

## Overview

The number of driving-related deaths in Minnesota in which at least one driver tested above the legal limit for alcohol has fallen from 206 in 1998 to 72 in 2017.<sup>1</sup> But impaired driving remains a significant issue in Minnesota. In 2017, there were 24,862 impaired driving arrests, 2,389 injuries in alcohol-related crashes, and 113 deaths in crashes where at least some alcohol was detected.<sup>2</sup> The state employs a variety of criminal and administrative consequences to address the ongoing issue of driving while impaired. This information brief provides an overview of the major components of DWI laws, which are mainly codified in [Minnesota Statutes, chapter 169A](#).

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<sup>1</sup> *Minnesota Impaired Driving Facts 2017*, Office of Traffic Safety, Minnesota Department of Public Safety (2018).

<sup>2</sup> *Id.*

## Common Terms

<b>AC</b>	Alcohol concentration, a measurement of the percentage of alcohol in a person's blood.
<b>BCA</b>	Bureau of Criminal Apprehension, the centralized law enforcement agency that provides forensic laboratory analysis blood and urine samples, and oversees breath-alcohol testing procedures and instruments.
<b>CVH</b>	Criminal vehicular homicide, causing the death of another person while operating a motor vehicle under conditions, including a violation of Minnesota's DWI law ( <a href="#">Minn. Stat. § 609.2112</a> ).
<b>CVO</b>	Criminal vehicular operation, causing harm to another person while operating a motor vehicle under conditions including a violation of Minnesota's DWI law ( <a href="#">Minn. Stat. §§ 609.2113</a> and <a href="#">609.2114</a> ).
<b>DPS</b>	Department of Public Safety, a state agency that includes the Division of Driver and Vehicle Services, which oversees driver licensing and vehicle registration.
<b>DWI</b>	Driving while impaired, the act of driving, operating, or being in physical control of a motor vehicle while under the influence of alcohol, a controlled substance, or an intoxicating substance; having an alcohol concentration that exceeds the legal limits; or having any amount or the metabolites of a schedule I or II controlled substance.
<b>PBT</b>	Preliminary breath test, a test administered by a law enforcement officer at the scene of a suspected DWI, which can form the basis for an arrest, but cannot be admitted into evidence at trial.
<b>REAM</b>	Remote electronic alcohol monitoring, a program involving a system that electronically monitors the alcohol concentration of individuals in their homes or other locations to ensure compliance with conditions of pretrial release, supervised release, or probation ( <a href="#">Minn. Stat. § 169A.73</a> ).
<b>SFST</b>	Standard field sobriety test, a test of a person's physical condition (walking a line, etc.) administered by a law enforcement officer at the scene of a suspected DWI, which can form the basis for an arrest and can be described at trial.

## Prohibited Behaviors

Minnesota's DWI law stipulates that it is a crime:

- 1) to drive, operate, or be in physical control<sup>3</sup> of any motor vehicle anywhere in the state while:
  - under the influence of alcohol, a controlled substance, or an intoxicating substance (when the person knows, or has reason to know, that the substance has the capacity to cause impairment), or any combination of these;
  - having an alcohol concentration (AC) of .08 or more at the time or within two hours of doing so;
  - having any amount or the metabolites of a schedule I or II controlled substance, other than marijuana, in the body; or
  - if the vehicle is a commercial motor vehicle, having an AC of .04 or more at the time or within two hours of doing so;
- 2) to refuse to submit to a chemical test of the person's blood, breath, or urine under [Minnesota Statutes, section 169A.52](#); or
- 3) to refuse to submit to a chemical test of the person's blood or urine pursuant to a warrant under [Minnesota Statutes, section 169A.51](#).

The crime of driving while impaired also applies to motorboats in operation, snowmobiles, all-terrain vehicles, off-highway motorcycles, and off-road vehicles.

## Consequences

A DWI arrest can result in administrative and criminal sanctions. The severity of these sanctions depends upon the facts of the current offense and the person's past record of impaired driving offenses.

Administrative sanctions are intended to be an immediate consequence. Upon arrest, if a person refuses or fails a chemical test for intoxication, the peace officer reports the refusal or result to the Commissioner of Public Safety and the commissioner revokes the person's license. Other administrative sanctions that may be imposed include plate impoundment and vehicle

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<sup>3</sup> The court has held that "to be in physical control" of a vehicle, the person must be in a position to exercise domain or control over the vehicle. *State v. Starfield*, 481 N.W. 834 (Minn. 1992). The courts have found persons "to be in physical control" of their vehicles while sleeping in the vehicle or being outside their vehicle. *See State v. Fleck*, 777 N.W.2d 233 (Minn. 2010) (evidence that person was asleep behind the wheel with keys in the console could lead a jury to find the person was "in physical control" of the vehicle); *Frisch v. State*, 2014 WL 3016152 (Minn. Ct. App. July 7, 2014) (unpublished) (person was "in physical control" of a vehicle even though he was 15 to 20 feet from the vehicle, when the keys were in the ignition and the vehicle was running). A passenger who grabs and turns a steering wheel exerts physical control of a motor vehicle. *State v. Henderson*, 890 N.W.2d 739 (Minn. Ct. App. 2017).

forfeiture. Administrative sanctions are civil in nature and any related court proceedings are generally held separate from the criminal trial.

Criminal charges trigger a separate action in criminal court. A criminal conviction can result in incarceration, probation, fines, chemical dependency treatment, and monitoring. If a person cannot afford a defense attorney, the court may appoint a public defender. A conviction produces a criminal record.

The remainder of this brief will examine the implied consent law, administrative sanctions, criminal penalties, and other DWI-related laws.

## Implied Consent Law

A person who drives, operates, or is in control of any type of motor vehicle anywhere in the state consents to a chemical test of breath, blood, or urine for the purpose of determining the presence of alcohol or controlled or intoxicating substances in the person's body.

The procedure for requiring a breath test differs from the procedure for requiring a blood or urine test. Both the United States and Minnesota Supreme Courts determined that an officer does not need a warrant to require that a person provide a breath sample, but does need a warrant to require that a person provide a blood or urine sample.<sup>4</sup>

Before an officer can require a breath test or obtain a warrant for a blood or urine test, the officer must have probable cause to believe that a person has been driving while intoxicated. That process typically begins with an accident investigation or an investigatory stop. An officer must have a valid basis for the first stop, but the officer does not need to have evidence of a DWI. A weaving car would be a valid basis for a stop, but an officer could also stop a vehicle for other reasons including the failure to signal a turn, lack of a taillight, or any other moving or equipment violation. An officer can expand the investigation based on new evidence including the smell of alcohol, slurred speech, or any other reasonable indication that a driver is under the influence of alcohol or a controlled substance. An officer may then administer field sobriety tests or a preliminary breath test.

In short, to build probable cause, the officer may:

- observe the impaired driving behavior and form a reasonable suspicion of an impaired driving violation;
- stop and question the driver;
- administer a standardized field sobriety test (SFST); and

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<sup>4</sup> The Minnesota court upheld the constitutionality of a warrantless *breath* test in *State v. Bernard*, 859 N.W.2d 762 (Minn. 2015), but found that law enforcement could only obtain samples of a person's blood or urine pursuant to a valid warrant in *State v. Thompson*, 886 N.W.2d 224 (Minn. 2016). The U.S. Supreme Court reached the same conclusions in *Birchfield v. North Dakota*, 579 U.S. ----; 136 S.Ct. 2160 (2016) and *Missouri v. McNeely*, 569 U.S. 141 (2013).

- administer a preliminary breath test (PBT).

If a person refuses to cooperate, cannot cooperate because of injury or the level of intoxication, or these screening tests establish probable cause to believe that a person was driving while intoxicated, the officer may arrest the person and either demand a more rigorous evidentiary test of the person's breath, or seek a warrant to obtain a sample of the person's blood or urine. Before administering the breath test, the officer must read the implied consent advisory statement to the person explaining that testing is mandatory, test refusal is a crime, and the person has the right to consult an attorney before taking the test. Before administering a blood or urine test, an officer must obtain a warrant approved by a judge and explain that test refusal is a crime.

The officer can require a person to provide a blood or urine sample if there is probable cause of a criminal vehicular operation (CVO) (see page 17) violation. If the person is unconscious, the chemical test may be administered pursuant to a valid warrant.

The officer chooses whether the test will be of the person's breath, blood, or urine. A person who refuses a blood test must be offered a urine test, and a person who refuses a urine test must be offered a blood test. If blood and urine tests are analyzed by the Bureau of Criminal Apprehension (BCA), the laboratory may certify chemical test results directly to the Department of Public Safety (DPS).

## Administrative Sanctions

The law provides for three administrative sanctions, which can commence immediately upon *arrest*—driver's license revocation, vehicle plate impoundment, and vehicle forfeiture.

### License Revocation

A person's driver's license can be withdrawn immediately following any test failure or refusal.<sup>5</sup> The person is given a seven-day temporary license to drive before the withdrawal becomes effective.<sup>6</sup> The period of license withdrawal is based on the current offense and number of prior impaired incidents.<sup>7</sup> Statutes establish a minimum period of withdrawal and the Commissioner of Public Safety typically imposes that minimum period.<sup>8</sup>

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<sup>5</sup> [Minn. Stat. § 169A.52](#), subd. 4.

<sup>6</sup> [Minn. Stat. § 169A.52](#), subd. 7.

<sup>7</sup> The accompanying charts provide a brief overview of administrative license revocation. Please consult current law for additional factors that may affect the revocation or cancellation period.

<sup>8</sup> See, [Minn. Stat. § 169A.52](#), subs. 3 and 4, and <https://dps.mn.gov/divisions/msp/about/Documents/impaired-dwi-consequences.pdf>.

### Administrative License Revocation for DWI Offenses

Type of Offense	Number of Impaired Incidents				
	1st	2nd in 10 Years or 3rd on Record	3rd in 10 Years or 4th on Record	4th in 10 Years	5 <sup>th</sup> + on Record
	Revocation		Cancelled and Denied		
<b>AC under .16</b>	90 days*/180 days if under age 21	1 year	3 years	4 years	6 years
<b>AC .16 or Over</b>	1 year	2 years	3 years	4 years	6 years
<b>Test Refusal</b>	1 year*	2 years	3 years	4 years	6 years

\*The revocation period may be reduced upon a conviction. See [Minn. Stat. § 169A.54](#)

### Administrative License Revocation for Criminal Vehicular Operation involving Alcohol

Type of Injury	Number of Impaired Incidents		
	1 <sup>st</sup>	2 <sup>nd</sup> in 10 Years	3 <sup>rd</sup> in 10 Years or 4 <sup>th</sup> + on Record
<b>Bodily Harm or Substantial Bodily Harm</b>	2 years	4 years	6 years
<b>Great Bodily Harm or Death</b>	6 years	8 years	10 years

The person may appeal the administrative license revocation, either administratively to DPS and/or judicially through the court. A revocation following a failed or refused breath test follows the guidelines in [Minnesota Statutes, section 169A.53](#). A revocation following a failed or refused blood or urine test follows the guidelines in [Minnesota Statutes, section 171.177](#).

Certain offenders have the option of regaining driving privileges sooner if they apply for a limited license or enroll in the ignition interlock device program. (See pages 9 and 10.)

### License Plate Impoundment

Plate impoundment refers to the physical seizure or surrender of vehicle license plates that occurs upon certain impaired driving incidents.<sup>9</sup>

An impaired driving violation involving an aggravating factor can result in plate impoundment. Aggravating factors are:

<sup>9</sup> [Minn. Stat. § 169A.60](#).

- a qualified prior impaired driving violation by that person within the previous ten years;
- an AC of .16 or more;
- having a child under age 16 present in the vehicle (when the driver is at least three years older); or
- violating while operating with a driver's license that has been cancelled for the person being inimical to public safety.

Plate impoundment applies to:

- the vehicle used in the plate impoundment violation, and
- any vehicle owned, registered, or leased in the name of the violator, whether alone or jointly.

The arresting officer issues a plate impoundment order at the time of arrest and the order is effective immediately. The officer orders seizure of the plates and issues a temporary vehicle permit valid for seven days (or 45 days if the violator is not the owner). The violator or registered owner may apply for new registration plates, which are specially coded and signify to law enforcement that the regular plates have been impounded for an impaired driving violation.

Specially coded license plates<sup>10</sup> may be issued for the vehicle(s), provided that:

- the violator has a properly licensed substitute driver;
- a member of the violator's household is validly licensed;
- the violator has been validly relicensed; or
- the owner is not the violator and is validly licensed.

Under a change made in 2021, the violator or registered owner can obtain new registration plates that are not specially coded if the violator enters the ignition interlock program and the violator continues to successfully participate in the program.<sup>11</sup>

The minimum term of plate impoundment is one year, during which time the violator may not drive any motor vehicle unless the vehicle displays specially coded plates and the person has been validly relicensed to drive. The violator is also subject to certain restrictions when selling or acquiring a vehicle during the impoundment period.

It is a crime for a driver whose plates have been impounded to attempt to evade the plate impoundment law in certain specified ways, or for another person to enable such evasion.

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<sup>10</sup> These plates are more commonly known as "whiskey plates." <sup>11</sup> [Minn. Stat. § 169A.60](#), subd. 13, para. (f).

As with the driver's license withdrawal sanction, a person incurring license plate impoundment may appeal this sanction both administratively and/or judicially through the court. (See [Minn. Stat. § 169A.60](#) for the procedural details.)

## Vehicle Forfeiture

Minnesota's DWI law provides for vehicle forfeiture for a "designated license revocation" or "designated offense," which is either a first-degree DWI offense or the third DWI violation within a ten-year period.

DWI law defines "designated license revocation" as a license revocation or commercial license disqualification for an implied consent violation within ten years of two or more qualified prior impaired driving incidents. The term "designated offense" includes a DWI violation in the first or second degree (see table on page 12) or involving a person whose driver's license is cancelled as inimical to public safety or subject to B-Card (no alcohol/controlled substance) restrictions.

The law provides that the arresting officer may seize the vehicle and requires that the prosecuting authority serve notice to the owner(s) of the intent to forfeit.<sup>12</sup> The forfeiture is conducted administratively, unless the driver or any person claiming to be an innocent owner challenges the forfeiture action within 60 days. A person claiming to be an innocent owner must notify the prosecuting authority of the intent to challenge the seizure. The prosecutor may release the vehicle or initiate a lawsuit in district court. If a court determines that an owner did not know the vehicle would be driven by an intoxicated driver or that the owner took reasonable steps to prevent an intoxicated person from operating the vehicle, the court must return the vehicle to the owner. A violator has the burden to file for judicial determination of the forfeiture. This is a civil action filed in district court. If the property is worth \$15,000 or less, the action may be filed in conciliation court.<sup>13</sup>

A vehicle is subject to forfeiture under this law only if:

- it was used in the commission of a designated offense and the driver was convicted of that offense, or

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<sup>12</sup> Notice of the intent to forfeit addresses both the driver and any potential innocent owner: "WARNING: If you were the person arrested when the property was seized, you will automatically lose the above-described property and the right to be heard in court if you do not file a lawsuit and serve the prosecuting authority within 60 days. You may file your lawsuit in conciliation court if the property is worth \$15,000 or less; otherwise, you must file in district court. You do not have to pay a filing fee for your lawsuit.

WARNING: If you have an ownership interest in the above-described property and were not the person arrested when the property was seized, you will automatically lose the above-described property and the right to be heard in court if you do not notify the prosecuting authority of your interest in writing within 60 days." [Minn. Stat. § 169A.63](#), subd. 8.

<sup>13</sup> Also referred to as "small claims" court.



- it was used in conduct resulting in a designated license revocation and the driver either fails to seek judicial review of the revocation in a timely manner or the revocation is sustained upon review.

Other vehicles owned by the offender are not subject to forfeiture. Forfeiture must be paused and the vehicle must be returned if the driver enters the ignition interlock program. If the driver is charged with a first-degree DWI offense, the driver must also participate in a DWI court in order to recover the vehicle.

Following completion of forfeiture, the arresting agency may sell or keep the vehicle for its official use. Proceeds from a sale must be shared between the arresting and prosecuting agencies and money can only be used for certain purposes.<sup>14</sup> However, the security interest or lease of the financial institution, if any, is protected, and the lienholder may choose to sell the vehicle at its own foreclosure sale or agree to a sale by the arresting agency. The proceeds, after deduction of certain expenses, go to the financial institution.

## Limited and Restricted Licenses

An individual who has had his or her driver's license revoked or cancelled may be eligible for a limited or restricted license during the revocation or cancellation period.

- 1) A limited license allows a person to drive six days a week for certain employment, abstinence-based treatment, educational, and homemaker purposes.
- 2) A restricted license allows a person to drive only vehicles equipped with ignition interlock. Depending on the number of prior offenses, a person with a restricted license will have either limited (see clause (1)) or full driving privileges while on ignition interlock.

Some individuals who have had their driver's license *revoked* for an impaired driving incident may choose (1) to wait out the revocation period and not drive, or (2) apply for issuance of a limited or restricted license. This option only applies to first-time offenders or to individuals whose second offense occurs more than ten years after the first. Upon expiration of the revocation period, these individuals may apply for reinstatement of full driving privileges.

All other individuals whose licenses have been *cancelled* are not eligible for reinstatement of driving privileges until the Commissioner of Public Safety receives proof of abstinence through the use of an ignition interlock device.<sup>15</sup> These drivers, unlike revoked drivers, cannot "wait out" the cancellation period if they want to regain driving privileges.

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<sup>14</sup> See [Minnesota Statutes section 169A.63](#), subdivision 10 for a list of approved uses for funds obtained through the sale of a vehicle following forfeiture.

<sup>15</sup> Statute permits use of other chemical monitoring devices approved by the Commissioner of Public Safety, but none are currently in use. See, [Minn. Stat. § 169A.55](#), subd. 4, para. (b), cl. (2).

Each individual's current and past record determines the available license options and, in certain cases, the waiting period.

Following a first-time test refusal or test failure with AC under .16, a person may:

- apply for an ignition interlock restricted license with full driving privileges;
- after a 15-day waiting period (90 days if under age 18), apply for a limited license; or
- not drive during the revocation period (i.e., may "wait out" the revocation period before regaining driving privileges).

A person with a first-time test failure with AC of .16 may:

- apply for an ignition interlock restricted license with full driving privileges; or
- not drive during the revocation period (i.e., may "wait out" the revocation period before regaining driving privileges).

After a second implied consent or DWI offense in ten years, or third or subsequent DWI offense on record, a person may:

- apply for an ignition interlock restricted license with limited driving privileges for at least one year; or
- not drive during the cancellation period (cannot seek reinstatement of driving privileges under this option).<sup>16</sup>

A person involved in a criminal vehicular injury involving alcohol may:

- apply for an ignition interlock restricted license with limited driving privileges for at least one year; or
- not drive during the cancellation period (cannot seek reinstatement of driving privileges under this option).

Following a criminal vehicular injury not involving alcohol, or vehicular homicide or manslaughter, a person may:

- after a one-year waiting period (two years if under age 18), apply for a limited license; or
- not drive during the revocation period (no ignition interlock option available).

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<sup>16</sup> A subset of this group may wait out the revocation period by showing that the person did not own a vehicle at the time of the offense or during the period of license revocation and did not violate any traffic laws during the revocation period. This option only applies to drivers with a second DWI offense in ten years or a third DWI offense on record.

## Ignition Interlock

The ignition interlock program<sup>17</sup> allows certain offenders to regain driving privileges sooner through issuance of a restricted and/or limited license that requires the person to drive only vehicles equipped with an ignition interlock.<sup>18</sup> (See licensing options pages 9 and 10.)

A private ignition interlock provider installs an ignition interlock device in a vehicle to measure an individual's AC level. At startup, the device takes a photograph as the driver blows into the device. The vehicle will not start if the device detects alcohol. Once the vehicle is in motion, the ignition interlock device takes and records rolling retests. If ordered by a court, the device provides location tracking information.

Successful completion of the program (as proof of abstinence) is *required* to regain driving privileges for a person whose license has been revoked or cancelled and denied:

- as a result of two or more impaired driving incidents in ten years or three or more incidents on record; and
- for criminal vehicular injury involving alcohol.

The period of time a person must spend in the ignition interlock program depends on the person's revocation or cancellation period, but may be extended for violations. Violations include: (1) tampering with or circumventing an ignition interlock device; and (2) driving a vehicle not equipped with an ignition interlock device. These violations are also misdemeanor offenses. Also, anytime the use of alcohol is detected or there is sufficient cause to believe a canceled person consumed alcohol or used drugs, the entire period restarts. For persons on revoked status, there must be no failed breath tests during the last 90 days of the program.

The cost of the ignition interlock device is the responsibility of the offender. Discount rates, through ignition interlock providers, may be available to indigent offenders.<sup>19</sup>

## Reinstatement After Cancellation

If a person has three or more impaired incidents in ten years or four incidents on record, the Department of Public Safety cancels and denies the person's driver's license. Once a license is canceled and denied, the person is not eligible for reinstatement of driving privileges until completing rehabilitation and submitting verification of abstinence through use of the ignition interlock device.

Department rules define rehabilitation requirements as including: following recommendations in a chemical use assessment, successfully completing chemical dependency treatment, and

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<sup>17</sup> [Minn. Stat. § 171.306](#).

<sup>18</sup> In certain cases, a participant may drive an employer-owned vehicle without an ignition interlock while in normal course of employment and with the employer's written consent.

<sup>19</sup> For more on the ignition interlock program, see [Ignition Interlock for DWI Offenders](#), House Research Department publication, September 2016.

meeting other requirements (e.g., insurance, fees, etc.). In addition, reinstatement following rehabilitation *must* be conditioned upon continued and absolute abstinence from the use of alcohol and drugs.

When an individual's license carries a "no alcohol/drugs" restriction, the individual is informed that the license is subject to cancellation upon satisfactory evidence of a violation *at any time*, regardless of whether the violation involves driving. Violation of this restriction *while operating a motor vehicle*, even if the driver is not impaired or has an AC below .08, is a gross misdemeanor. (If the individual is impaired, there may also be DWI charges.)

To regain driving privileges after violation of the "no alcohol/drugs" restriction, the person must again successfully complete rehabilitation and submit verification of 12 months of abstinence, which is proven through use of an ignition interlock device.

After maintaining abstinence for at least ten years, a person may apply for removal of the "no alcohol/drugs" restriction from the person's physical license and driving record.

## **Driver's License Reinstatement Fees**

Before becoming relicensed to drive after a DWI or CVO offense, a person must reapply for a driver's license and pay the following fees:

- \$250 – driver's license reinstatement fee
- \$430 – reinstatement surcharge
- \$26.25 – driver's license application fee

Certain persons who are eligible for a public defender may pay the reinstatement fee and surcharge in two installments. The Department of Public Safety may impose a handling fee for utilizing the installment plan. The driver's license expires in two years unless the second installment is paid. A person must make full payment of the fee and surcharge before renewing a license on the standard schedule or reinstating a cancelled, revoked, or suspended license.

## Criminal Penalties

Apart from administrative licensing sanctions, a prosecutor's office may file criminal charges against an offender. Criminal penalties upon conviction for DWI are tiered, as follows:

Offense	Punishment	Factors Determining Level of Offense
<b>Fourth Degree DWI</b>	Misdemeanor, punishable by up to 90 days of jail and a \$1,000 fine	<ul style="list-style-type: none"> <li>▪ DWI violation without test refusal or any aggravating factors*</li> </ul>
<b>Third Degree DWI</b>	Gross misdemeanor, punishable by up to one year of jail and a \$3,000 fine	<ul style="list-style-type: none"> <li>▪ DWI violation with test refusal or one aggravating factor</li> </ul>
<b>Second Degree DWI</b>	Gross misdemeanor, punishable by up to one year of jail and a \$3,000 fine	<ul style="list-style-type: none"> <li>▪ DWI violation with test refusal and one aggravating factor; or</li> <li>▪ DWI violation with two aggravating factors</li> </ul>
<b>First Degree DWI</b>	Felony, punishable by up to seven years' imprisonment and a \$14,000 fine	<ul style="list-style-type: none"> <li>▪ fourth impaired driving incident within ten years; or</li> <li>▪ following a previous felony DWI or criminal vehicular operation conviction</li> </ul>

*Aggravating Factor	Qualified Prior Impaired Driving Incident
<p>This includes:</p> <ul style="list-style-type: none"> <li>▪ a <b>qualified prior impaired driving incident</b> (<i>see next column</i>) within the preceding ten years;</li> <li>▪ an AC of .16 or more upon arrest; and</li> <li>▪ the presence of a child under age 16 in the vehicle, if more than 36 months younger than the offender.</li> </ul>	<p>This includes both:</p> <ul style="list-style-type: none"> <li>▪ prior impaired driving convictions; and</li> <li>▪ prior impaired driving-related losses of license (implied consent revocations) or operating privileges</li> </ul> <p>for separate driving incidents within the preceding ten years involving any kind of motor vehicle, including passenger motor vehicle, school bus or Head Start bus, commercial motor vehicle, airplane, snowmobile, all-terrain vehicle, off-road recreational vehicle, or motorboat in operation. Also includes substance-related criminal vehicular operation offenses.</p>

## **Mandatory Hold and Conditional Release Pretrial**

A person arrested for a first-degree (felony) or second-degree DWI crime must be taken into custody and detained until the person's first court appearance, at which time the court generally sets bail and specifies conditions of release.

A person charged with any of the following nonfelony offenses can obtain pretrial release from detention by posting maximum bail<sup>20</sup> or by agreeing to abstain from alcohol and to submit to remote electronic alcohol monitoring (REAM) involving at least daily breath-alcohol measurements. The offenses are:

- a third implied consent or DWI violation within ten years;
- a second violation, if under 19 years of age;
- a violation while already cancelled as inimical to public safety for a prior violation; or
- a violation involving an AC of .16 or more, or a child under 16 is in the vehicle.

Further conditions apply to a person charged with a felony (fourth or more violation within ten years), including:

- impoundment of the vehicle registration plates, or impoundment of the off-road recreational vehicle or motorboat itself, if one was being driven;
- a requirement for reporting at least weekly to a probation officer, involving random breath alcohol testing and/or urinalysis; and
- a requirement to reimburse the court for these services upon conviction for the crime.

The court must set a bail amount without other conditions upon which a defendant may obtain release.

## **Chemical Dependency Assessment and Treatment**

Every person convicted of DWI or a reduced charge must submit to a chemical use assessment administered by the county prior to sentencing. If the conviction is for a repeat offense within ten years or the conviction was for DWI with an AC of .16 or more, the court must order the person to submit to the level of treatment care recommended by the assessment. DPS rules list the treatment requirements.

The offender must pay the cost of the assessment directly to the service provider and pay a \$25 assessment charge imposed by the court. There is an additional \$5 surcharge for repeat violations within five years.

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<sup>20</sup> \$12,000 for gross misdemeanor DWI.

## Sentencing

### Mandatory Minimums

Upon conviction for DWI, repeat offenders are subject to the following mandatory minimum criminal penalties:

- **second DWI offense within ten years:**  
30 days of incarceration, at least 48 hours of which must be served in jail/workhouse, with eight hours of community work service for each day less than 30 served
- **third DWI offense within ten years:**  
90 days of incarceration, at least 30 days of which must be served consecutively in a local jail/workhouse
- **fourth DWI offense within ten years:**  
180 days of incarceration, at least 30 days of which must be served consecutively in a local jail/workhouse
- **fifth DWI offense within ten years:**  
One year of incarceration, at least 60 days of which must be served consecutively in a local jail/workhouse

The court may order that the person spend the remainder (nonjail portion) of the mandatory minimum sentence under REAM or on home detention.

### Alternatives to the Mandatory Minimum Period of Incarceration

The court may sentence the offender to a program of intensive probation for repeat DWI offenders that requires the person to consecutively serve at least six days in jail/workhouse and may order that the remainder of the minimum sentence be served on home detention. As another alternative, the court may require the person to enter the ignition interlock program as a condition of probation.

### Long-term Monitoring Required

Long-term monitoring applies to most third-time DWI offenders and repeat offenders under age 19. When the court stays part or all of a jail sentence, it must order the offender to submit to REAM (if available) for at least 30 consecutive days each year of probation.

### Intermediate Sanctions and Probation

When sentencing a DWI offender, the court may impose and execute a sentence to incarcerate, or it may stay imposition or execution of sentence and:

- order intermediate sanctions without probation; or

- place the person on probation with or without supervision and under terms the court prescribes, including intermediate sanctions.

The term “intermediate sanction” includes but is not limited to jail, home detention, electronic monitoring, intensive supervision, sentencing to service, day reporting, chemical dependency and mental health treatment, restitution, fines, day fines, community work service, restorative justice work, and work in lieu of or to work off fines or restitution.

For DWI convictions, the maximum period of the stay of sentence is:

- two years, for a misdemeanor conviction;
- six years, for a gross misdemeanor conviction; and
- seven years, for a felony DWI conviction.

### **Penalty Assessment**

When the court finds the aggravating factor of having an AC concentration of .16 or more, the court may impose a penalty assessment up to \$1,000. This is in addition to any fines or other charges.

### **Felony DWI**

Under Minnesota's felony DWI law, a person who commits first-degree DWI is guilty of a felony and may be sentenced to:

- imprisonment for not more than seven years (plus the term of conditional release);
- a fine of not more than \$14,000; or
- both.

A person is guilty of first-degree DWI if the person violates DWI law:

- within ten years of three or more qualified prior impaired driving incidents (defined as prior convictions or license revocations for separate impaired driving incidents);
- has previously been convicted of a felony DWI crime; or
- has previously been convicted of a felony-level CVO crime involving alcohol or controlled substances in Minnesota, or a comparable crime in another state.

Unlike nonfelony DWI crimes, being arrested with a high AC (.16 or more) or under circumstances of child endangerment are not defined as aggravating factors for felony DWI. Only qualified prior impaired driving incidents and prior convictions for felony CVO are considered.

When sentencing a person for a felony DWI offense, the court:

- must impose a sentence to imprisonment for not less than three years; and
- may stay execution of this mandatory sentence, but may not stay imposition or adjudication of this sentence.



A person sentenced to incarceration in prison for felony DWI is not eligible for early release unless the person has successfully completed a chemical dependency treatment program while in prison.

The court must place a felony DWI offender released from prison on conditional release for five years, under any conditions that the Commissioner of Corrections opts to impose, including an intensive probation program for repeat DWI offenders. If the person fails to comply with the conditions, the commissioner may revoke the release and return the person to prison.

If the court stays execution of the mandatory prison sentence, then it must apply the mandatory penalties for nonfelony DWI offenses (jail and/or intensive probation, as described in a preceding section) and must order that the person submit to long-term alcohol monitoring and comply with the level of treatment prescribed in the chemical dependency assessment. If the person violates any condition of probation, the court may order that the stayed prison sentence be executed.

The Minnesota sentencing guidelines presume a stayed sentence of 36 months, 42 months, and 48 months for a felony DWI conviction for a person with zero, one, or two criminal history points respectively, and they specify a presumptive commit-to-prison for a person with a criminal history score of three or more.

## Records and Expungement

A person may apply to have a misdemeanor or gross misdemeanor DWI sentence expunged (i.e., sealed) under certain conditions.<sup>21</sup> However, records of administrative license actions and DWI convictions must be retained permanently on the official driving record and are also used in future sentencing decisions.

## Criminal Vehicular Operation (CVO): Homicide and Injury

Criminal law defines six levels of CVO—all but one constituting felony offenses—depending on the level of injury inflicted:

- criminal vehicular homicide (causing death, but not constituting murder or manslaughter)
- great bodily harm (serious permanent injury)
- substantial bodily harm (temporary substantial injury)
- bodily harm (pain or injury—a gross misdemeanor)
- death or injury to an unborn child

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<sup>21</sup> See [Minn. Stat. ch. 609A](#) and [Expungement of Criminal Records](#), House Research Department Information Brief, January 2016.

A common element to each of these CVO crimes is that the person causes the specified harm to another person as a result of operating a motor vehicle<sup>22</sup> under any of the following conditions:

- in a grossly negligent manner
- in a negligent manner while in violation of any of the elements of regular DWI law
- where the driver who causes the accident leaves the scene in violation of Minnesota's hit-and-run law
- where a citation was issued that the vehicle was defectively maintained, the driver knew remedial action was not taken, the defect created a risk to others, and injury or death resulted from the defective maintenance

In practice, most CVO prosecutions involve simultaneous violation of DWI law. Under the sentencing guidelines, a conviction for criminal vehicular homicide for an offender with no other criminal history points carries a presumptive commit to prison for 48 months.

## **Special Laws**

### **Youth Under Age 21**

#### **Impaired Driving**

DWI laws apply equally to drivers of all ages. DWI violations require either evidence of impaired driving or an AC of .08 or higher, or the presence of certain illegal substances in the person's body, during or within two hours of the time of driving, operating, or being in control of a motor vehicle, broadly defined. Drivers aged 16 and 17 years old who violate the DWI laws are under the jurisdiction of the adult court, not the juvenile court. As such, they are subject to adult penalties and consequences.

#### **Zero Tolerance – Underage Drinking and Driving**

Minnesota has a zero-tolerance law for underage drinking and driving. This law provides misdemeanor penalties and driver's license suspension for any driver under age 21 who is convicted of driving a motor vehicle while consuming alcohol or while there is physical evidence of such consumption present in the person's body. A violation of the zero-tolerance law also restricts a person's eligibility for an instruction permit, provisional license, or driver's license. If the offender is age 16 or 17, an offense is prosecuted in juvenile court and is considered a "major traffic offense." So long as the conduct does not violate the DWI law, it cannot be used as an enhancing factor for any subsequent DWI violation.

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<sup>22</sup> The definition of a "motor vehicle" for CVO offenses is "a self-propelled device for moving persons or property or pulling implements from one place to another, whether the device is operated on land, rails, water, or in the air."

## Open Bottle Law

Minnesota's open bottle law makes it a crime to consume alcohol or possess an open bottle of an alcoholic beverage in a motor vehicle that is on the street or highway. It is not a violation to have an open bottle kept in a trunk or other area not occupied by passengers.

The open bottle law does not prohibit possession or consumption of alcoholic beverages by *passengers* in buses, limousines, motorboats, or pedal pubs.

## DWI Violator Using an Off-road Recreational Vehicle or Motorboat

Any person who commits a DWI violation involving an off-road recreational vehicle or motorboat is subject to the same administrative sanctions and criminal penalties as the person would be if arrested while driving a regular motor vehicle. That includes the revocation of a person's driver's license. A person who must participate in the ignition interlock program to operate a motor vehicle must also use ignition interlock on any off-road vehicle or motor boat. In addition, a person who violates DWI law in any vehicle loses the privilege to operate an off-road vehicle or motorboat for the same period of time that the person loses the privilege to operate a motor vehicle.

## Commercial Vehicle Driving

The legal AC limit for driving commercial motor vehicles is .04 instead of .08, and the implied consent law allows for a chemical test upon probable cause that the commercial vehicle driver has consumed any amount of alcohol.

A person who violates the .04 standard while driving a commercial motor vehicle is subject to a period of disqualification (one year for the first violation and lifetime disqualification for any subsequent violation) from commercial motor vehicle driving. The person would remain validly licensed to drive regular motor vehicles unless he or she also has violated regular DWI law by exceeding the .08 per se standard, driving while impaired, or driving with any amount of certain controlled substances in the body, in which case the person would be subject to the full range of applicable penalties and sanctions of regular DWI law.

In addition, a commercial motor vehicle driver who incurs license revocation or cancellation for an impaired driving violation in a personal passenger vehicle receives no special dispensations from the sanctions and penalties that apply to other drivers—the person is prohibited from driving any type of vehicle until becoming validly relicensed to drive.

## School Bus Driving

DWI law provides an even stricter standard of zero tolerance for school bus driving, by making it unlawful to drive a school bus when there is physical evidence in the person's body of the consumption of any amount of alcohol. In addition to criminal penalties, such a violation also triggers cancellation of the person's school bus driving endorsement. However, as with other nonbus commercial vehicle DWI violations, the person would remain validly licensed to drive

regular motor vehicles unless he or she also has violated the higher standards of regular DWI law.

## **Aircraft**

A federal law establishes a .04 per se standard for AC while operating an aircraft and also criminalizes test refusal. Violation is always a gross misdemeanor.

It also is unlawful to fly within eight hours of any alcohol consumption—a zero-tolerance standard, but time limited. Violation is a misdemeanor.



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