

INFORMATION BRIEF
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An Overview of Minnesota's DWI Laws

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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Prohibited Behaviors

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

(1) to drive, operate, or be in physical control¹ of any motor vehicle anywhere in the state while:

- under the influence of alcohol, a controlled substance, or a hazardous substance (knowingly), 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; or

(2) to refuse to submit to a chemical test of the person's blood, breath, or urine under [Minnesota Statutes, section 169A.52](#).

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

Consequences

The consequences of a DWI arrest are twofold. There are administrative and criminal sanctions, and the severity of these sanctions depends upon the person's current and 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 person's license is revoked. Other administrative sanctions that may be imposed include plate impoundment and vehicle forfeiture. Administrative sanctions are civil in nature and any related court proceedings are generally held separate from the criminal trial.

If the arrest results in criminal charges being filed, a separate criminal action is commenced. The consequences of a criminal conviction may include 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 results in a criminal record.

¹ 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).

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

Implied Consent Law

Minnesota's implied consent law assumes that a person who drives, operates, or is in control of any type of motor vehicle anywhere in the state has consented to a chemical test of breath, blood, or urine for the purpose of determining the presence of alcohol or controlled or hazardous substances in the person's body. The testing is administered at the direction of a law enforcement officer when there is probable cause that the person has committed a DWI violation and the person:

- has been arrested for a DWI violation;
- has been involved in a motor vehicle accident or collision involving bodily injury, death, or property damage;
- has refused to take the DWI preliminary screening test; or
- has taken the screening test and it shows an AC of .08 or more.

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
- administer a preliminary breath test (PBT).

If, based on these screening tests, the officer has probable cause to believe that a DWI crime has occurred, he or she may arrest the person and demand a more rigorous evidentiary test of the person's breath, blood, or urine.² Before administering the test, the officer must read the implied consent advisory statement to the person explaining that testing is mandatory, test refusal is a crime,³ and the person has the right to consult an attorney before taking the test.

The officer is not required to give the advisory if there is probable cause of a criminal vehicular operation (CVO) (see page 14) violation and the officer is not pursuing an implied consent revocation. If the person is unconscious, consent is *not* deemed withdrawn and the chemical test may be administered.

² Please consult the most current case law for constitutional requirements regarding warrantless searches.

In *State v. Bernard*, the Minnesota Supreme Court upheld the constitutionality of a warrantless *breath* test as a valid search-incident-to-arrest. 859 N.W.2d 762 (Minn. 2015) *cert. granted* (Dec. 11, 2015). However, the court of appeals declined to extend the search-incident-to-arrest exception to *blood* and *urine* tests, and found the warrantless tests, in both cases, unconstitutional. See *State v. Trahan*, 870 N.W.2d 396, 399 (Minn. App. 2015), *review granted* (Minn. Nov. 25, 2015); *State v. Thompson*, 2015 WL 9437538 (Minn. App. Dec. 28, 2015).

³ *Supra* note 2.

The officer chooses whether the test will be of the person's breath, blood, or urine. A person who refuses a blood or urine test must be offered another type of test (breath, blood, or urine). 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

Whenever the implied consent law can be invoked during the arrest process, the person's driver's license can be withdrawn immediately following any test failure or refusal. The person is given a seven-day temporary license to drive before the withdrawal becomes effective. The period of license withdrawal is based on the current offense and number of prior impaired incidents.⁴

DWI	Impaired Incidents				
	1st	2nd in 10 Years or 3rd on Record	3rd in 10 years or 4th on record	4th in 10 years	5th + on record
	Revocation		Cancelled and Denied		
AC Under .16	90 days*/180 days if under age 21	1 year	3 years	4 years	6 years
AC .16 or Over	1 year	2 years	3 years	4 years	6 years
Test Refusal	1 year*	2 years	3 years	4 years	6 years

* The revocation period may be reduced upon a conviction. See Minn. Stat. § 169A.54.

Criminal Vehicular Operation Involving Alcohol	Impaired Incidents		
	1st	2nd in 10 Years	3rd in 10 Years or 4th + on Record
Bodily Harm or Substantial Bodily Harm	2 years	4 years	6 years
Great Bodily Harm or Death	6 years	8 years	10 years

The person may appeal the administrative license revocation, either administratively to DPS and/or judicially through the court. (See [Minn. Stat. § 169A.53](#) for the procedural details.)

⁴ These charts provide a brief overview of administrative license revocation. Please consult current law for additional factors that may affect the revocation or cancellation period.

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 7 and 8.)

License Plate Impoundment

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

A plate impoundment violation is an impaired driving violation involving an aggravating factor, such as any of the following:

- occurring within ten years of a qualified prior impaired driving violation by that person
- involving an AC of .16 or more
- having a child under age 16 present in the vehicle (when driver is at least 3 years older)
- occurring while the person's license 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.

A plate impoundment order is issued by the arresting officer at the time of arrest and 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 plates⁵ 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.

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.

⁵ These plates are more commonly known as "whiskey plates."

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 typically the third DWI violation within a ten-year period, though with one or more aggravating factors, a person's second-time or even first-time violation might qualify as well.

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 10) 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.⁶ The forfeiture is conducted administratively, unless within 60 days the owner appeals the forfeiture action by filing for a 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.⁷

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 failed to appear at a scheduled court appearance, or
- 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. In the event the owner of the vehicle is not the offender, the law states that a motor vehicle is not subject to forfeiture if its owner can demonstrate that he or she did not know, or should not have known, of the unlawful or intended use of the vehicle, or that he or she took reasonable steps to stop the offender. This is the innocent owner defense. In the case of joint ownership of a vehicle, *all* owners must be innocent for any owner to employ the defense.

Following completion of forfeiture, the arresting agency may sell or keep the vehicle for its official use. 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

⁶ Notice of the intent to forfeit states: "WARNING: You will automatically lose the [vehicle] and the right to be heard in court if you do not file a lawsuit and serve the prosecuting attorney within 60 days." [Minn. Stat. § 169A.63](#), subd. 8.

⁷ Also referred to as "small claims" court.

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.

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. Upon expiration of the revocation period, the individual may apply for reinstatement of full driving privileges.

An individual whose license has been *cancelled* is not eligible for reinstatement of driving privileges until proof of abstinence is submitted to the commissioner of public safety through the use of an ignition interlock device. (Consequently, unlike revoked drivers, canceled drivers cannot "wait out" the cancellation period if they want to regain driving privileges.)

Licensing options available (and in certain cases, waiting periods) depend on the individual's current and past record, as follows:

First-time test refusal or test failure with AC under .16 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 revocation period (i.e., may "wait out" the revocation period before regaining driving privileges).

First-time test failure with AC of .16 or greater, second DWI offense in ten years, or third DWI offense on record may:

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

Third implied consent or DWI offense in ten years, or fourth or subsequent DWI offense on record may:

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

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 cancellation period (cannot seek reinstatement of driving privileges under this option).

Criminal vehicular injury not involving alcohol, or vehicular homicide or manslaughter may:

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

Ignition Interlock

The ignition interlock program 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.⁸ (See licensing options pages 7 and 8.)

An ignition interlock device is installed in a vehicle to measure an individual's AC level. To start the vehicle, the person must blow into the device and a photo is taken. The vehicle will not start if alcohol is detected, and rolling retests are taken and recorded while driving.

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

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

The overall ignition interlock program length is dependent 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 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.

⁸ 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.

Reinstatement After Cancellation

A person's driver's license is canceled and denied if he or she has three or more impaired incidents in ten years or four incidents on record. 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.

Rehabilitation requirements are defined in department rules and include: following recommendations in a chemical use assessment, successfully completing chemical dependency treatment, and 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* 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 pass the license examination, 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. A handling fee may be imposed for utilizing the installment plan. The driver's license expires in two years unless the second installment is paid. Full payment of the fee and surcharge is required before a person can renew a license on the standard schedule or reinstate a cancelled, revoked, or suspended license.

Criminal Penalties

Apart from administrative licensing sanctions, criminal charges may be filed against an offender. Criminal penalties upon conviction for DWI are tiered, as follows:

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

*Aggravating Factor	Qualified Prior Impaired Driving Incident
This includes: <ul style="list-style-type: none"> a qualified prior impaired driving incident (<i>see next column</i>) within the preceding ten years; an AC of .16 or more upon arrest; and the presence of a child under age 16 in the vehicle, if more than 36 months younger than the offender. 	This includes both: <ul style="list-style-type: none"> prior impaired driving convictions; and prior impaired driving-related losses of license (implied consent revocations) or operating privileges 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.

Mandatory Hold and Conditional Release Pretrial

When a person is arrested for a first-degree (felony) or second-degree DWI crime, the person 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.

Unless maximum bail⁹ is imposed, a person charged with any of the following nonfelony offenses may be granted pretrial release from detention, but only if the person agrees 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 also 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. The court must order the person to submit to the level of treatment care recommended by the assessment, if the conviction is for a repeat offense within ten years or the conviction was for DWI with an AC of .16 or more. Treatment requirements are spelled out in DPS rules.

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.

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 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

⁹ \$12,000 for gross misdemeanor DWI.

- **third DWI offense within ten years:**
90 days 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 if prescribed.

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); or
- 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.

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; instead, 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 or sentence the person to less than three years imprisonment.

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 also order that after a felony DWI offender is released from prison, the person must be placed 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 of release, the commissioner may revoke it 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 as well that the person submit to long-term alcohol monitoring and 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.¹⁰ 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: 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

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 vehicle¹¹ 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

¹⁰ See [Minn. Stat. ch. 609A](#).

¹¹ 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.”

- 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, conviction for criminal vehicular homicide carries a presumptive commit to prison for 48 months, for an offender with no other criminal history points.

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's law also 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, it 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.

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.

First-time DWI Violator Using an Off-road Recreational Vehicle or Motorboat

A violator who has no qualified prior impaired driving incident is subject only to the nonfelony criminal penalty and the loss of operating privileges for that type of vehicle.

The person is not subject to driver's license revocation, mandatory chemical dependency assessment and treatment, mandatory conditions of release, long-term monitoring, the penalty assessment fee, or license plate impoundment. However, the violation may be used to enhance future DWI offenses.

Any person arrested for a DWI violation involving an off-road recreational vehicle or motorboat and who has a qualified prior impaired driving incident on record is subject to the same administrative sanctions and criminal penalties as the person would be if arrested while driving a regular motor vehicle.

Commercial Vehicle Driving

DWI law sets a lower per se AC limit for driving commercial motor vehicles of .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 or by driving while impaired or 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.

Glossary

AC – Alcohol concentration

BCA – Bureau of Criminal Apprehension

CVI – Criminal vehicular injury

CVH – Criminal vehicular homicide

CVO – Criminal vehicular operation

DPS – Department of Public Safety

DWI – Driving while impaired

REAM – Remote electronic alcohol monitoring

For more information about DWI, visit the criminal justice area of our website, www.house.mn/hrd/.