

DWI

*A quick reference guide
for the enforcement of
Minnesota's DWI and related statutes*



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*Provided by the
Minnesota Department of Public Safety and the
National Highway Traffic Safety Administration*

**THIS INFORMATION IS ONLY A GUIDE AND SHOULD
NOT BE CONSIDERED AS LEGAL ADVICE.**

DWI Violation:

- A conviction of driving while impaired (169.121, 169.1211, 609.21)
- License revocation, suspension, cancellation, denial or disqualification for implied consent test or refusal
- A prior operating conviction for DUI violation with a snowmobile, all-terrain vehicle or motorboat
- Suspension or revocation for refusal to test or a DUI with a snowmobile, all-terrain vehicle or motorboat on or after Aug. 1, 1995
- A prior impaired driving offense involving a commercial motor vehicle
- Also includes an ordinance or law violation for DUI from another state

Penalties

1st violation or refusal-MISDEMEANOR

1st violation if .20 AC or over/ 2nd violation or refusal or revocation in five years / DUI in violation of 169.26 (railroad crossing)/ violation or refusal with a passenger under 16 years old – GROSS MISDEMEANOR

3rd violation, refusal or revocation in 10 years/ 2nd violation or revocation or more within 10 years if AC .20 or over/ 2nd violation or revocation or more within 10 years in violation of 169.26 (railroad crossing)/ 2nd violation or revocation or refusal in 10 years with a passenger under 16 years old/ 3rd violation or revocation or refusal or combination in 10 years – ENHANCED GROSS MISDEMEANOR

168.042 Administrative Plate Impoundment

- 2nd violation in five years or 3rd violation in 15 years or aggravated violations (169.129)
- 1st or subsequent violation if over .20 AC
- 1st or subsequent violation or refusal with a passenger under 16 years old
- 1st or subsequent violation of 171.24 Cancel IPS (171.04 subd 1 (9))

- includes related offenses from other states
- includes motor vehicle plates if the violator is on a recreational vehicle (snowmobile, all-terrain vehicle or motorboat)
- issue notice of impoundment and temporary permit
- SEIZE and DESTROY plates of vehicle violator currently driving regardless of ownership
- Impoundment can be done by the officer or by the Department of Public Safety
- all plates registered to party including joint registration and lease vehicles
- does NOT include rentals, out-of-state plates or recreational vehicle (snowmobile, all-terrain vehicle, motorboat, or off-highway motorcycle) registration

171.24 Driving After Cancellation - IPS

- gross misdemeanor to drive if CANCEL-IPS (drunk or sober)
- SEIZE and DESTROY plates (168.042)

169.121 DUI (relevant evidence at .04 AC)

subdivision 1: drive, operate, or physical control

- influence of alcohol
- influence of controlled substance
- combination of alcohol, controlled substance or hazardous substance
- AC is .10 or more, but less than .20
- AC is .10 or more, but less than .20 within 2 hours
- AC is over .20 within 2 hours
- knowingly under the influence of a hazardous substance as listed in 182.655
- body contains ANY amount of a controlled substance listed in schedule I or II (other than marijuana or tetrahydrocannabinols)

subdivision 1a

- crime to refuse testing (see 169.123)

subdivision 1c: conditional release

Must have maximum bail or abstain from alcohol and submit to a program of electronic alcohol monitoring if charged with:

- a. violation of subd. 1 or 1a within 5 years of two DWI convictions (or within 10 years of three or more DWI convictions)
- b. a second or subsequent violation of subd. 1 or 1a if the person is under the age of 19
- c. any violation of subd. 1 or 1a while driver cancelled IPS
- d. any violation of .20 or more, or
- e. any DWI Aggravated violation (169.129)

Must have maximum bail or abstain from alcohol, submit to electronic monitoring, weekly probation reporting, weekly random alcohol testing and plate impoundment if charged with:

- a. violation of subd. 1 or 1a within 10 years of the first of three DWI convictions, or
- b. a violation of subd. 1 or 1a within the person's lifetime after four or more DWI convictions

169.123 Chemical Testing (implied consent)

- test may be also required for probable cause of 609.21
- can only charge for TEST REFUSAL if advisory is read and given opportunity to contact an attorney and only on request for blood (or urine) if alternative test is offered (can be breath)
- subdivision 2a: if controlled substances are suspected, then the alternative for blood must be urine (and vice versa)
- can require blood or urine after breath if controlled substance is suspected (re-invoke implied consent advisory for controlled substance only)

169.129 Aggravated Violations

- must be a motor vehicle that requires a driver's license to operate
- currently has Minnesota driver's license or operating privileges revoked, canceled or suspended for an alcohol-related offense

169.1217 Vehicle Forfeiture

- 3rd violation, revocation or refusal or combination based on separate incidents in five years or 4th violation, revocation or refusal or combination in 15 years
- 2nd violation or revocation in five years if .20 AC or more
- 2nd violation or refusal or revocation if a passenger is under 16 years of age
- 3rd violation or revocation within 15 years of 1st of 2 or more offenses and .20 AC or more
- 3rd violation or refusal or revocation in 15 years if a passenger is under 16 years old
- DUI if canceled IPS or if has restriction on D/L not to consume or use alcohol or controlled substance
- seize vehicle with intent to forfeit

Preliminary Screening Test

results of the PBT test can be used in the following court actions:

- to prove that a test was properly required of a person under 169.123
- in a civil action arising out of the operation of the motor vehicle
- prosecution for underage driving after drinking – "zero tolerance" law (169.1218) or minor consumption (340A.503)
- prosecution for violation of the "zero tolerance" law for school bus drivers (169.1211 para. b)
- prosecution for violation of the conditions of a limited license (171.30)
- prosecution for violation of a conditional driver's license that prohibits the person from consuming any alcohol or controlled substance (171.09)

169.1211 sub.1 clause 3 paragraph B "Zero Tolerance" for School Bus drivers

- physical evidence of any alcohol consumption while using any class of school bus or Head Start bus
- first conviction – lose CDL for one year, second conviction – lose CDL for 10 years

169.1211 Commercial Vehicles

- *subdivision 1:* drive, operate, physical control of any commercial motor vehicle
- 1) when AC is .04 or more, but less than .20
- 2) when AC is .04 or more, but less than .20 when measured within two hours
- 3) when AC is .20 or more when measured within two hours
- invoke implied consent with any presence of alcohol

169.125 Commercial Vehicle Out-of-Service Order

- drive, operate, physical control of a commercial vehicle with any presence of alcohol – driver out of service for 24 hours.

609.21 Criminal Vehicular Homicide and Injury

subdivision 1: cause death, great bodily harm, substantial or any bodily harm to a person, or death or injury to an unborn child while operating a motor vehicle:

- gross negligence and under the influence of alcohol, controlled substance or both
- alcohol influence over .10
- alcohol influence over .10 within two hours

subdivision 1: death

subdivision 2: if a person causes great bodily harm to another, as a result of operating a motor vehicle [great bodily harm (type A accidents)]

subdivision 2a: substantial bodily harm

subdivision 2b: any bodily harm

subdivision 3: death to unborn child

subdivision 4: injury to unborn child

Definition

COMMERCIAL MOTOR VEHICLE: a motor vehicle or combination used to transport passengers or property if it –

- has a gross vehicle weight (GVW) of more than 26,000 pounds

- has a towed unit with a GVW of more than 10,000 pounds and the combination has a combined GVW of more than 26,000 pounds
- is a bus
- is of any size and is used to transport hazardous materials, except those vehicles having a GVW of 26,000 pounds or less while carrying in bulk tanks a total of not more than 200-gallons of petroleum products and liquid fertilizer
- is outwardly equipped and identified as a school bus
- a truck-tractor, capable of or designed to meet the above standards, whether or not the towed unit is attached
- does NOT include a farm truck, firefighting equipment or recreational equipment being used for personal use

Under 21 Alcohol Violations

Consumption and Operation

VIOLATION	STATUTE	PENALTY
Under 21 Consumption / Driver		
■ DUI, if applicable	169.121	Misd./G.M.
■ Unlawful to drive after consuming any amount of alcohol	169.1218	Misd.

Alcohol-Related

VIOLATION	STATUTE	PENALTY
Passenger Consumption		
■ Under 21 years of age	340A.503:1a2	Misd.
Passenger Possession		
■ Under 21 years of age	340A.503:3	Misd.
Open Container in Vehicle Driver / Owner Allowing O.B.	169.122:2	Misd.
	169.122:3	Misd.

Identification-Related

VIOLATION	STATUTE	PENALTY
False Information to officer	171.22:8	G.M.
Use of another person's D.L. or Minnesota I.D.	171.22:3	Misd.
Display of false / altered D.L. or Minnesota I.D.	171.22:1	Misd.

At a Glance

Plate Impoundment (168.042; 169.129; 171.04 subd 1 (9))

IMPOUND PLATES IF:

- 1st offense and .20 AC or more; or
- 1st offense and Child Endangerment; or
- 2nd offense in 5 years or 3rd offense in 15 years; or
- Aggravated DUI violation; or
- DUI offense at a railroad crossing; or
- Cancel-IPS violation.

Charging

MISDEMEANOR IF:

- 1st offense and under .20 AC, and no Child Endangerment, and no railroad crossing, and no Cancel-IPS, and no "B" card violation; or
- 2nd offense in more than 5 years and under .20 AC, and no Child Endangerment, and no railroad crossing, and no Cancel-IPS, and no "B" card violation.

GROSS MISDEMEANOR OR ENHANCED GROSS MISDEMEANOR IF:

- All other violations (charge by complaint).

Vehicle Forfeiture (169.1217)

VEHICLE SUBJECT TO FORFEITURE IF:

- 2nd offense in 5 years and .20 AC or more; or
- 2nd offense in 5 years and Child Endangerment; or
- 3rd offense in 5 years or 4th offense in 15 years; or
- 3rd offense within 15 years (of 1st of 2 or more offenses) and .20 AC or more; or
- DWI violation with a Cancel-IPS license status; or
- DWI violation with a "B" card license restriction.

Mandatory Hold For Court (169.121 subd 1c)

JAIL THE OFFENDER AND IMPOSE MAXIMUM BAIL OR ELECTRONIC ALCOHOL MONITORING IF:

- Any violation .20 AC or more; or
- Any violation while Cancel-IPS; or
- Any DWI aggravated violation; or
- A DWI violation within 5 years of 2 DWI convictions; or
- A DWI violation within 10 years of 3 or more DWI convictions; or
- A DWI violation and four or more DWI convictions on record; or
- 2nd DWI violation and under 19 years old.