

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

Susp

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off-90 to 365 dys; subsequent off-180 dys to 2 yrs (See Footnote No. 1 below.) Art. 6687b, §24

Mandatory Minimum Term of Withdrawal:

None (An occupational or restricted license may be issued; see Art. 6687b, §§23A and 25.)
Special Note: A license may not be suspended if either (1) a defendant is required to attend an alcohol education/treatment program or (2) a jury recommends no susp. Art. 6687, §24 (g)(1) and §3a(b), Art. 42.12 Code of Criminal Procedure.

¹For persons under 17: 1st off.-susp. until the person reaches 17 or for 365 dys whichever is the longer susp. period; sub. off.-a susp. until the person reaches 19 or for 365 dys whichever is the longer susp. period; see Family Code §§51.02(1) & 54.042. An occupational license is available if the person is eligible for a provisional license under §23A of Art. 6687b.

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

Mandatory Minimum Term of
Withdrawal: (continued)

However, there are exceptions. The above license suspensions cannot be suspended by the court if (1) a defendant has previously attended an alcohol education program as a part of probation for a DWI conviction and (2) they are required to attend such a program again of a sub. DWI offense conviction. For the purposes of this prohibition upon the court, a previous DWI off is any previous DWI off not just those committed w/n a 10 year period. Art. 42.12, §6d(b), (c) & (d) Code of Criminal Procedure

Other:

Rehabilitation:

Alcohol Education:

Yes—1st DWI off Art 42.12, §6f Code of Criminal Procedure (Required as a part of probation if the defendant has an alcohol dependency as determined by a PSI evaluation. See Art. 42.12, §6b(g).) See Footnote No. 1.

Alcohol Treatment:

Yes Art. 5561(C), §12

Alcohol Education/Treatment

as an Altern-

ative to Criminal

Licensing Actions

(Describe):

A restricted license may be issued for either occupational reasons or for participation in an alcohol/drug treatment/rehabilitation program see Art. 6687b.

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Yes - A defendant's veh may be subject to forfeiture by the State following three or more DWI convictions. Art. 67011-7

For 2nd or sub. off., the court may order alcohol education as a condition of probation even though the defendant may have already received such education as part of probation for a first offense. Art. 42.12, §6f(b) Code of Criminal Procedure

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC level of 0.04 or more, (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for either alcohol or controlled drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand.). In addition, a CMV operator who has any "measurable" or "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. See Art. 6687b-2, §§3(1), 3(2), 3(6), 3(11), 3(24), 25, 26 and 27; these provisions are eff. 4.1/92 (§12 of Ch. 236 of the Laws of 1989).

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

Terms Upon Which Vehicle
Will Be Released:
Other: **None**
Miscellaneous Sanctions
Not Included Elsewhere: **None**

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes DWI related 3rd degree felony.
§19.05(a)(2) Penal Code**

Sanctions:

Criminal Sanction:

Imprisonment (Term): **2 to 10 yrs §12.34 Penal Code**
Mandatory Minimum Term: **120 dys if probation is granted; see Art. 42.12,
§6b(c) Code of Criminal Procedure**
Fine (\$ Range): **\$5,000**
Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and
Type of Action: **Susp Art. 6687(b), §522(b)(2) and 24(a)**
Length of Term of
Licensing Withdrawal: **Not more than 1 yr Art. 6687(b), §23**
Mandatory Action--Minimum
Length of License
Withdrawal: **None**
Other: **None**

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

Sanction:

Criminal:

Imprisonment (Term): **1st off--not less than 72 hrs nor more than 6
mos.; 2nd & sub. off (Class A Misd.)--not more
than 1 yr Art. 6687b, §34; Art. 6701h, §32(c);
and §12.21 of the Penal Code**
Mandatory Minimum Term
of Imprisonment: **None**
Fine (\$ Range): **1st off--not less than \$100 nor more than \$500;
2nd and sub. off.--not more than \$2,000**
Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev): **Susp Art. 6687(b), §24(c)**
Length of Term of License
Withdrawal Action: **12 mos**
Mandatory Term of License
Withdrawal Action: **12 mos**

Other Criminal Actions Related to DWI: (continued)

Habitual Offender Laws:

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

Yes Art. 6687(b), §22(b)(4)

"Any person with 4 or more convictions arising out of different transactions in a cons period of 12 mos or 7 or more convictions arising out of different transactions w/in a period of 24 mos..." Art. 6687(b), §22(b)(4)

Term of License Rev While
Under Habitual Offender Status:
Offender Status:

Susp for not more than 1 yr 6687(b) §22(a)
An occasional license may be issued on a showing of "essential need"; see Art. 6687b, §23A.

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

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

None

Other State Laws Related To Alcohol Use:

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

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

No

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

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

21 (Year Eff: 1986). Alcoholic Beverage Code §§106.01, 106.02 & 106.03¹

21 Alc. Bev. Code §§106.01 & 106.05 exemptions for employment or while in the presence of a parent or guardian.

21 Alc. Bev. Code §§106.01 & 106.04 (Exemption for a minor's consumption of alcoholic beverages when they are in the "visible presence" of a parent or guardian.)

¹Selling Alcoholic Beverages to a minor with criminal negligence.

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes** Alcoholic Beverage Code §2.01 et seq. See Footnote No. 1 below. Under §2.02(b)(1), in order for a licensee to be liable, it must be proven that the patron was "obviously intoxicated to the extent that he presented a clear danger to himself and others" at the time they were sold/served alcoholic beverages. Also, under §2.03, these code provisions provide the exclusive remedy in situations where the patron is 18 years old or older.

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

Yes Note: The following case law may have been abrogated in part by the above provisions of the Alcoholic Beverage Code. See *Poole v. El Chico Corporation*, 713 S.W.2d 955 (Tex. App. - Hous. 14 Dist. 1986).

Dram Shop Actions--Social Hosts:

No *Walker v. Children's Services, Inc.*, 751 S.W.2d 717 (Tex.App - Amarillo 1988)

Other:

None

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

Misd §101.63²

Type of Criminal Action:

Term of Imprisonment:

1st off-Not more than 1 yr §101.63(b)²; 2nd off-Not more than 1 yr §101.63(c)²

Fine (\$ Range):

1st off-Not less than \$100 nor more than \$500; Subsequent off-Not less than \$500 nor more than \$1,000

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

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

Yes

Length of Term of License Withdrawal:

Suspended for not more than 60 dys, revoked or cancelled §§11.61, 32.17 and 61.71²

¹Note: Under §106.14 of the Alcoholic Beverage Code, actions of employees in serving alcoholic beverages to either minors or intoxicated persons are not attributable to employers if (1) the employer has required its employees to take alcoholic beverage seller training, (2) the employees have completed this training and (3) the employer has not encouraged employees to sell alcoholic beverages to either minors or intoxicated persons.

²Alcoholic Beverage Code

Other State Laws Related To Alcohol Use: (continued)

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

Type of Criminal Action:

Misd¹

Term of Imprisonment:

Not more than 1 yr² §§106.01 and 106.03³

Fine (\$ Range):

Not less than \$100 nor more than \$500;

Subsequent offense-\$500-\$1,000 §106.03³

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes §106.13³

Length of Term License Withdrawal:

1st off-suspended for not more than 60 dys or
cancelled; 2nd off-suspended for not more than 3
mos or cancelled; 3rd off (within 36
mos)-suspended/cancelled for not more than 12 mos

Anti-Happy Hour Laws/Regulations:

Yes (regulation - Rule 060.09.04.001)

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

Open Container Law (Yes/No):

No⁴

Anti-Consumption Law (Yes/No):

Yes Applies only to drivers Art. 6701d, §107E

¹The sale to a minor must be with criminal negligence; see §106.03(a) of the Alcoholic Beverage Code.

²Applies to both a 1st and sub off.

³Alcoholic Beverage Code

⁴Under Art. 67011-1, §f, a person convicted of a DWI offense may be subject to special enhanced sanctions, if, at the time of the offense, they had in their immediate possession an open container of an alcoholic beverage; see Footnote No. 2 on p. 3-388.

STATE:
General Comments:

UTAH
See Utah Code Annotated.

Basis for a DWI Charge:

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

Under the influence of alcohol §41-6-44(1)(a)
0.08 §41-6-44(1)
None
1(1) Any Drug and (2) a Combination of Any Drug
and Alcohol §41-6-44(1).
For Commercial Motor Vehicle Operators, see p.
3-398.

Chemical Breath Tests for BAC/BrAC Level:

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

No
Yes §41-6-44.10(2)
Yes §41-6-44.10(1)
Yes (Criminal and Civil Cases)
§41-6-44.10(8)
A driver may be compelled to submit to a
chemical test if they have been placed under
arrest either (1) for a DWI offense and there is
reason to believe that another person may die as
a result of the offense or (2) for a vehicle
homicide alcohol related offense. See
§76-5-207(6)(b) & (7)(a).

Chemical Tests of Other Substances for BAC Level
Which Are Authorized Under the Implied Consent Law:

Blood: **Yes** §41-6-44.10
Urine: **Yes** §41-6-44.10
Other: **None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No** (Note: A Magistrate may not grant diversion
in a DWI case; see §77-2-9)
Anti-Plea Bargaining Statute (Yes/No): **No** (Note: If the defendant pleads guilty or nolo
contendere to reckless driving as a substitute
for a DWI charge, the prosecution must state for
the record whether alcohol or drugs were related
to the pleaded off.; see §41-6-44(7).)
Pre-Sentencing Investigation Law (PSI)
(Yes/No): **Yes** §41-6-44(4) & (5)

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a
breath alcohol concentration level of 0.08 or more.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): N/A
Administrative Licensing Action (Susp/Rev): N/A
Other: N/A

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): None
Administrative Licensing Action (Susp/Rev): **Rev for 1 yr Mandatory; §41-6-44.10(2)(b)**
(Note: No hardship license may be issued for revs based on a test refusal; see §41-2-19(d).)
Other: None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):

1st off and sub off-non-injury related-Class B misd.- not more than **6 mos**; 1st and sub off-where there is an injury related to negligent action-Class A misd.- not more than **1 yr** §§41-6-44 & 76-3-204.

Mandatory Minimum Term:

1st off; non-injury related/injury related (negligence)-**48 cons hrs**; 2nd off (w/n 5 yrs)-non-injury related/injury related (negligence)-**240 cons hrs**; subsequent off (w/n 5 yrs)-non-injury related/ injury related (negligence)-**720 hrs**

Fine:

Amount (\$ Range):

1st off and sub off-non-injury related-Class B misd.-not more than **\$1,000**; 1st and sub off-where there is an injury related to negligent action-Class A misd.-not more than **\$2,500**^{1&2} §§41-6-44 & 76-3-301

Mandatory Min. Fine (\$):

See Footnote No. 1 below.

¹Under § 62A-8-302, the court is required to impose, in addition to the above fines, a special fine of between \$50 to \$200 for 1st offenders and \$1,000 for 2nd and subsequent offenders; this special fine is for the purpose of funding alcohol education and treatment programs under §62A-8-303; in addition, under §62A-8-302(2), the Court is also required to impose other assessments that fully compensate agencies for the costs of treating DWI defendants. Defendants are also required to pay a fee of \$100 into a Crime Victims' Reparations Trust Fund; see §41-25-1.

²Under §63-63a-1, a 25% surcharge is levied on all fines. The funds collected from this surcharge are used to fund the Crime Victim Reparation Trust fund; see §63-63a-4(3).

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other Penalties:

Community Service:

1st off, non-injury/injury related - **24 to 50 hrs** in lieu of imprisonment (24 hrs mandatory); 2nd off (w/n 5 yrs), Non-injury/injury related - **80 to 240 hrs** in lieu of imprisonment (80 hrs are mandatory); Subsequent offs (w/n 5 yrs), Non-injury/injury related - **240 to 720 hrs** in lieu of imprisonment (240 hrs are mandatory)

Restitution

(eg Victim's Fund):

Yes Either via a Victims' Compensation Fund (§63-63-1 et. seq.) or via direct payment by the defendant to the victim (§76-3-201(3)(a)(i))

Other:

None

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes - A BAC level of **0.08** (or reasonable grounds that a DWI violation has occurred) - 1st admin action - **Susp for 90 dys**; 2nd and subsequent admin actions - **Susp for 120 dys** (The susp pd. begins on the 31st dy after the arrest.) Note: These license susps appear to be mandatory. §§41-2-127(1)(c), 41-2-129 & 41-2-130 Under §41-2-128(1)(a) & (8)(a), a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that usually requires license rev (e.g., 2nd or sub. DWI). Such action may be taken without a preliminary hearing.

Other:

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st DWI off (for either injury or non-injury related offs)-**Susp**; subsequent DWI off (w/n 5 yrs) (for either injury or non-injury related offs)-**Rev** §§41-2-127, 41-2-128 & 41-6-44(9)

Term of License Withdrawal

(Days, Months, Years, etc.):

1st DWI off (for either injury or non-injury related offs) - **90 dys**; subsequent off (w/n 5 yrs) (for either injury or non-injury related offs) - **1 yr** §41-6-44(9)

Mandatory Minimum Term of

Withdrawal:

1st DWI off (for either injury or non-injury related offs) - **90 dys**; subsequent off (w/n 5 yrs) (either injury or non-injury related offs) - **1 yr**; §41-6-44(9) No hardship license may be issued; see §41-2-127(4).

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

Rehabilitation:

Alcohol Education:

Yes, A judge must order a convicted DWI defendant to attend either an education or treatment program. §41-6-44(4) & (5)

Alcohol Treatment:

See above.

Alcohol Education/

Treatment as an Alternative to Criminal

Licensing Actions

(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

No (Note: Under §41-6-44.30, an unattended vehicle may be temporarily impounded following a DWI arrest in order to protect the public safety.)

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Miscellaneous Sanctions

Not Included Elsewhere:

None

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC level of 0.04 or more, (2) are under the influence of either alcohol, drugs or a controlled substance or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs. mand.). In addition, a CMV operator who has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. A CMV is defined as a vehicle that (1) has a gross vehicle weight of 26,001 lbs. or more, (2) is designed to carry 15 or more persons including the driver or (3) transports hazardous materials. See §§41-2-102(5)(a), 41-2-102(7), 41-2-128(4)(c), 41-2-128(13), 41-2-703(2), 41-2-712, 41-2-715, 41-2-716 & 41-2-717.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes** Note: There are two different types of veh or automobile homicide. 1) "Simple" Negilgent Homicide: Death caused by operating a motor vehicle in a negligent manner while DWI or with a BAC level of 0.08 or more - 3rd degree felony §76-5-207(1) and 2) "Criminal" Negligent Homicide: Death caused by operating a motor vehicle in a criminally negligent manner (as defined by §76-2-103(4)) while DWI or with a BAC level of 0.08 or more - 2nd degree felony §76-5-207(2).

Sanctions:

Criminal Sanction:

Imprisonment (Term): Simple Negligent Homicide - Not more than 5 yrs; §76-3-203(3) Criminally Negligent Homicide - 1-15 yrs §76-3-203(2)

Mandatory Minimum Term: **None**

Fine (\$ Range): 1) Simple Negligent Homicide - Not more than \$5,000; 2) Criminal Negligent Homicide - Not more than \$10,000; §76-3-301(1) & (2)

Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and Type of Action: For both offs - Rev §41-2-127(1)(a)

Length of Term of Licensing Withdrawal: For both offs - 1 yr §41-2-132

Mandatory Action--Minimum Length of License Withdrawal: For both offs - 1 yr (No hardship license may be issued; see §41-2-127(4)(a)(i).)

Other: **None**

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term): C1 A Misd **not more than 1 yr** §§41-2-136(3)(a),
41-6-44 and 76-3-204(1)

Mandatory Minimum Term
of Imprisonment: **None**

Fine (\$ Range): **Not more than \$2,500** §76-3-301(3)

Mandatory Minimum Fine: **\$1,000¹**

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev): For driving while suspended - **Susp**; For driving
while revoked - **Rev**; §41-2-127(2)

Length of Term of License
Withdrawal Action: For driving while suspended - an additional like
period of susp for driving while revoked; for
driving while revoked 1 yr additional period
rev §41-2-127(2)

Mandatory Term of License
Withdrawal Action: The above licensing action is mandatory if the
original rev/susp was for a DWI offense; see
§41-2-127(4)(a)(iii).

Habitual Offender Laws:

State Has Such Law (Yes/No): **No**

Grounds for Being Declared an
Habitual Offender:

Term of License Rev While
Under Habitual Offender Status:

Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status

Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:

Imprisonment (Term):

Mandatory Minimum Term of
Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

¹The fine shall be in an amount not less than the maximum fine for a Class B misdemeanor; see §§41-2-136(3)(b) and 76-3-301(4).

STATE - Utah

Other State Laws Related to Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No): **Yes** §26-1-30(17)
BAC Chemical Test Is Given to the
the Following Persons:
Driver: **Yes**
Vehicle Passengers: **No**
Pedestrian: **Yes** (adults only)

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** §§32A-12-8(1) & 32A-12-13 (Year Eff: 1935)
Minimum Age (Years) Possession: **21** §32A-12-13
Minimum Age (Years) Consumption: **21** §32A-12-13

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes** §32A-14-1 (Note: Damages are limited to
\$100,000 per person and \$300,000 per occurrence.)

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

No

Dram Shop Actions-Social Hosts: Possible statutory liability §32A-14-1
Other: **None**

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action: **Class B Misd** §§32A-4-6(10), 32A-12-4,
32A-12-9, 76-3-204(2), 76-3-301(4), & 76-3-302(3)
Term of Imprisonment: **Not more than 6 mos**
Fine (\$ Range): **Not more than \$1,000** for individuals and not
more than **\$5,000** for either corporations,
associations, partnerships or governmental
instrumentalities

Comment: Under §63-55-7(8), the Alcoholic Beverage Control Act (Title 32A) will "terminate" on
July 1, 1998.

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):
Length of Term of License Withdrawal:

Yes¹ Suspension or Revocation §32A-1-19
Suspension: Time period not specified in the statute
Revocation: At least 3 yrs
§32A-1-19(9)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:
Term of Imprisonment:
Fine (\$ Range):

Class A **Misd** §§32A-4-6(10), 32A-12-4, 32A-12-8, 76-3-204(1), 76-3-301(3), & 76-3-302(2)
Not more than **1 yr**
Not more than **\$2,500** for individuals and not more than **\$10,000** for either corporations, associations, partnerships or governmental instrumentalities.

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):
Length of Term License Withdrawal:

Yes¹ Suspension or Revocation §32A-1-19
Suspension: Time period not specified in the statute;
Revocation: At least 3 yrs
§32A-1-19(9)

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):
Anti-Consumption Law (Yes/No):

Yes §41-6-44.20(2)
Yes - driver and passengers §41-6-44.20(1)

¹Special Note: Under §32A-1-19(10), employees in violation of this law may be prohibited, via a suspension action from serving alcoholic beverages for a period of up to one (1) month. However, any employee who has had three (3) suspensions within a 36 month period may be prohibited from handling liquor, in the course of employment, for one (1) year.

Comment: Under §63-55-7(8), the Alcoholic Beverage Control Act (Title 32A) will "terminate" on July 1, 1998.

STATE:
General Comments:

VERMONT
See Vermont Statutes Annotated.

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of intoxicating liquor¹ 23 §1201(a)(2)

Illegal Per Se Law (BAC Level):

0.10² 23 §1201(a)(1); **0.08** - A Civil Traffic Violation 23 §1214(a)

Presumption (BAC Level):

None

Types or Drugs/Drugs and Alcohol:

(1) Any Drug³ and (2) a Combination of Any Drug and Alcohol 23 §1201(a)(3)

Other:

(1) A BAC level of 0.10 is a "permissive inference" of a DWI offense (23 §1204(a)(3)) and (2) a BAC level of 0.15 w/n 2 hrs of a DWI offense is "permissive inference" of such offense (23 §1204(a)(4)).

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

Yes 23 §1203(f)

Implied Consent Law:

Arrest Required (Yes/No):

No⁴ 23 §1202(a)

Implied Consent Law Applies to

Drugs (Yes/No):

Yes⁵

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) 23 §1202(b)

Other Information:

A breath or blood sample (an evidential test) shall be obtained from a surviving driver whose vehicle is involved in a fatal accident where there is reasonable grounds to believe that the driver has any alcohol in their system. 23 §1202(a)

¹Includes all alcoholic beverages; see 23 §1200(4).

²Standard: Weight of alcohol in the blood; see 23 §§1201(a)(1), 1205(a) and 1214(a).

Comment: Under 23 §1200(1), the generally used standard for defining alcoholic concentration for both blood and breath is given. However, this standard is not used to describe either an illegal per offense, a per se civil traffic infraction or an admin. per se violation.

³"Drug" means regulated drugs as defined in 18 §4201; see 23 §1200(2).

⁴Note: If a driver refuses to submit to a chemical test and the police officer had "reasonable grounds to believe" that the driver was DWI, the State may proceed to suspend/revoke the driver's license. See 23 §1205.

⁵A blood sample may be requested (1) if breath testing equipment is not available to determine alcoholic content or (2) if the law enforcement officer believes that the driver was under the influence of drugs. See 23 §1202(a) and State v. Greenia, 522 A.2d 242 (Vt. 1987).

STATE - Vermont

Chemical Tests of Other Substances for BAC Level
Which Are Authorized Under the Implied Consent Law:

Blood: Yes See Footnote No. 5 on p. 403.
Urine: No
Other: None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): No
Anti-Plea Bargaining Statute (Yes/No): No
Pre-Sentencing Investigation Law (PSI)
(Yes/No): Yes The court may require a defendant to
undergo alcohol assessment screening. 23
§§4(49), 1209a(a) and 1210(a)

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail): None
Administrative Licensing Action
(Susp/Rev): None
Other: None

Refusal to Take Implied Consent
Chemical Test:

Criminal Sanction (Fine/Jail): None
Administrative Licensing Action
(Susp/Rev): 1st off - Susp 6 mos (mand.); 2nd off (w/n 5
yrs) - 18 mos susp (mand.); 3rd off (w/n 5 yrs)
- 3 yr rev (2 yrs mand.)¹; 4th and subsequent
offs (w/n 5 yrs) - Rev for life (3 yrs
mandatory)¹ 23 §1205(a) & (k)
Other:

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:
Imprisonment:
Term (Day, Month, Years,
Etc.):

Mandatory Minimum Term:

DWI Offs: 1st off - Not more than 1 yr; 2nd off
(w/n 5 yrs) - Not more than 1 yr; 3rd off (w/n
15 yrs) - Not more than 1 yr; Serious injury
related DWI off - 1 to 15 yrs; 23 §1210
2nd DWI off (w/n 5 yrs) - 48 cons hrs (Community
service in lieu of imprisonment); 3rd DWI off
(w/n 15 yrs) - 48 cons hrs See Footnote No. 2
below.

¹See Rehabilitation below.

²Under 23 §1210(g), the term "imprisonment as used for DWI offense convictions means confinement in either a jail, minimum security facility, in-patient rehabilitation (treatment) center or community correctional facility.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Fine:

Amount (\$ Range):

DWI Offs: 1st off - Not more than **\$750**; 2nd off (w/n 5 yrs) - Not more than **\$1,000**; 3rd off (w/n 15 yrs) - Not more than **\$1,500**; Serious injury related DWI off - Not more than **\$3,000**. See 23 §1210. Civil Traffic Violations - Not more than **\$175**; see 23 §1214(a)

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

2nd off (w/n 5 yrs) - Not less than **10 dys**; 3rd DWI off (w/n 15 yrs) - Not less than **10 dys** (Community service is in lieu of imprisonment.)

Restitution

(eg Victim's Fund):

Yes The court may order a defendant to pay restitution to a victim. 13 §7043

Other:

None

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes-0.10 1st Action-susp. **90 dys** (mandatory); 2nd Action (w/n 5 yrs)-susp. **18 mos** (mandatory); 3rd Action (w/n 5 yrs)-susp. **3 yrs** (2 yrs mandatory)¹; 4th & Sub. Action (w/n 5 yrs)-susp. for **life** (3 yrs mandatory)¹ See Footnote No. 2 below. 23 §1205

Title 23 §1205(m) creates a rebuttable presumption that a persons's BAC level was 0.10 at the time of operating a motor vehicle if such was at this level w/n two (2) hours after such operation.

Other:

None

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st off - **Susp**; 2nd off (after 5 yrs of 1st) - **Susp**; 2nd off (w/n 5 yrs) - **Susp**; 3rd off - **Rev**; 4th and subsequent offs (after 15 yrs of 1st) - **Rev**; 4th and subsequent offs (w/n 15 yrs) - **Rev**; 23 §§1206 and 1208 See Footnote No. 2.

Note: Under 23 §2502(a)(4), five (5) points are assessed against a driver for operating a motor vehicle with a BAC level of 0.08 (Civil Traffic Infraction). See 23 §§2502 & 2506 for further details on license suspensions under the point system.

¹See Rehabilitation below.

²Under 23 §1205(a), suspensions for admin. per se actions and for DWI convictions are to run concurrently.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off - 90 dys; 2nd off (after 5 yrs of 1st) - 90 dys; 2nd off (w/n 5 yrs) - 18 mos; 3rd off - 3 yrs; 4th and subsequent offs (after 15 yrs of 1st) - 6 yrs; 4th and subsequent off (w/n 15 yrs of 1st) - Life

Mandatory Minimum Term of
Withdrawal:

1st off-90 dys; 2nd off (after 5 yrs of 1st)-90 dys; 2nd off (w/n 5 yrs)-18 mos; 3rd off-2 yrs; 4th and sub offs (after 15 yrs of 1st)-2 yrs; 4th and sub offs (w/n 15 yrs)-2 yrs See Rehabilitation.

Other:

Rehabilitation:

Alcohol Education:

Yes

Special Note No. 1: For any license suspension based on a refusal, admin. per se actions or DWI convictions, a defendant must complete an alcohol and driver education program prior to having their license reinstated.

Special Note No. 2: For 2nd and 3rd refusals (w/n 5 yrs), 2nd and 3rd admin. per se actions (w/n 5 yrs) or 2nd and 3rd DWI off convictions (w/n 5 yrs), a defendant must also complete a therapy program at their own expense.

Special Note No. 3: If a person has had their license suspended for 3 or more yrs as a result of a refusal, admin. per se action or a DWI conviction, they may have their license reinstated provided they have abstained from the consumption of alcohol for 2 yrs.

Special Note No. 4: If a person has had their license revoked (suspended) for life as a result of a refusal, admin. per se action or a DWI conviction, they may have their license reinstated provided they have abstained from the consumption of alcohol for 3 yrs.

See 23 §§1205, 1206, 1208 and 1209a.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Alcohol Treatment: **Yes** See Special Notes above on p. 3-406.
Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority: **No**
Terms Upon Which Vehicle
Will Be Released:
Other: **None**
Miscellaneous Sanctions
Not Included Elsewhere: **None**

Other Criminal Actions Related to DWI

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes** (There are two veh homicide laws, 23 §1091(c) applies to death caused by motor veh operation in violation of law and 23 §1210(e) applies to death caused by DWI. Both of these offenses are felonies and the criminal sanctions for a conviction under either section are the same.)

Sanctions:

Criminal Sanction:

Imprisonment (Term): **1 to 15 yrs** Special Note: These penalties do not foreclose the option of tougher penalties for manslaughter (homicide) convictions. 13 §1, and 23 §§1091(c) and 1210(e)

Mandatory Minimum Term: **None**

Fine (\$ Range): **\$3,000**

Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

If death is DWI related, ie. a 23 §1210(e) conviction - **Susp**¹; If death is not DWI related, a 23 §1091(c) conviction - **Susp**; 23 §§1206(b), 23 1210(e), 23 1091(c)

¹Before a defendant's license is reinstated, they must complete an alcohol and driver education program; see 23 §§1206(b) and 1209(a)

Other Criminal Actions Related to DWI: (continued)

Length of Term of
Licensing Withdrawal: If death is DWI related - **1 yr**; If death is not
DWI related - **1 yr** plus any other susp period
required under the point system; see 23 §§2505
and 2506

Mandatory Action--Minimum
Length of License
Withdrawal: If death is DWI related - **1 yr**; If death is not
DWI related - **1 yr** plus any other susp period
required under the point system; see 23 §§2505
and 2506

Other: **None**

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term): 1st off - 30 dys; 2nd off - 90 dys; 3rd off - 6
mos; 4th off - 2 yrs; 23 §674

Mandatory Minimum Term
of Imprisonment: 1st off - 2 dys; 2nd off - 4 dys; 3rd off - 8
dys; 4th off - 16 dys 23 §674(c)

Fine (\$ Range): 1st off - \$500; 2nd off - \$500; 3rd off -
\$1,000; 4th off - \$1,000; 23 §674

Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev): All offs - **Susp**

Length of Term of License
Withdrawal Action: 1st off - 30 dys (additional); 2nd off - 90 dys;
3rd and 4th offs - 6 mos or susp under the point
system whichever is greater; 23 §2506 Note: If
more than one license susp/rev results from the
same incident, the susp/rev periods are cons.

Mandatory Term of License
Withdrawal Action: **None**

Habitual Offender Laws:

State Has Such Law (Yes/No): **Yes**, 23 §673

Grounds for Being Declared an
Habitual Offender: 8 or more convictions based on moving violations
(with 6 points or more assessed) and DWI offs
within 5-yr period

Other Criminal Actions Related to DWI: (continued)

Term of License Rev While Under Habitual Offender Status: **2 yrs**

Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status: **Misd**

Sanctions Following a Conviction of Driving While on Habitual Offender Status:

Imprisonment (Term): 1st off - 30 dys; 2nd off - 90 dys; 3rd off - 6 mos; 4th and subsequent offs - 2 yrs

Mandatory Minimum Term of Imprisonment: Note: Mandatory minimum sanctions in certain cases; 23 §674(c)

Fine (\$ Range): 1st off - \$500; 2nd off - \$500; 3rd off - \$1,000; 4th and subsequent offs - \$1,000

Mandatory Minimum Fine (\$): **None**

Licensing Actions (Specify): 1st off Susp - 30 dys (additional); 2nd off Susp - 90 dys; 3rd off Susp - 6 mos; 4th and subsequent offs Susp - 6 mos or susp under point system whichever is greater.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No): **No**

BAC Chemical Test Is Given to the the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21¹** (Year Eff: 1986) 7 §§238, 657 and 658

Minimum Age (Years) Possession: **21¹** (employment exemption) **Special Note:** The law does not specifically prohibit possession or consumption per se but makes illegal the possession on alcoholic beverages by minors for the purpose of consumption. 7 §657

Minimum Age (Years) Consumption: **21¹** See the Special Note above. 7 §657

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes** 7 §501

¹Students, who are under 18 years old and who are enrolled in post secondary education culinary arts program, are exempt from the drinking age limit law; see 7 §3.

Other State Laws Related To Alcohol Use: (continued)

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

Dram Shop Actions--Social Hosts:

No

Yes Langle v. Kurkul, 510 A.2d 1301 (1986) A
common law legal duty may be imposed in
situations where a social host has furnished
alcoholic beverages either to a visibly
intoxicated person, who may operate a motor
vehicle, or to a minor (510 A.2d 1301, 1306)¹.

Other:

None

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

None (Note: The Vermont Supreme Court has
stated that this State "... has no ... statute
making it a crime for any person ... to sell or
furnish alcoholic beverages to an adult who is
visibly intoxicated." Lange v. Kurkul, 510 A.2d
1301, 1304)

Term of Imprisonment:

Fine (\$ Range):

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

No

Length of Term of License Withdrawal:

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Misd²

Term of Imprisonment:

2 yrs 7 §658 & 13 §1

Fine (\$ Range):

\$200 - \$1,000

¹Title 7, §501(g) provides that nothing in the dram shop law shall create a "statutory" cause of action against a social host. This subsection, however, states that it "shall not be construed to limit or otherwise affect the liability of a social host for negligence at common law."

²See also 7 §224(c) where "[n]o spirituous liquor shall be sold by a third class licensee to a minor." See 7 §667 for possible sanctions for a violation of 7 §224(c).

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages
Withdrawn (Yes/No):
Length of Term License Withdrawal:

Yes 7 §236
Indeterminate 7 §236

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):
Anti-Consumption Law (Yes/No):

No
Yes, driver only; 23 §1134



STATE:
General Comments:

VIRGINIA
See Code of Virginia Annotated.

Basis for a DWI Charge:

Standard DWI Offense
Illegal Per Se Law (BAC Level):
Presumption (BAC Level):
Types of Drugs/Drugs and Alcohol:

Under the influence of alcohol §18.2-266
0.10¹ §18.2-266
0.10 §18.2-269(3)
(1) Any Drug, (2) Any Narcotic or Drug, (3) any
Self-Administered Intoxicant or Drug of
Whatever Nature and (4) Combined Influence of
Alcohol and any Drug or Drugs §18.2-266
For Commercial Motor Vehicle Operators, see p.
3-416.

Other:

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:
Implied Consent Law:
Arrest Required (Yes/No):
Implied Consent Law Applies to
Drugs (Yes/No):
Refusal to Submit to Chemical Test
Admitted into Evidence:

Yes §18.2-267(a)
Yes §18.2-268(B)
Yes §18.2-268(B)
Yes But only for rebuttal purposes
§18.2-268(0)

Other Information:

None

Chemical Tests of Other Substances for BAC Level
Which Are Authorized Under the Implied Consent Law:

Blood:
Urine:
Other:

Yes
No
None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):
Pre-Sentencing Investigation Law (PSI)
(Yes/No):

No
No
No

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):
Other:

None
None
None

¹Standard: Percent by weight by volume; see §18.2-266.

Sanctions for Refusal to Submit to a
Chemical Test: (continued)

Refusal to Take Implied Consent
Chemical Test:

Criminal Sanction (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):

None

1st refusal-Susp-6 mos; 2nd or subsequent
refusal (w/n 1 yr)-Susp-1 yr (These susps
appear to be mandatory.) §18.2-268(T) See
Footnote No. 1.

Other:

None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

C1 1 Misd (all offs) 1st off -12 mos; 2nd off
(w/n 5 yrs)-1 mo-1 yr; 2nd off (5-10 yrs from
1st)-1 mo-1 yr; 3rd and sub off (w/n 10 yrs)-2
mos-1 yr §§18.2-11(a) & 18.2-270

Mandatory Minimum Term:

2nd off (w/n 5 yrs)-48 hrs; 3rd and sub off (w/n
5 yrs)-30 dys; 3rd and subsequent off (w/n 5-10
yrs from 1st)-10 dys

Fine:

Amount (\$ Range):

1st off-Not more than \$1,000; 2nd off (w/n 5
yrs)-\$200-1,000; 2nd off (5-10 yrs from
1st)-\$200-1,000²; 3rd and sub off (w/n 10 yrs)
-\$500-1,000

Mandatory Min. Fine (\$):

None

Other Penalties:

Community Service:

None

Restitution

(eg Victim's Fund):

Yes Compensation may be obtained from two
sources: (1) A victims' compensation
(§19.2-368.1 et seq.); (2) direct compensation
by a defendant to a victim.(§19.2-305).

Other:

None

¹The court may dismiss a refusal susp action if the defendant pleads guilty to a DWI offense.

²If a person is required to enter a driver alcohol rehabilitation program under §18.2-271.1, they must pay a fee of not less than \$250 but not more than \$300; see §18.2-271.1(a1).

Sanctions Following a Conviction for a DWI Offense:
(continued)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law: **None**
Other: **None**

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

1st off-Privilege to operate any motor veh is deprived (Either susp. or rev.); 2nd off (w/n 10 yrs)-Rev; 3rd and sub off (w/n 10 yrs) Rev 4th off-Rev §§18.2-271, 46.2-391 & 46.2-394

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off-6 mos; 2nd off (w/n 10 yrs)-3 yrs; 3rd off (w/n 10 yrs)-10 yrs; 4th off-5 yrs (See Special Note at the end of the Sanctions section) See Footnote No. 1 below.
Persons under 18 years old: The DWI charge is deferred and the following licensing action must be taken-1st off-1 yr denial or until the person reaches 17 whichever is the longer susp. period (90 dys are mand); 2nd and sub. off-1 yr denial until the person reaches 18 whichever is the longer susp. period (1 yr is mand). A restricted hardship license may be issued to either a 1st, 2nd or sub. offender. Note: The court "denies" the driving privilege and takes and keeps possession of the license. See §16.1-279E1-E5.

Mandatory Minimum Term of
Withdrawal:

1st off - See Footnote No. 2; 2nd off (w/n 5 yrs) 2 yrs³; 2nd off (5-10 yrs from 1st)-1 yr³; 3rd and sub off (w/n 10 yrs)-5 yrs⁴; 4th off-5 yrs

¹Subject to the provisions of §§18.2-271 & 18.2-271.1, the licensing agency may revoke a driver's license for a DWI offense under §§46.2-389, 46.2-391 & 46.2-394 as follows: 1st off-1 yr rev; 2nd off (w/n 10 yrs)-3 yr rev; 3rd off (w/n 10 yrs)-10 yr rev (5 yrs mandatory); 4th off-5 yrs (mandatory).

²A restricted lic. may be issued if the defendant participates in a rehabilitation program.

³A restricted lic. may be issued after the minimum period of lic. withdrawal has passed and a defendant has completed a rehabilitation program.

⁴See Special Note in Misc. Sanctions on p. 3-417.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Other:

Rehabilitation:

Alcohol Education: 1st off-Yes; 2nd off (w/n 5 yrs)-Yes; 2nd off (5-10 yrs from 1st)-Yes; 3rd and sub off - See Special Note at Miscellaneous Sanctions (§18.2-271.1).

Alcohol Treatment: 1st off-Yes; 2nd off (w/n 5 yrs)-Yes; 2nd off 5-10 yrs from 1st-Yes; 3rd and sub off-See Special Note in Misc. Sanctions on p. 3-417.

Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):

If court authorizes an offender to participate in either an education or treatment program, a restricted permit may be issued.

Vehicle Impoundment/Confiscation:

Authorized by Specific
Statutory Authority:

Yes (1) Under §46.2-389(A), a person's vehicle registration and plates are **revoked** by the licensing agency for **1 yr** following a DWI conviction; however, under §46.2-389(B), such revocation shall be withdrawn if the defendant has entered a rehabilitation program under §18.2-271.1. (2) Notwithstanding the above, the licensing agency must still suspend/revoke a person's vehicle registration and plates if the court orders such; see §46.2-389(B).

Terms Upon Which Vehicle
Will Be Released:

Other: **None**

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC level of 0.04 or more (Standard: Percent by volume.), (2) are under the influence of alcohol or any narcotic drug, self-administered intoxicant or other drug or (3) refusal to submit to a chemical test. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs. mandatory). It is a Class 3 Misd. to operate a CMV with a BAC level of 0.04 or more; the sanction for this offense is a fine of not more than \$500. It is a Class 1 Misd. to operate a CMV either with a BAC level of 0.10 or more or while under the influence of either alcohol or drugs. The sanctions for this offense are as follows: 1st off-Jail for not more than 12 mos and/or a fine sanction of not more than \$1,000; 2nd off (w/n 10 yrs)-Jail from 1 mo to 1 yr and/or a fine of \$200 to \$1,000 (If the 2nd off was w/n 5 yrs of a previous off, there is a mandatory jail sanction of 48 hrs.); 3rd off (w/n 10 yrs)-Jail from 2 mos to 1 yr and/or a fine of \$500 to \$1,000 (A 30 dy jail sentence is mandatory if the 3rd or sub. off occurred w/n 5 yrs and a 10 dy jail sentence is mandatory if the 3rd or sub. off occurred w/n 10 but more than 5 yrs.) In addition, a person who has any alcohol in their system must be placed "out-of-service" for 24 hours. See §§18.2-11(a) & (c), 46.2-341.4, 46.2-341.17, 46.2-341.18, 46.2-341.24, 46.2-341.25, 46.2-341.26, 46.2-341.28, 46.2-341.29 and 46.2-341.31 (Ch. 705 of the Law of 1989).

Sanctions Following a Conviction for a DWI Offense:
(continued)

Miscellaneous Sanctions
Not Included Elsewhere:

Special Note: For a 3rd off, if a person is at the time of the DWI conviction dependent on alcohol, their license may be restored after 5 yrs provided they have been cured of such dependency, and are not otherwise a threat to the public safety. §46.2-391(C)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of off:

Yes-Death related DWI offense (involuntary manslaughter-death caused unintentionally via DWI) - Class 5 Felony §18.2-36.1

Sanctions:

Criminal Sanction:

Imprisonment (Term):

1 to 10 yrs¹ §18.2-10(e)

Mandatory Minimum Term:

None

Fine (\$ Range):

None

Mandatory Minimum Fine:

N/A

Administrative Licensing Action:

Licensing Authorized and
Type of Action:

Rev §46.2-389

Length of Term of

Licensing Withdrawal:

1 yr §46.2-389

Mandatory Action--Minimum

Length of License

Withdrawal:

1 yr §46.2-389

Other:

The defendant's vehicle registration/plates shall be revoked for 1 yr; see §46.2-389.

Driving While License Suspended or Revoked
Where the Basis Was a DWI Off:

Sanction:

Criminal:

Imprisonment (Term):

1st off (Cl. 2 Misd.)-Not more than 6 mos; 2nd and subsequent offs (Cl. 1 Misd.)-Not more than 12 mos §§18.2-11 & 46.2-301 See Footnote No. 1 below.

Mandatory Minimum Term
of Imprisonment:

None

Fine (\$ Range):

1st off-Not more than \$500; 2nd and subsequent offs-Not more than \$1,000

Mandatory Minimum Fine:

None

¹As an alternative, the defendant may be sentence to jail for not more than 12 mos and/or pay a fine of not more than \$1,000; see §18.2-10(e).

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev): **Rev or Susp §46.2-301**

Length of Term of License
Withdrawal Action: The same period for which the license has been previously suspended or revoked; if the original period not specified, then the Susp or Rev is not to exceed 90 dys. For a 4th offense, the lic. is revoked for 5 yrs; see §46.2-394.

Mandatory Term of License

Withdrawal Action: The same period for which the license has been previously suspended or revoked; if the original period not specified, then the Susp or Rev is not to exceed 90 dys. For a 4th offense, the lic. is revoked for 5 yrs; see §46.2-394.

Habitual Offender Laws:

State Has Such Law (Yes/No): **Yes §§46.2-351 et seq.**

Grounds for Being Declared an
Habitual Offender: Either (1) 3 serious offs or (2) 12 serious and/or other violations¹ w/n 10 yrs

Term of License Rev While
Under Habitual Offender Status: **10 yrs² §46.2-356**

Type of Criminal Off if
Convicted on Charges of
Driving While on Habitual
Offender Status: **Felony §18.2-8**

Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:

Imprisonment (Term): **1-5 yrs §46.2-357**

Mandatory Minimum Term of
Imprisonment: **1 yr §46.2-357**

Fine (\$ Range): **None**

Mandatory Minimum Fine (\$): **None**

Licensing Actions (Specify): **None**

¹Violations that authorize susp/rev for 30 dys or more.

²The license may be restored in less than 10 yrs under three (3) conditions. (1) If the offenses occurred when the driver was under 18, a license may be issued (with or without restrictions) and without a waiting period. (2) If one the offenses was a DWI and the offender was addicted to alcohol, a license may be restored (with or without restrictions) after 5 yrs provided the driver is no longer alcohol dependent and would not otherwise constitute a threat to the public's safety when operating a motor vehicle. (3) If the offenses concerned either (1) failure to pay fines or restitution or (2) failure to prove financial responsibility, the license may be restored (with or without restrictions) after 5 yrs. See §§46.2-360 & 46.2-361.

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No): **No**

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** for all alcoholic beverages (Year Eff:
1987) §§4-50, 4-62 & 4-112¹

Minimum Age (Years) Possession: **21** for all alcoholic beverages. Special
exemptions for physicians who administer
alcoholic beverages to minors, for employment
reasons, and at the order of a parent. §§4-50,
4-62 & 4-112.

Minimum Age (Years) Consumption: **No**¹

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **No**

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

No (Note: For a case denying liability, see
Williamson v. Old Brogue, Inc., 350 S.E.2d 621
(Va. 1986)².)

Dram Shop Actions-Social Hosts: **No** (No Cases)

Other: **None**

¹No sale for consumption on licensed premises to persons under 21; see §§4-63 & 4-112.

²For other cases denying liability under Virginia law, see Webb v. Blackie's House of Beef, Inc., 811 F.2d 840 (4th Cir. 1987), Corrigan v. U.S., 815 F.2d 954 (4th Cir. 1987) (cert. den., ___ U.S. ___, 108 S.Ct. 290, 98 L.Ed.2d 250) and Byrd v. Gate Petroleum, 845 F.2d 86 (4th Cir. 1988).

Other State Laws Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action: **Class 1 Misd¹** §§4-62, 4-92, 4-112(b),
18.2-11(a) and 18.2-12
Term of Imprisonment: **No more than 12 mos**
Fine (\$ Range): **Not more than \$1,000**

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes, Rev or susp²** §§4-37(j) & (c1) and 4-114
Length of Term of License Withdrawal: **Time period is not specified in the statute.**

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action: **Class 1 Misd¹** §§4-112(b), 18.2-11(a) and 18.2-12
Term of Imprisonment: **Not more than 12 mos**
Fine (\$ Range): **Not more than \$1,000**

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes Rev or susp²** §§4-37(j) & (c1) and 4-114
Length of Term License Withdrawal: **Time period not specified in the statute.**

Anti-Happy Hour Laws/Regulations:

Yes VR 125.01-5, §16 (regulation)

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No): **No**
Anti-Consumption Law (Yes/No): **Yes** Drivers only §18.2-323.1

¹It may be possible that a licensee (who sells alcoholic beverages of more than 3.2% alcohol by wgt) could also be charged with a violation of §4-98.10(b) which prohibits the sale of "any authorized alcoholic beverage to any person or at any place except as authorized by law." The sanctions for violating this provision are as follows: Jail-30 days to 12 mos; fine-\$50 to \$500; see also §4-98.10.

²Note: Either in addition or in lieu of suspending a license, a civil fine may be imposed as follows: 1st off-Not more than \$1,000; 2nd off-Not more than \$2,500; and, 3rd off-Not more than \$5,000

JURISDICTION:

VIRGIN ISLANDS

General Comments:

Virgin Islands Code (Updated through 1988.)

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of an intoxicating liquor
20 §493(a)(1)

Illegal Per Se Law (BAC Level):

0.10¹ 20 §493(a)(2)

Presumption (BAC Level):

None

Types of Drugs/Drugs and Alcohol:

(1) Controlled Substance or (2) Combined
Influence of an Intoxicating Liquor and a
Controlled Substance 20 §493(a)(1)

Other:

0.10 is prima facie evidence that a person is
under the influence of an intoxicating liquor
20 §493a(a)(3).

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

No

Implied Consent Law:

Arrest Required (Yes/No):

Yes 20 §493c(a)

Implied Consent Law Applies to

Drugs (Yes/No):

Yes 20 §493c(a)

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) 20 §493c(g)

Other Information:

None

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes 20 §493c(a)

Urine:

Yes 20 §493c(a)

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

Anti-Plea Bargaining Statute (Yes/No):

Pre-Sentencing Investigation Law (PSI)

(Yes/No):

Yes Alcohol Screening 20 §493(b)

¹Standard: Percent or more by weight of alcohol in the blood; see 20 §493(a)(2).

JURISDICTION - Virgin Islands

Sanction for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): **N/A**
Administrative Licensing Action
(Suspension/Revocation): **N/A**
Other:

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): **None**
Administrative Licensing Action
(Suspension/Revocation): **Susp-90 dys** (Appears to be mandatory.)
20 §493c(e)(2)
Other:

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See Footnote No. 1 below.

Imprisonment:

Term (Day, Month, Years,
Etc.):

1st Off-Misd-Not more than 1 yr; Sub. Off (w/n
10 yrs)-**Felony-48 con. hrs to 2 yrs**
14 §2(b)(1), 20 §493(b) & 20 §544(b)

Mandatory Minimum Term:

1st Off-None; sub. off (w/n 10 yrs)-**48 con. hrs²**

Fine:

Amount (\$ Range):

1st Off-Not more than \$500; sub. off (w/n 10
yrs)-**\$2,000**

Mandatory Min. Fine (\$):

1st Off-If there has been an accident-\$300; sub.
off-If there has been an accident-\$600

Other Penalties:

Community Service:

For a sub. off (w/n 10 yrs)-**10 dys** of community
service in lieu of the 48 con. hrs of
imprisonment. See 20 §493(b)(2).

Restitution

(eg Victim's Fund):

Yes (Limited) Under 5 §3711(c)(2) and 5 §3721,
a defendant may be required to pay restitution
to a victim as a condition of probation. Note:
This requirement applies to persons convicted of
any criminal offense.

Other:

¹Under 20 §550, the following sanctions apply to persons under 18 years old who are convicted of a DWI offense: Jail-None; fine-not more than \$100; licensing action-revocation for such period as fixed by the court; Misc.-impoundment of the vehicle used in the offense for not more than **60 dys**.

²Ten (10) days of community service in lieu of the mandatory jail term.

JURISDICTION - Virgin Islands

Sanctions Following a Conviction for a DWI Offense:
(continued)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes (Limited)¹ If the court finds by a preponderance of the evidence that a person has been driving with a BAC level that constitutes prima facie evidence of driving while under the influence (i.e., a BAC level of 0.10), it suspends the driver's license for **90 days**. This suspension action appears to be mandatory. See 20 §493c(e)(2).

Other:

None.

Post DWI Conviction Licensing Action:

See Footnote No. 1 on p. 3-422.

Type of Licensing Action
(Suspension/Revocation):

Susp/Rev^{2&3} 20 §493(c)

Term of License Withdrawal
(Days, Months, Years, etc.):

1st Off-6 mos; Sub. Off-1 to 5 yrs

Mandatory Minimum Term of
Withdrawal:

1st Off)-30 dys⁴; Sub. Off (w/n 10 yrs)-1 yr
(Appears to be mandatory.)

Other:

Rehabilitation:

Alcohol Education:

For all DWI offense convictions, the court must order a defendant to participate in either a substance abuse education or treatment program. 20 §493(d).

Alcohol Treatment:

See Alcohol Education above.

Alcohol Education/
Treatment as an Alternative

to Criminal/
Licensing Actions
(Describe):

¹Note: The police do not "pick-up" the license at the time of the DWI arrest.

²Either suspension or revocation for the periods indicated.

³Under 20 §546, the court can also revoke a driver's license either permanently or for a temporary period (as determined proper by the court).

⁴After this 30 day period, a restricted license may be issued. This license may only be used to "operate a motor vehicle to or from [a person's] place of employment or in the course of [a person's] employment."

JURISDICTION - Virgin Islands

Sanctions Following a Conviction for a DWI Offense:

(continued)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Yes-Limited See Footnote No. 1 on p. 3-422.

(Note: For failure to appear in court on a DWI charge, a person's vehicle may be impounded for such time as the court thinks proper; see 20 §544(c).)

Terms Upon Which Vehicle

Will Be Released:

Other:

Miscellaneous Sanctions

Not Included Elsewhere:

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

Jurisdiction Has Such Law/Type of

Offense:

Yes¹-Felony 14 §2(b)(1) & 20 §504

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Not more than **5 yrs** 20 §504

Mandatory Minimum Term:

None

Fine (\$ Range):

Not more than **\$1,000** 20 §504

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Rev 20 §546

Length of Term of

Licensing Withdrawal:

The court may revoke a driver's license either permanently or for a temporary period (as determined proper by the court).

Mandatory Action--Minimum

Length of License

Withdrawal:

The above revocation is not mandatory.

Other:

See Restitution for a DWI offense on p. 3-422.

¹Negligent homicide by motor vehicle where the driver was either (1) under the influence of alcohol, (2) affected by alcohol, (3) affected by narcotic drugs or (4) operating a vehicle in a reckless manner.

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

(Note: There is no specific offense for driving while license is either suspended or revoked. However, it is an offense to operate a motor vehicle without having a "valid" license. The following sanctions apply to a conviction of driving without a valid license: Jail-Not more than 6 mos; fine-Not more than \$200; and, license revocation-The court can revoke a driver's license either permanently or for a temporary period (as determined proper by the court. See 20 §371, 20 §544(f) and 20 §546.)

Mandatory Minimum Term
of Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Actions:

Type of Licensing Action
(Suspension/Revocation):

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

Other:

Habitual Offender Laws:

Jurisdiction Has Such Law (Yes/No):

No (Note: This jurisdiction does not have a per se habitual offender law. However, the licensing authority may revoke a driver's license where such driver is "guilty of habitual and persistent violations" of the traffic laws; see 20 §548(a).)

Grounds for Being Declared an
Habitual Offender:

Term of License Revocation While
Under Habitual Offender Status:

Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status

Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:

Imprisonment (Term):

Mandatory Minimum Term of
Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

JURISDICTION - Virgin Islands

Other Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):
BAC Chemical Test Is Given to the
Following Persons:
Driver:

Yes (Limited) 20 §493c(m)

Yes A blood sample must be taken w/n 4 hrs of
death. The information obtained from the sample
may only be used for statistical purposes.
20 §493c(m)

Vehicle Passengers:
Pedestrian:

No
No

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:
Minimum Age (Years) Possession:
Minimum Age (Years) Consumption:

18 (Sales only) (Year Eff: 1964) 14 §485

No
No

Dram Shop Laws and Related Legal Actions:

Jurisdiction Has

a Dram Shop Law (Yes/No):

No

"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the Case (Case
Citation):

Dram Shop Actions--Social Hosts:
Other:

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:
Term of Imprisonment:
Fine (\$ Range):

None

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages
Withdrawn (Yes/No):
Length of Term of License Withdrawal:

None

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:
Term of Imprisonment:
Fine (\$ Range):

Misd. 14 §485

Not more than 1 yr 14 §3(a)(2)

Not more than \$200 14 §3(a)(2)

JURISDICTION - Virgin Islands

Other Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes-Rev 14 §485

Length of Term License Withdrawal:

3 yrs 14 §485

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

No



STATE:

General Comments:

WASHINGTON

See Revised Code of Washington Annotated.

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of or affected by intoxicating liquor §§46.61.502(3) & 46.61.504(3)

Illegal Per Se Law (BAC/BrAC Level):

0.10¹ §§46.61.502(1) & (2) and 46.61.504(1) & (2)

Presumption (BAC Level):

None

Types of Drugs/Drugs and Alcohol:

(1) Any Drug and (2) a Combination of Intoxicating Liquor and Any Drug §§46.61.502(3) & (4) and 46.61.504(3) & (4)

Other:

For Commercial Motor Vehicle Operators, see p. 3-432.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:

No

Implied Consent Law:

Arrest Required (Yes/No):

Yes §46-20-308

Implied Consent Law Applies to

Drugs (Yes/No):

No³

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) §46.61.517²

Other Information:

Special Note: A person may be administered either a breath or blood test without their consent, if they have been arrested for either (1) vehicle homicide, (2) vehicle assault or (3) DWI where there has been an injury related accident which may result in death; see §46.20.308.³

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes

Urine:

No

Other:

None

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more.

²See State v. Zwicker, 713 P.2d 1101 (Wash. 1986), which limited such evidence to situations where the defendant initially raises the issue of a blood alcohol test by contesting the credibility or competence of police procedures.

³See §46.20.308(3) where, if there is an injury likely to cause death, a person may be compelled to submit to a test for drugs as well as alcohol.

STATE - Washington

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):
Pre-Sentencing Investigation Law (PSI)
(Yes/No):

No¹
No¹

Yes Permissive authorization, but not mandatory; see §46.61.515.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):
Other:

N/A
N/A
N/A

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):
Administrative Licensing Action
(Susp/Rev):

None

1st refusal-Rev for 1 yr (Mandatory); 2nd refusal (w/n 5 yrs) Rev for 2 yrs (Mandatory) §§46.20.308 and 46.20.311(2)

Other:

A blood or breath test may be taken without consent for the following offs.: Veh. homicide, veh. assault and DWI where there are injuries likely to cause death; see §46.20.308(3).

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:
Term (Day, Month, Years,
Etc.):

1st off - 24 hrs - 1 yr; 2nd and Subsequent off (w/n 5 yrs) - 7 dys - 1 yr; 2nd and Subsequent off but offender has no license or because their license was either suspended or revoked - 90 dys - 1 yr; Veh. assault (Drunk driving related injury C1 C felony) - Not more than 5 yrs; §§46.61.502, .504, .515, .522 See Miscellaneous Sanctions on p. 3-432.

Mandatory Minimum Term:

1st off - 24 cons hrs^{1&2}; 2nd and Subsequent offs (w/n 5 yrs) - 7 dys^{2&3}; 2nd and Subsequent off but offender has no license or because their license was either suspended or revoked - 90 dys See Miscellaneous Sanctions on p. 3-432.

¹The State has a deferred prosecution program for DWI offenses. A person is eligible for this program only once in every five (5) years. The program provides for alcohol treatment for a two year period. Upon successful completion of the program. The court shall dismiss the charges pending against the defendant. See §10.05.010 et seq.

²May be suspended only if jail would impose a risk to defendant's physical or mental well-being.

³With 48 con. hrs; see §46.61.515(1).

Sanctions Following a Conviction for a DWI Offense:
(continued)

Fine:

Amount (\$ Range):

1st off - \$250-\$1,000; 2nd and Subsequent off (w/n 5 yrs) - \$500-\$2,000; 2nd and Subsequent DWI off but offender has no license or because their license was either suspended or revoked - Not more than **\$1,500**; Veh assault (Drunk Driving related injury C1 C felony) - Not more than **\$10,000**

Mandatory Min. Fine (\$):

1st off - \$250¹; 2nd and Subsequent offs (w/n 5 yrs) - \$500¹; 2nd and Subsequent DWI offender but offender has no license because their license was either suspended or revoked - **\$200**; §§46.61.502, .504 and .515

Other Penalties:

Community Service:

None

Restitution

(eg Victim's Fund)

Yes Paid by the defendant to a victim²
§§9.94A.120(14), 9.94A.140 & 9.94A.142

Other:

The court may order a person convicted of a DWI offense to install an "ignition interlock" device on their vehicle. The device, if required, must remain installed for at least 6 mos; see §46.20.710 et seq.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

None (Note: The Admin. Per Se law, due to become eff 1/1/86, was repealed by §6 of Ch. 407, Laws of 1985.)

Other:

Under §§46.20.291(1)(a) & 46.20.311(1), a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that requires mandatory license rev (e.g., 2nd or sub DWI offs). The law does not specifically state that such action can be taken without a preliminary hearing.

Post DWI Conviction Licensing Action:

Type of Licensing Action:

(Susp/Rev):

1st off - Susp³; 2nd off (w/n 5 yrs) - Rev; 3rd and subsequent off (w/n 5 yrs) - Rev; Veh Assault - Rev; §§46.04.285, 46.04.480 and 46.61.515(5))

¹Unless the defendant is indigent.

²The State's victims' compensation law (§7.68.010 et seq.) does not generally cover injuries/damages resulting from traffic law violations such as DWI.

³If the defendant is under 19 yrs old, the susp is for 90 dys or until they reach 19 whichever is the longer susp period.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Term of License Withdrawal
(Days, Months, Years, etc.): 1st off - Not less than 90 dys³; 2nd off (w/n 5 yrs) - 1 yr; 3rd and subsequent off (w/n 5 yrs) - 2 yrs; Veh assault - 1 yr §§46.20.285, 46.04.480 and 46.61.515(5))

Mandatory Minimum Term of
Withdrawal: 1st off - 30 dys¹; 2nd off (w/n 5 yrs) - 1 yr; 3rd and subsequent off (w/n 5 yrs) - 2 yrs; Veh Assault - 1 yr

Other:

Rehabilitation:
Alcohol Education: **Yes for all offs²**
Alcohol Treatment: **Yes for all offs²**

Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority: **No**
Terms Upon Which Vehicle
Will Be Released:
Other: **None**

Miscellaneous Sanctions
Not Included Elsewhere: Incarceration may include "home detention" See §§9.94A.030(18) & (28) and 9.94A.190(1). Note: It is not certain whether "home detention" can be used as an alternative for the mandatory portions of the DWI imprisonment/jail sanctions.

¹A restricted license may be issued under certain conditions after the 30-day mandatory period; see §46.20.391

²Note: Alcohol education/treatment are required and are in addition to any other criminal/civil sanctions; see §46.61.515.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC level of 0.04 or more, (2) are under the influence of alcohol or any drug or (3) refuse to submit to a chemical test for alcohol. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs. mand.). Note: The implied consent provisions for CMV operators allows testing for either alcohol or drugs; however, the "disqualification" sanctions only apply to a refusal to submit to test for alcohol. In addition, a CMV operator must be placed "out-of-service" for 24 hours if they have any amount of alcohol in their system. A person commits a gross misdemeanor if they operate a CMV with any amount of alcohol in their system: Jail-not more than 1 yr; fine-not more than \$5,000. See §9.92.020 and §§3(2), 3(6), 3(8), 3(15), 11, 13, 14 & 19 of Ch. 178 of the Laws of 1989.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense: **Yes**-C1 B Felony Where death is caused by the operation of a vehicle while under the influence of intoxicating liquor or in a reckless manner. §46.61.520

Sanctions:

Criminal Sanction:

Imprisonment (Term): Not more than **10 yrs**; §§46.20.285 and 46.61.520
Mandatory Minimum Term: **None**
Fine (\$ Range): Not more than **\$20,000** (Under §9A.20.30, restitution may be authorized in lieu of a fine.)
Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and Type of Action: **Rev**
Length of Term of Licensing Withdrawal: **2 yrs**
Mandatory Action--Minimum Length of License Withdrawal: **2 yrs** §46.20.391
Other: **None**

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term): Gross Misd. 1st off-10 dys to 6 mos; 2nd off-90 dys to 1 yr; 3rd & sub. off-1 yr (Note: See last off listed under DWI sanctions section)¹ §46.20.342(1)

Mandatory Minimum Term of Imprisonment:

None

Fine (\$ Range):

For all offs - Not more than **\$500** §46.20.342(1)

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Susp or Rev² §46.20.342(2)

Length of Term of License

Withdrawal Action:

If off is driving while suspended, an additional susp for a period equal to the original susp period; if the off is driving while revoked, an additional rev period of 1 yr.

¹Note: If the vehicle used in this offense is owned by the driver, the vehicle may be impounded until any penalties, fines or forfeitures associated with the offense are satisfied; see §46.20.435.

²If the driver is the registered owner of the vehicle used in the offense, the vehicle's registration/license may be cancelled; see §46.16.710 et seq.

Other Criminal Actions Related to DWI: (continued)

Mandatory Term of License
Withdrawal Action:

If off is driving while suspended, an additional susp for a period equal to the original susp period; if the off is driving while revoked, an additional rev period of 1 yr¹.

Habitual Offender Laws:

State Has Such Law (Yes/No):
Grounds for Being Declared an
Habitual Offender:

Yes §46.65.020

3 serious offs w/n 5 yrs or a combination of 20 minor and/or serious offs w/n 5 yrs provided that 3 minor offs must have been committed w/n the period of 360 dys for this alternative to apply.

Term of License Rev While
Under Habitual Offender Status:

5 yrs (Special stay of rev if based on DWI offs and person is attending an alcohol treatment program; or after 2 yrs a restricted or unrestricted license may be issued.)
§§46.65.060, 46.65.070 & 46.65.080

Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status

Gross Misd. §64.65.090

Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:

Imprisonment (Term):

1st off-10 dys-6 mos; 2nd off-90 dys-1 yr; 3rd & sub. off-1yr §§46.20.342(1) & 46.65.090(1)

Mandatory Minimum Term of
Imprisonment:

1st off where there is DWI-**30 dys** §46.65.090(2)
For all offs-Not more than **\$500** §§46.20.324(1) & 46.65.090(1)

Fine (\$ Range):

Mandatory Minimum Fine (\$):

N/A

Licensing Actions (Specify):

None

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):
BAC Chemical Test Is Given to the
the Following Persons:

Yes §§46.20.308(1) and 46.52.065

Driver:

Yes

Vehicle Passengers:

No

Pedestrian:

Yes

¹A restricted license may be issued under certain conditions.

Other State Laws Related To Alcohol Use: (continued)

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

- Minimum Age (Years) Sale/Purchase: **21** (Year Eff: 1934) §§66.44.270(1) and 66.44.290
- Minimum Age (Years) Possession: **21** §66.44.270(2) (Exemptions for minors who have been served alcoholic beverages by their parents or guardians in the home, for medical reasons and for religious services.)
- Minimum Age (Years) Consumption: **21** §66.44.270(2) (Exemptions for minors who have been served alcoholic beverages by their parents or guardians in the home, for medical reasons and for religious services.)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **No**¹

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):

Yes Purchase v. Meyer, 737 P.2d 661 (Wash. 1987)²

Dram Shop Actions—Social Hosts:

No Burkhart v. Harrod, 755 P.2d 579 (Wash. 1988)³

Other:

Note: Sec. 4.56.250(2), that limited the amount of non-economic damages a person could receive in civil (tort) action, was declared in violation of the State's constitution. See *Sofie v. Fibreboard Corp.*, 771 P.2d 711 (Wash. 1989).

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Term of Imprisonment:

Misd §§9A.20.010(2), 66.44.180 & 66.44.200
1st off - Not more than **2 mos**; 2nd off - Not more than **6 mos**; 3rd and subsequent offs - Not more than **1 yr**;

Fine (\$ Range):

For individuals, 1st off - Not more than **\$500**; 2nd and sub off-**None**; For corporations, 1st off - Not more than **\$5,000**; 2nd and subsequent offs - Not more than **\$10,000** (And/or forfeiture of its corporate license.)

¹Note: This State's Dram Shop Law was repealed in 1955; see Ch. 372 of the laws of 1955.

²Applies to the actions of either (1) an obviously intoxicated patron or (2) a minor patron. See Footnote No. 10 of the Purchase case for other decisions (737 P.2d at 664).

³Note: This case may only apply in "non-business" social host situations. Businesses that host events where alcoholic beverages are served may be liable for the injuries caused by intoxicated employees (or guests); see *Halligan v. Pupo*, 678 P.2d 1295 (Wash.App. 1984).

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp or Rev

Length of Term of License Withdrawal: Not specified in the statute

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Misd §§9A.20.010(2), 66.44.180, 66.44.270 & 66.44.320

Term of Imprisonment:

Same penalties apply as to serving alcoholic beverages to intoxicated persons

Fine (\$ Range):

Same penalties apply as to serving alcoholic beverages to intoxicated persons

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp or Rev

Length of Term License Withdrawal:

Not specified in the statute §§66.24.010, 66.44.180, 66.44.320 and 66.44.325

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Yes §46.61.519(2)^{1&2}

Anti-Consumption Law (Yes/No):

Yes - Driver and Passengers² §46.61.519(1)¹

Note: Under §66.44.100, "no person shall open the package containing liquor or consume liquor in a public place;" the law allows for exceptions (e.g. licensed establishments).

¹A violation is a traffic infraction.

²Does not apply to passengers in commercially chartered vehicles.

STATE

General Comments:

WEST VIRGINIA

See West Virginia Code.

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC Level):

Presumption (BAC Level):

Types of Drugs/Drugs and Alcohol:

Under the influence of alcohol §17C-5-2

0.10¹ §17C-5-2

0.10¹ §17C-5-8

(1) Any Drug, (2) Controlled Substance, (3) a Combination of Alcohol and Any Other Controlled Substance or Any Other Drug, (4) Habitual Users of Narcotic Drugs, Amphetamine or Any Derivative Thereof §17C-5-2

Other:

0.10 is also prima facie evidence of driving under the influence of alcohol §17C-5-8(c)
For Commercial Motor Vehicle Operators, see p. 3-438.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

Yes §17C-5-5

Implied Consent Law:

Arrest Required (Yes/No):

Yes §17C-5-4

Implied Consent Law Applies to

Drugs (Yes/No):

No

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) State v. Cozart, 352 S.E.2d 152 (W.Va. 1986)

Other Information:

None

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes §17C-5-4

Urine:

Yes §17C-5-4

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

No

Pre-Sentencing Investigation Law (PSI)

(Yes/No):

No

¹Standard: 0.10 percent by weight of alcohol in the blood; see §§17C-5-2 & 17C-5-8.

STATE - West Virginia

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): **None**
Administrative Licensing Action
(Susp/Rev): **None**
Other: **None**

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): **None**
Administrative Licensing Action
(Susp/Rev): **1st refusal-Rev for 1 yr (Mandatory); 2nd
refusal¹-Rev for 10 yrs (5 yrs mandatory); 3rd
refusal¹-Rev for life (10 yrs mandatory)
§§17C-5-4 & 17C-5-7**
Other: **None**

¹A previous admin. per se violation is also considered a prior refusal for licensing sanction enhancement purposes; see §17C-5-7(b).

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC level of 0.04 or more, (2) are under the influence of either alcohol or a controlled substance or (3) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs. mand.). In addition, a CMV operator who either (1) refuses to take a PBT or (2) has any measurable (or detectable) amount of alcohol in their system must be placed "out-of-service" for 24 hours. Unless the law provides for another sanction, it is a misdemeanor to violate any of the provisions of the CMV/CDL law: Jail-not more than 6 months; fine-\$100 to \$1,000. See §§17E-1-3, 17E-1-13, 17E-1-14, 17E-1-15 & 17E-1-25.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

DWI not related to death or bodily injury, 1st off - 1 dy² to 6 mos; 2nd off-6 mos to 1 yr; 3rd and subsequent offs-1 to 3 yrs; DWI resulting in death where there is reckless disregard of the safety of others¹ - 1 to 10 yrs; DWI resulting in death where there is an illegal act or a failure to perform a legal duty, 1st off-90 dys to 1 yr; 2nd off-6 mos to 1 yr; 3rd and Sub offs-1 to 3 yrs; DWI resulting from bodily injury where there is an illegal act or a failure to perform a legal duty, 1st off - 1 dy² to 1 yr; 2nd off - 6 mos to 1 yr; 3rd and subsequent offs - 1 to 3 yrs; §17C-5-2 See Footnote No. 3 below.
None See Footnote No. 4 below.

Mandatory Minimum Term:

Fine:

Amount (\$ Range):

DWI not related to death or bodily injury, 1st off - \$100 to \$500; 2nd off-\$1,000 to \$3,000; 3rd and subsequent offs-\$3,000 to \$5,000; DWI resulting in death where there is reckless disregard of the safety of others¹ - \$1,000 to \$3,000; DWI resulting in death where there is an illegal act or a failure to perform a legal duty, 1st off- \$500 to \$1,000; 2nd off- \$1,000 to \$3,000; 3rd and Sub offs- \$3,000 to \$5,000; DWI resulting from bodily injury where there is an illegal act or a failure to perform a legal duty, 1st off - \$200 to \$1,000; 2nd off - \$1,000 to \$3,000; 3rd and subsequent offs - \$3,000 to \$5,000; §17C-5-2 See Footnote No. 3 below.

Mandatory Min. Fine (\$):

§17C-5-21(m) provides that the above sentences are mandatory and are not subject to either susp or rev.

¹Felony

²Actual confinement of not less than 24 hrs.

³Note: It is a misdemeanor for a person to drive a vehicle if they are an habitual user of narcotic drug or an amphetamine or any derivative thereof. The sanctions for this offense are as follows: Imprisonment from 1 day to 6 months with actual confinement of not less than 24 hours and/or a fine of from \$100 to 500.

⁴Note: Sec. 17C-5-2(m) provides that the DWI sanctions are mandatory and are not subject to either susp or probation; i.e., the minimum imprisonment sanction, it appears, must be served. However, this section does provide that for jail sentences of one (1) yr or less, the provisions of sec. §§62-11A-1 et. seq. may be applied by the Court. In brief, §62-11A-1 provides for a defendant's temporary release from confinement for employment, educational, medical, or family needs/reasons.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other Penalties:

Community Service:

None

Restitution

(eg Victim's Fund):

Yes Victims' Compensation Fund; see §14-1-1 et seq. & §14-2A-3 et seq. Direct compensation by the defendant to the victim via court order is also possible; see, e.g., §14-2A-3(b)(1).

Other:

None

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Basis of action: A BAC of 0.10 or driving while under the influence of alcohol) Admin actions where there is neither a death nor a bodily injury: 1st action - 6 mos rev (90 dys are mandatory); 2nd action - 10 yrs rev (5 yrs are mandatory); 3rd action - Rev for life (10 yrs mandatory) §§17C-5A-2 and 17C-5A-3(a), (b) and (c); Admin. actions where there is a death and the driver has also acted in reckless disregard for the safety of others 1st action-10 yrs rev (5 yrs mandatory), 2nd action-Rev for life (10 yrs mandatory). Admin actions where there is a death of a person but no recklessness on the part of the driver: 1st action - 5 yrs rev (2 1/2 yrs mandatory); 2nd action - Rev for life (10 yrs mandatory). Admin actions where there is bodily injury: 1st action - 2 yrs rev (1 yr mandatory); 2nd action - 10 yrs rev (5 yrs mandatory) 3rd action - Rev. for life (10 yrs mandatory) §§17C-5A-2 and 17C-5A-3. See Footnote Nos. 1 & 2 below. Note: The admin. per se law appears to apply to both residents and nonresidents; see §17B-3-2.

A person, under 19 years old, who has violated the admin. per se law, must have their license revoked until they are 19 or for the applicable statutory period whichever is longer; see §17C-5A-2(n).

Other:

Under §§17B-3-6 & 17B-3-8, a person's license may be susp for not more than 1 yr if they have "committed" (but have not necessarily been convicted of) an off that requires mandatory license rev (e.g., DWI). Such action may be taken without a preliminary hearing.

¹Note: If an habitual user of a narcotic drug or an amphetamine or any derivative thereof has operated a motor vehicle, their license is revoked as follows: 1st action - 6 mos; 2nd action - 10 yrs; and 3rd action - for life. §17C-5A-2(i)

²A previous implied consent refusal is also considered a prior refusal for licensing sanction enhancement purposes; see §17C-5A-2(j).

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

Note: License susp/rev provisions under previous law following a DWI conviction have been replaced by the provisions of the Administrative Per Se Law.

Term of License Withdrawal
(Days, Months, Years, etc.):
Mandatory Minimum Term of
Withdrawal:

N/A

Other:

Rehabilitation:

Alcohol Education:

Yes §17C-5A-3 Note: After (1) the period of mandatory rev has elapsed and (2) the driver has successfully completed an approved program of either alcohol/drug education or alcohol/drug treatment, a defendant's license may be reissued with or without conditions.

Alcohol Treatment:

Yes See note above.

Alcohol Education/

Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):

Generally no but there are some alternatives.
See §17C-5A-3.

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

No

Terms Upon Which Vehicle

Will Be Released:

Other:

None

Miscellaneous Sanctions

Not Included Elsewhere:

None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Offense:

Yes, Misd See Footnote No. 1 on p. 3-442.

Negligent homicide §17C-5-1 (For details on deaths related to DWI, see DWI sanctions above.)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Not more than 1 yr

Mandatory Minimum Term:

None

Fine (\$ Range):

\$100-1,000

Mandatory Minimum Fine:

None.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:

Licensing Authorized and
Type of Action: Rev §§17B-1-1(n) & 17B-3-5
Length of Term of
Licensing Withdrawal: 1 yr

Mandatory Action--Minimum
Length of License
Withdrawal: 1 yr
Other: None

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term): 1st off Misd - 6 mos; 2nd off Misd - 1 yr; 3rd
and subsequent offs Felony - 1-3 yrs
(penitentiary) §17B-4-3(b)

Mandatory Minimum Term
of Imprisonment: 1st off - 6 mos; 2nd off - 1 yr; 3rd and
subsequent offs - 1 yr

Fine (\$ Range): 1st off - \$100-500; 2nd off - \$1,000- 3,000; 3rd
and subsequent offs - \$3,000- 5,000 §17B-4-3(b)

Mandatory Minimum Fine: 1st off - \$100; 2nd off - \$1,000; 3rd and
subsequent offs - \$1,000

Administrative Licensing Actions:

Type of Licensing Action
(Susp/Rev): Either Susp or Rev

Length of Term of License
Withdrawal Action: If license was originally suspended the license
withdrawal period would be equivalent to the
original period of susp. If license was
revoked, 1 yr extension of the original rev.
§17B-4-3(c)

Mandatory Term of License
Withdrawal Action: Same as above.

Habitual Offender Laws:

State Has Such Law (Yes/No): No

Grounds for Being Declared an

Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

¹A felony is defined as an offense for which the law which specifically requires that the incarceration sanction is to be served in the State penitentiary; see §17B-1-1(n). Since the §17C-5-1 does not specify where the term of incarceration must be served, the offense would appear to be a misdemeanor.

Other Criminal Actions Related to DWI: (continued)

Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:

Imprisonment (Term):
Mandatory Minimum Term of
Imprisonment:
Fine (\$ Range):
Mandatory Minimum Fine (\$):
Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No): **Yes** §17C-5B-1
BAC Chemical Test Is Given to the
the Following Persons:
Driver: **Yes**
Vehicle Passengers: **No**
Pedestrian: **Yes (Adult Pedestrians)**

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** (Year Eff: 1986) §§11-16-18(a)(3),
11-16-19(a), 60-3-12(3), 60-3-22(1), 60-3-22a
60-6-8(4), 60-7-12(a)(3), 60-7-12a, 60-8-20(c)
and 60-8-20a
Minimum Age (Years) Possession: **None**
Minimum Age (Years) Consumption: **None**

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **No**
"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation): **No** (Note: A Federal District Court has held
that West Virginia courts would find in favor of
a dram shop action based upon common law
grounds; see Walker v. Griffith, 626 F.Supp. 350
(1986).)
Dram Shop Actions-Social Hosts: **No** (No Cases)
Other: **None**

Other State Laws Related To Alcohol Use: (continued)

**Criminal Action Against Owners or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:**

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Misd.--For all offenses.

Alcoholic Liquor^{1&6}: Sales by the State
Commission/Agents²-**5 dys-6 mos**; Special
Licensees³-**30 dys-1 yr**; Private Clubs⁴-**not more
than 1 yr**; Wines⁵-**30-dys-6 mos**. Nonintoxicating
Beer^{1&7}: Class A & B Licensees-**30 dys-6 mos**.

Footnotes are on p. 3-446.

Alcoholic Liquor^{1&6}: Sales by the State
Commission/Agents²-**\$10-500**; Special
Licensees³-**\$50-500**; Private Clubs⁴-**\$100-500**;
Wines⁵-**\$25-500**. Nonintoxicating Beer^{1&7}: Class
A & B Licensees-**\$25-500**. Footnotes are on p.
3-446.

**Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:**

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Yes, Discontinued, suspended or revoked

Alcoholic Liquor^{1&6}: Sales by the State
Commission/Agents²-State stores or agents may be
discontinued at the discretion of the
commissioner; Special Licensees³-Rev time period
is not specified but normal licensing period is
one (1) year; Private Clubs⁴-**Rev/susp**-Licenses
are usually revoked for **up to one (1) year**;
Wines⁵-Rev/susp time period is not specified in
the statute. Footnotes are on p. 3-446.

Nonintoxicating Beer^{1&7}: Class A & B
Licensees-**Rev/susp**-If the license is revoked, no
new license shall be issued for **two (2) years**;
the statute does not state a specific time
period for a suspension. Footnotes are on p.
3-446.

Other State Law Related to Alcohol Use: (continued)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Misd.-For all offenses

Alcoholic Liquor^{1&6}: Sales by the State Commission/Agents²-**5 dys-6 mos**; Special Licensees³-**30 dys-1 yr**; Private Clubs⁴-**not more than 1 yr**; Wines⁵-**30-dys-6 mos**. Nonintoxicating Beer^{1&7}: Class A & B Licensees-**30 dys-6 mos**.

Footnotes are on p. 3-4426

Alcoholic Liquor^{1&6}: Sales by the State Commission/Agents²-**\$10-500**; Special Licensees³-**\$50-500**; Private Clubs⁴-**\$100-500**; Wines⁵-**\$25-500**. Nonintoxicating Beer^{1&7}: Class A & B Licensees-**\$25-500**. Footnotes are on p. 3-446.

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Yes, Discontinued, suspended or revoked

Alcoholic Liquor^{1&6}: Sales by the State Commission/Agents²-State stores or agents may be discontinued at the discretion of the commissioner; Special Licensees³-Rev time period is not specified but normal licensing period is **one (1) year**; Private Clubs⁴-**Rev/susp**-Licenses are usually revoked for **up to one (1) year**; Wines⁵-Rev/susp time period is not specified in the statute. Footnotes are on p. 3-446.

Nonintoxicating Beer^{1&7}: Class A & B Licensees-**Rev/susp**-If the license is revoked, no new license shall be issued for **two (2) years**; the statute does not state a specific time period for a suspension. Footnotes are on p. 3-446.

Other State Law Related to Alcohol Use: (continued)

Anti-Happy Hour Laws/Regulations: **No**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No): **No**

Anti-Consumption Law (Yes/No): **Yes - Driver and passengers §60-6-9(a)(3)**

¹Alcoholic Liquor—all alcoholic beverages except nonintoxicating beer; nonintoxicating beer—all cereal malt beverages and malt coolers containing at least 0.5% alcohol by volume but not more than 4.2% alcohol by weight or 6% by volume whichever is greater. §§11-16-3 & 60-1-5.

²The State Alcohol Commissioner establishes either State stores or licenses private agents to sell alcoholic liquor in packages at retail. §§60-3-1 (monopoly), 60-3-2 & 60-3-16 (sales in sealed packages only).

³Special Licensees—E.g., manufacturers of alcoholic liquor, wholesale and retail druggists, users of alcohol for scientific purposes, users of wine for sacramental purposes, etc. §60-4-1 et seq.

⁴Private Clubs, which are not open to the public, may be licensed to sell alcoholic liquor by the drink. §60-7-1 et seq.

⁵Licenses may be granted for the "off premises" consumption of wine by any retailer. Licenses may be granted for the "on premises" consumption of wine to restaurants which are not open to the public. §60-8-1 et seq.

⁶Alcoholic Liquor—citations: Sales by the State Commission—§§60-30-2, 60-3-22 & 60-6-15; Special Licensees—§§60-3-22, 60-4-1, 60-4-1 & 60-6-8; Private Clubs—§§60-7-12 & 60-7-13; Wines—§§60-8-18, 60-8-20 & 60-8-25

⁷Nonintoxicating Beer—citations: §§11-16-9, 11-16-18 & 11-16-23 Special Note: Class A Licenses ("on and off premises" sales) are issued (1) to retail businesses (profit) and (2) to social, fraternal, private clubs, etc. (non-profit); Class B Licenses ("off premises" sales only) are issued to retail food stores.

STATE:

WISCONSIN

General Comments:

See Wisconsin Statutes Annotated.

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of an intoxicant

§346.63(1)(a) & (2)(a)

Illegal Per Se Law (BAC/BrAC Level):

0.10^{1&2} §§346:63(1)(b) & (2)(a)(2) and 940.25

Presumption (BAC Level):

None

Types of Drugs/Drugs and Alcohol:

(1) Any Drug, (2) an Intoxicant, (3) a Controlled Substance, (4) a Combination of an Intoxicant and a Controlled Substance and (5) a Combination of an Intoxicant and Any Other Drug §346.63(1)(a) & (2)(a)(1)

Other:

For Commercial Motor Vehicle Operators, see p. 3-450.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:

Yes §343.303

Implied Consent Law:

Arrest Required (Yes/No):

Yes §343.305(3)

Implied Consent Law Applies to

Drugs (Yes/No):

Yes §343.305(2)

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes (Criminal Cases) State v. Albright, 298 N.W.2d 196 (CA 1980)

Other Information:

None

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes

Urine:

Yes

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No³

Anti-Plea Bargaining Statute (Yes/No):

No (Note: However, the Court must approve dismissals of or amendments to DWI charges; see §967.055.)

Pre-Sentencing Investigation Law (PSI)

(Yes/No):

Yes §§343.305(9)(c) & 343.30(1q)(c)1 (intro)

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more. Standards: Percent by weight of alcohol in the blood; and, grams of alcohol per 210 liters of breath (§346.63(1)(b)).

²Sec. 346.63(2m) prohibits any person under 19 years old from operating a motor vehicle with a BAC level of more than 0.00 but less than 0.10.

³Deferred prosecution for DWI offenders is prohibited; see §§967.055(3) & 971.39. (Note: Deferred prosecution is only available in counties having a population of less than 100,000; see §971.39.)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): **None**
Administrative Licensing Action (Susp/Rev): **None**
Other: **None**

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): **None**
Administrative Licensing Action (Susp/Rev):

1st refusal - **1 yr rev**, after 30 dys of the rev period, the driver is eligible for an occupational license; 2nd refusal (w/n 5 yrs) - **2 yr rev**, after 90 dys of the rev period, the driver is eligible for occupational license; 3rd and subsequent refusal (w/n 5 yrs) - **3 yr rev**, after 120 dys of rev period, the driver is eligible for an occupational license; Note: Previous DWI convictions and admin. per se actions are considered to be prior refusals. §343.305(9)

Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:
Term (Day, Month, Years, Etc.):

Non-injury related DWI off: 1st off-None; 2nd off (w/n 5 yrs)-**5 dys to 6 mos**; 3rd and sub off (w/n 5 yrs)-**30 dys to 1 yr**; Injury related DWI offs, Without great bodily harm - **30 dys to 1 yr**; With great bodily harm (CI E felony) - Not more than **2 yrs** §§346.631(1), 346.65(2), 346.65(3), 939.50 and 940.25

Mandatory Minimum Term:

None

Fine:

Amount (\$ Range):

Non-injury related DWI offs, 1st off- **\$150 to 300**; 2nd DWI off (w/n 5 yrs) - **\$300 to 1,000**; 3rd & sub. off (w/n 5 yrs)-**\$600 to 2,000**; Injury related DWI offs, Without great bodily harm - **\$300 to 2,000**; With great bodily harm (CI E felony) - Not more than **\$10,000** See Footnote No. 1 on p. 3-449.

Mandatory Min. Fine (\$):

None

If a person, under 19 years old has been arrested for a violation of §346.63(2m), driving with a BAC level of more than 0.00 but less than 0.10, refuses to submit to a chemical test, their license is revoked for six (6) months. After the first 15 days of this revocation period have passed, an occupational license can be issued. A refusal based only on this offense is not considered a prior refusal for enhanced sanctioning purposes for either DWI convictions or other chemical test refusals. See §§343.305(9)(em) & 346.63(2m).

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other Penalties:

Community Service:

Yes §346.65(2g)²

Restitution:

(eg Victim's Fund):

Yes: Direct compensation by the defendant to a victim for some types of "pecuniary losses;" see §346.65(2r)(a). In addition, the State has a victims' compensation fund; see §949.01 et seq. Awards are limited to \$40,000 for any one injury or death; see §949.06(2).

Special Note: An adult passenger may not receive an award from this fund if they knew the driver they were riding with was intoxicated or had a BAC level of 0.10 or more; see §949.08(2)(e).

Other:

Persons convicted of a DWI offense must pay a driver improvement surcharge of \$200 in addition to any other fine or forfeiture that may be imposed; see §346.655(1). In addition, under §§814.60 & 973.045, a defendant must pay a crime victim and witness assistance surcharge of \$30 for a misdemeanor conviction and \$50 for a felony conviction.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes **0.10** BAC §343.305(7) & (8) (Action is taken via the licensing agency; see §343.305(8)-Susp 6 mos. (15 dys mandatory)³

Other:

A person is referred to the licensing agency after two or more DWI arrests. §343.16(2)

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st off - Susp; 2nd and 3rd offs - Rev; DWI injury related offs, with or without great bodily harm - Rev §§343.10, 343.30 & 343.31 See Footnote Nos. 1 & 2 on p. 3-450.

¹Sec. 346.63(2m) prohibits any person under 19 years old from operating a motor vehicle with a BAC level of more than 0.00 but less than 0.10. There is a forfeiture of \$10 for a violation of this provision; see §346.65(2q).

²Community service may be imposed (1) in lieu of certain fines/forfeitures or (2) in addition to other penalties; see §346.65(2g) for details.

³A restricted occupational license is available via the courts. A person may file a petition for such a license before the court without a waiting period. Upon receipt of the petition, the court may grant a temporary occupational license which is valid for 30 days. However, 15 days must have elapsed since the date of the suspension before this license can be issued. See §§343.30(1q)(b)(2) & 343.10(1)(d).

Sanctions Following a Conviction for a DWI Offense:

(continued)

Term of License Withdrawal

(Days, Months, Years, etc.): Non-injury related DWI offs; 1st off- Susp 6-9 mos; 2nd off-Rev 1 yr-18 mos; sub off - Rev 2-3 yrs; Injury related DWI offs Without great bodily harm - Rev 1 to 2 yrs; With great bodily harm - Rev 2 yrs Note: A previous conviction includes refusals.

Mandatory Minimum Term of Withdrawal:

Non-injury related DWI offs; 1st off - 15 dys³; 2nd off - 60 dys⁴; sub off - 90 dys⁴; Injury related DWI offs Without great bodily harm - 60 dys; With great bodily harm - 120 dys

¹Sec. 346.63(2m) prohibits any person under 19 year old from operating a motor vehicle with a BAC level of more than 0.00 but less than 0.10. A violation of §346.63(2m) results in a 3 mo license susp; however, an occupational license is available; see §343.30(1q).

²Under §343.30(1q)(g), if a person has a chauffeur's license and they are convicted of a DWI offense while not operating a

motor vehicle as a chauffeur, the chauffeur's license is not suspended or revoked.

³An occupational license is available via the courts. A person may file a petition for such a license before the court without a waiting period. Upon receipt of the petition, the court may grant a temporary occupational license which is valid for 30 days until the court is able to hear and decide the petition for the regular occupational license. However, 15 days must have elapsed since the date of the suspension before this temporary license can be issued. See §§343.30(1q)(b)(2) & 343.10(1)(d).

⁴A restricted occupational license may be issued after this period of time.

Note: Under §343.30(1q)(h), the license susp/rev period for a DWI offense conviction is reduced by any susp time imposed for a refusal (based on the same incident/occurrence). Also, license suspensions/revocations for DWI, refusal or admin. per se which are based on the same incident/occurrence must run consecutively. See §343.305(10)(g).

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC level of 0.04 or more, (2) are intoxicated or under the influence of alcohol or a controlled substance, (3) under the influence of any drug which render them incapable of driving safely or (4) refuse to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand.). In addition, a CMV operator who has any "measurable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. Any person who operates a CMV with any "measurable" amount of alcohol in their system shall pay a forfeiture of \$10. Any person who operates a CMV with a BAC/BrAC of between 0.04 and 0.10 is subject to the following criminal sanctions. For non-injury offs: 1st off-forfeiture of \$150 to \$300; 2nd off (w/n 5 yrs)-jail 5 dys to 6 mos, fine-\$300 to \$1,000; 3rd or sub off (w/n 5 yrs)-jail 30 dys to 1 yr, fine-\$600 to \$2,000. For an injury off: Jail-30 dys to 1 yr; fine-\$300 to \$2,000. For an off where there has been "great bodily" injury (Class E felony): Jail-not more than 2 yrs; fine-not more than \$10,000. See §§340.01(lv), 340.01(8), 340.01(13m), 340.01(9r)(intro.), 343.305(2), 343.305(3)(a), 343.305(4)(c)2, 343.305(7)(b), 343.31, 343.315, 346.63(5)(a), 346.63(6)(a), 346.63(7)(a), 346.65(2j), 346.65(3), 346.65(2u)(a), 885.235(5)(a), 940.25(1)(intro.) and 940.25(1)(bm); eff. 1/1/91.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

Rehabilitation:

Alcohol Education:

Yes Persons convicted of a DWI related injury offense (without great bodily harm) must submit to an alcohol assessment and comply with a driver safety plan. Operating privileges shall be suspended if a person does not comply with Court-ordered alcohol/drug assessment (DWI screening), education or treatment program; see §343.30(1q)(c) & (d).

Alcohol Treatment:

Yes See above.

Alcohol Education/
Treatment as an Altern-

ative to Criminal

Licensing Actions

(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

No

Terms Upon Which Vehicle

Will Be Released:

Other:

Note: Vehicles may be impounded as a result of an operator-owner's failure to post security for an accident; see §344.14 and for a conviction of driving while license is either suspended or revoked; see §343.44(4)

Miscellaneous Sanctions

Not Included Elsewhere:

A person who has not attained the age of 19, may not operate a motor veh with a BAC level of 0.0 up to 0.10; see §346.63(2m); for a violation of §346.63(2m) there is a license susp for 3 mos (For a 1st off., an occupational hardship license is available at any time.) See §343.30(1p). There is also a forfeiture of \$10 (see §346.65(2q)).

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of Off:

Yes--C1 E felony where death is caused by operating a veh with a high degree of negligence; **C1 D felony** Where death is caused by operating a veh in an intoxicated condition §§343.10, 343.31, 939.50, 940.08, and 940.09

Other Criminal Actions Related to DWI: (continued)

Sanctions:

Criminal Sanction:

Imprisonment (Term): C1 E felony-Not more than **2 yrs**; C1 D felony-Not more than **5 yrs** §§343.10, 343.31, 939.50, 940.08 and 940.09

Mandatory Minimum Term: **None**

Fine (\$ Range): C1 E felony - Not more than **\$10,000**; C1 D felony - Not more than **\$10,000**

Mandatory Minimum Fine: **None**

Administrative Licensing Action:

Licensing Authorized and Type of Action: For C1 E & D felonies - **Rev**

Length of Term of Licensing Withdrawal: C1 E felony - **1 yr**; C1 D felony - **5 yrs**

Mandatory Action--Minimum Length of License Withdrawal: C1 E felony - A restricted license may be issued; C1 D felony - **120 dys**; A restricted license may be issued after this period.

Other: **None**

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

See Vehicle Impoundment/Confiscation on p. 3-451.

Sanction:

Criminal:

Imprisonment (Term): 1st off-**None**; 2nd off¹- **10 dys to 6 mos**; 3rd off-**30 dys to 9 mos**; 4th off - **60 dys to 1 yr**; 5th and subsequent offs-**6 mos to 1 yr**; (Within 5 yrs) §§343.31 and 343.44 See Footnote No. 2.

Mandatory Minimum Term of Imprisonment: **None**

Fine (\$ Range): 1st off-**\$150 to 600**; 2nd off - **\$300 to 1,000**; 3rd off-**\$1,000 to 2,000**; 4th off- **\$1,500 to 2,500**; 5th and subsequent offs - **\$2,000 to 2,500** §§343.31 and 343.44)

Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev): **Rev**

Length of Term of License Withdrawal Action: **6 mos**

Mandatory Term of License Withdrawal Action: A mandatory license withdrawal period is not specified; a restricted license could be issued but only if there has been no previous susp or rev for the past yr.

¹Within 5 yrs

²Note: There are different sanctions for persons who operate a CMV while they are "disqualified" from operating such a vehicle; see §343.44(2m).

Other Criminal Actions Related to DWI: (continued)

Habitual Offender Laws:

State Has Such Law (Yes/No):
Grounds for Being Declared an
Habitual Offender:

Yes §§351.01 to .11

Four or more serious offs or 12 or more minor
moving violations w/n 5 yrs

Term of License Rev While
Under Habitual Offender Status:

5 yrs (A hardship license may be issued after 2
yrs of the rev period have passed; see §351.07)

Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status

Misd

Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:

Imprisonment (Term):
Mandatory Minimum Term of
Imprisonment:
Fine (\$ Range):
Mandatory Minimum Fine (\$):
Licensing Actions (Specify):

90 dys

None

Up to \$1,000

None

None

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic
Accidents:

State Has Such a Law (Yes/No):
BAC Chemical Test Is Given to the
the Following Persons:

Yes §346.71(2)

Driver:
Vehicle Passengers:
Pedestrian:

Yes

No

Yes (14 years or older)

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 (Year Eff: 1986) §§125.02(8m), 125.07(1) &
125.07(4)

Minimum Age (Years) Possession:

21 Applies to either possession or consumption
in public places unless accompanied by a parent
or guardian §§125.07(1) & 125.07(4)

Minimum Age (Years) Consumption:

21 Applies to either possession or consumption
in public places unless accompanied by a parent
or guardian §125.07(4)

Other State Laws Related To Alcohol Use: (continued)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes §125.035 Note: Liability is limited to the serving of alcoholic beverages to minors; case law noted below may have been abrogated in part.

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):

Sorenson v. Jarvis, 350 N.W.2d 108 (Wis. 1984)¹

Dram Shop Actions--Social Hosts:

Yes §125.035 Note: Liability limited to the actions of intoxicated minors. See also, Koback v. Crook, 366 N.W.2d 859 (Wis. 1985) which also limited liability to the actions of intoxicated minors.

Other:

None

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Misd §§125.07(2)(a) & (b) and 939.60

Term of Imprisonment:

Not more than **60 dys**

Fine (\$ Range):

\$100-500

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Susp/Rev §125.12

Length of Term of License Withdrawal:

Susp-Not more than **90 dys**; Rev-at least **12 mos**

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

All offs are violations and they are therefore not criminal offs §125.07(1)(a) & (b)

Term of Imprisonment:

N/A

Fine (\$ Range):

1st off - Not more than **\$500**; 2nd and subsequent offs (w/n 12 mos) - **\$200-500**

¹The holding in this case applied only to the actions of intoxicated minors.

Other State Laws Related To Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):
Length of Term License Withdrawal:

Yes for 2nd and subsequent offs; §125.07(1)(b)
1st offs - None; 2nd offs (w/n 12 mos) - Susp. not more than 3 dys; 3rd offs (w/n 12 mos) - Susp. 3 to 10 dys; 4th off (w/n 12 mos) - Susp. 15 to 30 dys (Also, possible Susp/Rev under §125.12; Susp-Not more than 90 dys; Rev-at least 12 mos.)

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):
Anti-Consumption Law (Yes/No):

Yes §346.935(2) & (3)
Yes - driver and passengers §346.935(1) (Does not apply to a motor bus.)



STATE:
General Comments:

WYOMING
See Wyoming Statutes Annotated.

Basis for a DWI Charge:

Standard DWI Offence:

Under the influence of alcohol
§31-5-233(b)(i)(A)

Illegal Per Se Law (BAC Level):

0.10¹ §31-5-233(b)(i)

Presumption (BAC Level):

None

Types of Drugs/Drugs and Alcohol:

(1) Controlled Substance² or (2) a Combination
of Alcohol and Any Controlled Substance
§31-5-233(b)(i)(B) & (C)

Other:

For Commercial Motor Vehicle Operators, see p.
3-461.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

No

Implied Consent Law:

Arrest Required (Yes/No):

Yes §31-6-102(a)

Implied Consent Law Applies to
Drugs (Yes/No):

Yes §31-6-102(a)(i)

Refusal to Submit to Chemical Test
Admitted into Evidence:

Yes (Criminal and Civil Cases) §31-6-105(f)

Other Information:

A test may be required in cases where serious
bodily injury or death has resulted; see
§31-6-102(d).

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Yes

Urine:

Yes

Other:

None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea Bargaining Statute (Yes/No):

Yes §31-5-233(j) A DWI charge may not be
reduced or dismissed, unless the State in open
court moves or files a statement containing
supporting facts to indicate that there is
insufficient evidence to support the original
DWI charge.

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

No

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration level of 0.10 or more or (2) a urine alcohol concentration level of 0.10 or more (grams of alcohol per 75 milliliters of urine).
§31-5-233(a) & (b)(1).

²Includes glue, aerosol or other toxic vapor; see §31-5-233(a)(ii).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): **N/A**
Administrative Licensing Action
(Susp/Rev): **N/A**
Other: **N/A**

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): **None**
Administrative Licensing Action
(Susp/Rev): 1st Refusal - Susp 6 mos (Mandatory); 2nd or Sub. Refusal - Susp. 1 yr & 6 mos (18 mos) (Mandatory) §§31-6-107(a) & 31-7-105(d)(iv)(D) §31-6-102(c)
Other: **None**

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):

1st off Misd - Not more than 6 mos; Subsequent offs (w/n 5 yrs) Misd - 7 dys to 6 mos²; Serious bodily injury DWI off (§31-5-233(g)), 1st off - Not more than 1 yr; Subsequent offs - Not more than 20 yrs §31-5-233(e) & (h)
Subsequent DWI offs (w/n 5 yrs) - 7 dys §31-5-233(e)

Mandatory Minimum Term:

Special Note: Under §31-5-233(g), a defendant may be allowed out of jail long enough to complete actual hrs of employment or education and a reasonable time to travel to and from his place of employment or school (i.e., work/school release program)

Fine:

Amount (\$ Range):

1st off - Not more than \$750; Subsequent offs - \$200 to 750; Serious bodily injury DWI off - 1st off - Not more than \$5,000; subsequent off - None (Note: A surcharge of \$50 is assessed against convicted DWI offenders. This surcharge is used to help finance the Victims' Compensation fund. See §1-40-119.)

Mandatory Min. Fine (\$):

None

¹A person is also subject to this enhanced licensing sanction if they have been convicted of a previous DWI offense. §31-6-107(a)(ii)(B)

²The discretionary portion of a jail sentence may be suspended if the defendant agrees to pursue and complete an alcohol education and treatment program; see §31-5-233(e).

Sanctions Following a Conviction for a DWI Offense:

(continued)

Other Penalties:

Community Service: **None**

Restitution:

(eg Victim's Fund)

Yes The State has a Victims' Compensation Act. §1-40-102 et seq.

Other:

None

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes-0.10 BAC Susp. 90 dys^{1&2} (For a subsequent action w/n 5 yrs, this susp. is mandatory.) A person arrested for a DWI off has their license taken by the arresting officer. The officer issues a temporary license to the driver. This temporary license is valid for 30 dys. See §§31-5-1205(k), 31-6-102(e) and 31-6-103(b).

Other:

Special Note: There appears to be a conflict between §§31-6-103(b) and 31-7-105(d). Section 31-6-103(b) (See the last sentence.) seems to grant the licensing agency (hearing examiner) the authority to provide for limited driving privileges in hardship situations to persons who have submitted to an implied consent test and who are found to be in violation of the admin. per se provisions (§31-6-102(e)). However, §31-7-105(d)(iv) clearly states that no such limited privileges are to be granted to a person who has had their driver's license suspended under §31-6-102.

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

1st off-Susp; 2nd off (w/n 5 yrs)- Susp; 3rd & Sub. offs (w/n 5 yrs)- Rev; DWI Serious bodily Injury offs- Rev §§31-7-105(d), 31-7-127(a)(ii) & 31-7-128(b)

Term of License Withdrawal

(Days, Months, Years, etc.):

1st off - 90 dys²; 2nd off (w/n 5 yrs) - 1 yr²; 3rd & subsequent offs - 3 yrs²; DWI Serious bodily injury offs - See the comment below.

¹For a 1st admin. per se action, the 90 day suspension may be modified to allow for limited driving privileges in hardship situations; see §§31-6-103(b) & 31-7-105.

²A 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; see §31-6-102(e).

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term of
Withdrawal:

1st off - Hardship driving privileges are available; see Rehabilitation; 2nd off (w/n 5 yrs) - 1 yr; 3rd & subsequent offs (w/n 5 yrs) - 3 yrs; DWI Serious bodily injury offs- See the comment below.

Comment: Even though convictions for DWI serious bodily injury offenses clearly result in mandatory license revocations (§31-5-233(h)(iii)), Wyoming law does not provide specific guidance as to the length of such revocations.

For a first offense, the law establishes no clear period of mandatory license revocation. For two reasons; the mandatory license revocation provisions of §31-7-127 would not apply to a first conviction for a DWI serious bodily injury offense. (1) The one (1) year mandatory license revocation provided for under §31-7-127(a)(i) & (b) for any felony conviction related to the operation of a motor vehicle does not apply since a conviction for a first DWI serious bodily injury offense is not a felony. (Note: A felony is defined as any offense for which a person may be sentenced to serve more than one (1) year in prison; see §6-10-101. However, for a first DWI serious bodily injury offense conviction, the maximum prison term is only one (1) year; see §31-5-233(h)(i).) And; (2) the three (3) year mandatory license revocation for DWI convictions (§31-5-233 convictions) under §31-7-127(a)(ii) only occurs when there is a third or subsequent offense committed with a five (5) year period (see below). In addition, there are no other provisions of Wyoming law that provide for revocation periods in the absence of ones specifically established under law. As a result, the law does not provide for a specific license revocation period for a first DWI bodily injury offense.

As far as mandatory license revocations for subsequent offenses are concerned, the issue is whether such offenses will result in either a one (1) year or a three (3) year period of revocation. Subsequent convictions for DWI serious bodily injury offenses are felony convictions since a defendant may be sentenced to serve up to 20 years in prison (§§6-1-101 and 31-5-233(h)(ii)). Consequently, a license would

Sanctions Following a Conviction for a DWI Offense:
(continued)

Comment (continued):

be revoked for at least one (1) year as noted above under §31-7-127(a)(i) & (b). However, as also noted above, if three (3) or more subsequent DWI convictions occur within a five (5) year period, a license could, it appears, be revoked for three (3) years. (Note: Section 31-7-127(a)(ii) does not distinguish between "regular" and serious bodily injury subsequent DWI offenses for license revocation purposes and, as such, it could be argued that the three (3) year license revocation period applies to both types of offenses.)

For subsequent DWI serious bodily injury offense convictions, a license revocation for either one (1) year or three (3) years may be meaningless. Persons convicted of such offenses face severe prison sentences (up to 20 years) which could last longer than the license revocation period. Thus, unless such revocation period starts to run after the person's release from prison, its value is questionable since it would occur, in whole or in part, during a period of time when the person is confined and unable to operate a motor vehicle regardless of their licensing status.

Other:

Rehabilitation:

Alcohol Education:

Yes 1. The court may suspend part or all of the discretionary portion of an imprisonment sentence under §31-5-233(e) if the defendant agrees to pursue and completes an alcohol education or treatment program as prescribed by the court.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr (1 yr mand.) (not less than 3 yrs (3 yrs mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC/UrAC (UrAC = grams of alc per 75 milliliters of urine) level of 0.04 or more, (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for alcohol concentration. Note: The disqualification provision (§31-17-111) applies only to alcohol concentrations; however, the CMV implied consent provision (§31-17-113) applies to both alcohol and controlled drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 yrs mand.). In addition, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. Finally, it is a misd to violate any provision of the CMV/CDL law; for a 1st off, the sanctions are imprisonment for not more than 90 dys and/or a fine of not more than \$750 and, for a 2nd or subsequent off, imprisonment for not more than 6 mos and/or a fine of not more than \$750. See §§31-17-102(a)(ii) & (vii), 31-17-111, 31-17-112, 31-17-113 and 31-17-120.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Alcohol Treatment:
Alcohol Education/
Treatment as an Altern-
ative to Criminal
Licensing Actions
(Describe):

2. In order to obtain a hardship driving privileges, the defendant must agree to pursue and complete an alcohol education and treatment program as the driver licensing agency prescribes; see §31-7-105(d).
Yes See Alcohol Education above.

Yes See Alcohol Education above.

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:
Terms Upon Which Vehicle
Will Be Released:
Other:

No

For a subsequent DWI conviction (w/n 2 yrs), a defendant's veh registration shall be suspended for the same period as their license rev/susp; see §31-7-128(c).

Miscellaneous Sanctions
Not Included Elsewhere:

None

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such Law/Type of off:

Yes, two types of offs; 1.) Death caused by operation of a veh in violation of the motor vehs laws regulating traffic control **Misd.** 2.) Aggravated veh homicide if death caused via DWI **Felony** §§6-2-106 & 6-10-101

Sanctions:

Criminal Sanction:

Imprisonment (Term):

1.) Death by a violation of the motor veh laws - Not more than **1 yr**; 2.) Aggravated veh homicide if death caused via DWI - Not more than **20 yrs**

Mandatory Minimum Term:

None

Fine (\$ Range):

1.) Death caused by a violation of the motor veh laws - Not more than **\$2,000**. 2.) Aggravated veh homicide via DWI - **None**

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and
Type of Action:

Rev §§6-2-106(c), 31-7-105(d)(iv)(A), 31-7-127(a)(vii) & 31-7-127(b)

Length of Term of

Licensing Withdrawal:

1 yr

Mandatory Action--Minimum

Length of License

Withdrawal:

1 yr

Other:

None

Other Criminal Actions Related to DWI: (continued)

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):	Misd - Not more than 6 mos §31-7-135(a)
Mandatory Minimum Term of Imprisonment:	None
Fine (\$ Range):	Not more than \$750
Mandatory Minimum Fine:	None

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev):	Susp or rev
Length of Term of License Withdrawal Action:	The original susp or rev period is extended 1 yr. §31-7-135(b)
Mandatory Term of License Withdrawal Action:	The original susp or rev period is extended 1 yr. §31-7-135(b)

Habitual Offender Laws:

State Has Such Law (Yes/No):	No
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine (\$ Range):	
Mandatory Minimum Fine (\$):	
Licensing Actions (Specify):	

Other State Laws Related to Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

No

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

21 §12-6-101(a) & (c) (Year Eff: 1988)

Minimum Age (Years) Possession:

21 Applies to possession in a public place;
there are exemptions for either employment or by
order of a parent. §12-6-101(b)

Minimum Age (Years) Consumption:

None

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

Yes Limited¹ §12-8-301

"Dram Shop Law" Concept Has Been

Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the State (Case
Citation):

No Note: Case law, McClellan v. Tottenhoff,
666 P.2d. 408 (Wyo. 1983), was apparently
indirectly abrogated by §12-8-301¹

Dram Shop Actions--Social Hosts:

Yes Limited Social hosts who serve alcoholic
beverages illegally, such as to persons who are
under 21 years old and who are not their child
or ward, etc., may be liable for the resulting
damages. §12-8-301(c)¹

Other:

None

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

Misd. Limited Application² Under

§§12-5-301(a)(v) & 12-8-101, it is illegal for
licensees to sell sealed packages of alcoholic
beverages to intoxicated persons in certain
"drive-in areas."

Term of Imprisonment:

Not more than 6 mos

Fine (\$ Range):

Not more than \$750

¹Sec. 12-8-301(a) specifically prohibits dram shop type actions against anyone (e.g., licensees and social hosts) who has legally served or furnished alcoholic beverages to another person. Dram shop liability only applies if the person serving or furnishing such beverages violates Title 12, Alcoholic Beverages, of the Wyoming Statutes.

²Previous law, §12-5-501, concerning the selling of alcoholic beverages to intoxicated persons generally was repealed.

Other State Laws Related to Alcohol Use: (continued)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:
License to Serve Alcoholic Beverages
Withdrawn (Yes/No):

Yes §12-7-101. Limited Application¹ See §12-5-301(a)(v) and the statement above under criminal sanctions.

Length of Term of License Withdrawal: A susp is not to exceed the balance of the term for which the license was issued; as for rev, no time period is specified in the statute.
§12-7-102

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:
Type of Criminal Action:
Term of Imprisonment:
Fine (\$ Range):

Misd §§12-5-301, 12-6-101 and 12-8-101
Not more than 6 mos
Not more than \$750

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:
License to Serve Alcoholic Beverages
Withdrawn (Yes/No):

Yes Susp or rev where there is gross violation of the law

Length of Term License Withdrawal: A susp is not to exceed the balance of the term for which the license was issued; as for rev, no time period is specified in the statute.
§12-7-102

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

No

Anti-Consumption Law (Yes/No):

No

¹See Footnote No. 2 on p. 3-464.



APPENDIX A

ITEM:

General Comments:

UNIFORM VEHICLE CODE (UVC)

The UVC as revised by the National Committee on Uniform Traffic Laws and Ordinances in 1987.

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC/BrAC Level):

Presumption (BAC Level):

Types of Drugs/Drugs and Alcohol:

Under the Influence of Alcohol §11-902(a)(2)

0.08¹ §§11-902(a)(1) & 11-903(a)(5)

0.08 §11-903(b)(3)

(1) Any drug, (2) a combination of drugs and (3) a combination of alcohol and drugs

§11-902(a)(3) & (4)

Other:

None

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

Yes §6-208

No - A formal arrest is not required in all DWI situations. A chemical test may be administered under the following conditions where there is evidence showing probable cause of a DWI offense and one of the following exists: (1) an arrest for a DWI offense; (2) an accident; (3) a refusal to submit to preliminary breath test; and, (4) a preliminary breath test was administered and indicates a BAC/BrAC level of 0.08 or more. §6-207

Implied Consent Law Applies to

Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

Other Information:

Yes §6-207

Yes (Criminal & Civil Cases) §11-903(c)

A driver may be compelled to submit to a chemical test if they are involved in an accident resulting in death or serious personal injury to another person and there is reason to believe that they are guilty of a DWI offense. §6-209

Chemical Tests of Other Substances for BAC Level

Which Are Authorized Under the Implied Consent Law:

Blood:

Urine:

Other:

Yes §6-207(a)

Yes §6-207(a)

None

¹The UVC's illegal per se provision also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.08 or more.

Uniform Vehicle Code

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea Bargaining Statute (Yes/No):

No
No However, the prosecution must state for the record the factual basis for substituting another charge for a DWI one and whether an alcoholic beverage or any drug has been ingested by or administered to the defendant in connection with the offense. §11-905

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

Yes, Alcohol Screening §11-904(a) (Special Note: Prior to sentencing, a victim's impact statement may be made to the court either orally or in writing; see §11-906.)

Sanctions for Refusal to Submit to a BAC
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): **None**
Administrative Licensing Action
(Suspension/Revocation): **None**
Other: **None**

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): **None**
Administrative Licensing Action
(Suspension/Revocation):

Rev. for 6 mos/1 yr.¹ §§6-207(c) & 6-213(a)(1)
Note: The UVC recommends that either a 6 month or a 1 year revocation period be adopted by the States as a licensing sanction for an implied consent law refusal.

Other: **None**

¹Under §6-214, a limited license may be issued after 30 days of the revocation period have passed. The limited license can only be issued if (1) no prior limited license has been issued within the preceding 12 months and (2) there have been no prior revocations. This section imposes no specific restrictions on a person's use of this license. However, it does grant the licensing agency the authority to impose any conditions or limitations on the use of such license as it deems are needed for the public's safety.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

1st off - Misd¹ - 10 dys - 1 yr; 2nd. & sub.
off-Misd¹ - 90 dys - 1 yr. §11-902(c)
None²

Mandatory Minimum Term:
Fine:

Amount (\$ Range):

1st off-Misd-\$100 - 1,000; 2nd & sub.
off-Misd-Not more than \$1,000 §11-902(c)
None²

Mandatory Min. Fine (\$):

Other Penalties:

Community Service:

Possible as a condition of either probation or suspension of a DWI imprisonment sanction. See §17-103(b).

Restitution

(eg Victim's Fund):

Possible as a condition of either probation or suspension of a DWI imprisonment sanction. See §17-103(b).

Other:

Attendance and satisfactory completion of a driver improvement course may be ordered by the court. §17-103(a)(3)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

BAC/BrAC 0.08 - Rev 3 mos/6 mos³ (Note: The UVC recommends, that for an admin. per se violation, the States revoke a license for either 3 or 6 mos.) §56-207(d), (e) & (f) and 6-213(a)(2). See Special Note on p. A-4.

Other:

Under §§6-210(a)(1) and 6-215, a person's license may be **suspended for not more than 1 yr** if they have committed (but have not necessarily been convicted of) an off that requires mandatory license revocation (e.g. DWI).

¹Since §11-902 does not declare that a DWI offense (either a 1st or a subsequent offense) is a felony, it is a misdemeanor via the provisions of §17-101.

²See §17-103(c) where a court may probate or suspend sanctions for any misdemeanor traffic off unless such penalties are made specifically mandatory by law.

³Under §6-214, a limited license may be issued after 30 days of the revocation period have passed. The limited license can only be issued if (1) no prior limited license has been issued within the preceeding 12 months and (2) there have been no prior revocations. This section imposes no specific restrictions on a person's use of this license. However, it does grant the licensing agency the authority to impose any conditions or limitations on the use of such license as it deems are needed for the public's safety.

Uniform Vehicle Code

Sanctions Following a Conviction for a DWI Offense:
(continued)

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Suspension/Revocation):

Rev (1st and sub. off) §6-206(2) See the
Special Note below.

Term of License Withdrawal

(Days, Months, Years, etc.):

1 yr (1st and sub. off) §6-213(a)(3), (4) or (5)

Mandatory Minimum Term of

Withdrawal:

See Footnote No. 1, and Miscellaneous Sanctions
below.

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

Alcohol Education/

Treatment as an Altern-

ative to Criminal

Licensing Actions

(Describe):

Yes (1st and sub. off) §11-904(b)

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

No

Terms Upon Which Vehicle

Will Be Released:

Other:

Following a DWI conviction, a defendant may have
his/her vehicle(s) registration(s) suspended.
Note: The UVC does not recommend a length of
time for such suspension. §17-301(2)

Miscellaneous Sanctions

Not Included Elsewhere:

After the revocation period, a new license shall
not be issued until the person satisfies the
State licensing agency that it is reasonably
safe to permit them to drive; see §6-213(b).

Special Note: If a person receives revocations for both an admin. per se violation and for a DWI conviction based on the same occurrence, the total revocation period that shall be imposed cannot exceed the longer of the two revocation periods; see §6-213(d).

Under §6-214, a limited license may be issued after 30 days of the revocation period have passed. The limited license can only be issued if (1) no prior limited license has been issued within the preceding 12 months and (2) there have been no prior revocations. This section imposes no specific restrictions on a person's use of this license. However, it does grant the licensing agency the authority to impose any conditions or limitations on the use of such license as it deems are needed for the public's safety.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

UVC Has Such Law/Type of Offense:

Yes-Misd or Felony¹ §11-907(a)

Sanctions:

Criminal Sanction:

Imprisonment (Term):

3 mos - 1 yr in the county jail or not less than than 1 yr nor more than 5 yrs in the penitentiary §11-907(b)

Mandatory Minimum Term:

None²

Fine (\$ Range):

\$500 - 2,000 §11-907(b). Note: The fine sanction does not apply if the penitentiary imprisonment sanction is imposed.

Mandatory Minimum Fine:

None²

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Rev. §6-206(1)

Length of Term of

Licensing Withdrawal:

1 yr §6-213(a)(3), (4) or (5)

Mandatory Action—Minimum

Length of License

Withdrawal:

1 yr §§6-206 & 6-213(a)(3), (4) or (5) See Footnote No. 1 on p. A-4.

¹It appears that a UVC vehicle homicide offense could be classified as either a misdemeanor or a felony depending upon whether respectively a defendant is given the county jail sanction (3 mos-1 yr) or the penitentiary one (1-5 yrs). At first impression, it would seem that a vehicle homicide offense should be classified as a misdemeanor under §17-101(a) since §11-907 is silent as to such classification. However, if certain general principles of criminal law as well as other UVC provisions are applied, UVC vehicle homicide could be classified as either a misdemeanor or a felony depending upon how long and where a defendant is to be incarcerated. In brief, using these general principles, a crime is classified as a misdemeanor if an incarceration sanction does not exceed one year and/or such is to be served in a county (or local) jail; a crime is classified as a felony if an incarceration sanction is greater than one year and/or such must be served in a State penitentiary. Thus, under these principles, it is possible that an offense, such as UVC vehicle homicide, could have a dual classification (misdemeanor or felony) depending upon the type of incarceration sanction imposed by the court. See 21 Am.Jur 2d, Criminal Law, §29 and the definition of a felony in Black's Law Dictionary, 4th Ed., 1968. Further support for dual classification comes from the UVC itself. Under §17-201, a person convicted of a felony is to be sentenced to a term of imprisonment of not less than 1 yr nor more than 5 yrs; this sanction is identical to one of the sanctioning options under §11-907(b). Thus, although there is no specific language on this matter, it seems only reasonable to conclude that the UVC would classify a vehicle homicide offense as a felony if a defendant is given the penitentiary incarceration sanction. To classify a vehicle homicide as a misdemeanor when the sanction imposed on a defendant is the same as for a general UVC felony offense would render the UVC inconsistent in sanctioning and classification matters; such a result does seem warranted if a more logical classification/sanctioning scheme can be justified.

²See §17-103(c) where a court may probate or suspend sanctions for any misdemeanor traffic off unless such penalties are made specifically mandatory by law. For felony offenses, the UVC provides no specific guidance as to mandatory sentences; however, many State criminal laws provide for the suspension or probation of a sentence for certain types of felony offenses.

Other Criminal Actions Related to DWI: (continued)

Other For a vehicle homicide conviction, a defendant may have his/her vehicle(s) registration(s) suspended. Note: The UVC does not recommend a length of time for this suspension. §17-301(1)

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

Sanctions:

Criminal:

Imprisonment (Term): 2 dys - 6 mos Misd §6-303(a)
Mandatory Minimum Term
of Imprisonment: None¹
Fine (\$ Range): Not more than \$500 §6-303(a)
Mandatory Minimum Fine: None¹

Administrative Licensing Actions:

Type of Licensing Action
(Suspension/Revocation): Rev §6-303(b)
Withdrawal Action: 1 yr from and after the date the period of
revocation would otherwise have terminated
§6-303(b)

Mandatory Term of License
Withdrawal Action: 1 yr from and after the date the period of
revocation would otherwise have terminated
§6-303(b)

Other: Following a conviction of driving while their license is revoked, a defendant may have his/her vehicle(s) registration(s) suspended. Note: The UVC does not recommend a length of time for this suspension. §17-301(6)

Habitual Offender Laws:

UVC Has Such Law (Yes/No): No
Grounds for Being Declared an
Habitual Offender:
Term of License Revocation While
Under Habitual Offender Status:

¹See §17-103(c) where a court may probate or suspend sanctions for any misdemeanor traffic off unless such penalties are made specifically mandatory by law.

Uniform Vehicle Code

Other Criminal Actions Related to DWI: (continued)

Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status

Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:

Imprisonment (Term):
Mandatory Minimum Term of
Imprisonment:
Fine (\$ Range):
Mandatory Minimum Fine (\$):
Licensing Actions (Specify):

Other UVC Provisions Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic
Accidents:

UVC Has Such a Law (Yes/No):
BAC Chemical Test Is Given to the
the Following Persons:
Driver:
Vehicle Passengers:
Pedestrian:

Yes §10-116

Yes §10-116(a)

No

Yes for persons at least 16 years old
§10-116(a) & (b)

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:
Minimum Age (Years) Possession:
Minimum Age (Years) Consumption:

See Footnote No. 1 below.

Dram Shop Laws and Related Legal Actions:

UVC Has a Dram Shop Law (Yes/No):
"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the Case (Case
Citation):

See Footnote No. 1 below.

N/A

Dram Shop Actions--Social Hosts:
Other:

See Footnote No. 1 below.

1 This area of the law is not normally covered by UVC.

Uniform Vehicle Code

Other UVC Provisions Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action: See Footnote No. 1 below.
Term of Imprisonment:
Fine (\$ Range):

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): See Footnote No. 1 below.
Length of Term of License Withdrawal:

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action: See Footnote No. 1 below.
Term of Imprisonment:
Fine (\$ Range):

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): See Footnote No. 1 below.
Length of Term License Withdrawal:

Anti-Happy Hour Laws/Regulations:

See Footnote No. 1 below.

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No): **None**
Anti-Consumption Law (Yes/No): **None**

¹This area of the law is not normally covered by UVC.

APPENDIX B

ITEM: Federal Alcohol Incentive Grant Criteria
(408 CRITERIA)
General Comments: See 23 USC §408 and 23 CFR Part 1309.
BASC=Basic Grant Criteria
SUPC=Supplemental Grant Criteria
SPEC=Special Grant Criteria

Basis for a DWI Charge:

Standard DWI Offense:
Illegal Per Se Law (BAC/BrAC Level): BASC - 0.10¹ 23 CFR §§1309.3(b) and 1309.5
(c)(1)
Presumption (BAC Level): SUPC - 0.08 23 CFR §1309.6(b)(13)
Types of Drugs/Drugs and Alcohol: SUPC - **Controlled Substances**
23 CFR §1309.3(a)²
Other:

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law: SUPC - **Yes**³ 23 CFR §1309.6(b)(15)
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:

Chemical Tests of Other Substances for BAC Level
Which Are Authorized Under the Implied Consent Law:

Blood: BASC - **Yes**⁴
Urine: BASC - **Yes**⁴
Other: BASC - **Yes**⁴

¹The BASC's illegal per se requirement also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more.

²Applies to rehabilitation and treatment only; see 23 CFR §1309.6(b)(22).

³Authorized only where there is probable cause to suspect a driver is impaired.

⁴The Basic Criterion on implied consent test refusal refers to "chemical test" (i.e., no specific type of test is required); therefore, any chemical test whether it be for breath, blood, urine, etc. will satisfy this criterion. See 23 CFR §§1309.3(f)(2) & (3) and 1309.5(a)(1).

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
 Anti-Plea Bargaining Statute (Yes/No): SUPC - Yes (limited)¹
 23 CFR §1309.6(b)(16)
 Pre-Sentencing Investigation Law (PSI)
 (Yes/No): SUPC - Yes 23 CFR §1309.6(b)(8)

Sanction for Refusal to Submit to a BAC
Chemical Test:

Refusal to Take a Preliminary Breath Test:
 Criminal Sanctions (Fine/Jail):
 Administrative Licensing Action
 (Suspension/Revocation):
 Other:

Refusal to Take Implied Consent
Chemical Test:

Criminal Sanction (Fine/Jail):
 Administrative Licensing Action
 (Suspension/Revocation): BASC - Susp. (or Rev.) - 1st Refusal-90 dys
(mandatory); 2nd and subsequent refusal-1 yr
(mandatory) 23 CFR §§1309.3(f)(2) & (3) and
1309.5(a)(1)
 Other:

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:
 Imprisonment:
 Term (Day, Month, Years,
 Etc.):
 Mandatory Minimum Term:

SPEC - 1st off-48 con. hrs.²
 23 CFR §1309.7(a)(2)(ii) See community service
 below.
BASC - 2nd off (w/n 5 yrs)-48 con. hrs.²
 23 CFR §1309.5(b)(1) See community service
 below.
SPEC - 2nd off (w/n 5 yrs)-10 days² (at least 48
 con. hrs. is to be served) 23 CFR §1309.7(b)(1)
SPEC - 3rd off (w/n 5 yrs)-120 con. dys.² 23 CFR
 §1309.7(c)(1)

Fine:
 Amount (\$ Range):
 Mandatory Min. Fine (\$):

¹No alcohol-related charge shall be reduced to a non-alcohol-related charge or probation without judgment be entered without a written declaration of why the action is in the interest of justice. If a charge is reduced, the defendant's driving record must reflect that the reduced charge is alcohol-related.

²"Imprisonment" means confinement in a jail, minimum security facility, community corrections facility, in-patient rehabilitation or treatment center, or other facility, provided the individual under confinement is in fact being detained. It does not include house arrest. See 23 CFR §1309.3(c).

Sanctions Following a Conviction for a DWI Offense:
(continued)

Other Penalties:

Community Service:

SPEC - 1st off-100 hrs. (to be completed w/n 3 mos) as an alternative to the 48 con. hrs. of imprisonment

23 CFR §1309.7(a)(2)(i)

BASC - 2nd off-10 dys as an alternative to the 48 con. hrs. of imprisonment

23 CFR §1309.5(b)(1)

Restitution

(eg Victim's Fund):

SUPC - Yes 23 CFR §1309.6(b)(17)

Other:

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

(**Special Note:** The Basic Criteria requires that the overall average time from a DWI arrest to suspension (or revocation) of a driver's license either cannot exceed an average of 45 days; see 23 CFR §§1309.3(d).¹ In addition, before a State is eligible for funds under the Supplemental Criteria, they must have a license suspension (revocation) system which meets the requirements of 23 CFR §1309.5; see 23 CFR §1309.6(a).)

Other:

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Suspension/Revocation):

BASC and SPEC - Susp./Rev. 23 CFR §§1309.3(f)(1), 1309.5 (a)(1) and 1309.7

Term of License Withdrawal

(Days, Months, Years, etc.):

BASC - 1st off.-90 dys (Susp/Rev)
23 CFR §§1309.3(f)(1) and 1309.5(a)(1)

¹Under 23 CFR §§1309.5(a)(2)(ii) and 1309.5(a)(3)(i), a State may demonstrate compliance with this element of the criteria by submitting (1) data showing that the average time from arrest to suspension (or revocation) of a driver's license does not exceed 90 days and (2) a plan showing how the State intends to achieve a 45 day average.

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term of
Withdrawal:

BASC - 1st off. - 30 dys¹ (Susp/Rev)
SPEC - 1st off. - 90 dys (Susp)
23 CFR §1309.7(a)(1)
BASC - 2nd and subsequent off. - 1 yr
(Susp/Rev) 23 CFR §§1309.3(f)(3) and
1309.5(a)(1)
SPEC - 2nd off. - 1 yr (Rev)
23 CFR §1309.7(b)(2)
SPEC - 3rd off. - 3 yrs (Rev)
23 CFR §1309.7(c)(2)

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

SUPC - Yes 23 CFR §1309.6(b)(3) & (22)²

Alcohol Education/
Treatment as an Alternative
to Criminal/
Licensing Actions
(Describe):

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

Other:

Miscellaneous Sanctions

Not Included Elsewhere:

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

Criteria Has Such Law/Type of Offense:

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

Fine (\$ Range):

Mandatory Minimum Fine:

¹After the mandatory 30 day period, a restricted license may be issued for not less than 60 days.

²23 CFR §1309.6(b)(22) provides for the rehabilitation and treatment of persons arrested and convicted of driving under the influence of a controlled substance.

Other Criminal Actions Related to DWI: (continued)

Administrative Licensing Action:
Licensing Authorized and
Type of Action:
Length of Term of
Licensing Withdrawal:
Mandatory Action--Minimum
Length of License
Withdrawal:
Other:

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

Mandatory Minimum Term

of Imprisonment:

SPEC - 30 con. dys.¹ 23 CFR §1309.7(d)(1)

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Actions:

Type of Licensing Action

(Suspension/Revocation):

SPEC - Susp/Rev¹ 23 CFR §1309.7(d)(2)

Length of Term of License

Withdrawal Action:

SPEC - See the statement below.

Mandatory Term of License

Withdrawal Action:

SPEC - Upon release from imprisonment, an additional period of license suspension or revocation of not less than the period of suspension or revocation remaining in effect at the time of commission of the offense of driving with a suspended or revoked license; see 23 CFR §1309.7(d)(2)¹

Other:

SUPC - Mandatory impoundment or confiscation of license plates/tags of any vehicle operated by an individual whose license has been suspended or revoked for an alcohol-related offense; see 23 CFR §1309.6(18).

Habitual Offender Laws:

Criteria Has Such Law (Yes/No):

Grounds for Being Declared an

Habitual Offender:

Term of License Revocation While

Under Habitual Offender Status:

¹This penalty would also apply to driving in violation of a restriction placed on a defendant's driving privileges because of a DWI conviction; see 23 CFR §1309.7(d).

Other 408 Criteria Related To Alcohol Use:

Type of Criminal Offense if
Convicted on Charges of
Driving While on Habitual
Offender Status

Sanctions Following a Conviction of
Driving While on Habitual Offender
Status:

Imprisonment (Term):
Mandatory Minimum Term of
Imprisonment:
Fine (\$ Range):
Mandatory Minimum Fine (\$):
Licensing Actions (Specify):

Laws Requiring BAC Chemical Tests on
Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):
BAC Chemical Test Is Given to the
the Following Persons:
Driver:
Vehicle Passengers:
Pedestrian:

Laws Establishing the Minimum Ages
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: SUPC - 21 23 CFR §1309.6(b)(1)
Minimum Age (Years) Possession: SUPC - 21 23 CFR §1309.6(b)(1)
Minimum Age (Years) Consumption: SUPC - 21 23 CFR §1309.6(b)(1)

Dram Shop Laws and Related Legal Actions:
Criteria Has

a Dram Shop Law (Yes/No): SUPC - Yes¹ 23 CFR §1309.6(b)(20)
"Dram Shop Law" Concept Has Been
Adopted Via a Change to the Common
Law Rule by Action of the Highest
Court of Record in the Case (Case
Citation): SUPC - Yes¹ 23 CFR §1309.6(b)(20)
Dram Shop Actions-Social Hosts: SUPC - Yes¹ 23 CFR §1309.6(b)(20)
Other:

¹Liability against any person who serves alcoholic beverages to an individual who is visibly intoxicated.

Other 408 Criteria Related To Alcohol Use: (continued)

Criminal Action Against Owner or Employees
of Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

Type of Criminal Action:

SUPC - Yes 23 CFR §1309.6(b)(20) Ref: 48 FR
5552

Term of Imprisonment:

Fine (\$ Range):

Administrative Actions Against Owners of
Establishments that Serve Alcoholic
Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term of License Withdrawal:

Criminal Actions Against Owners or
Employees of Establishments that Serve
Alcoholic Beverages or the Wrong Type
of Alcoholic Beverage to Those Persons
Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

Administrative Actions Against Owners of
Establishments That Serve Alcoholic
Beverages to Those Persons Under the
Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Length of Term License Withdrawal:

Anti-Happy Hour Laws/Regulations:

Laws Prohibiting (1) the Possession of
Open Containers of Alcoholic Beverages
and (2) the Consumption of Alcoholic
Beverages in the Passenger Compartment
of a Vehicle:

Open Container Law (Yes/No):

Anti-Consumption Law (Yes/No):



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