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16. Abstract This digest provides a compendium of State laws that address driving under the influence of drugs (DUI-D). It covers all 50 States, the District of Columbia, and Puerto Rico. It is designed to be an accessible yet comprehensive reference for DUI-D offenses. Three summary charts of State laws are included on basic drugged driving provisions, provisions of laws pertaining to chemical testing, and marijuana possession and use laws. Citations for provisions of the State laws are also provided allowing the reader to locate the original source of the information.			
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Table of Contents

INTRODUCTION	iv
LEGISLATIVE SUBJECT AREAS	vii
ABBREVIATIONS and SYMBOLS	ix
OVERVIEW OF KEY PROVISIONS OF STATE IMPAIRED DRIVING LAWS.....	x
Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving	xi
Table 1. Basic Drugged Driving Provisions	xi
Table 2. Key Provisions of State Laws Pertaining to Chemical Testing	xvii
Table 3. Marijuana Possession and Use Laws	xxiv
ALABAMA	1
ALASKA	6
ARIZONA.....	13
ARKANSAS.....	21
CALIFORNIA	29
COLORADO	40
CONNECTICUT	48
DELAWARE	54
DISTRICT OF COLUMBIA	62
FLORIDA	68
GEORGIA.....	77
HAWAII	85
IDAHO.....	91
ILLINOIS.....	97
INDIANA	107
IOWA.....	113
KANSAS	120
KENTUCKY.....	126
LOUISIANA.....	134
MAINE	141
MARYLAND	147
MASSACHUSETTS.....	154
MICHIGAN	161
MINNESOTA.....	169

MISSISSIPPI	177
MISSOURI	183
MONTANA	189
NEBRASKA	196
NEVADA.....	203
NEW HAMPSHIRE	212
NEW JERSEY	218
NEW MEXICO.....	225
NEW YORK.....	231
NORTH CAROLINA	239
NORTH DAKOTA.....	246
OHIO	252
OKLAHOMA	260
OREGON.....	266
PENNSYLVANIA.....	273
PUERTO RICO	280
RHODE ISLAND	285
SOUTH CAROLINA.....	292
SOUTH DAKOTA	298
TENNESSEE	303
TEXAS.....	309
UTAH	316
VERMONT.....	322
VIRGINIA	328
WASHINGTON	335
WEST VIRGINIA	342
WISCONSIN	348
WYOMING	355
FEDERAL LAND	360

INTRODUCTION

This digest reports the status of State laws dealing with driving under the influence of drugs (DUI-D) for all 50 States, the District of Columbia, and Puerto Rico. It is designed to be an accessible yet comprehensive reference to current State laws for DUI-D offenses. In general, the laws are current as of September 5, 2016. However, laws related to marijuana possession and use are current as of December 31, 2016 to reflect changes to State laws made in November 2016 to that subject.

Each State entry includes: Type of DUI-D Law, Basis for a DUI-D Charge; Tests for Drug Concentration; Adjudication of Drugged Driving (DUI-D) Charges; Sanctions; Homicide by Vehicle; DUI-D Offenses and Commercial Motor Vehicles; Driving While License Suspended for DUI-D; Habitual Traffic Offender Law; Other State Laws Related to Drug Use; State Laws Related to Marijuana Use; and Intoxicant Exclusion Laws.

The investigation of drug impaired driving offenses routinely involves obtaining and testing bodily substances other than a person's breath. Blood is most frequently sought, but urine and saliva are also tested in many States. Most States permit a law enforcement officer to obtain a blood sample from a DUI-D suspect pursuant to an implied consent statute (i.e., without obtaining a warrant), as long as the suspect does not revoke his/her consent. Some States do not permit a blood sample to be withdrawn unless a law enforcement officer obtains a warrant. A few States only permit blood draws in the DUI-D context in cases involving a serious injury or death.

DEFINITIONS

Commercial Motor Vehicle:

For impaired driving offense purposes, most States define a "commercial motor vehicle" (CMV) as one that (1) has a gross vehicle weight \geq 26,001 pounds; (2) is designed to transport 16 or more people including the driver; or (3) transports hazardous materials.

Drugs and Controlled Substances:

These are terms frequently used to refer to substances which, if ingested, may cause a person to be in violation of a State's illegal per se law, or to become impaired in violation of such State's general DUI-D law prohibiting the driving/operation of a motor vehicle while under the influence or while impaired. Each State separately defines the drug(s) and/or controlled substance(s) that trigger such laws. Such definitions are noted for reference in this digest.

DUI-D, DWI, DUI, OWI, OUI, and Impaired Driving Offense:

These are general terms that refer to any criminal action related to driving or operating a motor vehicle while "illegal per se" or while either impaired by, under the influence of, or intoxicated by, drugs. For the purposes of this digest, DUI-D will be utilized as standard terminology.

Entity Establishing Testing Protocol:

Many State legislatures require a specific entity to establish protocols for the chemical testing of blood samples in the DUI-D context. Typically, if such protocols are not followed, the blood sample at issue is not admissible in a DUI-D trial. It should be noted that in some States, chemical testing protocols are required only if the blood sample was obtained pursuant to the implied consent statute, meaning such protocols would not apply if the sample were withdrawn pursuant to a search warrant. Other States have protocols which apply to the chemical testing of a blood sample regardless of whether it was obtained pursuant to implied consent or a search warrant.

Illegal Per Se Law:

This law makes it a criminal offense to operate a motor vehicle: (1) at or above a specified concentration of a designated substance in the blood, urine, or saliva; or (2) with any amount of a designated substance, usually a controlled (illegal) substance or its metabolite, in the body. (This second category is commonly referred to as a "zero tolerance" law).

Implied Consent Law:

This type of law provides that a person gives implied consent to submit to a test for drug content in his/her body if he/she is arrested or otherwise detained for a DUI-D offense. If the person refuses to submit to such a test, civil sanctions such as a fine or license suspension may be imposed. The results obtained from such a test are usually admissible into evidence at a DUI-D trial.

Vehicular Homicide:

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

Mandatory Sanctions:

A “mandatory sanction” means either a criminal sanction (e.g., jail, fine, or community service) or an administrative licensing action (e.g., license suspension or revocation) that must be imposed by either a court or an administrative agency. That is, statutory law specifically requires that such sanction be imposed.

Marijuana:

An increasing number of States have legalized or decriminalized marijuana, or cannabis. The prevalence of marijuana throughout the United States means that a high number of DUI-D offenses involve this substance. This digest tracks marijuana possession and use laws for all 50 States, and notes whether marijuana possession is “illegal,” “decriminalized,” “legal for medicinal use,” and/or “legal for recreational use.”

Preliminary Breath Test:

A “preliminary breath test” (PBT) refers to a breath test given by a law enforcement officer to a suspected impaired driver prior to an arrest for an impaired driving offense. The results of this test are used along with other evidence by the officer to determine if there is “probable cause” to arrest the driver for such an offense. Usually, the results of a PBT cannot be admitted into evidence. Some States impose a civil sanction upon a person who refuses to submit to a PBT, or permit such refusal to be entered as evidence at trial.

Pre-Sentence Investigation Law:

As used in this publication, this term means a law that provides that a person who has been convicted of an impaired driving offense undergo an evaluation to determine if he/she has either an alcohol or drug abuse problem prior to sentencing.

Presumption:

The term “presumption” under “Basis for a DUI-D Charge” refers to a specific drug concentration in a driver's blood, urine, or other bodily substance, at or above which it may be presumed that he/she was driving in violation of the “Standard DUI-D Offense.”

Refusal:

When a person revokes his/her implied consent to submit to a chemical test of the person's breath, blood, urine, and/or other bodily substance, this is generally referred to as a “refusal” offense. When a DUI-D suspect refuses to take a chemical test required under a State's implied consent statute, a law enforcement officer must either obtain a warrant to withdraw the person's blood, or rely on a non-consent exception to the warrant requirement. *Missouri v. McNeely*, 133 S.Ct. 1552 (2013). Many States impose sanctions when a DUI-D suspect refuses an implied consent chemical test. Historically, these have included penalties such as jail, a fine, driver's license suspension, or admitting such refusal as evidence during a DUI-D trial. It should be noted that while many States still technically have criminal penalties on the books for refusal to submit to an implied consent blood test, criminal penalties were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

Vehicle and Motor Vehicle:

All States specify that a person must be driving a “vehicle” or “motor vehicle” in order to trigger the prohibition against driving under the influence. However, each State defines the term “vehicle” or “motor vehicle” differently. Such definitions are noted for reference within this digest.

Off-Highway Vehicles:

This digest does not report on State laws that prohibit the operation of non-highway vehicles (e.g., snowmobiles, all-terrain vehicles [ATVs], or other off-road vehicles [ORVs]) either while under the influence of drugs or at or above a specific drug concentration.

Sanctions (Criminal and Administrative):

Unless otherwise stated, the sanctions are the same for all drugged driving offenses (driving under the influence of drugs, illegal per se, etc.).

The sanctions listed in the digest for criminal offenses are those that would normally apply to adult offenders. However, it should be noted that for juvenile offenders, the law may limit a court's ability to assign such punishment. Such offenders also may be subject to other sanctions for a violation of criminal laws that may not be listed in this digest.

This digest does report the sanctions (criminal or administrative) related to State laws that have special provisions that make it illegal for a young person (e.g., a person under 21) to operate a motor vehicle either (1) at or above a specific drug concentration, which is below the level used to determine adult intoxication; or (2) with any measurable amount of drugs in his/her body.

However, the digest does not generally report the sanctions (criminal or administrative) associated with State laws related to juvenile offenders. Please note that the sanctions for fines listed in this digest do not include court costs.

Search Warrant:

Most States permit a law enforcement officer to obtain a sample of a DUI-D suspect's bodily substance (generally blood) by relying upon a search warrant, rather than relying upon the State's implied consent statute. Where a DUI-D suspect has revoked his/her implied consent by refusing to submit to a chemical test required under a State's implied consent statute, a law enforcement officer must obtain a search warrant, or rely upon an established exception to the search warrant requirement. *Missouri v. McNeely*, 133 S.Ct. 1552 (2013).

Zero Tolerance:

This law makes it a criminal offense to operate a vehicle with any amount of a designated substance, usually a controlled or illegal substance or its metabolite, in the body.

LEGISLATIVE SUBJECT AREAS

Type of DUI-D Law

Basis for DUI-D Charge

- Standard DUI-D Offense
- Illegal Per Se Law
- Presumption Based on Drugs
- Other

Chemical Testing for Drug Concentration

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

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

- Blood
- Urine
- Other

Individuals Authorized to Perform Chemical Testing (Blood)

- Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform
- Entity Establishing Testing Protocols
- Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform
- Other

Adjudication of DUI-D Charges

- Mandatory Adjudication Law
- Anti-Plea-Bargaining Statute
- Pre-Sentencing Investigation Law

Affirmative Defenses to DUI-D Charge

- Legal Entitlement/Valid Prescription
- Therapeutic Concentration
- Involuntary Intoxication
- Other

Sanctions for Refusal to Submit to Chem. Test

- Refusal to Take Preliminary Breath Test - Criminal Sanction (Fine/Jail)
- Preliminary Breath Test - Other
- Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail)
- Implied Consent Chemical Test - Other

Criminal Sanctions Following DUI-D Conviction

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

Administrative Sanctions – Post-Conviction

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

Homicide by Vehicle

- State Has Such a Law
- Imprisonment/Fine
- Mandatory Minimum Term/Fine
- Other

DUI-D Offenses and Commercial Motor Vehicles (CMV)

Driving While License Suspended for DUI-D Offense

- Criminal (Fine/Imprisonment)
- Mandatory Minimum Fine/Imprisonment
- Other

Habitual Traffic Offender Law

- State Has Such a Law (Yes/No)
- Grounds for Being Declared Habitual Offender
- Term of License Revocations While on Habitual Offender Status
- Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status
- Imprisonment (Term)
- Mandatory Minimum Term/Fine

Other State Laws Related to Drug Use

- Drug Chemical Tests on:
 - Persons Killed in Traffic Crash
 - Deceased Driver Killed in Crash
 - Deceased Vehicle Passengers Killed in Crash
 - Deceased Pedestrian Killed in Crash
 - Persons Involved in Traffic Crashes

Marijuana – Possession and Use Laws

Intoxicant Exclusion Law (UPPL)

ABBREVIATIONS and SYMBOLS

BAC = blood alcohol concentration
BrAC = breath alcohol concentration
CDL = commercial driver's license
CMV = commercial motor vehicle
DUI = driving under the influence
DWI = driving while intoxicated
DUI-D= driving under the influence of drugs
EMS = emergency medical services
Gr = gram(s)
Lb. = pound(s)
Mand = mandatory
N/A = not applicable
OUI = operating under the influence
OWI = operating while intoxicated
Oz = ounce(s)
PBT = preliminary breath test
Susp = suspended
Rev = revoked
> = greater than
< = less than
≥ = greater than or equal to
≤ = less than or equal to

Note: Some jurisdictions and legal documents spell the word “marijuana” as “marihuana.” These are not mistakes or typographical errors. The spelling dates to the [Marihuana Tax Act of 1937](#), and remains in many documents, especially Federal documents such as the [Controlled Substances Act](#) (1970) still in force.

OVERVIEW OF KEY PROVISIONS OF STATE IMPAIRED DRIVING LAWS

State statutes or regulations concerned with drugged driving violations, i.e., DUI-D, typically include several major components: the basis for an offense; requirements for chemical tests for drug concentration; the adjudication of charges; sanctions; and other criminal actions related to DUI-D. Details of State statutes and/or regulations pertaining to each of these components are provided in the State-by-State analysis of this document.

THE BASIS FOR A DUI-D CHARGE

All States, the District of Columbia, and Puerto Rico have enacted laws making it illegal to operate a vehicle when the person is under the influence, intoxicated, or impaired by drugs or controlled substances, and/or making it illegal to operate a vehicle with any amount, or a designated amount, of a drug or controlled substance in one's bloodstream or body. The basis for a DUI-D charge in each State sets forth the conditions under which a person may be convicted for driving under the influence of drugs. Definitions of "under the influence," "intoxicated," and "impaired," vary from State to State, and are noted within this Digest. The types of substances that may trigger a DUI-D charge also vary widely and are cited herein.

Some States have statutes establishing a lower threshold level for DUI-D for certain groups of individuals. For example, in South Dakota it is illegal for people under age 21 to operate a motor vehicle after having consumed marijuana or any controlled drug or substance as long as physical evidence of the consumption remains present in the person's body.

SANCTIONS FOR FIRST and REPEAT OFFENDERS

First-time DUI-D offenders, upon conviction, are often subject to jail time, and/or fines, and can receive other sanctions such as community service, vehicle impoundment, drug education and treatment. Information on the minimum sanctions that may be imposed upon first-time DUI-D offenders, upon conviction, in each

State, is provided in the Key Provisions of State Drugged Driving Laws Summary Tables included in this document.

OTHER CRIMINAL ACTIONS RELATED TO DUI-D

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

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 1. Basic Drugged Driving Provisions¹ (through September 5, 2016)					
State	Type of DUI-D Law	Illegal Per Se Law		Presumption Laws	
		Applicable to Drugs	Drug Types/Quantities	Applicable to Drugs	Drug Types/Quantities
AL	Under the Influence	No	N/A	No	N/A
AK	Under the Influence	No	N/A	No	N/A
AZ	Zero Tolerance	Yes	Any drug and any metabolite capable of causing impairment ²	No	N/A
AR	While Intoxicated	No	N/A	No	N/A
CA	Under the Influence	No	N/A	No	N/A
CO	Under the Influence/ While Impaired	No	N/A	Yes	≥ 5 ng/mL delta 9-tetrahydrocannabinol
CT	Under the Influence	No	N/A	No	N/A
DE	Under the Influence/ Zero Tolerance	Yes	Within 4 hours of driving: <ul style="list-style-type: none"> • Any amount of an illicit or recreational drug³ that was unlawfully used/consumed • Any amount of a substance or compound that is the result of the unlawful use/ consumption of an illicit or recreational drug 	No	N/A

¹ Key provisions of State statutes and regulations concerned with driving under the influence of drugs (DUI-D). Provisions of local laws are NOT reported.

² The very extensive list of drugs that fall under the per se violation can be found at A.R.S. §13-3401.

³ An “illicit or recreational drug” means any substance or preparation that is (a) any material, compound, combination, mixture, synthetic substitute or preparation which is enumerated as a Schedule I controlled substance under 16 Del.C. §4714; (b) Cocaine or of any mixture containing cocaine, as described in 16 Del.C. §4716(b)(4); (c) amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in 16 Del.C. §4716(d)(1); (d) methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in 16 Del.C. §4716(d)(3); (e) phencyclidine, or of any mixture containing any such substance, as described in 16 Del.C. §4716(e)(5); (f) a designer drug as defined in 16 Del.C. §4701; or (g) a substance or preparation having the property of releasing vapors or fumes which may be used for the purpose of producing a condition of intoxication, inebriation, stupefaction or lethargy or for the purpose of dulling the brain or nervous system. 21 Del.C. §4177(c)(7).

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 1. Basic Drugged Driving Provisions¹ (through September 5, 2016)					
State	Type of DUI-D Law	Illegal Per Se Law		Presumption Laws	
		Applicable to Drugs	Drug Types/Quantities	Applicable to Drugs	Drug Types/Quantities
DC	Under the Influence/ Ability Impaired	No	N/A	No	N/A
FL	Under the Influence	No	N/A	No	N/A
GA	Under the Influence/ Zero Tolerance	Yes	Any amount of marijuana or a controlled substance, ⁴ including the metabolites and derivatives of either or both (blood and urine)	No	N/A
HI	Under the Influence	No	N/A	Yes	One or more drugs ⁵ in an amount sufficient to impair the person's ability to operate a vehicle in a prudent manner within 3 hours after the time of the alleged violation
ID	Under the Influence	No	N/A	No	N/A
IL	Under the Influence/ Zero Tolerance	Yes	Any Amount: <ul style="list-style-type: none"> • Controlled Substance;⁶ Intoxicating Compound;⁷ Methamphetamine⁸ Within 2 hours of Driving: <ul style="list-style-type: none"> • ≥ 5 ng/mL delta-9-tetrahydrocannabinol (whole blood); • ≥ 10 ng/mL delta-9-tetrahydrocannabinol (other bodily substance) 	Yes	Within 2 hours of driving: <ul style="list-style-type: none"> • ≥ 5 ng/mL delta-9-tetrahydrocannabinol (whole blood) • ≥ 10 ng/mL delta-9-tetrahydrocannabinol (other bodily substance)

⁴ A “controlled substance” means a drug, substance, or immediate precursor in Schedules I through V of OGCA §16-13-25 through 16-13-29, and Schedules I through V of 21 C.F.R. §1308. OGCA §§16-13-21(4); 40-6-391(a)(6).

⁵ A “drug” includes (1) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) substances other than food intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of these, but not any device or their components, parts, or accessories. HRS §329-1.

⁶ Listed in the Illinois Controlled Substances Act, 720 ILCS 570/100 *et seq.*

⁷ Listed in the Use of Intoxicating Compounds Act, 720 ILCS 690/1.

⁸ Listed in the Methamphetamine Control and Community Protection Act, 720 ILCS 646/1 *et seq.*

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 1. Basic Drugged Driving Provisions¹ (through September 5, 2016)					
State	Type of DUI-D Law	Illegal Per Se Law		Presumption Laws	
		Applicable to Drugs	Drug Types/Quantities	Applicable to Drugs	Drug Types/Quantities
IN	While Intoxicated/ Zero Tolerance	Yes	Any amount of a controlled substance ⁹ or its metabolite in the body	No	N/A
IA	Under the Influence/ Zero Tolerance	Yes	Any amount of a controlled substance ¹⁰ (blood or urine)	No	N/A
KS	Under the Influence	No	N/A	No	N/A
KY	Under the Influence/ Zero Tolerance	Yes	Any Schedule I controlled substance ¹¹ except marijuana; alprazolam; amphetamine; buprenorphine; butalbital; carisoprodol; cocaine; diazepam; hydrocodone; meprobamate; methadone; methamphetamine; oxycodone; promethazine; propoxyphene; zolpidem	No	N/A
LA	Under the Influence	No	N/A	No	N/A
ME	Under the Influence	No	N/A	No	N/A
MD	Under the Influence	No	N/A	No	N/A
MA	Under the Influence	No	NA	No	NA
MI	Under the Influence/ Zero Tolerance	Yes	Any amount of a controlled substance ¹² in the body	No	N/A
MN	Under the Influence/ Zero Tolerance	Yes	Any amount of a controlled substance listed in Schedule I or II, ¹³ or its metabolite, other than marijuana or tetrahydrocannabinol in the body	No	N/A

⁹ Listed in schedule I or II of IC §35-48-2.

¹⁰ Pursuant to I.C.A. §321J.1, a “controlled substance” includes any drug, substance, or compound listed in I.C.A. §§124.204 or 124.206, or any metabolite or derivative of the drug, substance, or compound

¹¹ Schedule I controlled substances are listed in KRS §218a.050.

¹² Includes controlled substances listed in Schedule I of M.C.L.A. §333.7212, or a rule promulgated under that section, or a controlled substance described in M.C.L.A. §333.7214(a)(iv). M.C.L.A. §257.625(8).

¹³ Schedules I and II are located at M.S.A. §152.02.

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 1. Basic Drugged Driving Provisions¹ (through September 5, 2016)					
State	Type of DUI-D Law	Illegal Per Se Law		Presumption Laws	
		Applicable to Drugs	Drug Types/Quantities	Applicable to Drugs	Drug Types/Quantities
MS	Under the Influence	No	N/A	No	N/A
MO	Driving While Intoxicated	No	N/A	No	N/A
MT	Under the Influence/ Per Se	Yes	Delta-9-tetrahydrocannabinol \geq 5 ng/mL (blood)	No	N/A
NE	Under the Influence	No	N/A	No	N/A
NV	Under the Influence/ Zero Tolerance	Yes	Specific concentration levels of enumerated drugs in blood or urine ¹⁴	No	N/A
NH	Under the Influence	No	N/A	No	N/A
NJ	Under the Influence	No	N/A	No	N/A
NM	Under the Influence	No	N/A	No	N/A
NY	While Ability Impaired	No	N/A	No	N/A
NC	Under the Influence/ Zero Tolerance	Yes	Any amount of a Schedule I controlled substance ¹⁵ or its metabolite	No	N/A
ND	Under the Influence	No	N/A	No	N/A
OH	Under the Influence/ Zero Tolerance	Yes	Concentration of a controlled substance \geq proscribed limits ¹⁶	No	N/A

¹⁴ See N.R.S. §§484C.110(3); 484C.080 for an extensive list of drugs that all under the per se violation.

¹⁵ See N.C.G.S. §90-89 for a list of controlled substances categorized as Schedule I.

¹⁶ See R.C. §§4506.01(L); 4511.19(A)(1).

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 1. Basic Drugged Driving Provisions¹ (through September 5, 2016)					
State	Type of DUI-D Law	Illegal Per Se Law		Presumption Laws	
		Applicable to Drugs	Drug Types/Quantities	Applicable to Drugs	Drug Types/Quantities
OK	Under the Influence/ Zero Tolerance	Yes	Any amount of a Schedule I chemical, controlled substance ¹⁷ , or one of its metabolites or analogs in the person's blood, saliva, urine or any other bodily fluid	No	N/A
OR	Under the Influence	No	N/A	No	N/A
PA	Under the Influence/ Zero Tolerance	Yes	Any amount of a Schedule I, II, or III controlled substance ¹⁸ not prescribed for the individual, or the metabolite of either in the blood.	No	N/A
PR	Under the Influence	No	N/A	No	N/A
RI	Under the Influence/ Zero Tolerance	Yes	Presence of any controlled substance ¹⁹ in the blood	No	N/A
SC	Under the Influence	No	N/A	No	N/A
SD	Under the Influence	Yes, if under 21	Any amount of marijuana or controlled substance ²⁰ for as long as physical evidence of the consumption remains present in the person's body	No	N/A
TN	Under the Influence	No	N/A	No	N/A
TX	Driving While Intoxicated	No	N/A	No	N/A
UT	Under the Influence/ Zero Tolerance	Yes	Any measurable controlled substance ²¹ or metabolite of a controlled substance	No	N/A

¹⁷ See 63 Okl.St. Ann. §2-204 for a complete list of Schedule I controlled substances.

¹⁸ See 35 Pa.C.S.A. §780-104.

¹⁹ A controlled substance means a drug, substance, immediate precursor, or synthetic drug in schedules I -- V of this chapter. The term shall not include distilled spirits, wine, or malt beverages, as those terms are defined or used in chapter 1 of title 3, nor tobacco. Gen.Laws 1956 §21-28-1.02(7).

²⁰ "Controlled drug or substance" means a drug, substance, or immediate precursor in Schedules I through IV of SDCL §§34-20B-11 to 34-20B-26. SDCL §34-20B-3.

²¹ A controlled substance means a drug or substance: (A) included in Schedules I, II, III, IV, or V of U.C.A. 1953 §58-37-4; (B) included in Schedules I, II, III, IV, or V of the Federal Controlled Substances Act, Title II, P.L. 91-513; (C) that is a controlled substance analog; or (D) listed in U.C.A. 1953 §58-37-4.2. U.C.A. 1953 §58-37-2.

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 1. Basic Drugged Driving Provisions¹ (through September 5, 2016)					
State	Type of DUI-D Law	Illegal Per Se Law		Presumption Laws	
		Applicable to Drugs	Drug Types/Quantities	Applicable to Drugs	Drug Types/Quantities
VT	Under the Influence	No	N/A	No	N/A
VA	Under the Influence/ Per Se	Yes	A blood concentration per liter ≥: <ul style="list-style-type: none"> • .02 mg of cocaine • 0.1 mg of methamphetamine • .01 mg of phencyclidine • 0.1 mg of 3, 4-methylene-dioxymethamphetamine 	Yes	A blood concentration per liter ≥: <ul style="list-style-type: none"> • .02 mg of cocaine • 0.1 mg of methamphetamine • .01 mg of phencyclidine • 0.1 mg of 3, 4-methylene-dioxymethamphetamine
WA	Under the Influence/ Zero Tolerance	Yes	Within 2 hours of driving: Tetrahydrocannabinol ≥ 5 ng/mL	No	N/A
WV	Under the Influence	No	N/A	No	N/A
WI	Under the Influence/ Zero Tolerance	Yes	A detectable amount of a restricted controlled substance ²² in the blood	No	N/A
WY	Under the Influence	No	N/A	No	N/A

²² “Controlled substance” means a drug, substance or immediate precursor included in schedules I to V of subch. II. “Controlled substance analog” means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance included in schedule I or II and: 1. Which has a stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II; or 2. With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II. (11)(a) “Drug” means any of the following: 1. A substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary or any supplement to any of them; 2. A substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals; 3. A substance, other than food, intended to affect the structure or any function of the body of humans or animals; 4. A substance intended for use as a component of any article specified in subd. 1., 2. or 3. W.S.A. §961.01(4), (4m), (11)(a).

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 2. Key Provisions of State Laws Pertaining to Chemical Testing²³
(through September 5, 2016)

State	Preliminary Breath Test Law Applicable to Drugs	Implied Consent Law		Chemical Tests for Drugs Permitted by Implied Consent Statute				Refusal ²⁴	Search Warrant
		Applicable in DUI-D Cases	Standard for Application	Breath	Blood	Urine	Saliva	Admitted into Evidence	Permitted for Blood Sample
AL	No	No ²⁵	N/A	N/A	N/A	N/A	N/A	N/A	Yes ²⁶
AK	No	No ²⁷	N/A	N/A	N/A	N/A	N/A	Yes	Yes ²⁸
AZ	Yes	Yes	Arrest	Yes	Yes	Yes	Yes	Criminal and civil cases and other proceedings	Yes
AR	No	Yes	<ul style="list-style-type: none"> • Arrest; • Involvement in Accident; or • Reasonable cause to believe BAC ≥ 0.08 	Yes	Yes	Yes	Yes	Criminal cases	Yes
CA	Yes	Yes	Arrest	No	Yes	Yes	No	Criminal and civil cases	Yes
CO	No	Yes	Probable Cause	Yes	Yes	Yes	Yes	Criminal Cases	Yes

²³ Key provisions of State statutes and regulations concerned with driving under the influence of drugs (DUI-D). Provisions of local laws are NOT reported.

²⁴ This term indicates a circumstance in which a DUI suspect who is subject to the State's implied consent statute has refused to provide a sample of his breath, blood, urine, or other bodily substance, as required by the State's implied consent statute.

²⁵ Except in accident cases involving death or a serious physical injury

²⁶ Alabama's Implied Consent statute does not apply to blood testing in a DUI-D case. Therefore, a search warrant would be not only permitted, but required to obtain a blood sample.

²⁷ It appears that if a person has been lawfully arrested for driving while under the influence of an inhalant or controlled substance, the person is considered to have given consent to a breath test in order to determine the alcohol content of the person's breath. However, the statute does not authorize chemical testing of blood or urine to determine the presence of controlled substances, unless the person has been involved in an accident that causes death or physical injury to another person, or the person is unconscious. AS §§28.35.031(a); 28.35.035(a),(b).

²⁸ Alaska's Implied Consent statute does not apply to blood testing in a DUI-D case. Therefore, a search warrant would be not only permitted, but required to obtain a blood sample.

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 2. Key Provisions of State Laws Pertaining to Chemical Testing²³
(through September 5, 2016)

State	Preliminary Breath Test Law Applicable to Drugs	Implied Consent Law		Chemical Tests for Drugs Permitted by Implied Consent Statute				Refusal ²⁴	Search Warrant
		Applicable in DUI-D Cases	Standard for Application	Breath	Blood	Urine	Saliva	Admitted into Evidence	Permitted for Blood Sample
CT	No	Yes	Arrest	Yes	Yes	Yes	No	Criminal cases	Yes
DE	No	Yes	Probable Cause	Yes	Yes	Yes	No	Criminal and civil cases	Yes
DC	Yes	Yes	Arrest	Yes	Yes	Yes	No	Criminal and civil cases	Yes
FL	No	Yes	Arrest ²⁹	No	Yes ³⁰	Yes	No	Criminal proceeding	Yes
GA	No	Yes	Arrest	Yes	Yes	Yes	Yes	Criminal cases	Yes
HI	Yes	Yes	Arrest	Yes	Yes	Yes	No	No ³¹	Yes
ID	No	Yes	Reasonable Grounds for a DUI Offense	Yes	Yes	Yes	No	Criminal cases	Yes
IL	Yes	Yes	Arrest	Yes	Yes	Yes	Yes	Criminal and civil cases	Yes
IN	Yes	Yes	Probable Cause	Yes	Yes	Yes	Yes	Criminal and civil cases	Yes

²⁹ Arrest not required for taking a blood sample if the driver is taken to a medical facility for treatment as a result of an accident. F.S.A. §316/1932(1)(c).

³⁰ A blood test may only be taken under the implied consent law if: 1) the law enforcement has “reasonable cause” to believe that the person was DUI-D; 2) the driver appears for treatment at a medical facility; and 3) the administration of a breath/urine test is impractical or impossible. F.S.A. §316.1932(1)(c).

³¹ There is an exception for administrative hearings related to test refusals (license suspension). HRS § 291E-65; see *Freitas v. Admin. Director of Courts*, 116 P.3d 673 (Hawai‘i, 2005).

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 2. Key Provisions of State Laws Pertaining to Chemical Testing²³ (through September 5, 2016)									
State	Preliminary Breath Test Law Applicable to Drugs	Implied Consent Law		Chemical Tests for Drugs Permitted by Implied Consent Statute				Refusal²⁴	Search Warrant
		Applicable in DUI-D Cases	Standard for Application	Breath	Blood	Urine	Saliva	Admitted into Evidence	Permitted for Blood Sample
IA	Yes	Yes	Reasonable Grounds for a DUI-D Offense	Yes	Yes	Yes	No	Criminal and civil cases	Limited ³²
KS	Yes	Yes	Note ³³	Yes	Yes	Yes	Yes	Criminal cases	Yes
KY	No	Yes	Reasonable Grounds for a DUI-D Offense	Yes	Yes	Yes	No	Criminal cases	Limited ³⁴
LA	No	Yes	Arrest	Yes	Yes	Yes	Yes	Criminal cases	Yes
ME	No	Yes	Probable Cause	Yes	Yes	Yes	No	Criminal cases	Yes
MD	No	Yes	Reasonable Grounds for a DUI-D Offense	No	Yes	No	No	Criminal and civil cases	Limited ³⁵

³² A person may only be required to submit to a chemical test pursuant to a search warrant issued in an investigation of involuntary manslaughter (I.C.A. §707.5) or homicide/serious injury by vehicle (I.C.A. §707.6A) where a traffic accident has resulted in a death or in a personal injury likely to cause death and there is evidence of a DUI offense. I.C.A. §§ 321J.9(1); 321J.10.

³³ (1) At the time of the request, the officer has reasonable grounds to believe the person was operating or attempting to operate a vehicle while DUI-D, operating a CMV with drugs in the person's system, or < 21 and operating or attempting to operate a vehicle with drugs in the person's system; and (a) the person has been arrested or (b) was in an accident; or (2) the person was operating or attempting to operate a vehicle and such vehicle was involved in an accident resulting in serious injury or death of any person and the operator could be cited for a traffic offense. K.S.A. §8-1001(b).

³⁴ The law *only* allows a court to issue a search warrant requiring that either a blood or a urine sample be obtained for chemical testing in a DUI-D case involving either a death or physical injury. KRS §189A.105(2)(b). *See also Combs v. Commonwealth*, 965 S.W.2d 161 (Ky. 1998).

³⁵ It appears that in Maryland, a person cannot be compelled to submit to a chemical test unless the person was involved in a motor vehicle accident that resulted in the death of, or a life threatening injury to, another person. MD Code, Courts & Judicial Proceedings §10-309(a)(1).

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 2. Key Provisions of State Laws Pertaining to Chemical Testing²³ (through September 5, 2016)									
State	Preliminary Breath Test Law Applicable to Drugs	Implied Consent Law		Chemical Tests for Drugs Permitted by Implied Consent Statute				Refusal ²⁴	Search Warrant
		Applicable in DUI-D Cases	Standard for Application	Breath	Blood	Urine	Saliva	Admitted into Evidence	Permitted for Blood Sample
MA	No	No	N/A	N/A	N/A	N/A	N/A	No ³⁶	Yes ³⁷
MI	Yes	Yes	Arrest	Yes	Yes	Yes	No	Yes – Limited admissibility to show test was offered, but not as evidence of innocence/guilt	Yes
MN	Yes	Yes	Probable Cause ³⁸	Yes	Yes	Yes	No	No	Yes ³⁹
MS	No	No	Reasonable Grounds and Probable Cause ⁴⁰	Yes	Yes	Yes	No	Criminal cases	Yes ⁴¹
MO	Yes	Yes	Arrest	Yes	Yes	Yes	Yes	Criminal cases	No
MT	No	Yes	Arrest	Yes	Yes	No	No	Criminal Cases	Yes

³⁶ Prohibited by statute in both criminal and civil cases except that the registrar may use evidence in an administrative proceeding to suspend the driving license. M.G.L.A. 90 §24(1)(e).

³⁷ The Implied Consent statute in Massachusetts does not apply to blood testing in DUI-D cases. Therefore, a search warrant would be not only permitted, but required to obtain a blood sample.

³⁸ The Minnesota Implied Consent statute also requires that (1) the person has been lawfully placed under arrest for DUI; (2) the person has been involved in a motor vehicle accident resulting in property damage, personal injury, or death; (3) the person has refused to take a PBT; or (4) the person submitted to a PBT and the result was BAC ≥ 0.08. M.S.A. §169A.51.

³⁹ A search warrant is currently required to obtain a blood sample in a DUI-D cases in Minnesota.

⁴⁰ Exceptions: Reasonable grounds for belief is sufficient for persons under age 21; (2) A person was involved in a motor vehicle collision which resulted in a fatality, a readily apparent serious physical injury, or serious physical injury. V.A.M.S. §577.020.1.

⁴¹ Mississippi's Implied Consent statute does not apply to blood testing in a DUI-D case. Therefore, a search warrant would be not only permitted, but required to obtain a blood sample.

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 2. Key Provisions of State Laws Pertaining to Chemical Testing²³
(through September 5, 2016)

State	Preliminary Breath Test Law Applicable to Drugs	Implied Consent Law		Chemical Tests for Drugs Permitted by Implied Consent Statute				Refusal ²⁴	Search Warrant
		Applicable in DUI-D Cases	Standard for Application	Breath	Blood	Urine	Saliva	Admitted into Evidence	Permitted for Blood Sample
NE	No	Yes	Arrest	Yes	Yes	Yes	No	Criminal Cases	No
NV	Yes	Yes	Probable Cause	Yes	Yes	Yes	Yes	Criminal cases and administrative actions	Yes
NH	Yes	Yes	Arrest	Yes	Yes	Yes	No	Criminal and civil cases	No
NJ	No	No	N/A	No	No	No	No	Criminal cases	No
NM	No	Yes	Arrest	Yes	Yes	No	No	Criminal and civil cases	No
NY	Yes	Yes	Arrest	Yes	Yes	Yes	Yes	Criminal and civil cases	No
NC	Yes	Yes	Arrest	Yes	Yes	Yes	Yes	Criminal Cases	No
ND	No	Yes	Arrest	Yes	Yes	Yes	No	Criminal and civil cases	No
OH	N/A	Yes	Reasonable Grounds ⁴²	Yes	Yes	Yes	No	Criminal Cases	Yes
OK	N/A	Yes	Arrest	No	Yes	Yes	Yes	Criminal Cases	Yes
OR	N/A	Yes	Arrest	Yes	Yes	Yes	No	Criminal and civil cases	No

⁴² The code states that a chemical test shall be administered at the request of an officer having reasonable grounds to believe a person was operating a vehicle in violation of the DWI (OVI) statute. It also states that if an officer arrests a person for a violation, the officer shall request such person to submit to a chemical test. R.C. §4511.191(A)(3), (5). Based on this language, it appears that arrest is not required for an officer to request someone to submit to a test. However, if there is an arrest, then the officer is mandated to give such test.

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 2. Key Provisions of State Laws Pertaining to Chemical Testing²³
(through September 5, 2016)

State	Preliminary Breath Test Law Applicable to Drugs	Implied Consent Law		Chemical Tests for Drugs Permitted by Implied Consent Statute				Refusal ²⁴	Search Warrant
		Applicable in DUI-D Cases	Standard for Application	Breath	Blood	Urine	Saliva	Admitted into Evidence	Permitted for Blood Sample
PA	Yes	Yes	Reasonable Grounds	Yes	Yes	Yes	No	Criminal Cases	No
PR	Yes	Yes	Reasonable Grounds	Yes	Yes	Yes	Yes	N/A	Yes
RI	Yes	Yes	Reasonable Grounds	Yes	Yes	Yes	Yes	Yes – Criminal cases if defendant chooses to testify	Yes
SC	N/A	Yes	Arrest	Yes	Yes	Yes	Yes	Criminal cases	No
SD	No	Yes	Arrest	Yes	Yes	No	Yes	Criminal cases	No
TN	N/A	Yes	Probable Cause	No	Yes	Yes	No	Criminal cases	No
TX	N/A	Yes	Arrest	Yes	Yes	Yes	No	Criminal cases	No
UT	N/A	Yes	Arrest	Yes	Yes	Yes	Yes	Criminal and civil cases	No
VT	Yes	Yes	Probable Cause	Yes	Yes	No	No	Criminal cases	No
VA	Yes	Yes	Arrest	Yes	Yes	No	No	Criminal case	Yes
WA	Yes	Yes	Arrest	No	No	No	No	Criminal cases involving breath	Yes ⁴³
WV	Yes	Yes	Arrest	Yes	Yes	No	No	Criminal cases	No

⁴³ Washington's Implied Consent statute does not apply to blood testing in a DUI-D case. Therefore, a search warrant would be not only permitted, but required to obtain a blood sample.

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 2. Key Provisions of State Laws Pertaining to Chemical Testing²³ (through September 5, 2016)									
State	Preliminary Breath Test Law Applicable to Drugs	Implied Consent Law		Chemical Tests for Drugs Permitted by Implied Consent Statute				Refusal²⁴	Search Warrant
		Applicable in DUI-D Cases	Standard for Application	Breath	Blood	Urine	Saliva	Admitted into Evidence	Permitted for Blood Sample
WI	Yes	Yes	Arrest	Yes	Yes	Yes	No	Criminal Cases	No
WY	N/A	Yes	Arrest	Yes	Yes	Yes	No	No	No

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 3. Marijuana Possession & Use Laws (through December 31, 2016)					
State	Decriminalized	Legalized	Legal for Medical Use	Legal for Recreational Use	Penalties for Illegal Possession (Up to 1 oz.)
AL	No	No	No	No	<u>First Offense (Class A Misd.)</u> – Not more than 1 year and \$6,000 . <u>Second Offense (Class D Fel.)</u> – Between 1 year and 1 day and 5 years , and not more than \$7,500 .
AK	Possession ≤ 1 oz.	Possession ≤ 1 oz.	Yes	Possession ≤ 1 oz.	Consumption in public is a violation, punishable by a fine up to \$100 .
AZ	No	No	Yes	No	<u>Possession < 2 lb.</u> (Class 6 felony) – Not less than \$750 or three times the value of the marijuana , whichever is greater; a term of imprisonment; if granted probation, not less than 24 hours of community service, drug testing.
AR	No	No	Yes	No	<u>< 4 oz.</u> (Class A Misdemeanor) – Not more than 1 year , and not more than \$2,500 . <u>1 oz. < 4 oz. and 4 previous convictions (Class D Felony)</u> – Not more than 6 years , and not more than \$10,000 .
CA	Possession ≤ 28.5 gr.	Possession ≤ 28.5 gr.	Yes	Possession ≤ 28.5 gr.	N/A
CO	Possession ≤ 1 oz.	Possession ≤ 1 oz.	Yes	Possession ≤ 1 oz.	N/A
CT	Possession < ½ oz.	No	Yes	No	<u>Possession < ½ oz.</u> <u>First Offense - \$150 civil penalty.</u> <u>Subsequent Offense</u> – Between \$200 and \$500 civil penalty . <u>Possession > ½ oz.</u> <u>First Offense (Class A Misdemeanor)</u> – Not more than 1 year and \$2,000 . <u>Second Offense (Class A Misdemeanor)</u> – Not more than 1 year and \$2,000 , mandatory evaluation and treatment for drug dependency. <u>Third or Subsequent Offense (Class A Misdemeanor or Class E Felony)</u> – Not more than 1 year and \$2,000 . ⁴⁴

⁴⁴ Alternatively, the court may find the person to be a persistent offender and sentence the person to not more than **3 years**.

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 3. Marijuana Possession & Use Laws (through December 31, 2016)					
State	Decriminalized	Legalized	Legal for Medical Use	Legal for Recreational Use	Penalties for Illegal Possession (Up to 1 oz.)
DE	Possession ≤ 1 oz.	No	Yes	No	N/A
DC	Possession ≤ 2 oz.	Possession ≤ 2 oz.	Yes	Possession ≤ 2 oz.	N/A
FL	No	No	No ⁴⁵	No	<u>Possession ≤ 20 grams</u> (Misdemeanor) – Not more than 1 year and \$1,000 . <u>Possession > 20 grams</u> (3rd Degree Felony) – Not more than 5 years and \$5,000 .
GA	No	No	No	No	<u>Possession ≤ 1 oz.</u> (Misdemeanor) – Up to 12 months and/or up to \$1,000 .
HI	No	No	Yes	No	<u>Possession < 1 oz.</u> (Petty Misdemeanor) – Up to 30 days and/or up to \$1000 .
ID	No	No	No	No	<u>Possession < 1 oz.</u> (Petty Misdemeanor) – Up to 30 days and/or up to \$1000 .
IL	Possession ≤ 10 gr.	No	Yes	No	<u>Possession ≤ 10 grams</u> (Civil violation) – A civil penalty of between \$100 and \$200 . <u>Possession 10 < 30 grams</u> (Class B Misdemeanor) – Not more than 6 months , and/or \$1,500 .
IN	No	No	No	No	<u>1st Offense Possession</u> (Class B Misdemeanor) – Not more than 180 days and/or \$1,000 . <u>2nd or Subsequent Offense Possession and < 30 grams</u> (Class A Misdemeanor) – Not more than 1 year and/or \$5,000 .

⁴⁵ However, the Florida Medical Marijuana Legalization Initiative was approved by voters as a constitutional amendment on November 8, 2016, and became effective on January 3, 2017. F.S.A. Const. Art. 10 §29.

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 3. Marijuana Possession & Use Laws (through December 31, 2016)					
State	Decriminalized	Legalized	Legal for Medical Use	Legal for Recreational Use	Penalties for Illegal Possession (Up to 1 oz.)
IA	No	No	No	No	<p><u>First offense</u> (Serious misdemeanor) – Not more than 6 months and/or \$1,000.</p> <p><u>Second offense</u> (Serious misdemeanor) – Not more than 1 year, and a fine between \$315 and \$1,875.</p> <p><u>Third offense</u> (Aggravated misdemeanor) – Not more than 2 years, and a fine between \$625 and \$6,250.</p>
KS	No	No	No	No	<p><u>First Offense</u> (Class B Nonperson Misdemeanor) - Not more than 6 months in jail and \$1,000.</p> <p><u>Second Offense</u> (Class A Nonperson Misdemeanor) - Not more than 1 year in jail and \$2,500.</p> <p><u>Third Offense</u> (Drug Severity Level 5 Felony) – Between 14 and 16 months in prison, and not more than \$100,000.</p>
KY	No	No	No	No	<p><u>First and Subsequent Possession < 8 oz.</u> (Class B Misdemeanor) - Not more than 45 days and/or \$250.</p>
LA	No	No	Yes	No	<p><u>First offense (< 14 grams)</u> – Not more than 15 days in jail and/or \$300.</p> <p><u>First offense (14 grams < 2.5 lbs.)</u> – Not more than 6 months in jail and/or \$500.</p> <p><u>Second offense (< 2.5 lbs.)</u> – Not more than 6 months in jail and/or \$1,000.</p> <p><u>Third offense (< 2.5 lbs.)</u> – Not more than 2 years imprisonment (with or without hard labor) and/or \$2,500.</p> <p><u>Fourth or subsequent offense (< 2.5 lbs.)</u> – Not more than 8 years in prison (with or without hard labor), and/or \$5,000.</p>
ME	No ⁴⁶	Possession ≤ 2.5 oz.	Yes	No	<p><u>Possession (< 1.25 oz.)</u> - Civil violation between \$350 and \$600.</p>

⁴⁶ The Maine Marijuana Legalization Act, which legalizes possession of ≤ 2.5 oz. marijuana for recreational use was approved by voters November 8, 2016, and became effective January 30, 2017.

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 3. Marijuana Possession & Use Laws (through December 31, 2016)					
State	Decriminalized	Legalized	Legal for Medical Use	Legal for Recreational Use	Penalties for Illegal Possession (Up to 1 oz.)
MD	Possession ≤ 10 gr.	No	Yes	No	<p><u>Possession < 10 grams Decriminalized:</u> <u>First offense</u> - Civil offense not more than \$100. <u>Second offense</u> - Civil offense not more than \$250. <u>Third or subsequent offense</u> - Civil offense not more than \$500, and drug education program, assessment for substance abuse disorder, and substance abuse treatment, if necessary. <u>Possession ≥ 10 grams (Misdemeanor)</u> - Not more than 1 year and/or \$1,000.</p>
MA	Possession ≤ 1 oz.	Possession ≤ 1 oz.	Yes	Possession ≤ 1 oz.	N/A
MI	No	No	Yes	No	<p><u>Possession (Misdemeanor)</u> - Not more than 1 year and/or \$2,000. <u>Use (Misdemeanor)</u> - Not more than 90 days and/or \$100.</p>
MN	Possession ≤ 42.5 gr.	No	Yes	No	<p><u>Possession of < 42.5 gr.</u> (Petty Misdemeanor) – Not more than \$200, participation in a drug education program.</p>
MS	No	No	No	No	<p><u>Possession ≤ 30 grams</u> - A fine of between \$100 and \$250. <u>Second offense (w/in 2 years)</u> – A fine of \$250 and not more than 60 days in jail, mandatory participation in an approved drug education program. <u>Third or subsequent w/in 2 years (Misdemeanor)</u> – Between \$250 and \$1,000, and not more than 6 months in jail.</p>
MO	No	No	No	No	<p><u>Possession < 35 gr.</u> (Class A misdemeanor): Not more than 1 year and/or \$100.</p>
MT	No	No	Yes	No	<p><u>Possession < 60 gr:</u> <u>First offense</u> (misdemeanor) – Not less than \$100 or more than \$500 and not more than 6 months. <u>Second Offense</u> (misdemeanor) - Not more than \$1,000 and/or imprisonment in county jail for a term not to exceed 1 year or in the State prison for a term not to exceed 3 years.</p>

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 3. Marijuana Possession & Use Laws (through December 31, 2016)					
State	Decriminalized	Legalized	Legal for Medical Use	Legal for Recreational Use	Penalties for Illegal Possession (Up to 1 oz.)
NE	No	No	No	No	<p><u>First offense</u> (infraction): \$300 and assigned to attend a course if the judge determines that such course is in the best interest of the individual defendant;</p> <p><u>Second offense</u> (class 4 misdemeanor) - \$400 and not more than 5 days;</p> <p><u>Third or subsequent offenses</u> (class IIIA misdemeanor) - \$500 and not more than 7 days.</p>
NV	No	No ⁴⁷	Yes	No	<p><u>First offense possession of ≤ 1 oz.</u> (misdemeanor): Not more than \$600 or mandatory assessment for addiction;</p> <p><u>Second offense possession of ≤ 1 oz.</u> (misdemeanor): Not more than \$1,000 fine or mandatory treatment;</p> <p><u>Third offense possession of ≤ 1 oz.</u> (misdemeanor): Not more than 365 days and/or \$2,000;</p> <p><u>Fourth or subsequent offense</u> (Class E Felony): Between 1 year and 4 years, and not more than \$5,000.</p>
NH	No	No	Yes	No	<p><u>Possession</u> (class A misdemeanor) - Not more than 1 year and/or \$2,000.</p>
NJ	No	No	Yes	No	<p><u>Possession ≤ 50 grams</u> - Not than 6 months and not more than \$1,000;</p>
NM	No	No	Yes	No	<p><u>First Offense possession ≤ 1 oz.</u> (petty misdemeanor) - 15 days and/or \$50-\$100.</p> <p><u>Second or subsequent offense possession ≤ 1 oz.</u>(misdemeanor) - 1 year and/or \$100-\$1000.</p>

⁴⁷ In November 2016, Nevada voted to pass Question 2 that will allow people 21 and older to possess personal use quantities of marijuana and permits such persons to grow up to six marijuana plants, if they reside 25 miles away or more from an operating marijuana retailer. This law does not permit public use or display of marijuana that will remain subject to criminal penalties. This law went into effect January 1, 2017.

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 3. Marijuana Possession & Use Laws (through December 31, 2016)					
State	Decriminalized	Legalized	Legal for Medical Use	Legal for Recreational Use	Penalties for Illegal Possession (Up to 1 oz.)
NY	No	No	Yes	No	<p>Possession ≤ 25 grams: <u>First Offense</u> - \$100; <u>Second offense (within 3 years)</u> - \$200; <u>Third or subsequent offense (within 3 years)</u> - \$250 and/or not more than 15 days. <u>Possession of > 25 grams but < 2 oz.</u> (class B misdemeanor) - Not more than 3 months and \$500.</p>
NC	No	No	Yes	No	<p><u>Possession ≤ 0.5 oz.</u> (class 3 misdemeanor) - Not more than \$200 or 20 days. Any sentence of imprisonment imposed for this offense must be suspended. <u>Possession > 0.5 < 1.5 oz.</u> (class 1 misdemeanor) - Between 1 and 45 days, and not more than \$1000.</p>
ND	No	No	No ⁴⁸	No	<p><u>Possession ≤ 1 oz.</u> (Class B misdemeanor) - Not more than 30 days and/or \$1,000.</p>
OH	No	No	No	No	<p><u>Possession < 100 grams</u> (minor misdemeanor) - \$150 fine.</p>
OK	No	No	No	No	<p><u>First offense</u> (misdemeanor) - Not more than 1 year and \$1,000. <u>Second offense</u> (within 10 years) (felony) - Between 2 years and 5 years, and not more than \$5,000. <u>Second or subsequent</u> (> 10 years since first offense) (felony) - Between 1 year and 5 years, and not more than \$5,000.</p>

⁴⁸ Voters in North Dakota passed Measure 5 in 2016. This law provides exceptions to illegal possession for medical marijuana uses. This law, cited as the North Dakota Compassionate Care Act, went into effect in February 2017.

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 3. Marijuana Possession & Use Laws (through December 31, 2016)					
State	Decriminalized	Legalized	Legal for Medical Use	Legal for Recreational Use	Penalties for Illegal Possession (Up to 1 oz.)
OR	No	No	Yes	No	<p><u>Use in Public</u> (class B violation) – Not more than \$1,000.</p> <p><u>Possession > 4 times the statutory maximum amount</u> (class A misdemeanor) - Not more than 1 year and \$6,250.</p> <p><u>Possession > 2 < 4 times statutory maximum amount</u> (class B misdemeanor) - Not more than 6 months and \$2,500.</p> <p><u>Possession ≤ 2 times statutory maximum amount</u> (class B violation) – Not more than \$1,000.</p>
PA	No	No	No	No	<u>Possession ≤ 30 grams</u> (misdemeanor) – Not more than 30 days and/or \$500 .
PR	No	No	No	No	<p><u>First offense</u> (felony) – Not more than 3 years and \$5,000.</p> <p><u>Second offense</u> (felony) – Not more than 6 years.</p>
RI	Possession ≤ 1 oz.	No	Yes	No	<p><u>Possession ≤ 1 oz.</u> – \$150 civil violation.</p> <p><u>Possession > 1 oz.</u>(misdemeanor) – Not more than 1 year, and between \$200 and \$500.</p>
SC	Yes	No	No	No	<p><u>First offense possession of ≤ 1 oz.</u> (misdemeanor) – Not more than 30 days and between \$100 and \$200.</p> <p><u>Second or subsequent offense ≤ 1 oz.</u> (misdemeanor) – Not more than 1 year and not more than \$2,000.</p>
SD	No	No	No	No	<u>Possession of ≤ 2 oz.</u> (class 1 misdemeanor) – Not more than 1 year and \$2,000 .
TN	No	No	No	No	<p><u>Possession of a ≤ 0.5 oz.</u>: Not more than 1 year and \$2,500.</p> <p>A \$250 fine is required for all first-time convictions. A subsequent offense brings a \$500 mandatory minimum fine.</p>
TX	No	No	No	No	<u>Possession ≤ 2 oz.</u> (Class B misdemeanor) – Not more than 180 days and/or \$2,000 .

Summary Charts of Key Provisions of State Laws: Drug-Impaired Driving

Table 3. Marijuana Possession & Use Laws (through December 31, 2016)					
State	Decriminalized	Legalized	Legal for Medical Use	Legal for Recreational Use	Penalties for Illegal Possession (Up to 1 oz.)
UT	No	No	No	No	<p><u>Possession < 1 oz.</u> (class B misdemeanor) – Not more than 6 months and \$1,000.</p> <p><u>Second offense</u> (class A misdemeanor) – Not more than 1 year and \$2,500.</p> <p><u>Third or subsequent</u> (third degree felony) – Not more than 5 years and \$5,000.</p>
VT	Possession ≤ 1 oz.	No	Yes	No	<p><u>Possession ≤ 1 oz.:</u></p> <p><u>First Offense</u> – Not more than \$200 civil violation.</p> <p><u>Second Offense</u> – Not more than \$300 civil violation.</p> <p><u>Third Offense</u> – Not more than \$500 civil violation.</p>
VA	No	No	No	No	<p><u>First Offense</u> – Not more than 30 days and/or \$500.</p> <p><u>Second or Subsequent Offense</u> – Not more than 12 months and \$2,500.</p>
WA	Possession ≤ 1 oz.	Possession ≤ 1 oz.	Yes	Possession ≤ 1 oz.	<p><u>Possession < 40 grams</u> – Between 24 hours and 90 days and \$250.</p> <p><u>Second or subsequent possession < 40 grams</u> – Between 24 hours and 90 days, and \$500.</p>
WV	No	No	No	No	<p><u>Possession (any amount)</u> (misdemeanor) – Between 90 days and 6 months, and not more than \$1,000.</p>
WI	No	No	No	No	<p><u>First Offense</u> – Not more than 6 months and/or \$1,000.</p> <p><u>Second Offense</u> (class I felony) – Not more than \$10,000 and/or 3.5 years.</p>
WY	No	No	No	No	<p><u>Use or under the influences marijuana</u> (misdemeanor) – Not more than 6 months and \$750.</p> <p><u>Possession ≤ 3 oz.</u> (misdemeanor) – Not more than 12 months and/or \$1,000.</p>

State Laws

STATE

General Reference:

ALABAMA

Code of Alabama (Ala.)

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

Type of DUI-D Law:**Under the Influence**Basis for DUI-D Charge:

Ala. §32-5A-191(a)(3), (4), (5).

Standard DUI-D Offense:

Drive or be in actual physical control of any vehicle⁴⁹ while under the influence of a controlled substance⁵⁰, the combined influence of alcohol and a controlled substance, or any substance which impairs the mental or physical faculties of the person, to a degree which renders him or her incapable of safely driving. Ala. §32-5A-191(a)(3), (4), (5).

Illegal Per Se Law:

None

Presumption Based on Drugs – State Has (Yes/No):

None

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

No⁵¹

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

N/A

Implied Consent Law:

Yes. Ala. §32-5-192.

Arrest Required (Yes/No):

Yes. Ala. §32-5-192.

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

No – Except accident cases resulting in death or a serious physical injury. Ala. Code §32-5-200; *State v. Radford*, 557 So.2d 1285 (Ala. Crim. App. 1989).

Refusal to Submit to Chemical Test Admitted into Evidence:

N/A

Other Information:

Non-Breath Chemical Tests for Drug Concentration Authorized Under the Implied Consent Law:**None**

Blood:

N/A

Urine:

N/A

Other:

Search Warrant Required

Alabama's Implied Consent statute does not apply to blood testing in a DUI-D case. Therefore, a search warrant would

⁴⁹ A “vehicle” means “every device in which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks or electric personal assistive mobility devices.” Ala. §32-1-1.1(81). In the DUI-D context, a bicycle or a ridden animal are also deemed to be a vehicle. *Id.*

⁵⁰ A “controlled substance” includes any drug, substance or immediate precursor in Schedules I through V of Article 2 of Title 20 Chapter 2 of the Alabama Code. Ala. Code §20-2-2(4).

⁵¹ However, law enforcement officers may administer such tests, and may form the basis of probable cause to arrest a suspect for DUI. *Boyd v. City of Montgomery*, 472 So. 2d 694 (Ala. Crim. App. 1985).

be required to obtain a blood sample. Ala. §32-5-192.

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform: **N/A**
 Entity Establishing Testing Protocols **N/A**
 Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform: **No**
 Other:

Adjudication of DUI-D Charges:

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

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription: **No.** Ala. Code §32-5A-191(d).
 Therapeutic Concentration: **Yes**⁵²
 Involuntary Intoxication: **Yes - Limited.**⁵³ Involuntary intoxication is not a defense to a criminal charge, unless as a result the actor lacks capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. Ala. Code §13A-3-2(a), (c).

Other:

Sanctions for Refusal to Submit to a Chemical Test:

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

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

Criminal Sanctions Following a DUI-D Conviction:

⁵² Based on the language of the DUI-D statute, it appears to be a valid defense that the concentration of a controlled substance would not have rendered the person under the influence to a degree which renders him or her incapable of safely driving. Ala. Code §32-5A-191. *See also Raper v. State*, So. 2d 544 (Ala. Crim. App. 1991).

⁵³ Involuntary intoxication is "...resulting from force, fraud, or artifice." *Miller v. State*, 439 So. 2d 800, 802 (Ala. 1983) (citing commentary to Ala. Code §13A-3-2). By contrast, voluntary intoxication means "intoxication caused by substances that the actor knowingly introduced into his body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them under circumstances what would afford a defense to a charge of crime." *Id.* (citing Ala. Code §13A-3-2(e)(2)).

Imprisonment/Fine:	<p><u>First offense</u> – Not more than 1 year and/or not less than \$600 or more than \$2,100;⁵⁴</p> <p><u>Second offense</u> (within 5 years) – Not more than 1 year (with 5 days mandatory or 30 days community service) and not less than \$1,100 or more than \$5,100;</p> <p><u>Third offense</u> (within 5 years) – Not less than 60 days (mand) or more than 1 year and not less than \$2,100 or more than \$10,100;</p> <p><u>Fourth or subsequent offense</u> (within 5 years) – Not less than 1 year and 1 day (with 10 days mandatory) or more than 10 years and not less than \$4,100 or more than \$10,100.⁵⁵ Ala. §32-5A-191(e), (f), (g), (h).</p> <p>Serious Bodily Injury related to a DUI-D Offense (assault in the first degree – Class B felony): Not less than 2 years or more than 20 years,⁵⁶ and may be fined not more than \$30,000. Ala. §§13A-5-2(b); 13A-5-6(a)(2); 13A-5-11(a)(2); 13A-6-20(a)(5), (b).</p>
Mandatory Minimum Term/Fine:	N/A
Community Service:	<u>Second offense</u> (within 5 years) – Not less than 30 days if no jail time is served. Ala. §32-5A-191(f).
Restitution:	Yes. Victims' Compensation Fund. Ala. §15-23-1, <i>et seq.</i> Special Note: Under Ala. §15-18-65 <i>et seq.</i> , a defendant may be required to pay restitution to a victim (or a victim's representative) as a result of damages caused by the defendant's criminal behavior.
Child Endangerment:	The minimum sentence is double the usual sanction if an offender age 21 or over was operating a vehicle while transporting a passenger under age 14 at the time of the DUI-D offense. Ala. §32-5A-191(j).
Other:	Special Note: A Class C felony conviction for a fourth DUI offense is not to be considered a felony for purposes of the enhancement of punishment under the State's Habitual Felony Offender Law. Ala. §32-5A-191(h).
<u>Administrative Sanctions – Post-Conviction</u>	
Substance Abuse Education:	Yes. Ala. §32-5A-191(k).
Substance Abuse Treatment:	Yes. Ala. §32-5A-191(k).
Vehicle Impoundment/Confiscation:	Impoundment. Ala. §§ 32-6-19(b), 32-13-2.
Authorized by Specific Statutory Authority:	For a subsequent offense within 5 years, the registrations of all vehicles owned by the offender shall be suspended for the duration of the license suspension. There is a hardship

⁵⁴ The jail and fine sanctions do not apply to first offenders who are under 21. Ala. §32-5A-191(b).

⁵⁵ A court may choose to suspend or probate a portion of the sentence conditioned upon the defendant's enrollment in and successful completion of a chemical dependency program. If probation is granted, an offender may be placed on house arrest with electronic monitoring. Ala. §32-5A-191(h).

⁵⁶ These sanctions apply to first offense convictions for assault in the first degree. To determine the sanctions for a 2nd or subsequent offense of this type, see Ala. §13A-5-9. Murder: If a person causes the death of another while operating a motor vehicle while intoxicated and in an erratic manner with excessive speed, that person may be prosecuted for murder. *See Tims v. State*, 711 So. 2d 1118 (Ala. Crim. App. 1997).

	exemption for other individuals. Ala. §32-5A-191(q).
Terms Upon Which Vehicle Will Be Released:	N/A
Other Miscellaneous Sanctions:	N/A
<u>Homicide by Vehicle:</u>	
State Has Such a Law:	Yes
Imprisonment/Fine:	<u>Criminally Negligent Homicide</u> while driving under the influence – Not less than 1 year and 1 day or more than 10 years and may be fined not more than \$15,000 . Ala. §§13A-5-6; 13A-5-11; 13A-6-4(a), (c). <u>Murder/Reckless Homicide</u> ⁵⁷ - Not less than 10 years or more than 99 years , and a fine of up to \$60,000 . If committed under aggravated circumstances, punishment is death or life imprisonment without parole. Ala. §§13A-5-6; 13A-5-11; 13A-6-2.
Mandatory Minimum Term/Fine:	None
Other:	N/A
<u>DUI-D Offenses and Commercial Motor Vehicles (CMV):</u>	A person is “disqualified” from operating a CMV for not less than 1 year (not less than 3 years if transporting hazardous materials) if while driving a CMV that person (1) is under the influence of a controlled substance; or (2) refuses to submit to a chemical test for drug concentration. For a subsequent violation or a combination of two or more violations of any of the above listed items, the “disqualification” is for life (10 years mand). Ala. §§32-6-49.3(2), (3); 32-6-49.11; 32-6-49.13.
<u>Driving While License Suspended for DUI-D Offense:</u>	
Criminal - Fine/Imprisonment:	Note. ⁵⁸ Misdemeanor – Not less than \$100 or more than \$500 and may be imprisoned for not more than 180 days . Ala. §32-6-19(a).
Mandatory Minimum Fine/Imprisonment Term:	None . However, there is an additional penalty of \$50 used to fund safety and training funds. This penalty appears to be mandatory. Ala. §32-6-19(a), (b), (c).
Other:	

⁵⁷ A person commits the crime of murder if, under circumstances manifesting extreme indifference to human life, he recklessly engages in conduct which creates a grave risk of death to a person other than himself, and thereby causes the death of another person. Ala. §13-6-2(a)(2). If a person causes the death of another while operating a motor vehicle while under the influence and in an erratic manner with excessive speed, that person may be prosecuted for murder. *See Tims v. State*, 711 So. 2d 1118 (Ala. Crim. App. 1997).

⁵⁸ There is no specific statutory provision for driving on a suspended or revoked license, where the basis was a DUI-D offense. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are suspended or revoked. Further, neither the CMV laws nor the general code provisions concerned with driving on a suspended or revoked license provides specific sanctions for operating a CMV while disqualified or under an out-of-service order.

Habitual Traffic Offender Law:

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

Other State Laws Related to Drug Use:

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

No, but the implied consent law applies to dead persons. Ala. §32-5-200(c).

Drug Chemical Test Given to Deceased Driver Killed in Crash:

N/A

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

N/A

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

N/A

Drug Chemical Tests on Persons Involved in Traffic Crashes:

Yes. A person who is involved in an accident which resulted in a death or a “serious physical injury,” and where there are reasonable grounds that they were driving while under the influence of alcohol, amphetamines, opiates or cannabis, shall be deemed to have given consent to a test of their blood for the purpose of determining the alcoholic content or the presence of the drugs listed. Ala. §32-5-200(a).

Marijuana – Possession and Use Laws:

Illegal.

First offense (Class A Misdemeanor) – Not more than **1 year** in jail and a fine of not more than **\$6,000**. Ala. Code §§ 13A-5-7; 13A-5-12; 13A-12-214.

Second or subsequent offense (Class D Felony) – Not less than **1 year and 1 day**, or more than **5 years**, and a fine of up to **\$7,500**. Ala. Code §§13A-5-6; 13A-5-11; 13A-12-213.

Intoxicant Exclusion Law (UPPL):

Yes. Applies to intoxicants and narcotics, unless administered on the advice of a physician. Ala. §27-19-26

STATE	ALASKA
General Reference:	Alaska Statutes (AS); Alaska Administrative Code (AAC)
<u>Type of DUI-D Law:</u>	Under the Influence
<u>Basis for a DUI-D Charge:</u>	AS §28.35.030(a)(1).AS §28.35.030(a)(1).
Standard DUI-D Offense:	Drive or operate a motor vehicle ⁵⁹ while under the influence ⁶⁰ of an inhalant ⁶¹ or any controlled substance ⁶² , singly or in combination with an alcoholic beverage or intoxicating liquor. AS §28.35.030(a)(1).
Illegal Per Se Law:	No
Presumption Based on Drugs – State Has (Yes/No):	No
Other:	N/A
<u>Chemical Testing for Drug Concentration:</u>	
Preliminary Breath Test Law – State Has Such a Law (Yes/No):	Yes. AS §28.35.031(b). This also applies to CMV operators. AS §28.33.031(c).
Preliminary Breath Test Law – Applies to Drugs (Yes/No):	No
Implied Consent Law:	Yes. AS §28.35.031.
Arrest Required (Yes/No):	Yes. Unless death or serious physical injury. AS §28.35.031(a), (g).
Implied Consent Law Applies to Drugs (Yes/No):	No. Except as noted in “Other Information” below.
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes – Criminal and Civil Cases. AS §§28.35.032(e).
Other Information:	It appears that if a person has been lawfully arrested for driving while under the influence of an inhalant or controlled substance, the person is considered to have given consent to a breath test in order to determine the alcohol content of the person’s breath. However, the statute does not authorize chemical testing of blood or urine to determine the presence of controlled substances, unless the person has been involved in an accident that

⁵⁹ A “motor vehicle” means any self-propelled device “by which a person or property may be transported or drawn upon or immediately over a highway or vehicular way or area.” AS §§28.90.990(17), (30). A “motor vehicle” does not include a device used exclusively upon stationary rails or tracks, mobile homes, or vehicles moved by human or animal power. Id.

⁶⁰ A person is “under the influence” of an alcoholic beverage, intoxicating liquor, inhalant, or controlled substance, singly or in combination, when as a result of the use thereof, his or her physical or mental abilities are impaired so that he or she no longer has the ability to operate or drive a motor vehicle with the caution characteristic of a person of ordinary prudence who is not under the influence of such a substance. *Adams v. State*, 359 P.3d 990, 993 (2015).

⁶¹ An “inhalant” means a material or substance that is readily vaporizable at room temperature and whose vapors or gases, when inhaled, (i) pose an immediate threat to the life or health of the person; or (ii) are likely to have adverse delayed effects on the health of the person; including but not limited to: gasoline, materials and substances containing petroleum distillates, and common household materials and substances whose containers bear a notice warning that inhalation of vapors or gases may cause physical harm. AS §§28.35.030(u)(1); 47.37.270(6)

⁶² A “controlled substance” means any substance listed as being controlled under AS §11.71 or 21 U.S.C. 812-813, or determined under Federal regulations to be controlled for the purposes of 21 U.S.C. 801-813 (Controlled Substances Act). §§28.33.190; 28.35.039(2).

causes death or physical injury to another person, or the person is unconscious. AS §§28.35.031(a); 28.35.035(a), (b). Note.⁶³

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

Blood: **No.** Except as provided in “other information” above.
 Urine: **No.** Except as provided in “other information” above.
 Other: Except as provided in “other information” above, Alaska’s Implied Consent statute does not apply to blood testing in a DUI-D case. Therefore, a search warrant would be required to obtain a blood sample. AS §28.35.031.

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform: **Yes. A person trained according to techniques, methods, and standards of training approved by the Department of Public Safety.** AS §28.35.033(d).
 Entity Establishing Testing Protocols: **Yes.** Chemical analysis of breath or blood must be performed according to methods approved by the **Department of Public Safety.** The Department of Public Safety is authorized to approve satisfactory techniques, methods, and standards of training necessary to ascertain the qualifications of individuals to conduct the analysis. AS §28.35.033(d).
 Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform: **No.** AS §28.35.031(h).
 Other: **Independent Testing**
 The person tested may request to have an additional independent chemical test administered. AS §28.35.033(e).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No): **No**
 Anti-Plea-Bargaining Statute (Yes/No): **No**
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes.** AS §28.35.030(h) (for felony DUI-D conviction under AS §28.35.030(n) and for felony Refusal to take a breath test under AS §28.35.032(p)).⁶⁴

⁶³ In Alaska, technically a “chemical test” of blood, breath, and urine for alcohol or a controlled substance may be administered to a person without consent if that person has been arrested for a DUI-D offense where there has been an accident involving death or physical injury to another person. AS §28.35.035(a). *See also* AS §28.35.031(g) (blood and urine for controlled substances); and *Municipality of Anchorage v. Ray*, 854 P.2d 740 (Alaska App. 1993) (holding, among other things, that a blood sample drawn by a physician was not so great of an intrusion as to violate due process, and search and seizure provisions of Federal and Alaska Constitutions were not violated by statute allowing police to take blood alcohol sample from arrested motorist without consent). However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court’s decisions in *Birchfield v. North Dakota*, 579 U.S. _____ (2016) (holding that the search incident to arrest exception to the warrant requirement does not apply to warrantless DUI blood draws); and *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

Affirmative Defenses to DUI-D Charge:Legal Entitlement/Valid Prescription: **No**Therapeutic Concentration: **Yes**⁶⁵Involuntary Intoxication: **Yes.** *Solomon v. State*, 227 P.3d 461, 462 (Alaska App. 2010) (requires defendant to establish “at least a reasonable possibility” that the defendant did not act negligently regarding the circumstance that the substance he/she ingested was an intoxicant).⁶⁶

Other:

Sanctions for Refusal to Submit to a Chemical Test:Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **Infraction** (non-criminal offense) – Not more than **\$300**. AS §§28.35.031(e); 28.90.010(c).Preliminary Breath Test – Other: Refusal to submit to a PBT may be admitted into evidence at either a criminal or civil proceeding. AS §28.35.031(c). It is a Class B misdemeanor for a CMV operator to refuse to submit to a PBT. AS §28.33.031(f). The sanctions for this offense are not more than **90 days** in jail and/or a fine of not more than **\$2,000**. AS §12.55.035(b)(6); 12.55.135(b).Refusal to Take Implied Consent Chemical Test – Criminal Sanction⁶⁷ (Fine/Jail): Class A misdemeanorClass A misdemeanor1st refusal - not less than **72 consecutive hours** and a fine of not less than **\$1,500**;2nd refusal - not less than **20 days** and a fine of not less than **\$3,000**;3rd refusal - not less than **60 days** and a fine of not less than **\$4,000**;4th refusal - not less than **120 days** and a fine of not less than **\$5,000**;5th refusal = not less than **240 days** and a fine of not less than **\$6,000**;6th and subsequent refusal - not less than **360 days** and a fine of not less than **\$7,000**. AS §28.35.032(g)(1).Class C felony – Fine of not less than **\$10,000**, and:3rd refusal (within 10 years of the preceding offense) - **120 days**⁶⁸;

⁶⁴ Technically a pre-sentence investigation is also required for a felony Refusal to take a blood test under AS §35.032(p). However criminal penalties for refusal to submit to an implied consent blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

⁶⁵ It appears based upon the language of the statute that if a “therapeutic” concentration would not render a person “under the influence,” arguing that the level of the substance detected was merely therapeutic would be a valid defense.

⁶⁶ *Cf. Morgan v. Anchorage*, 643 P.2d 691, 692 (Alaska App. 1982) (rejecting the claim that the government must prove motorist aware he/she was under the influence); and *Van Brunt v. State*, 646 P.2d 872, 873 (Alaska App. 1982) (holding that a conviction for driving under the influence does not require proof that motorist knew he/she was under the influence, or that blood/breath alcohol level exceeded the legal limit; the fact that motorist knowingly drank and drove was enough to support conviction).

⁶⁷ As of June 23, 2016, the listed sanctions only apply when a person refuses to submit to a breath test—they do not apply to a refusal to submit to a blood test. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

4th refusal (within 10 years) - 240 days;
5th or subsequent refusal (within 10 years) - 360 days.

AS 28.35.032(f), (g), (p).

The jail and fine sanctions (including minimum mandatory sanctions), confinement in a community residential center, cost of incarceration (where applicable) for first and subsequent refusal offenses⁶⁹ are the same as for DUI-D offenses. These sanctions run consecutively with any other sanctions. AS §28.35.032(f), (g)(5).

Implied Consent Chemical Test - Other:

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

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:

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

II. Class C felony (third offense within 10 years, or second or subsequent felony offense)⁷⁰ – Not more than **5 years** and may be fined not less than **\$10,000** or more than **\$50,000**. AS §§12.55.035; 12.55.125; 28.35.030(n).

Mandatory Minimum Term/Fine:

I. Class A Misdemeanor offenses:

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

Second offense – Not less than **20 days** and not less than **\$3,000**;

Third offense⁷¹ – Not less than **60 days** and not less than **\$4,000**;

Fourth offense – Not less than **120 days** and not less than **\$5,000**;

Fifth offense – Not less than **240 days** and not less than **\$6,000**;

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

II. Class C felony offenses (offenses occurring within 10

⁶⁸ These are minimum sentences. For maximum sentences, see AS §12.55.125(e).

⁶⁹ For DUI-D convictions or for convictions for refusal to submit to a chemical test, a previous offense is considered to be either a previous chemical test refusal or a previous DUI conviction. AS §§28.35.030(u)(4); 28.35.032(p).

⁷⁰ For either DUI-D offense convictions or for convictions for refusal to submit to a chemical test, a previous offense is considered to be either a previous chemical test refusal or a previous DUI conviction. AS §§28.35.030(u)(4); 28.35.032(o).

⁷¹ Third and subsequent offense sanctions for a Class A misdemeanor only apply when the person is not subject to the Class C felony provisions in AS §28.35.030(n).

	years) - Fine of not less than \$10,000, and: <u>Third offense – 120 days;</u> <u>Fourth offense – 240 days;</u> <u>Fifth and subsequent offense – 360 days.</u> AS §28.35.030(n). If a second or subsequent felony offense, sentence is subject to AS §§12.55.125; 12.55.155.
Community Service:	Note. ⁷² <u>First offense – At least 24 hours;</u> <u>Second offense – At least 160 hours.</u> AS §28.35.030(k). Discretionary for subsequent offenses. AS §12.55.055.
Restitution:	Yes. The court may order a defendant to pay direct compensation to a victim(s). AS §12.55.045.
Child Endangerment:	N/A
Other:	Incarceration Costs: Except for indigent defendants, an offender may be required to pay the cost of their incarceration. However, such cost is limited to a maximum of \$2,000. The cost may be reimbursed from an Alaska Permanent Fund Dividend of an indigent defendant. AS §28.35.030(k). EMS, Police, and Fire Department Costs: A defendant may be ordered to pay the reasonable costs of any “emergency response” associated with an accident related to the DUI-D offense. An “emergency response” includes emergency medical, law enforcement and fire department services. AS §28.35.030(m).
 <u>Administrative Sanctions – Post-Conviction:</u>	
Substance Abuse Education:	Yes. AS §28.35.030(h).
Substance Abuse Treatment:	Yes. AS §28.35.030(i).
Vehicle Impoundment/Confiscation:	Yes. Mandatory for Class C felonies. AS §28.35.030(n)(5).
Authorized by Specific Statutory Authority:	Yes. Forfeiture of the vehicle used in DUI-D / Refusal offenses. AS §§28.35.030(n)(5); 28.35.032(p)(6); 28.35.036.
Terms Upon Which Vehicle Will Be Released:	A person claiming ownership or security interest in the vehicle must establish by a preponderance of the evidence that the interest in the vehicle was acquired in good faith; that such person was not the person convicted of the offense; and did not know or have reasonable cause to believe such vehicle would be used in the offense. If this is established, then the vehicle shall be released or an amount equal to the value of that person’s interest shall be

⁷² This community service is not an alternative to the mandatory minimum terms of imprisonment. For third and subsequent offenses, the length and type of community service is discretionary with the court.

Other Miscellaneous Sanctions:	ordered. AS §§28.35.036; 28.35.037(b). N/A
<u>Homicide by Vehicle:</u> State Has Such a Law:	Yes, Case Law – Vehicular homicide can be second-degree murder (AS §11.41.110(a)(2)), manslaughter (AS §11.41.120(a)), or criminally negligent homicide (AS §11.41.130(a)), depending on the degree of the risk created by the defendant’s conduct and level of awareness of risk. ⁷³
Imprisonment/Fine:	<u>Second-degree murder</u> (Unclassified felony)– At least 10 years but not more than 99 years and may be fined not more than \$500,000 ; <u>Manslaughter</u> (Class A felony) – Not more than 20 years and may be fined not more than \$250,000 ; <u>Criminally negligent homicide</u> (Class B felony) – Not more than 10 years and may be fined not more than \$100,000 . AS §§11.41.110; 12.55.035; 12.55.125.
Mandatory Minimum Term/Fine:	None
Other:	N/A
<u>DUI-D Offenses and Commercial Motor Vehicles (CMV):</u>	A person is “disqualified” from operating a CMV for not less than 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person is under the influence of any controlled substance; or refuses to submit to a chemical test. For a second violation or a combination of two violations of any of the above listed items, the “disqualification” is for life (10 years mandatory). For a subsequent violation or a combination of more than two violations of any of the above listed items, there is a <u>mandatory</u> lifetime “disqualification.” A person who operates a CMV while under the influence of any controlled substance or who refuses to submit to a breath test is also subject to the regular DUI-D/IMPLIED consent law criminal and administrative (licensing) sanctions, including <u>all</u> mandatory sanctions. AS §§28.15.165; 28.15.219; 28.33.030; 28.33.031(a); 28.33.130; 28.33.140; 28.35.032(f).
<u>Driving While License Suspended for DUI-D Offense:</u>	
Criminal – Fine/Imprisonment:	Note. ⁷⁴

⁷³ See *Jeffries v. State*, 169 P.3d 913 (Alaska 2007); *Puzewicz v. State*, 856 P.2d 1178 (Alaska App. 1993); and *Foxglove v. State*, 929 P.2d 669 (Alaska App. 1997).

⁷⁴ It is Class A misdemeanor to operate a CMV during a CDL disqualification or a CDL out-of-service order. The sanctions for a first offense – jail for not less than 20 days with 10 days suspended and not less than 80 hours community service; subsequent

	<u>Class A Misdemeanor</u> – Not more than 1 year and may be fined not more than \$10,000 . AS §§12.55.035; 12.55.135(a); 28.15.291.
Mandatory Minimum Fine/Imprisonment:	Not less than 20 days with 10 days suspended and a fine of not less than \$500 , and not less than 80 hours community service. AS §28.15.291(b)(1)(C).
Other:	The court may order forfeiture. AS §28.15.291(b)(5).
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	No
<u>Other State Laws Related to Drug Use:</u>	
Drug Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	No
Drug Chemical Test Given to Deceased Driver Killed in Crash:	N/A
Drug Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	N/A
Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:	N/A
Drug Chemical Tests on Persons Involved in Traffic Crashes:	Yes . AS §28.35.031(b)(2), (g).
<u>Marijuana – Possession and Use Laws:</u>	
	Decriminalized and Legal for Recreational and Medicinal Use.
	Adults may possess ≤ 1 oz. of cannabis and cultivate up to six cannabis plants (no more than three mature) for personal use. AS §17.38.020.
	Sharing or gifting ≤ 1 oz. or six plants to persons at least 21 years of age is also permitted. AS §17.38.020.
	Consumption of cannabis in public is a violation, punishable by a fine of up to \$100 . AS §17.38.040.
<u>Intoxicant Exclusion Law (UPPL):</u>	Yes . AS §21.51.260.

offense (within 10 years) – not less than 60 days and a fine of \$1,000. For both first and subsequent offenders, driving privileges cannot be restored for an additional 90 days. AS §§12.55.035; 12.55.135; 28.33.150(a), (b), (c).

STATE	ARIZONA
General Reference:	Arizona Revised Statutes Annotated (A.R.S.)
<u>Type of DUI-D Law:</u>	Per Se/Zero Tolerance
<u>Basis for DUI-D Charge:</u>	A.R.S. §28-1381(A).
Standard DUI-D Offense:	Drive or be in actual physical control of a vehicle ⁷⁵ while: <p>I. Under the influence of any drug⁷⁶, vapor releasing substance containing a toxic substance, or any combination of liquor, drugs, or vapor releasing substances if the person is impaired to the slightest degree. A.R.S. §28-1381(A)(1); or</p> <p>II. While there is any drug or its metabolite⁷⁷ in the person's body. A.R.S. §28-1381(A)(3).</p>
Illegal Per Se Law:	Any drug and any metabolite capable of causing impairment. A.R.S. §28-1381(A)(3); <i>State ex re. Montgomery v. Harris</i> , 346 P.3d 984, 990 (Ariz. 2014).
Presumption Based on Drugs – State Has (Yes/No):	No
Other:	N/A
<u>Chemical Testing for Drug Concentration:</u>	
Preliminary Breath Test Law – State Has Such a Law (Yes/No):	Yes. A.R.S. §28-1322.
Preliminary Breath Test Law – Applies to Drugs (Yes/No):	Yes. Based on reasonable suspicion of any DUI offense. A.R.S. §28-1322.
Implied Consent Law:	Yes. A.R.S. §28-1321.
Arrest Required (Yes/No):	Yes. A.R.S. §28-1321(A).
Implied Consent Law Applies to Drugs (Yes/No):	Yes. A.R.S. §28-1321(A).
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes – Criminal and civil cases and other proceedings. A.R.S. §28-1388(D).
Other Information:	
<u>Non-Breath Chemical Tests for Drug Concentration Authorized Under the Implied Consent Law:</u>	
Blood:	Yes. A.R.S. §28-1321(A).
Urine:	Yes. A.R.S. §28-1321(A).
Other:	“Other bodily substance.” A.R.S. §28-1321(A).

⁷⁵ A vehicle is defined as “a device in, on or by which a person or property is or may be transported or drawn on a public highway, excluding devices moved by human power or used exclusively on stationary rails or tracks.” A.R.S. §28-101(64).

⁷⁶ The very extensive list of drugs that fall under the per se violation can be found at A.R.S. §13-3401.

⁷⁷ This statute has been interpreted to apply only to metabolites “capable of causing impairment.” *State ex rel. Montgomery v. Harris*, 346 P.3d 984 (Ariz. 2014).

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. A physician, registered nurse, or “another qualified⁷⁸ person.” A.R.S. §28-1388(A).

However, the qualifications of the individual withdrawing the blood and the method used to withdraw the blood are not foundational prerequisites for the admissibility of a blood analysis made pursuant to the implied consent statute. A.R.S. §28-1388(A).

Entity Establishing Testing Protocols:

Yes – Limited to Alcohol Analysis. The Department of Public Safety is authorized to adopt rules prescribing the approval of methods for the analysis of blood or other bodily substances to determine blood alcohol concentration. A.R.S. §28-1326(A). *See also* A.A.C. R13-10-102.

There do not appear to be any parallel statutes or regulations authorizing a particular entity to approve methods for analyzing blood or other bodily substances to detect and/or quantify the presence of other intoxicants.

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:

No

Other:

Independent Testing

A person required to take a blood test pursuant to the implied consent statute must be given a reasonable opportunity to arrange for any physician, registered nurse or other qualified person of the person’s own choosing to administer a test or tests in addition to any administered at the direction of the law enforcement officer. However, the failure or inability to obtain an additional test by a person does not preclude the admission of evidence relating to the test(s) taken at the direction of a law enforcement officer. A.R.S. §28-1388(C).

Samples Collected for Medical Purposes

Persons (e.g., medical facility personnel) who collect blood, urine or other bodily substances from drivers may be requested by law enforcement authorities to supply samples of such substances to them for testing. A.R.S. §28-1388(E).

Search Warrant

If a person under arrest refuses, samples may be obtained through a search warrant. A.R.S. §28-1321(D)(1).

Adjudication of DUI-D Charges:

⁷⁸ A phlebotomist is a qualified person under the statute. *State v. May*, 112 P.3d 39 (Ariz. 2005) (blood draw performed by deputy who had taken one-week course in phlebotomy and had drawn blood 150 – 200 times upheld). *See also State v. Nocea*, 221 P.3d 1036 (Ariz. 2009) (upholding blood draw performed upon defendant seated in police car, by a law enforcement officer who was a qualified phlebotomist). However, an official certification in phlebotomy is not required in order for an individual to be considered a “qualified person;” the person need only demonstrate competence through training or experience. *See State v. Carrasco*, 49 P.3d 1140 (Ariz. 2002) and *State ex rel. Pennartz v. Olcavage*, 30 P.3d 649 (Ariz. 2001).

Mandatory Adjudication Law (Yes/No): **No**
 Anti-Plea-Bargaining Statute (Yes/No): **Yes.** A.R.S. §28-1387(I). The State shall not dismiss a charge unless there is an insufficient legal or factual basis.
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes.** Drug screening required. A.R.S. §28-1387(B).

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription: I. It is not a defense to a charge of a violation of A.R.S. §28-1381(A)(1) that the person is or has been entitled to use the drug. A.R.S. §28-1381(B).

II. It is a defense to a charge of a violation of A.R.S. §28-1381(A)(3) that the person was using a drug as prescribed by a licensed medical practitioner. A.R.S. §28-1381(D).

Therapeutic Concentration: **Yes.**
 A person using a drug as prescribed by a licensed medical practitioner is not guilty of violating A.R.S. §28-1381(A)(3). A.R.S. §28-1381(D).

Involuntary Intoxication: **No.**
 Driving under the influence is a strict liability offense that does not require proof of any culpable mental state. *State v. George*, 313 P.3d 543, 547 (Ariz. 2013) (citing *State v. Zaragoza*, 209 P.3d 629, 634 ¶¶20 (Ariz. 2009); see also *State v. Edmisten*, 207 P.3d 770, 774 ¶¶7 (Ariz. 2009).

Other: It is a defense if a person of average intelligence and common knowledge would not be aware of the bodily process that would turn a legal substance into a prohibited drug/metabolite. *State v. George*, 313 P.3d 543, 546 (Ariz. 2013) (citing *State v. Boyd*, 31 P.3d 140 (Ariz. 2001).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **None**
 Preliminary Breath Test – Other: **N/A**

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

Criminal Sanctions Following DUI-D Conviction:

Imprisonment/Fine: I. First offense (Class 1 misdemeanor) – Not more than **6 months** (with not less than 10 consecutive days) and a fine of not less than **\$250** or more than **\$2,500** may be imposed, plus two **\$500** mandatory assessments. A.R.S. §§13-707; 13-802; 28-1381(C).

II. Second offense⁷⁹ (within 84 months) (Class 1 misdemeanor) – Not more than **6 months** (with not less than 90 days) and a fine of not less than **\$500** or more than **\$2,500**, plus at least **30 hours** of community service and two **\$1,250** mandatory assessments. A.R.S. §§13-707; 13-802; 28-1381(C), (K).

III. Third or subsequent offense (within 84 months) (**Aggravated DUI**, Class 4 felony⁸⁰) - **1-3.75 years** and may be fined not more than **\$150,000**. A.R.S. §§13-702(D); 13-801; 28-1383(A)(2).

IV. Other Aggravated DUI-D offenses

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

- DUI-D while driver's license or privilege to drive suspended/canceled/revoked/refused, or while restriction placed on driver's license as a result of DUI, DUI Under Extreme Influence of Intoxicating Liquor, or for driving during an administrative license suspension period pursuant to A.R.S. §28-1385. A.R.S. §28-1383(A)(1).
- DUI-D while person required to operate vehicle equipped with ignition interlock device. A.R.S. §28-1383(A)(4).

Class 6 felony - 0.33 years - 2 years and may be fined not more than **\$150,000**. A.R.S. §§13-702(D); 13-801.

- DUI-D while person under 15 years old in the car. A.R.S. §28-1383(A)(3).

Mandatory Minimum Term/Fine:

I. First offense – **1 day**⁸¹; not less than **\$250**. A.R.S. §28-1381(I), (J).

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

III. Third offense (within 84 months) - **4 months**; not less than **\$750**. A.R.S. §28-1383(D).

IV. Fourth and subsequent offenses (within 84 months) - **8 months**; not less than **\$750**. A.R.S. §28-1383(E).

V. Driving While License Suspended/Revoked as a result of DUI offense - **4 months**; not less than **\$750**. A.R.S. §28-1383(D).

VI. Driving with person < 15 in vehicle (1st DUI offense) – **1 consecutive day**⁸²; not less than **\$250**. A.R.S. §§ 28-1381(I); 28-1383(F).

⁷⁹ For sentence enhancement purposes, a prior offense includes any previous DUI offense.

⁸⁰ A court may sentence a person found guilty of a felony crime to a mitigated term, minimum term, presumptive term, maximum term or aggravated term. These terms are listed in order of severity. The court will take into consideration any mitigating or aggravating factors of the crime or defendant when sentencing such person. The terms listed for the Class 4 and 6 felonies are the ranges set forth by A.R.S. §13-702(D), from mitigated term to aggravated term.

⁸¹ Provided the defendant completes an alcohol/drug screening, counseling, education/treatment program.

	VII. <u>Driving with person < 15 in vehicle</u> (2nd DUI offense) - 30 consecutive days ; not less than \$500 . A.R.S. §§28-1381(K); 28-1383(G).
Community Service:	<u>First and second offenses</u> - Yes . ⁸³ Discretionary with the court, except that for second or subsequent offenses within 84 months, the court must impose at least 30 hours of community service. A.R.S. §§28-1381(I), (K); 28-1382(D), (E); <u>Felony offenses</u> – Community service cannot be assigned. A.R.S. §11-459(B)(4).
Restitution:	Yes . Victims’ compensation fund. A.R.S. §41-2407. Where there was an economic loss to a victim, the Court may order that all or any portion of the fine be allocated as restitution. A.R.S. §13-804.
Child Endangerment:	An intoxicated driver with a person < 15 in the vehicle commits aggravated DUI. (See sanctions for aggravated DUI.) A.R.S. §28-1383(A)(3).
Other:	Driver Training Course: A person may be required to attend and successfully complete a driver-training course. A.R.S. §28-3306. Probation: This is discretionary. <u>First or second offense</u> – 5 years; <u>Aggravated DUI Offenses</u> – 10 years. Probation may be extended if a condition of probation, such as restitution, is not met. A.R.S. §13-902. Surcharges: Under A.R.S. §§12-116.01; 12-116.02, the court is to levy penalty assessments based on a percentage of the fine imposed. These surcharges may be waived if they create a hardship on the offender or his/her family. Reimbursement: The court shall order misdemeanants sentenced to a jail term to reimburse for costs, and the court may require reimbursement for any public costs incurred pursuant to defendant’s case. A.R.S. §§13-804.01; 13-809.
<u>Administrative Sanctions – Post-Conviction:</u>	
Substance Abuse Education:	Yes ⁸⁴ - All offenses. A.R.S. §28-1387. The sentencing court may partially suspend a jail sentence for a 1st or 2nd DUI-D offense upon completion of a court ordered drug screening, education or treatment program. A.R.S. §28-1381(J), (L).
Substance Abuse Treatment:	Yes – All offenses. A.R.S. §28-1387(B).
Vehicle Impoundment/Confiscation:	Forfeiture (Mandatory)
Authorized by Specific Statutory Authority:	The vehicle used in the offense <u>and</u> owned by the offender is forfeited for: (1) 3rd or subsequent DUI offense; (2) a DUI

⁸² Provided the defendant completes an alcohol/drug screening, counseling, education/treatment program.

⁸³ First offenders are eligible for community service after having served 1 day in jail. Second offenders are eligible for community service after they have served 20% of the initial term of incarceration. A.R.S. §§9-499.07(N); 11-459(M).

⁸⁴ If a defendant has been ordered to participate in a drug education or treatment program, the license cannot be restored until he/she proves completion of such program. A.R.S. §28-3319(C).

offense while transporting a child < 15; (3) a DUI offense while the license is still suspended or revoked for a prior DUI offense, or; (4) a DUI offense or refusal to submit to a breath, blood or urine test while required to have an ignition interlock device. A.R.S. §28-1384(A).

Terms Upon Which Vehicle Will Be Released:

N/A

Other Miscellaneous Sanctions:

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

Incarceration Costs: DUI-D offenders must be assessed the costs of their incarceration. The costs charged are based on the offender's financial capabilities. A.R.S. §§13-804.01; 28-1444.

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

Homicide by Vehicle:

State Has Such a Law:

Yes. See A.R.S. §13-1102 and *State v. Venegas*, 669 P.2d 604 (Ariz. App. Div. 1 1983); A.R.S. § 13-1103 and *State v. Montoya*, 608 P.2d 92 (1980). Note.⁸⁵

Imprisonment/Fine:

Negligent Homicide – Class 4 Felony.⁸⁶ A.R.S. §13-1102.

Manslaughter - Class 2 Felony. A.R.S. §13-1103.

Mandatory Minimum Term/Fine:

N/A

Other:

N/A

DUI-D Offenses and Commercial Motor Vehicles (CMV):

In addition to the penalties described above, a person is “disqualified” from operating a CMV for not less than 1 mandatory year (3 years if transporting hazardous materials) if while driving a CMV that person refuses a chemical test in violation of §28-1321, or is convicted of DUI-D. For a subsequent violation, the “disqualification” is for life.

⁸⁵ Additionally, I. A person who causes a death while committing certain traffic violations (failure to stop a red light, failure to yield to oncoming traffic while making a left turn and failure to stop at a stop sign) is subject to a “civil penalty” of not more than \$1,000, license suspension, community service, and must complete a Traffic Survival School. A.R.S. §28-672(C), (D). II. It is an “aggravating circumstance” for sentencing purposes for a person to commit either aggravated assault, negligent homicide, manslaughter or second degree murder while driving with a BAC \geq .15. A.R.S. §§13-701(D)(16); 13-702.

⁸⁶ A court may sentence a person found guilty of a felony crime to a mitigated term, minimum term, presumptive term, maximum term or aggravated term. These terms are listed in order of severity. The court will take into consideration any mitigating or aggravating factors of the crime or defendant when sentencing such person. The terms listed for the Class 2 and 4 felonies are the ranges set forth by A.R.S. §13-702(D), from mitigated term to aggravated term.

The driver of a CMV is also subject to permanent disqualification if convicted of using any motor vehicle in the commission of a felony involving the manufacture, distribution or dispensing of a controlled substance or possession with intent to manufacture, distribute or dispense a controlled substance. A.R.S. §§28-101(2); 28-1301; 28-1381(A)(4); 28-1385(A); 28-3312.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

A.R.S. §28-3473.

Note.⁸⁷

Class 1 misdemeanor – Not more than **6 months** and **\$2,500**;

Class 4 felony – Any DUI-D offense and driving on a suspended/revoked license for a previous DUI conviction (Aggravated DUI) – **1 year-3.75 years** and may be fined not more than **\$150,000**. A.R.S. §§13-702; 13-801; 28-1383; 28-3473.

Mandatory Minimum Fine/Imprisonment:

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

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

Other:

The term above is mandatory.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Other State Laws Related to Drug Use:

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

Yes. A.R.S. §28-668.

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes. A.R.S. §28-668.

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

No

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

No

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

Yes. A.R.S. §28-673.

Marijuana – Possession and Use Laws:

Possession of ≤ 2.5 oz. Marijuana is **legal for medical use**. A.R.S. §36-2801, *et seq.*

⁸⁷ I. The law specifically provides that the sanctions given also apply to persons who operate a CMV during a CDL disqualification. II. The law provides for the following sanctions for a violation of an “out-of-service” order: (1) a civil penalty of at least \$2,500 (first violation); \$5,000 (subsequent violation). [A.R.S. §28-5241(B), (D)(1), (F)]; (2) the following CDL disqualification periods: first violation – 180 days (mand); second violation (within 10 years) – 2 years (mand); third or subsequent violation (within 10 years) – 3 years (mand). If the violation involved the transportation of hazardous materials, the disqualification periods are as follows: first violation – 180 days (mand); second or subsequent violation (within 10 years) – 3 years (mand). A.R.S. §28-3312(B), (C).

Criminal Penalties:

Possession < 2 lb. (Class 6 Felony) – Not less than **\$750 or three times the value of the marijuana**, whichever is greater, but not more than \$150,000; a term of imprisonment⁸⁸; if granted probation, not less than 24 hours of community service, drug testing.

Possession 2 lbs. < 4 lbs. (Class 5 Felony) – Not less than **\$750 or three times the value of the marijuana**, whichever is greater, but not more than \$150,000; a term of imprisonment⁸⁹; if granted probation, not less than 24 hours of community service, drug testing.

Possession ≥ 4 lbs. (Class 4 Felony) - Not less than **\$750 or three times the value of the marijuana**, whichever is greater, but not more than \$150,000; a term of imprisonment⁹⁰; if granted probation, not less than 24 hours of community service, drug testing. A.R.S. §§13-702(D); 13-801; 13-3405.

Intoxicant Exclusion Law (UPPL):

Yes. A.R.S. §20-1368.

⁸⁸ A court may sentence a person found guilty of a felony crime to a mitigated term, minimum term, presumptive term, maximum term or aggravated term. These terms are listed in order of severity. The court will take into consideration any mitigating or aggravating factors of the crime or defendant when sentencing such person. The terms listed for a Class 6 felony are the ranges set forth by A.R.S. §13-702(D), from mitigated term to aggravated term.

⁸⁹ A court may sentence a person found guilty of a felony crime to a mitigated term, minimum term, presumptive term, maximum term or aggravated term. These terms are listed in order of severity. The court will take into consideration any mitigating or aggravating factors of the crime or defendant when sentencing such person. The terms listed for a Class 6 felony are the ranges set forth by A.R.S. §13-702(D), from mitigated term to aggravated term.

⁹⁰ A court may sentence a person found guilty of a felony crime to a mitigated term, minimum term, presumptive term, maximum term or aggravated term. These terms are listed in order of severity. The court will take into consideration any mitigating or aggravating factors of the crime or defendant when sentencing such person. The terms listed for a Class 6 felony are the ranges set forth by A.R.S. §13-702(D), from mitigated term to aggravated term.

STATE	ARKANSAS
General Reference:	Arkansas Code Annotated (A.C.A.)
<u>Type of DUI-D Law:</u>	Operate While Intoxicated
<u>Basis for DUI-D Charge:</u>	A.C.A. §5-65-103(a)(1).
Standard DUI-D Offense:	Operate or be in actual physical control of a motor vehicle ⁹¹ while intoxicated ⁹² .
Illegal Per Se Law:	No
Presumption Based on Drugs – State Has (Yes/No):	No
Other:	
 <u>Chemical Testing for Drug Concentration:</u>	
Preliminary Breath Test Law – State Has Such a Law (Yes/No):	No ⁹³
Preliminary Breath Test Law – Applies to Drugs (Yes/No):	N/A
Implied Consent Law:	Yes. A.C.A. §§5-65-202; 5-65-309(a).
Arrest Required (Yes/No):	No ⁹⁴
Implied Consent Law Applies to Drugs (Yes/No):	Yes. A.C.A. §5-65-202.
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes – Criminal Cases. <i>Medlock v. State</i> , 964 S.W.2d 196 (Ark. 1998); <i>Spicer v. State</i> , 799 S.W.2d 562 (Ark. App. 1990).
Other Information:	
 <u>Non-Breath Chemical Tests for Drug Concentration Authorized Under the Implied Consent Law:</u>	
Blood:	Yes. A.C.A. §5-65-202(a).

⁹¹ It appears that a “motor vehicle” includes “every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated on rails,” and includes all-terrain vehicles (ATVs). *Fitch v. State*, 853 S.W.2d 874, 875-76 (Ark. 1993) (citing A.C.A. §§27-21-101 through 109; and 27-14-207(b)).

⁹² The term “intoxicated” means influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant, or any combination thereof, to such a degree that the driver’s reactions, motor skills, and judgment are substantially altered and the driver, therefore, constitutes a clear and substantial danger of physical injury or death to himself/herself or another person. A.C.A. §5-65-102(4). The term “influence” means being controlled or affected by the ingestion of an alcoholic beverage or similar intoxicant or a combination thereof to a such a degree that a person’s reactions, motor skills, and judgment are altered or diminished, even to the slightest scale, and the underage driver, due to inexperience and lack of skill, constitutes a danger of physical injury or death to himself/herself or another person. A.C.A. §5-65-102(3). The term “controlled substance” means a drug, substance, or immediate precursor in Schedules I-IV. A.C.A. §5-65-102(1).

⁹³ It appears that despite the absence if a specific law relating to this type of test, a Portable Breath Test may be offered by law enforcement, and the results of such a test may be relied upon as part of an officer’s probable cause determination; but the result of such a test may not be admitted as substantive evidence at trial absent proof of reliability. *See Elser v. State*, 114 S.W.3d 168 (Ark. 2003); *Daniels v. State*, 139 S.W.3d 140 (Ark. App. 2003).

⁹⁴ A law enforcement officer can request a driver to submit to a chemical test: (1) if the driver has been arrested for a DUI offense; (2) if the driver has been involved in an accident; or (3) if, at the time of a DUI arrest, there is “reasonable cause to believe” that the driver is intoxicated or has a BAC \geq .08 (or driving under the influence or with a BAC \geq .02 but $<$.08, for underage drivers). A.C.A. §§5-65-202(a); 5-65-309(a).

Urine: **Yes.** A.C.A. §5-65-202(a).
 Other: **Yes - Saliva.** A.C.A. §5-65-202(a).

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform: **Yes. A physician or a person acting under the direction and supervision of a physician.** A.C.A. §5-65-204(c).

Entity Establishing Testing Protocols: **Yes – Limited to Alcohol Analysis.**
 The method of chemical testing to determine the presence and amount of alcohol in a person’s blood, urine, saliva, or breath must be performed according to a method approved by the **Department of Health and State Board of Health.** A.C.A. §5-65-204(b)(2). *See also* Ark. Admin. Code §007.25.3-A(3.13) (“Who May Analyze Samples”).
 The method of chemical analysis of a person’s blood, urine, saliva, or other bodily substance made by the State Crime Laboratory for determining the presence of a controlled substance or intoxicant is exempt from approval by the department or the board. A.C.A. §5-65-204(b)(2).

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:
 Other:

No

Independent Testing

The person tested may have a physician or a qualified technician, registered nurse, or other qualified person of his/her choice administer an additional independent chemical test. A.C.A. §5-65-204(d).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No): **Yes.**⁹⁵ A.C.A. §5-65-107.
 Anti-Plea-Bargaining Statute (Yes/No): **Yes.** A.C.A. §5-65-107.
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes.** A.C.A. §5-65-109. The report must include (but is not limited to) the offender’s driving record, an alcohol problem assessment, and a victim impact statement (if applicable).

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription: **No**⁹⁶
 Therapeutic Concentration: **Yes**⁹⁷
 Involuntary Intoxication: **Yes.**⁹⁸ A.C.A. §5-2-207(a).

⁹⁵ Persons charged with a DUI-D offense must be tried on such charges or plead to such charges and no such charges shall be reduced. A.C.A. §5-65-107. For persons who are convicted of or who have pleaded guilty to or *nolo contendere* to a first DUI-D offense, the court is prohibited from placing such persons on probation and later discharging the accused without adjudication after the probation period has been served. A.C.A. §5-65-108(c). The same applies for persons under 21. A.C.A. §5-65-308.

⁹⁶ *See, e.g., Fiveash v. State*, 458 S.W.2d 774 (Ark. App. 2015) (conviction for DUI-D relied upon evidence that Defendant had taken Adderall pill which had been prescribed to him).

⁹⁷ It appears based upon the language of the statute that if a “therapeutic” concentration would not render a person “intoxicated,” arguing that the level of the substance detected was merely therapeutic would be a valid defense.

Other:

Sanctions for Refusal to Submit to a Chemical Test:

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

N/A

Preliminary Breath Test – Other:

Refusal to take a portable or preliminary breath test may be admitted into evidence as consciousness of guilt. *Hilton v. State*, 96 S.W. 3d, 757 (Ark. App. 2003).

Refusal to Take Implied Consent Chemical Test – Criminal⁹⁹ Sanction (Fine/Jail):

Persons Under 21:

First offense – Not less than **\$100** or more than **\$500**;

Second offense – Not less than **\$200** or more than **\$1,000** and not less than **30 days** (mand) community service;

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

Persons Over 21: N/A¹⁰⁰

Implied Consent Chemical Test - Other:

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:

First offense – Not less than **24 hours** or more than **1 year** or community service in lieu of jail and not less than **\$150** or more than **\$1,000**;

Second offense (within 5 years) – Not less than **7 days** or more than **1 year**, or no fewer than 30 days community service and not less than **\$400** or more than **\$3,000**;

Third offense (within 5 years of 1st offense) – Not less than **90 days** or more than **1 year**, or no fewer than 90 days community service and not less than **\$900** or more than **\$5,000**;

Fourth offense (within 5 years of 1st offense) (Felony) – At least **1 year** but not more than **6 years** or not less than 1 year community service and not less than **\$900** or more than **\$5,000**;

Fifth or subsequent offense (within 5 years of the 1st offense) (Unclassified Felony) – At least **2 years** but not more than **10 years** or not less than 2 years community service and not less

⁹⁸ Cf. *See v. State*, 757 S.W.2d 947 (Ark. 1988) (holding that intoxication caused by a substance which the actor knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know, is not “involuntary intoxication,” even if the actor suffers from chronic substance addiction).

⁹⁹ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

¹⁰⁰ There are no statutory provisions providing criminal sanctions for refusal to take implied consent chemical test for offenders 21 and older.

than **\$900** or more than **\$5,000**.

Sixth or subsequent offense (within 10 years of the 1st offense) (Class B Felony) – No less than **5 years** nor more than 20 years and a fine of up to \$15,000. A.C.A. §§5-4-201; 5-4-401; 5-65-111; 5-65-112

For Persons Under 21:

First offense – Not less than **\$100** or more than **\$500**;

Second offense – Not less than **\$200** or more than **\$1,000**;

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

Mandatory Minimum Term/Fine:

The base fines above appear to be mandatory.

Community Service:

I. First offense – **In lieu of imprisonment** (the law does not specify the length of time a person must do community service);

Second offense – (within 5 years) – Not less than **30 mandatory days** in lieu of jail;

Third offense (within 5 years) – Not less than **90 days (mand)** in lieu of jail;

Fourth offense (within 5 years) – Not less than **1 year (mand)** in lieu of jail;

Fifth offense (within 5 years) – Not less than **2 years (mand)** in lieu of jail. A.C.A. §5-65-111(a), (b).

Sixth or subsequent offense (within 10 years) – Not less than **2 years** or more than 10 years in lieu of jail

II. Persons unable to pay a fine may be given community service as an alternative sanction. A.C.A. §5-65-114.

III. For Persons Under 21:

First offense – Time period is not specified;

Second offense – For not less than **30 days (mand)**;

Third or subsequent offense – For not less than **60 days (mand)**. A.C.A. §5-65-306.

Restitution:

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

Child Endangerment:

If Person Under 16 is Passenger:

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

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

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

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

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

Sixth or subsequent offense (within 10 years of 1st offense) (Class B Felony) - No less than **5 years** nor more than 20 years and a fine of up to \$15,000, or not less than **3 years** or more than 10 years community service. A.C.A. §5-4-201; 5-4-401; 5-65-111; 5-65-112.

Other:

A defendant may have to pay assessments or fees for an alcohol education program, even for a DUI-D conviction. A.C.A. § 5-65-115.

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

No¹⁰¹

Substance Abuse Treatment:

No

Vehicle Impoundment/Confiscation:

Forfeiture

Authorized by Specific Statutory Authority:

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

Terms Upon Which Vehicle Will Be Released:

N/A

Other Miscellaneous Sanctions:

I. License Plate Impoundment. License plates shall be impounded for no less than **90 days** if a driver has been arrested for driving while suspended/revoked where such suspension/revocation was based on a DUI-D conviction.¹⁰² A.C.A. §5-65-106.

II. Motor Vehicle Registration Suspension. A person who has had his/her license suspended or revoked for a DUI-D offense (A.C.A. §§5-65-103; 5-65-303) or the CDL disqualified for driving a CMV in violation of the DUI-D provisions of A.C.A. §27-23-114 must have the registration of **ALL** of the vehicles owned by them suspended for the same period of time as the licensing action or for 1 year whichever is longer.¹⁰³ A.C.A. §§5-65-402; 5-65-403.

Highway Work Zone:¹⁰⁴ The fine is **doubled** if the offense is committed in a Highway Work Zone. A.C.A. §27-50-408(b).

Homicide by Vehicle:

State Has Such a Law:

Negligent homicide – Class B felony.

¹⁰¹ It appears that an alcohol education/treatment program is required, but not a substance abuse education/treatment program. A.C.A. §§5-65-104(b)(1); 5-65-115; 5-65-307.

¹⁰² However, a temporary license plate may be issued if the court determines that it is in the best interests of the dependents of the offender.

¹⁰³ If a family member or a co-owner of a vehicle subject to registration suspension is completely dependent upon the use of such vehicle for the “necessities of life,” a restricted registration may be issued allowing such dependent person to operate the vehicle. A.C.A. §5-65-403(j).

¹⁰⁴ An additional fine equal to all of the other fines is imposed for committing a “moving traffic violation” in a highway work zone when construction personnel are present. A “moving traffic violation” includes driving while intoxicated, under age driving while the influence and refusal to submit to a chemical test. A.C.A. §27-50-408(b)(1)(A), (e).

Imprisonment/Fine:	A.C.A. §§5-10-105(a); 27-50-307. Not less than 5 years or more than 20 years and not more than \$15,000 . A.C.A. §§5-4-401(a)(3); 5-4-201(a)(1).
Mandatory Minimum Term/Fine:	None
Other:	N/A

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is “disqualified” from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person is intoxicated, or refuses to submit to a chemical test to determine drug concentration.¹⁰⁵ For a subsequent violation or a combination of two or more violations of any of the above listed items, the “disqualification” is for life (10 years mand).

It is a Class B Misdemeanor to operate a CMV while intoxicated. A.C.A. §§27-23-112; 27-23-114.

Sanctions¹⁰⁶:

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

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

Third or subsequent offense - Mandatory community service for not less than 60 days in lieu of jail. A.C.A. §§5-4-201; 5-4-401; 27-23-112; 27-23-114(g).

A person who is convicted of this offense must undergo an alcohol abuse assessment. It does not appear that an assessment relating to other substances is required. A.C.A. §27-23-114(f).

Under separate provisions of law, persons may have the CDL suspended for 1 year if convicted of operating a CMV while under the influence of a controlled substance. A.C.A. §§27-16-915(a), (b); 27-23-112(a).

DUI-D Offenses Involving Motor Vehicles Used in Commerce and Regulated Under the State's Motor Carrier Act. A person commits a misdemeanor if that person operates a motor vehicle regulated under this act while possessing, using, or under the influence of intoxicating liquor, a controlled substance, or any substance that renders the person incapable of safely operating a motor vehicle. The sanctions for this offense are as follows:

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

Second and subsequent offense – not less than \$500 or more than \$1,000. A.C.A. §23-13-258.

¹⁰⁵ The CMV implied consent provision (A.C.A. §27-23-115(a)) applies to a test for both a blood alcohol concentration and drugs.

¹⁰⁶ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

This law cannot abrogate or supersede the regular DUI-D law. i.e., a person must be charged with a violation of the DUI-D law in preference to this one. If a person is unable to pay a fine, that person may be given community service as an alternative sanction. A.C.A. §5-65-114.

Driving While License Suspended for DUI –D Offense:

Criminal - Fine/Imprisonment:

Misdemeanor – Not less than **10 days** or more than **90 days** and not more than **\$1,000**. A.C.A. §§5-65-105.

Mandatory Minimum Fine/Imprisonment:

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

Other:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Other State Laws Related to Drug Use:

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

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

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes¹⁰⁷

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

N/A

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

N/A

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

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

Marijuana – Possession and Use Laws:

≤ 2.5 oz. Legal for Medical Use.¹⁰⁸

Criminal Penalties:

< 4 oz. (Class A Misdemeanor) – Up to **1 year**,¹⁰⁹ and a fine of up to **\$2,500**.

1 oz. < 4 oz. and 4 previous convictions (Class D Felony) – Not more than **6 years**, and a fine of up to **\$10,000**.

10 lbs. < 25 lbs. (Class C Felony) – Not less than **3 years** or more than **10 years**, and a fine of up to **\$10,000**.

25 lbs. < 100 lbs. (Class B Felony) – Not less than **5 years** or more than **20 years**, and a fine of up to **\$15,000**.

100 lbs. < 500 lbs. (Class A Felony) - Not less than **6 years**

¹⁰⁷ Based upon probable cause of DUI-D offense related to an accident involving either a death or where there is reason to believe that a death may occur, a deceased driver may be administered a test of his/her blood, breath or urine for alcohol or drug presence and concentration. A.C.A. §§5-65-202(b); 5-65-208(a); 5-65-309(b).

¹⁰⁸ The Arkansas Medical Marijuana Amendment was approved by voters as a constitutional amendment on November 8, 2016. AR Const. Amend. 98, §1, *et seq.*

¹⁰⁹ First time offenders may be sentenced to parole for a period of not less than one year, in lieu of jail time. A.C.A. §5-64-413.

or more than **30 years**, and a fine of up to **\$15,000**. A.C.A. §§5-4-201; 5-4-401; 5-64-419(b)(5).

Intoxicant Exclusion Law (UPPL):

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

STATE

CALIFORNIA

General Reference:

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

Type of DUI-D Law:

Under the Influence

Basis for DUI-D Charge:

Cal.Vehicle Code §§23152(e), (f).

Standard DUI-D Offense:

Drive¹¹⁰ a vehicle¹¹¹ while under the influence¹¹² of a drug¹¹³, or the combined influence of a drug and any alcoholic beverage. Cal.Vehicle Code §§23152(e), (f).

Illegal Per Se Law:

None

Presumption Based on Drugs – State Has (Yes/No):

No

Other:

It is also unlawful for a person who is addicted to the use of any drug to drive a vehicle, unless the person is participating in an approved narcotic treatment program. Cal. Vehicle Code §23152(c).

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

Yes. Cal.Vehicle Code §23612(h).

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Yes. Cal.Vehicle Code §23612(h), (i).¹¹⁴

Implied Consent Law:

Yes. Cal.Vehicle Code §23612.

Arrest Required (Yes/No):

Yes. Cal.Vehicle Code §23612.

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

Yes. Cal.Vehicle Code §23612(a)(l)(B).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes - Criminal and Civil Cases.
Cal.Vehicle Code §23612(a)(4).

Other Information:

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

Blood:

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

Urine:

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

Other:

N/A

¹¹⁰ “Driving,” for purposes of this statute, means any volitional movement of a vehicle. *People v. Lively*, 10 Cal. App. 4th 1364, 1368 (1993).

¹¹¹ A “vehicle” includes all devices by which a person or property may be propelled or moved upon a highway, except a device moved exclusively by human power or used exclusively upon stationary racks or tracks. Cal. Vehicle Code §670.

¹¹² To be “under the influence” means that the substance(s) must have so far affected the individual’s nervous system, brain, or muscles, so as to impair to an appreciable degree the person’s ability to operate a vehicle in a manner like that of an ordinarily prudent and cautious person in full possession of his faculties. *People v. Canty*, 90 P.3d 1168, 1174 (Cal. 2004).

¹¹³ A “drug” means any substance or combination of substances, other than alcohol, which could so affect the nervous system, brain, or muscles of a person as to impair, to an appreciable degree, his ability to drive a vehicle in the manner that an ordinarily prudent man, in full possession of his faculties, using reasonable care, would drive a similar vehicle under like conditions.” Cal. Vehicle Code §312. *See also People v. Olive*, 92 Cal. App. 4th Supp. 21 (2001) (holding that Kava qualifies as a drug).

¹¹⁴ A PBT may be conducted without legislative authority. A.G. Opinion No. 88-1102, Oct. 26, 1989.

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:
Entity Establishing Testing Protocols:

Yes – but only for blood withdrawn to determine alcohol content.¹¹⁵

Yes – Limited to Alcohol Analysis. The Department of Motor Vehicles in cooperation with the State Department of Health Services. Cal. Vehicle Code §§290 and 23158(j); 17 CA ADC §1216, *et seq.*

There appear to be no parallel statutes or regulations authorizing a particular entity to approve methods for analyzing blood or other bodily substances to detect and/or quantify the presence of other intoxicants.

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:
Other:

No¹¹⁶

Independent Testing

The person tested may, at his own expense, have an additional test administered. However, the failure or inability to obtain an additional test does not preclude the admissibility in evidence of the test taken at the direction of a peace officer. Cal. Vehicle Code §23158(b).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea-Bargaining Statute (Yes/No):

No

Yes. Plea-bargaining is prohibited in any DUI-D case, and any serious felony case, unless: (1) there is insufficient evidence of the offense; (2) testimony of a material witness cannot be obtained; or (3) the reduction or dismissal of charges would not result in substantial change in sentence. Cal.Penal Code §1192.7(a)(2).

In addition, a criminal charge cannot be dismissed without the court’s approval. Cal.Penal Code §1385. Under Cal.Vehicle Code §23635, the court must give the reasons a DUI-D charge was reduced to a lesser offense or was dismissed.

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

Yes.¹¹⁷ (Mand. for subsequent offenses and offenders whose BAC is .15 or more). Cal.Vehicle Code §23646, *et seq.*; Cal.Vehicle Code §23655.

Affirmative Defenses to DUI-D Charge:

¹¹⁵ The statute indicates that only persons with the specified qualifications “may withdraw blood for the purpose of determining the alcoholic content therein.” Cal. Vehicle Code §23158. There does not appear to be a parallel statute limiting those who may withdraw blood for the purpose of determining drug content. Authorized persons include: a licensed physician, surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory scientist or clinical laboratory bioanalyst, a person who has been issued a “certified phlebotomy technician” certificate, designated unlicensed laboratory personnel, or, at the request of a peace officer, a certified paramedic authorized by his employer. Cal. Vehicle Code §23158(a).

¹¹⁶ When a person has refused an officer’s request to submit to, or has failed to complete, a blood test required by the Implied Consent statute, the sample must be withdrawn “in a reasonable, medically approved manner.” Cal. Penal Code §1524(13).

¹¹⁷ Each county shall develop a PSI alcohol assessment program. Cal.Vehicle Code §23646.

Legal Entitlement/Valid Prescription: **No.** Cal. Vehicle Code §23630.
 Therapeutic Concentration: **Yes**¹¹⁸
 Involuntary Intoxication: **Yes.** *People v. Mathson*, 210 Cal. App. 4th 1297 (App. 3 Dist. 2012).
 Other:

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **None**
 Preliminary Breath Test – Other: **N/A**

Refusal to Take Implied Consent Chemical Test – Criminal Sanction¹¹⁹ (Fine/Jail): **Yes** (Upon conviction for underlying DUI-D).
DUI-D non-injury offenses:
First refusal – if probation is granted, the court must use the following sentence structure: mandatory **48 hours** in jail, a fine of not less than **\$390**;
Second refusal (within 10 years) – **96 hours** additional custody;
Third refusal (within 10 years) – **10 days** additional custody;
Fourth refusal (within 10 years) – **18 days** additional custody.
 Cal.Vehicle Code §23577(a)
DUI-D injury offenses:
First refusal – Additional **48 continuous hours** in jail (mandatory);
Second refusal - **96 hours** additional custody (mandatory).
 Cal.Vehicle Code §23577.
 Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine: Non-Injury DUI-D Offenses are **misdemeanors**. Cal.Vehicle Code §§23152; 40000.15.
Citations: Sanctions for violating the DUI laws are codified under Cal.Vehicle Code §23536, *et seq.*
Non-Injury DUI-D Offense (with no previous DUI offenses¹²⁰) – Not less than **96 hours** (at least 48 hours shall be continuous) or more than **6 months** and not less than **\$390** or more than **\$1,000**. Cal.Vehicle Code §23536(a).

¹¹⁸ Based on the language of the DUI-D statute, it appears to be a valid defense that the concentration of a drug would not have rendered the person “under the influence.” Cal. Vehicle Code §23152.

¹¹⁹ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

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

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

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

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

Injury-Related DUI-D Offense (with no previous DUI offenses) –Not less than **90 days** or more than **1 year** in county jail and not less than **\$390** or more than **\$1,000**. Cal.Vehicle Code §23554.

Injury-Related DUI-D Offense¹²² (with one previous DUI offense within 10 years) –Not less than **120 days** or more than **1 year** in county jail and not less than **\$390** or more than **\$5,000**. Cal.Vehicle Code §23560.

Injury Related DUI-D Offense¹²³ (with two or more previous DUI offenses) – A term (in State prison) for **2, 3 or 4 years** and not less than **\$1,015** or more than **\$5,000**. Cal.Vehicle Code §23566.

DUI Offense with Great Bodily Injury where there have been 4 or more previous DUI offenses within 10 years, an **additional consecutive** sentence of **3 years** in the State prison. Cal.Vehicle Code §23566(c).

Mandatory Minimum Term/Fine:

Non-Injury DUI-D offense (with no previous DUI offenses) – **\$390**. Cal.Vehicle Code §23538.

Non-Injury DUI-D offense (with one previous DUI offense) – **10 days**; or **96 hours (as 2 continuous periods of 48 hours)** and **\$390**. Cal.Vehicle Code §23542.

Non-Injury DUI-D offense (with two previous DUI offenses) –**120 days** and **\$390**. Cal.Vehicle Code §23548.

Non-Injury DUI-D offense (with three or more previous DUI offenses) – **180 days** and **\$390**. Cal.Vehicle Code §23552.

Injury-related DUI-D offense (with no previous DUI offenses) – **5 days** and **\$390**. Cal.Vehicle Code §23556.

Injury-related DUI-D offense (with one previous DUI offense) – **30 days** and **\$390**. Cal.Vehicle Code §23562.

Injury-related DUI-D offense (with two or more previous DUI offenses) – **1 year** and **\$390**. Cal.Vehicle Code §23568.

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

¹²² If more than one individual has been injured, an enhanced prison term of one year is added for each victim. The maximum number of such enhancements is three. Cal.Vehicle Code §23558.

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

Community Service:	Yes. Cal.Penal Code §1203.1.
Restitution:	Yes. Cal.Penal Code §1203.1. <u>Injury-related DUI-D offenses.</u> Cal.Gov. Code §13950, <i>et seq.</i> (Victims' Assistance Fund).
Child Endangerment:	If any person is convicted of DUI-D and a minor < age 14 was in the vehicle at the time of the offense, the court shall impose the following penalties <i>in addition</i> to any other penalty: <u>First offense</u> – an additional 48 continuous hours in jail (mand); <u>Second offense</u> – an additional 10 days in jail (mand); <u>Third offense</u> – an additional 30 days in jail (mand); <u>Fourth offense</u> – an additional 90 days in jail (mand). Cal.Vehicle Code §23572. A person may also be charged with child endangerment under Cal.Penal Code §273a. ¹²⁴
Other:	Prior Felony DUI Offenses: A person (1) who has been convicted of a DUI-D offense (injury or non-injury offense) with a <u>prior conviction</u> either for a <u>felony</u> DUI offense (injury or non-injury) or for a <u>felony</u> vehicle manslaughter offense related to DUI <u>with</u> gross negligence; or (2) who has been convicted of a DUI offense (injury or non-injury offense) with a <u>prior conviction</u> for a “gross vehicular manslaughter while intoxicated” offense or for a <u>felony</u> vehicle manslaughter offense related to DUI <u>without</u> gross negligence is subject to the following sanctions: (A) Incarceration in either a county jail or State prison for not more than 1 year (or incarceration in the county jail from 180 days to 1 year if probation is granted) (either 48 consecutive hours of imprisonment or 10 days of community service are mandatory); (B) a fine of not less than \$390 nor more than \$1,000; and (C) unless a longer period would otherwise apply, license revocation for 4 years (24 months mandatory with restricted driving after this period provided the offender participates in either an 18-or 30-month DUI rehabilitation program). Cal.Vehicle Code §§13352(a)(7); 23550.5; 23552; 23580; 23600. Test Fee: The counties are authorized to impose on defendants a fee of not more \$50 for conducting the analysis for drugs and/or alcohol. Cal.Penal Code §1463.14. EMS Cost: A person may be held liable for the cost of an emergency response that resulted from the negligent operation of a motor vehicle while under the influence of either alcohol or drugs. Cal.Govt. Code §53150, <i>et seq.</i> ; Cal.Penal Code §1203.1(l). The law does not specifically require a DUI offense conviction as a condition of liability.

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

Alcohol Program Assessments for DUI-D Offenders:

I. A person convicted of a DUI-D offense must pay an assessment, not to exceed \$50, for the purpose of funding alcohol abuse education and prevention programs.

Cal.Vehicle Code §23645(a).

II. A fee of not more than \$100 may be assessed against a person convicted of a DUI-D offense in counties participating in an alcohol and drug assessment program, and an assessment not to exceed \$100 may be imposed for PSI alcohol/drug evaluation. Cal.Vehicle Code §23649.

Special State Penalty (Fine): An additional State penalty of \$10 is assessed against every defendant for every \$10 of a fine (or fraction thereof) actually imposed and paid by a defendant. Cal.Penal Code §§1463(1)(2); 1464(a).

Special County Penalty (Fine): An additional county penalty of \$7 is assessed against every defendant for every \$10 of a fine (or fraction thereof) actually imposed and paid by a defendant. Cal.Gov. Code §76000; Cal.Penal Code §1463(1)(2). As a condition of probation the court may require the defendant to pay costs of probation investigation, incarceration, and provision of parole supervision. Cal.Penal Code §§1203.1b; 1203.1c; 1203.1e.

DUI Visitation Program (Persons Under 21): For a first DUI-D non-injury offense, a person, with his consent and as part of his probation, may be ordered by the court to visit trauma or hospital facilities to observe victims of accidents where alcohol¹²⁵ was involved. In order to participate in this program, persons under 21 must agree not to drink alcoholic beverages until they are 21 and not use illegal drugs. Cal.Vehicle Code §23509, *et seq.*

Home Detention: DUI-D offenders are eligible for “home detention” as an alternative to imprisonment. This alternative includes “home detention” for certain minimum mandatory jail sentences. However, the mandatory sanctions for multiple DUI offenders under Cal.Vehicle Code §23580 (48 continuous hours or 10 days of community service) apply nevertheless. Cal.Penal Code §1203.016.

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

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

See Substance Abuse Treatment

Substance Abuse Treatment:

Conditions of probation, which normally provide for a

¹²⁵ The language of the statute specifies alcohol and does not mention other substances.

reduced period of incarceration, usually require a defendant to participate in a DUI education/rehab program for a DUI-D conviction.¹²⁶ Cal.Vehicle Code §§23538, *et seq.*; 13352.

In lieu of the more traditional alcohol and drug education and treatment programs, an offender, again as a condition of probation, may be allowed to participate in a special “live-in alternative.” This alternative focuses on substance abuse users and requires them to live full time at a special facility. Cal.Penal Code §8001.

The court may require a “driving under the influence” program for 18 or 30 months. Cal.Vehicle Code §23552.

A person convicted of a first DUI-D offense in a juvenile court must participate in and complete either an alcohol or drug education program. Cal.Vehicle Code §23538; 23556; Cal. Health & Safety Code §11837(a) (c),(d).

Vehicle Impoundment/Confiscation:

Yes

Authorized by Specific Statutory Authority:

Yes

Impoundment Upon Conviction:¹²⁷ A vehicle owned and driven by the offender may be impounded as follows for a DUI-D offense (non-injury/injury):

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

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

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

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

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

Subsequent offense – Not more than **12 months**. Cal.Vehicle Code §23592(a)(1).

Forfeiture: A defendant’s vehicle may be subject to forfeiture if convicted of a DUI-D vehicle homicide offense, a non-injury-related DUI-D offense and two or more (or combinations of) convictions within 7 years for a vehicle homicide offense or a non-injury/injury-related DUI-D offense, or a DUI-D serious injury offense and one or more (or combinations of) convictions within 7 years for a vehicle homicide offense or a non-injury/injury DUI-D offense. Cal.Vehicle Code §23596.

¹²⁶ First offenders who have been placed on probation and at the time of the offense had a BAC \geq .20 or refused to submit to a chemical test must be placed in an education/counseling program for at least 6 months. Cal.Health & Safety Code §11837(c)(2). The same holds true for those who plead guilty or nolo contendere to a reckless driving charge in lieu of DUI. Cal.Vehicle Code §23103.5.

¹²⁷ Under this impoundment/forfeiture law, no vehicle may be impounded or forfeited if another person has a community property interest in the vehicle and if it is the sole vehicle available to the defendant's immediate family. Cal.Vehicle Code §§23594; 23596. Additionally, it appears that Cal.Vehicle Code §23594 concerns DUI offenses only. Whereas, Cal.Vehicle Code §23592 lists DUI offenses along with other types of offenses that would trigger impoundment.

Terms Upon Which Vehicle Will Be Released:

N/A

Other Miscellaneous Sanctions:

Sanctions for Controlled Substance Convictions:

If the use of a motor vehicle was used in or incidental to a controlled substance offense, driving privileges may be suspended for **up to three years**. Cal. Vehicle Code §13202.

Conviction of a person between 13 and 20 years old for a controlled substance offense requires a **one-year** license suspension. Cal. Vehicle Code §13202.5.

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

Homicide by Vehicle:

State Has Such a Law:

Yes. Vehicular Manslaughter.¹²⁸ Cal. Penal Code §§191.5; 192(c); 193.

Imprisonment/Fine:

Note¹²⁹

Gross Vehicular Manslaughter While Intoxicated^{130, 131} – Imprisonment in the State prison for **4, 6, or 10 years** and not more than **\$10,000**. Cal. Penal Code §191.5(a).

Vehicular Manslaughter While Intoxicated¹³² – Imprisonment in the county jail for not more than **1 year**, or imprisonment in the State prison for **16 months** or **2 or 4 years** and not more than **\$10,000**. Cal. Penal Code §§191.5(b); 672.

Note: An offender could also be charged with murder upon facts exhibiting wantonness and a conscious disregard for life of any person.¹³³

¹²⁸ Implied Malice. Under certain circumstances, in situations where a person has been killed by an intoxicated driver, evidence of voluntary intoxication can be introduced as evidence of implied malice in a second degree murder case against the driver. An offender could be charged with murder upon facts exhibiting wantonness and a conscious disregard for life to support a finding of implied malice. Additionally, courts have recognized that an offender's previous encounters with the consequences of recklessness on the highway – whether provoked by the use of alcohol or of another intoxicant, among other things, sensitizes such offender to the dangerousness of such life-threatening conduct. Cal. Penal Code §§29.4; 188; 191.5 (e); *People v. Watson*, 637 P.2d 279 (Cal. 1981), superseded by statute on another point as stated in *People v. Bradford*, 22 Cal.App.4th 433, 439 (1994). See also *People v. Ortiz*, 109 Cal.App.4th 104, 112 (Cal.App.1Dist. 2003).

¹²⁹ If more than one individual has been killed, an enhanced prison term of one year is added for each victim. The maximum number of such enhancements is three. Cal. Vehicle Code §23558.

¹³⁰ This is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driver was intoxicated and the killing was either a proximate result of the commission of an unlawful, but non-felonious act and with gross negligence, or the proximate result of the commission of an unlawful act that might produce death, in an unlawful manner, and with gross negligence. Cal. Penal Code §191.5(a).

¹³¹ Subsequent Offenses: A defendant convicted of this offense is subject to imprisonment from 15 years to life, if that person had a prior vehicle manslaughter offense with gross negligence, a prior vehicle-intoxicated manslaughter offense without gross negligence, a prior injury-related drunk-driving offense or a drunk-driving offense that was punished as a second or subsequent offense. Cal. Penal Code §191.5(d).

¹³² This is the same as gross vehicular manslaughter *except* there is no gross negligence. Cal. Penal Code §191.5(b).

¹³³ Gross vehicle manslaughter while intoxicated is not a lesser-included offense of murder. As a result, a person can be tried for both offenses. *People v. Sanchez*, 16 P.3d 118 (Cal. 2001).

Mandatory Minimum Term/Fine:

None

Other:

I. Vehicle Forfeiture. Cal.Vehicle Code §23596.

II. Victims' Assistance Fund. Cal.Gov. Code §13959, *et seq.*

III. *See* Special State Penalty (Fine) and Special County Penalty (Fine). Cal.Penal Code §§1463(l), (2); 1464(a); Cal.Vehicle Code §§1203.1(b), (c), (e); Cal.Gov. Code §76000.

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is prohibited from operating a CMV for **1 mandatory year** (3 years if transporting hazardous materials) if convicted of driving a CMV while under the influence of a controlled substance. For a subsequent conviction of driving a CMV while under the influence, a person is prohibited from operating such a vehicle for life. A person who refuses to submit to a chemical test while operating a CMV is subject to licensing sanctions, including license sanction enhancements) under the implied consent law; however, if transporting hazardous materials, the suspension is for 3 years (mand). Cal.Vehicle Code §§15300; 15302.

A person who has been injured in a traffic accident caused by an intoxicated CMV operator may recover treble damage from the operator's employer if the employer has "willfully failed" to comply with Federal CMV regulations related to alcohol use and controlled substances testing. Cal.Civ. Code §3333.7(a); Cal.Vehicle Code §34520(a).

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

Misdemeanor:

First offense – Not less than **10 days** or more than **6 months**, and not less than **\$300** or more than **\$1,000**;

Second and subsequent offenses¹³⁴ (within 5 years) – Not less than **30 days** or more than **1 year**, and not less than **\$500** or more than **\$2,000**. Cal.Vehicle Code §14601.2.

Mandatory Minimum Fine/Imprisonment Term:

First offense – **10 days**;¹³⁵

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

Additionally, the court shall require a person convicted of a violation to install an ignition interlock device. Cal.Vehicle Code §§14601.2(h); 23575.

¹³⁴ A previous offense includes not only a prior conviction under Cal.Vehicle Code §14601.2, but also a violation of Cal.Vehicle Code §14601 (which prohibits driving after a license has been suspended or revoked for a reckless driving offense), Cal.Vehicle Code §14601.1 (the general prohibition against driving while a license is either suspended or revoked) and Cal.Vehicle Code §14601.5.

¹³⁵ If a defendant injures a person while violating this law, they must also serve this mandatory minimum imprisonment term. i.e., they cannot receive work release, community service or other similar programs. Cal.Vehicle Code §14601.4.

Other:	Vehicle Forfeiture. A vehicle is subject to forfeiture if it is driven by a person who has a suspended or revoked license, who has had a previous misdemeanor conviction either of driving while suspended or revoked under other provisions of law or the habitual offender law and who is the registered owner of such vehicle. However, the vehicle is not subject to forfeiture if there is a community property interest in the vehicle and it is the “only vehicle available to the driver’s immediate family.” Cal.Vehicle Code §14607.6.
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	Yes. Cal.Penal Code §193.7; Cal.Vehicle Code §§13350(b); 14601.3(a); 23546(b); 23550; 23550.5.
Grounds for Being Declared Habitual Offender:	A person is a “ habitual traffic offender ” for a period of 3 years, if that person: (1) commits a DUI-related vehicle homicide within 7 years of two or more separate violations of DUI offenses or reckless driving; (2) commits a DUI non-injury or injury offense and has two or more previous DUI offenses; (3) is sanctioned under Cal.Vehicle Code §23550.5 because that person has a prior drunk driving felony offense; or (4) accumulates a “driving record” ¹³⁶ while operating a vehicle when the license is either suspended or revoked. ¹³⁷
Term of License Revocations While on Habitual Offender Status:	1 year and proof of financial responsibility. Cal.Vehicle Code §13350(c).
Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):	Misdemeanor. Cal.Penal Code §17; Cal.Vehicle Code §14601.3(e). For “habitual traffic offender” status based on vehicle homicide or DUI offenses: 180 days imprisonment and a fine of \$2,000 . ¹³⁸ Cal.Vehicle Code §14601.3(e)(3). For “habitual traffic offender” status based on vehicle operation while suspension/revocation <u>and</u> after accumulating a “driving record”: <u>First offense</u> – 30 days and a fine of \$1,000 ; <u>Second and subsequent offenses</u> (within 7 years) – 180 days and a fine of \$2,000 . Cal.Vehicle Code §14601.3(e).
Mandatory Minimum Term/Fine:	The terms above appear to be mandatory.
<u>Other State Laws Related to Drug Use:</u>	
Drug Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes. Cal.Gov. Code §27491.25; Cal.Vehicle Code §23612(a)(5).
Drug Chemical Test Given to Deceased Driver Killed in Crash:	Yes

¹³⁶ A “driving record” consists of any one of the following: (1) Two or more convictions for 2 point violations within 12 months; three or more convictions for 1 point violations within 12 months; (3) three or more “reportable” accidents within 12 months; or (4) any combination of convictions/accidents which results in 3 points within 12 months. Cal.Vehicle Code §14601.3(a).

¹³⁷ A declaration of “habitual offender status” on this basis automatically means a person may be subject to criminal sanctions.

¹³⁸ This penalty shall be consecutive to any other penalty imposed. Cal.Vehicle Code §14601.3 (e)(3).

Drug Chemical Test Given to Deceased Vehicle Passengers Killed in Crash: **Yes**

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

Drug Chemical Tests on Persons Involved in Traffic Crashes: **No**

Marijuana – Possession and Use Laws: **Legal for Medical Use.** Cal. Health & Safety Code §11362.5(d).
Note¹³⁹
Possession ≤ 28.5 grams Marijuana and/or 4 grams of Concentrated Cannabis
≥ 21 – **Legalized for personal/recreational use.**
18 – 20 (Infraction) – Not more than **\$100**.
< 18 First Offense (Infraction) – **4 hours** drug education/counseling and not more than **10 hours** of community service.
< 18 Second or Subsequent Offense (Infraction) – **6 hours** drug education/counseling and not more than **20 hours** of community service.
Possession > 28.5 grams Marijuana and/or > 4 grams Concentrated Cannabis
≥ 18 – Not more than **6 months** and/or a fine of not more than **\$500**.
< 18 First Offense (Infraction) – **8 hours** drug education/counseling and not more than **40 hours** of community service.
< 18 Second or Subsequent Offense (Infraction) – **10 hours** drug education/counseling and not more than **60 hours** of community service. Cal. Health & Safety Code §11357.

Intoxicant Exclusion Law (UPPL): **No.** Cal. Ins. Code §10369.12(b)

¹³⁹ The following penalty structure was approved and went into effect on November 9, 2016.

STATE

COLORADO

General Reference:

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

Type of DUI-D Law:

Under the Influence/While Impaired¹⁴⁰

Basis for a DUI-D Charge:

C.R.S.A. §42-4-1301(1).

Standard DUI-D Offense:

Drive a motor vehicle¹⁴¹ or vehicle¹⁴² while:

I. **Under the influence**¹⁴³ of one or more drugs¹⁴⁴, or a combination of alcohol and one or more drugs, C.R.S.A. §42-4-1301(1)(a); or

II. **Impaired**¹⁴⁵ by one or more drugs, or a combination of alcohol and one or more drugs. C.R.S.A. §42-4-1301(1)(b).

Illegal Per Se:

N/A – “Under the Influence” or “Ability Impaired”

Presumption Based on Drugs – State Has (Yes/No):

Yes.

≥ 5 nanograms of **delta 9-tetrahydrocannabinol** per milliliter in whole blood = permissible inference the person was driving under the influence of one or more drugs. C.R.S.A. §42-4-1301(6)(a)(IV).

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

Yes. C.R.S.A. §42-4-1301(6)(i).

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

No. A law enforcement officer may only administer a preliminary breath test if he/she reasonably suspects the person was driving a motor vehicle or vehicle while under the influence of or while impaired by alcohol. C.R.S.A. §42-4-1301(6)(i)(I).

¹⁴⁰ Colorado refers to an offense for driving while ability impaired (C.R.S.A. §42-4-1301(1)(b)) as “DWAI.”

¹⁴¹ A “motor vehicle” means any self-propelled vehicle that is designed primarily for travel on the public highways and that is generally and commonly used to transport persons and property over the public highways or a low-speed electric vehicle, but does not include low-power scooters, wheelchairs, or vehicles moved solely by human power. C.R.S.A. §42-1-102(58).

¹⁴² A “vehicle” is a device that is capable of moving itself, or of being moved, from place to place upon wheels or endless tracks. It includes a bicycle, or electrical assisted bicycle, but does not include a wheelchair, off-highway vehicle, snowmobile, farm tractor, or implement of husbandry designed primarily or exclusively for use and used in agricultural operations or any device moved exclusively over stationary rails or tracks or designed to move primarily through the air. C.R.S.A. §42-1-102(112).

¹⁴³ “Driving under the influence” means driving a motor vehicle or vehicle when a person has consumed alcohol or one or more drugs, or a combination of alcohol and one or more drugs, that affects the person to a degree that the person is substantially incapable, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle. C.R.S.A. §42-4-1301(1)(f).

¹⁴⁴ Pursuant to C.R.S.A. §42-4-1301(d), the term “one or more drugs” includes: (A) any of the substances (i) recognized as drugs in the official United States pharmacopoeia, national formulary, or the official homeopathic pharmacopoeia of the United States, or a supplement thereof; (ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (iii) other than food, intended to affect the structure of any function of the body of individuals or animals; or (iv) intended for use as a component of any of the afore-mentioned substances, C.R.S.A. §27-80-203(13)(a); but a “drug” does not include devices or their components, parts, or accessories. C.R.S.A. §27-80-203(13)(b). The term also encompasses (B) any controlled substance as defined in C.R.S.A. §18-18-102(5), and (C) any inhaled glue, aerosol, or other toxic vapor or vapors, as defined in C.R.S.A. §18-18-412. C.R.S.A. §42-4-1301(1)(d).

¹⁴⁵ “Driving while ability impaired” means driving a motor vehicle or vehicle when a person has consumed alcohol or one or more drugs, or a combination of both alcohol and one or more drugs, that affects the person to the slightest degree so that the person is less able than the person ordinarily would have been, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle. C.R.S.A. §42-4-1301(1)(g).

Implied Consent Law: **Yes.**¹⁴⁶ C.R.S.A. §42-4-1301.1.
 Arrest Required (Yes/No): **No.** However, probable cause is required. C.R.S.A. §42-4-1301.1(2)(b)(I).
 Implied Consent Law Applies to Drugs (Yes/No): **Yes.** C.R.S.A. §42-4-1301.1(2)(b)(I).
 Refusal to Submit to Chemical Test Admitted into Evidence: **Yes – Criminal Cases.** C.R.S.A. §42-4-1301(6)(d).
 Other Information:

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

Blood: **Yes – C.R.S.A. §42-4-1301.1(2)(b)(I).**
 Urine: **Yes – For Drugs only.** C.R.S.A. §42-4-1301.1(2)(b)(I)
 Other: **Saliva – For Drugs only.** C.R.S.A. §42-4-1301.1(2)(b)(I)
 Note.¹⁴⁷

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform: **Yes. A physician, registered nurse, certified paramedic, emergency medical service provider, or a person whose normal duties include withdrawing blood samples under the supervision of a physician or registered nurse.** C.R.S.A. §42-4-1301.1(6)(a).
 Entity Establishing Testing Protocols: **Yes. Colorado State Board of Health.** 5 CO ADC 1005-2.
 Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform: **Yes. A physician, nurse, paramedic, emergency medical technician, medical technologist, or a person who’s training and normal duties include collecting blood specimens under the supervision of a physician or nurse.** 5 CO ADC 1005-1, *et seq.*
 Other:

¹⁴⁶ Colorado calls this law an “express consent” law instead of an “implied consent” law. For example, any person who operates a motor vehicle in Colorado is “deemed to have expressed such person’s consent” to submit to chemical test of either his/her blood, breath, urine, or saliva.

¹⁴⁷ In Colorado, technically the Statutes provide that a law enforcement officer may physically restrain any person who refuses when he has probable cause to believe that the person committed criminally negligent homicide, vehicular homicide, 3rd degree assault or vehicular assault. C.R.S.A. §42-4-1301.1(3). The Statutes further provide that person’s blood may be taken by force if there exists probable cause that the person committed an alcohol-related driving offense, or there is a clear indication that the blood sample will provide evidence of the level of intoxication. Evidence acquired through an involuntary blood test pursuant to §42-4-1301.1(3) shall be admissible in any prosecution for DUI, DUI per se, DWAI, or UDD. C.R.S.A. §42-4-1301(6)(e). Exigent must circumstances exist, and the test must be reasonable and conducted in a reasonable manner. *People v. Shepherd*, 906 P. 2d 607 (Colo. 1995). Colorado courts previously held that the natural metabolism of an intoxicant in the bloodstream posed a per se exigent circumstance. *People v. Barry*, 349 P.3d 1139, 1148 ¶ 24 (2015 COA) (citing *People v. Schall*, 59 P.3d 848, 851 (Colo. 2002)). In light of *Missouri v. McNeely*, 133 S.Ct. 1552 (2013), Colorado courts now recognize that exigency in a DUI context “must be determined case by case based on the totality of the circumstances.” *Id.* These legislative exceptions to the search warrant requirement should be relied upon with caution in light of the United States Supreme Court’s decisions in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a per se exigent circumstance) and *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No): **No.** Deferred prosecution or deferred sentence of DUI/DWAI driving offenses is available. C.R.S.A. §§18-1.3-101; 18-1.3-102.

Anti-Plea-Bargaining Statute (Yes/No): **Yes.**¹⁴⁸ C.R.S.A. §42-4-1301(4).

Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes.** Alcohol and Drug Evaluations may be required. C.R.S.A. §42-4-1301.3(1).

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription: **No.** C.R.S.A. §42-4-1301(1)(e).

Therapeutic Concentration: **No.**¹⁴⁹

Involuntary Intoxication: **Yes.** *People v. Grenier*, 200 P.3d 1062, 1075 (Colo. App. 2008).

Other:

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **No**

Preliminary Breath Test – Other: **N/A**

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

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

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine: **Driving Under the Influence:**
First offense (misdemeanor) – Not less than **5 days** or more than **1 year** and not less than **\$600** or more than **\$1,000**;
Subsequent offense of DUI, DUI per se, or habitual user¹⁵⁰ – Not less than **10 days** or more than **1 year** and not less than **\$600** or more than **\$1,500**;
Third or subsequent offense – Not less than **60 days** or more than **1 year** and not less than **\$600** or more than **\$1,500**.
 C.R.S.A. §42-4-1307(3), (5), (6).
Driving While Ability Impaired (misdemeanor):
First offense – Not less than **2 days** or more than **180 days** and not less than **\$200** or more than **\$500**;
Second offense – Not less than **10 days** or more than **1 year** and may be fined not less than **\$600** or more than **\$1,500**.

¹⁴⁸ The court cannot accept a guilty plea to a non-alcohol or non-drug-related traffic offense in lieu of a DUI/DWAI offense unless the prosecutor makes a good faith representation that they could not establish a prima facie case on the original charge. C.R.S.A. §42-4-1301(4).

¹⁴⁹ It appears based upon the language of the statute that if a “therapeutic” concentration would not render a person “under the influence” or “impaired,” that arguing that the level of the substance detected was merely therapeutic would be a valid defense.

¹⁵⁰ But where there has been a conviction for a driving while impaired offense.

Mandatory Minimum Term/Fine:	<p><u>Third or subsequent</u> – Not less than 60 days or more than 1 year and not less than \$600 or more than \$1,500. C.R.S.A. §42-4-1307(4), (5), (6).</p> <p>Injury-Related DUI Offense (Vehicle Assault) (Class 4 felony) – 2 to 6 years and \$2,000 to \$500,000. C.R.S.A. §§18-1.3-401; 18-3-205(1)(b), (c).</p> <p>Driving Under the Influence: <u>First offense</u>– 5 days;¹⁵¹ <u>Second offense</u> – 10 days. <u>Subsequent offense</u> – 60 days. C.R.S.A. §42-4-1307(3), (5), (6).</p> <p>Driving While Impaired: <u>First offense</u>– 2 days; <u>Second offense</u> – 10 days; <u>Subsequent offense</u> – 60 days. C.R.S.A. §42-4-1307(4), (5), (6).</p> <p>Injury Related DUI-D Offense (Vehicle Assault) (Class 4 felony) – 1 year. C.R.S.A. §18-1.3-401(6).</p>
Community Service:	<p>Driving Under the Influence: <u>First offense</u> – Not less than 48 hours or more than 96 hours. C.R.S.A. §42-4-1307(3). <u>Subsequent offense of DUI or habitual user</u>¹⁵² – Not less than 48 hours or more than 120 hours. C.R.S.A. §42-4-1307(5), (6).</p> <p>Driving While Impaired: <u>First offense</u>– Not less than 24 hours or more than 48 hours. C.R.S.A. §42-4-1307(4). <u>Subsequent offense</u>– Not less than 48 hours or more than 120 hours. C.R.S.A. §42-4-1307(5), (6).</p> <p>Persons assigned to community service must pay a fee of no more than \$120. C.R.S.A. §§42-4-1307(14); 42-4-1301.4(5).</p>
Restitution:	<p>Yes.</p> <p>I. Court costs which credit the crime victim compensation fund. C.R.S.A. §24-4.1-119(1).</p> <p>II. A defendant may be ordered to pay restitution as part of the sentence. C.R.S.A. §§18-1.3-205; 18-1.3-601; 42-4-1307(11).</p> <p>Other Penalties:</p> <p>I. A penalty surcharge of not less than \$100 or more than \$500 shall be imposed on all DUIs.</p> <p>II. A penalty surcharge of \$20 for the traumatic brain injury trust fund.</p> <p>III. A penalty surcharge of not less than \$1 or more than \$10</p>

¹⁵¹ Note: The mandatory 5-day sentence may be suspended if the offender undergoes a pre-sentence or post-sentence alcohol and drug evaluation and satisfactorily completes and meets all financial obligations of the program. C.R.S.A. §42-4-1307.

¹⁵² But where there has been a conviction for a driving while impaired offense.

Child Endangerment: for programs to address alcohol and substance abuse problems. C.R.S.A. §42-4-1307(10).
 Knowingly or recklessly committing an act that either kills or injures a child (< 16) is child abuse.
 If death results, it is a Class 2 felony, which carries a term of **8-24 years** in prison and/or a fine of **\$5,000 – \$1,000,000**.
 If injury results, it is a Class 3 felony, which carries a term of **4-12 years** in prison and/or a fine of **\$3,000 – \$750,000**.
 Mandatory parole is 5 years for both felonies. C.R.S.A. §§18-1.3-401; 18-6-401(1), (2), (7)(a)(I), (III); *People v. Deskins*, 927 P. 2d 368 (Colo 1996).

Other: **Mandatory Parole:** Persons who have been convicted of Vehicle Assault must be placed on parole for 3 years. C.R.S.A. §18-1.3-401(1)(a)(V)(A).

Administrative Sanctions – Post-Conviction:

Substance Abuse Education: **Yes.** C.R.S.A. §§42-2-126(4); 42-2-132(2)(a)(II).
 Substance Abuse Treatment: **Yes.** C.R.S.A. §§42-2-126 (4); 42-2-132(2)(a)(II).
 Vehicle Impoundment/Confiscation: **Yes – Limited to use in commission of felony.**¹⁵³
 Authorized by Specific Statutory Authority:
 Terms Upon Which Vehicle Will Be Released:
 Other Miscellaneous Sanctions: I. A DUI/DWAI offender may be sentenced to attend a “victim impact panel” and assessed an attendance fee. C.R.S.A. §42-4-1307(12).
 II. A DUI/DWAI offender is required to pay \$75 (deposited into the Law Enforcement Assistance Fund) and \$15 (deposited into the county treasury). C.R.S.A. §43-4-402(1).
 III. Misdemeanor offenders are assessed a surcharge of 37% of the fine imposed, or \$78 (misd.), \$46 (Class 1 misd. traffic) or \$33 (Class 2 misd. traffic), whichever amount is greater. Felony offenders are assessed a surcharge of 37% of the fine imposed or \$163, whichever amount is greater. C.R.S.A. §24-4.2-104(1)(a)(I)
 IV. Traffic School: A person who violates the State’s traffic laws may be ordered to attend a course of instruction on traffic laws, hazardous driving situations and accident prevention. C.R.S.A. §42-4-1717.

Homicide by Vehicle¹⁵⁴:

State Has Such a Law: **DUI Vehicle Homicide** – Class 3 felony. C.R.S.A. §18-3-106(1)(b), (c).

¹⁵³ A vehicle used by its owner in the commission of a felony would be classified as a Class 1 public nuisance and may be subject to forfeiture. C.R.S.A. §16-13-302, 16-13-303(1)(i).

¹⁵⁴ The definition of “vehicle” for the purposes of the DUI vehicular homicide statute is broader than the DUI/DWAI statute. C.R.S.A. §181-901(3)(k); and *People v. Barry*, 349 P.3d 1139, 1159-60 (2015). DUI vehicular homicide can be committed by driving or operating a car, truck, snowmobile, all-terrain vehicle, farm tractor, boat, or airplane. *Barry*, 349 P.3d at 1160.

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

Mandatory Minimum Term/Fine: **None**
 Other: **Class 3 felony** – Mandatory parole for 5 years. C.R.S.A. § 18-1.3-401(a).

DUI-D Offenses and Commercial Motor Vehicles (CMV):

Any person who holds a commercial driver’s license or who drives a commercial motor vehicle is subject to the same disciplinary actions and penalties as listed above for all DUI-D offenses. C.R.S.A. §42-2-405(1).

If any person possesses or knowingly transports a schedule I drug or other substance identified in 49 CFR chapter III, subchapter B, appendix D, an amphetamine, a narcotic drug, a formulation of an amphetamine, or a derivative of a narcotic drug while operating a commercial vehicle during on-duty time, the department shall cancel such person's commercial driver's license for a period of six months, or, if such person does not have a commercial driver's license, the department shall not issue a commercial driver's license to such person until at least six months have elapsed since the date of the latest such occurrence. C.R.S.A. §42-2-405(2).

If any person makes unlawful use of any of the above-mentioned substances, while operating a commercial motor vehicle during on-duty time, the department shall cancel such person's commercial driver's license for a period of one year or, if such person does not have a commercial driver's license, the department shall not issue a commercial driver's license to such person until at least one year has elapsed since the date of the latest such occurrence. C.R.S.A. §42-2-405(2). **1 year**. C.R.S.A. §42-2-132(2)(a).

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

Class 3 felony – Mandatory parole for 5 years. C.R.S.A. § 18-1.3-401(a).

Misdemeanor:

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

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

Mandatory Minimum Fine/Imprisonment:

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

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:	Misdemeanor: <u>First offense</u> – Not less than 30 days or more than 1 year and may be fined not less than \$500 or more than \$1,000 ; <u>Second and subsequent offenses</u> – Not less than 90 days or more than 2 years and may be fined not less than \$500 or more than \$3,000 . C.R.S.A. §42-2-138(1)(d)(I).
Mandatory Minimum Fine/Imprisonment:	The minimum terms listed above are mandatory. The fines are discretionary. C.R.S.A. §42-2-138(1)(d)(I).
Other:	N/A
 <u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	Yes . C.R.S.A. §42-2-201.
Grounds for Being Declared Habitual Offender:	(1) 3 or more serious offenses in 7 years ¹⁵⁵ ; (2) 10 or more convictions for offenses of 4 points ¹⁵⁶ or more within 5 years; or (3) 18 or more convictions of 3 points ¹⁵⁷ or less within 5 years. C.R.S.A. §42-2-202.
Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status:	Class 1 Misdemeanor . ¹⁵⁸ C.R.S.A. §42-2-206(1)(a)(I).
Imprisonment (Term):	6 to 18 months and/or \$500 to \$5,000 . C.R.S.A. §18-1.3-501.
Mandatory Minimum Term/Fine:	30 days and/or \$3,000 . ¹⁵⁹ C.R.S.A. §42-2-206(1)(a)(II).
 <u>Other State Laws Related to Drug Use:</u>	
Drug Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes . C.R.S.A. §§42-4-1301.1(8); 42-4-1304(1).
Drug Chemical Test Given to Deceased Driver Killed in Crash:	Yes . C.R.S.A. §§42-4-1301.1(8); 42-4-1304(1).
Drug Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	Yes – only if the driver cannot be immediately determined. C.R.S.A. §42-4-1304(1).
Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:	Yes – 15 or older. C.R.S.A. §42-4-1304(1).
Drug Chemical Tests on Persons Involved in Traffic Crashes:	No

¹⁵⁵ These include DUI, DUI per se or DWAI, reckless driving, driving on suspended or revoked license, vehicular assault and vehicular homicide, etc. C.R.S.A. §42-2-202(2)(a).

¹⁵⁶ These include DUI/DUI per se, habitual user, DWAI, UDD, certain speeding offenses, reckless and careless driving. C.R.S.A. §42-2-127(2)(b)(5).

¹⁵⁷ These include certain speeding offenses and various traffic infractions. C.R.S.A. §42-2-127(2)(b)(5).

¹⁵⁸ Aggravated Driving: A person commits aggravated driving, a Class 6 felony, when operating a motor vehicle while the license is still revoked for being a habitual offender and committing a DUI/DWAI offense, reckless driving, eluding a police officer, or a violation of the accident reporting requirements. C.R.S.A. §42-2-206(1)(b)(I), (II). Sanctions: 1 year to 18 months imprisonment (mand. parole for 1 yr.) and \$1,000 – \$100,000 in fines. C.R.S.A. §18-1.3-401(1)(a). Vehicle Forfeiture: A vehicle used in the commission of a “felony” is subject to *in rem* civil forfeiture. C.R.S.A. §§16-13-302; 16-13-303(1)(i). Under this law, the State is able to seize a driver’s vehicle based upon the offense of driving after license revocation. The driver may be subjected to criminal prosecution for such behavior. This does not constitute double jeopardy. *People v. Ferrel*, 929 P.2d 65 (Colo.App. 1996).

¹⁵⁹ A person must be sentenced to a mandatory jail term or a mandatory fine but may be sentenced to both. However, the mandatory jail or fine sanction may be suspended if the offender completes no less than 40 (mandatory) hours or no greater than 300 hours of community service. C.R.S.A. §42-2-206(1)(a)(II).

Marijuana – Possession and Use Laws:

Legal for Recreational and Medical Use. Colo. Const. Art. 18, §16.

Possession of ≤ 1 oz. Marijuana by persons ≥ 21 – Legalized.

Possession of ≤ 6 Marijuana plants (≤ 3 mature/flowering) – Legalized.

Decriminalized. Colo. Const. Art. 18, §16(3).

Other:

If at the time of the alleged DUI/DWAI offense the person possessed a valid medical marijuana registry identification card, the prosecution shall not use such fact as part of the prosecution's case in chief. C.R.S.A. §42-4-1301(6)(j).

The driver's possession of a valid medical marijuana registry identification card shall not, in the absence of other contributing factors, constitute probable cause for a peace officer to require the driver to submit to an analysis of his/her blood. C.R.S.A. §42-4-1301(6)(k).

Intoxicant Exclusion Law (UPPL):

No. C.R.S.A. §10-16-201(6)

STATE

General Reference:

CONNECTICUT

Connecticut General Statutes Annotated (C.G.S.A.)¹⁶⁰Type of DUI-D Law:**Under the Influence**Basis for a DUI-D Charge:

C.G.S.A. §14-227a(a).

Standard DUI-D Offense:

Operate a motor vehicle¹⁶¹ while under the influence¹⁶² of any drug¹⁶³, or both a drug and intoxicating liquor.

Illegal Per Se Law:

N/A

Presumption Based on Drugs – State Has (Yes/No):

No

Other:

N/A

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

No

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

N/A

Implied Consent Law:

Yes. C.G.S.A. §14-227b.

Arrest Required (Yes/No):

Yes. C.G.S.A. §14-227b.

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

Yes. C.G.S.A. §14-227b(b).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal Cases. C.G.S.A. §§14-227a(e); 14-227b(b).

Other Information:

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

Blood:

Yes. C.G.S.A. §14-227b(a).

Urine:

Yes. C.G.S.A. §14-227b(a).

Other:

N/A

Individuals Authorized to Perform Chemical Testing (Blood):¹⁶⁰ Connecticut refers to DWI as “OUI”.¹⁶¹ A “motor vehicle” includes all vehicles used on the public highways. C.G.S.A. §14-202(5). “Vehicle” has the same meaning as ‘motor vehicle’. C.G.S.A. §14-202(10). A “motor vehicle” as used in the OUI statute includes snowmobiles and all-terrain vehicles, as defined in C.G.S.A. §14-379. C.G.S.A. §14-227a(a). A motorcycle is considered a motor vehicle. *State v. Rathburn*, 249 A.2d 262 (Conn. Cir. Ct. 1968).¹⁶² A driver operating a motor vehicle while under the influence of a drug is one whose mental, physical or nervous processes have become so affected that he loses, to an appreciable degree, the ability to function properly in the operation of his vehicle. *State v. Dalzell*, 901 A.2d 706 (Conn. App. 2006).¹⁶³ A “drug” means (A) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (B) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (C) substances, other than food, intended to affect the structure or any function of the body of man or animals; and (D) substances intended for use as a component of any article specified in subparagraph (A), (B), or (C) of this subdivision. It does not include devices or their components, parts or accessories. C.G.S.A. §21a-240(17).

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:	Yes. Must be withdrawn by a person licensed to practice medicine and surgery, a phlebotomist, a qualified laboratory technician, an emergency medical technician II, a registered nurse, or such other occupational classification as the commissioner determines may competently and safely withdraw blood in DUI cases. C.G.S.A. §227a(b), (d); Regs. Conn. State Agencies §14-227a-9b. Note. ¹⁶⁴
Entity Establishing Testing Protocols:	Yes. The Department of Emergency Services and Public Protection. C.G.S.A. §14-227a(b). In accident cases involving death or serious bodily injury, blood shall be examined by the Division of Scientific Services within the Department of Emergency Services and Public Protection. C.G.S.A. §14-227c(b).
Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:	It appears that the above regulations apply to any sample collected and analyzed for a DUI case, regardless of whether collection occurred pursuant to a search warrant or pursuant to implied consent, but not to a sample collected and analyzed for other purposes. Samples collected and analyzed for medical diagnostic testing are specifically exempted. Regs. Conn. State Agencies §14-227a-2b.
Other:	Independent Testing An additional chemical test of the same type must be performed at least 10 minutes after the initial test was performed, or for reasonable cause, an additional test of a different type. C.G.S.A. §14-227a(b)(5). Use of Medical Records In an accident case where the suspect has suffered a physical injury, medical records may be used to establish probable cause for arrest, and probable cause for a warrant authorizing the seizure of the chemical analysis of such blood or urine samples of the accused, and/or the medical records of the accused. C.G.S.A. §14-227a(k).
<u>Adjudication of DUI-D Charges:</u>	
Mandatory Adjudication Law (Yes/No):	No ¹⁶⁵
Anti-Plea-Bargaining Statute (Yes/No):	No. However, the law does require the State to give to the court, in open session, the reasons why a DUI charge was reduced, nolle prossed or dismissed. C.G.S.A. §14-227a(f).
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes. However, a court is not required to conduct a pre-sentence investigation for first offenders or subsequent

¹⁶⁴ Pursuant to the Implied Consent statute, the test must be performed at the direction of a police officer according to methods and equipment approved by the Department of Emergency Services and Public Protection and in accordance with subsection (d) of this section. C.G.S.A. §14-227a(b). The Commissioner of Emergency Services and Public Protection is charged with adopting regulations governing the conduct of chemical tests, the operation and use of chemical test devices, the training and certification of operators of such devices, and the drawing or obtaining of blood, breath or urine samples. C.G.S.A. §14-227a(d). The regulations governing chemical testing are located at Regs. Conn. State Agencies §14-227a-1b, *et seq.*

¹⁶⁵ A pre-trial diversion program is available only for first DUI offenders where death or serious injury is not involved. C.G.S.A. §§54-56g; 54-56e.

offenders whose maximum sentence is one year or less.
C.G.S.A. §54-91a.

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription: **No**
Therapeutic Concentration: **Yes**¹⁶⁶
Involuntary Intoxication: **No.** *State v. Borrelli*, 895 A.2d 257 (Conn. App. 2006) (citing C.G.S.A. §53a-7).
Other:

Sanctions for Refusal to Submit to a Chemical Test:

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

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

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine: **Under the Influence:**
First offense (misdemeanor) – Not less than **\$500** or more than **\$1,000** and not more than **6 months**;
Second offense (within 10 years – felony) – Not less than **\$1,000** or more than **\$4,000** and not more than **2 years**;
Third or subsequent offense (within 10 years – felony) – Not less than **\$2,000** or more than **\$8,000** and not more than **3 years**. C.G.S.A. §§14-227a(g); 53a-25; 53a-26.
Vehicle Assault (Class D felony) – Not more than **\$5,000** and not less than **1 year** or more than **5 years**. C.G.S.A. §§53a-35a; 53a-41; 53a-60d.

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

Community Service: **Under the Influence:**
First offense– **100 hours** in lieu of the 48 consecutive hours of mandatory imprisonment. For this alternative, the entire jail sentence is suspended and the required community

¹⁶⁶ It appears based upon the language of the statute that if a “therapeutic” concentration would not render a person “under the influence,” arguing that the level of the substance detected was merely therapeutic would be a valid defense.

	service is to be performed as a part of probation; ¹⁶⁷ Second and subsequent offense (within 10 years) – 100 hours (mand) in addition to incarceration and as part of probation. C.G.S.A. §§14-227a(g); 14-227e.
Restitution:	Yes. Criminal injuries compensation fund. C.G.S.A. §§54-209; 54-215. Direct Restitution: The court may order restitution be paid directly to the victim, the order of which becomes an enforceable civil judgment. C.G.S.A. §53a-28(c).
Child Endangerment:	Yes. Class C Felony, punishable by a term of not less than 1 years or more than 10 years and a fine of not more than \$10,000 . C.G.S.A. §§53-21(a)(1); 53a-25; 53a-35a(7).
Other:	Special Cost: A special cost of \$15 is imposed for a DUI conviction under C.G.S.A. §14-227a. C.G.S.A. §54-143(a). Incarceration Cost: A defendant may be required to pay the cost of incarceration. C.G.S.A. §18-85a. ¹⁶⁸ Ignition Interlock Cost: A defendant who has been court ordered not to operate a vehicle unless it is equipped with ignition interlock bears the costs of installing and maintaining the device. C.G.S.A. §14-227j(c).
<u>Administrative Sanctions – Post-Conviction:</u>	
Substance Abuse Education:	No
Substance Abuse Treatment:	Yes. The court <u>may</u> order substance abuse treatment. C.G.S.A. §14-227a(g).
Vehicle Impoundment/Confiscation:	Yes
Authorized by Specific Statutory Authority:	Limited Impoundment: The vehicle driven by a person who has been arrested for driving while under the influence of drugs shall be impounded for 48 hours <i>if the person's driving privilege was suspended or revoked at the time of the offense</i> . C.G.S.A. §14-227h.
Terms Upon Which Vehicle Will Be Released:	The owner of such vehicle may reclaim the vehicle only after the expiration of 48 hours upon payment of all towing and storage costs. C.G.S.A. §14-227h.
Other Miscellaneous Sanctions:	Victim Impact Panel: The court may require a probationer to participate in a victim impact panel as a condition of probation. C.G.S.A. §14-227a(l).
<u>Homicide by Vehicle:</u>	
State Has Such a Law:	Yes – Class C felony. A person is guilty of manslaughter with a motor vehicle if while operating a vehicle under the influence of intoxicating liquor and/or any drug, that person causes the death of another person. C.G.S.A. §53a-56b.
Imprisonment/Fine:	Not less than 1 year or more than 10 years and/or a fine not

¹⁶⁷ Under separate provisions of law, an offender who is sentenced to probation may be required to perform community service. C.G.S.A. §53a-28(e).

¹⁶⁸ In practice, this has rarely been used.

Mandatory Minimum Term/Fine:
Other:

to exceed **\$10,000**. C.G.S.A. §§53a-35a; 53a-41.

Not less than **1 year**. C.G.S.A. §§53a-25; 53a-35a; 53a-41.

Community Service: An offender who is sentenced to probation may be required to perform community service. C.G.S.A. §53a-28(e).

Persistent Offender: A person who has been convicted of DUI manslaughter or DUI Assault and who has a previous conviction for either of these offenses or a DUI violation under C.G.S.A. §14-227a within 10 years may be incarcerated at the next higher level felony offense. C.G.S.A. §53a-40f. (Class B felony- Not less than **1 year** or more than **20 years** and/or a fine of not more than **\$15,000**. C.G.S.A. §53a-35a.)

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is “disqualified” from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while operating CMV, that person is convicted of driving while under the influence of drug(s) or refuses to submit to a chemical test. For a subsequent violation or a combination of two or more violations of any of the above listed items, the “disqualification” is for life. The lifetime “disqualification” may be reduced to 10 years (mand) if certain conditions are satisfied. But a person is not eligible for a “special permit” based on hardship. C.G.S.A. §§14-1(14), (16); 14-37a; 14-44k.¹⁶⁹

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

First offense (Misdemeanor) – Not more than **1 year** and not less than **\$500** or more than **\$1,000**.¹⁷⁰ C.G.S.A. §§14-215(c)(1); 53a-26(a).

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

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

Mandatory Minimum Fine/Imprisonment:

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

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

Third or subsequent offense (Felony) – 1 year. C.G.S.A.

¹⁶⁹ A person who operates a CMV after having been placed “out-of-service” is subject to the following CDL disqualification periods: first offense – not less than 180 days (mand) or more than 1 year; second offense (within 10 years) – not less than 2 years (mand) or more than 5 years; third or subsequent offense (within 10 years) – not less than 3 years (mand) or more than 5 years. If the offender was transporting passengers or hazardous materials, the disqualification periods are as follows: first offense – not less than 180 days (mand) or more than 2 years; second or subsequent offense (within 10 years) – not less than 3 years (mand) or more than 5 years. In addition, such an offender is subject to a civil penalty. C.G.S.A. §14-44k(i).

¹⁷⁰ The sanctions given also apply to persons who operate a motor vehicle after their driving privileges have been suspended for an implied consent law violation.

Other:	§14-215(c)(3). N/A
<u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No):	No
<u>Other State Laws Related to Drug Use:</u> Drug Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes. C.G.S.A. §14-227c(a).
Drug Chemical Test Given to Deceased Driver Killed in Crash:	Yes
Drug Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	No
Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:	Yes
Drug Chemical Tests on Persons Involved in Traffic Crashes:	Yes. C.G.S.A. §14-227c(b).
<u>Marijuana – Possession and Use Laws:</u>	Legal for Medical Use C.G.S.A. §§21a-279a; 21a-253. Possession < ½ oz. Decriminalized: <u>First offense</u> - \$150 civil penalty. <u>Subsequent offense</u> – Not less than \$200 or more than \$500 civil penalty. ¹⁷¹ C.G.S.A. §21a-279a. Possession ≥ ½ oz.: <u>First offense (Class A Misdemeanor)</u> – Not more than 1 year and a fine of not more than \$2,000. <u>Second offense (Class A Misdemeanor)</u> – Not more than 1 year and a fine of not more than \$2,000. Additionally, the court shall evaluate such person and, if the court determines the person is drug-dependent, may suspend prosecution and order the person to undergo a substance abuse treatment program. <u>Third or subsequent offense (Class A Misdemeanor or Class E Felony)</u> - Not more than 1 year and a fine of not more than \$2,000. Alternatively, the court may find the person to be a persistent offender in accordance with C.G.S.A. §53a-40(f), and sentence the person to not more than 3 years. C.G.S.A. §§21a-279; 53a-35a; 53a-36; 53a-42.
<u>Intoxicant Exclusion Law (UPPL):</u>	No. C.G.S.A. §38a-498c.

¹⁷¹ A third or subsequent offense requires referral for participation in a drug education program at the person's own expense. C.G.S.A. §21a-279a(c).

STATE

DELAWARE

General Reference:

Delaware Code Annotated (Del.C.)

Type of DUI-D Law:**Under the Influence/Zero Tolerance**Basis for a DUI-D Charge:

21 Del.C. §4177(a)(2), (3), (6).

Standard DUI-D Offense:

Drive¹⁷² a vehicle¹⁷³ under the influence¹⁷⁴ of any drug¹⁷⁵, or a combination of alcohol and any drug. 21 Del.C. §4177(a)(2), (3).

Illegal Per Se Law:

When a person's blood contains, within 4 hours of driving¹⁷⁶:

I. Any amount of an "illicit or recreational drug"¹⁷⁷ that is the result of the "unlawful use or consumption"¹⁷⁸ of such illicit or recreational drug; or

II. Any amount of a "substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug"¹⁷⁹ prior to or during driving. 21 Del.C. §4177(a)(6).

Presumption Based on Drugs – State Has (Yes/No):

No

Other:

N/AChemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has

Yes. 21 Del.C. §§2741(c); 4177(g)(1).

¹⁷² "Drive" includes driving, operating, or having actual physical control of a vehicle. 21 Del.C. §4177(c)(5).

¹⁷³ A "vehicle" includes (a) every device by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks, electric trackless trolley coaches, and electric personal assistive mobility devices, 21 Del.C. §101(82); (b) "OHVs", which are motor driving off-road vehicles capable of cross-country travel without the benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland or other natural terrain, unless the vehicle is a farm vehicle being used for farming, a vehicle used for military, fire, emergency or law-enforcement purposes, a construction or logging vehicle used in performance of its common function, electric personal assistive mobility device or a registered aircraft, or snowmobile, 21 Del.C. §101(41); and (c) Mopeds, which are a pedal or non-pedal bicycle having 2 tandem wheels, either of which is 10 inches or more in maximum diameter, and having an internal combustion motor characterized in that the maximum piston displacement is less than 55 cc, or an electric motor rated between 751 watts and 2,000 watts, 21 Del.C. §101(33). 21 Del.C. §4177(c)(10).

¹⁷⁴ "Under the influence" means that the person is, because of alcohol or drugs or a combination of both, less able than the person would ordinarily have been either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the driving of a vehicle. 21 Del.C. §4177(c)(11).

¹⁷⁵ The term "drug" includes those drugs defined in Titles 11 and 16 (see schedule of controlled substances in Title 16, Ch. 47) and any substance or preparation that releases intoxicating vapors or fumes. 21 Del.C. §4177(c)(6).

¹⁷⁶ Proof that the drug was consumed prior to or at the time of driving is required. A person may not be found guilty under 21 Del.C. §4177(a)(6) if the drug was consumed after the person ceased driving. 21 Del.C. 4177(b)(3)(a).

¹⁷⁷ An "illicit or recreational drug" means any substance or preparation that is (a) any material, compound, combination, mixture, synthetic substitute or preparation which is enumerated as a Schedule I controlled substance under 16 Del.C. §4714; (b) Cocaine or of any mixture containing cocaine, as described in 16 Del.C. §4716(b)(4); (c) amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in 16 Del.C. §4716(d)(1); (d) methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in 16 Del.C. §4716(d)(3); (e) phencyclidine, or of any mixture containing any such substance, as described in 16 Del.C. §4716(e)(5); (f) a designer drug as defined in 16 Del.C. §4701; or (g) a substance or preparation having the property of releasing vapors or fumes which may be used for the purpose of producing a condition of intoxication, inebriation, stupefaction or lethargy or for the purpose of dulling the brain or nervous system. 21 Del.C. §4177(c)(7).

¹⁷⁸ "Unlawful use or consumption" means that the person used or consumed a drug without legal authority to do so as provided by Delaware law. 21 Del.C. §4177(c)(8). However, the prosecution is not required to prove lack of legal authority, rather if a person claims that he/she lawfully used or consumed a drug, it is that person's burden to show lawful use/consumption. Id.

¹⁷⁹ However, this does not include inactive ingredients or metabolites of drugs. 21 Del.C. §4177(c)(9).

Such a Law (Yes/No):	
Preliminary Breath Test Law – Applies to Drugs (Yes/No):	No
Implied Consent Law:	Yes. 21 Del.C. §2740.
Arrest Required (Yes/No):	No. Probable cause is sufficient. 21 Del.C. §§2740; 2741(b); 2742(e).
Implied Consent Law Applies to Drugs (Yes/No):	Yes. 21 Del.C. §§2740; 2741(b).
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes. (Criminal and Civil Cases) 21 Del.C. §2749.
Other Information:	A person <u>may</u> be required to submit to a chemical test if there is probable cause of a DUI-D offense. However, a police officer may take reasonable steps to conduct chemical testing without relying upon implied consent. 21 Del.C. §2742(a).
<u>Non-Breath Chemical Tests for Drug Concentration Authorized Under the Implied Consent Law:</u>	
Blood:	Yes. 21 Del.C. §2740.
Urine:	Yes. 21 Del.C. §2740.
Other:	
<u>Individuals Authorized to Perform Chemical Testing (Blood):</u>	
Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:	Yes. Duly licensed physicians, registered nurses, licensed practical nurses, and other persons trained in medically accepted procedures for the drawing of blood and employed by a hospital or other health care facility, acting at the request of a police officer. 21 Del.C. §2746.
Entity Establishing Testing Protocols:	No. Results of chemical testing pertaining to blood are admissible as long as the testing was performed at the Division of Forensic Science, the Delaware State Police Crime Laboratory, any State or Federal law-enforcement agency, or any hospital or medical laboratory. Del.C. §2301 (“Chemical test”).
Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:	No
Other:	It is not necessary to produce evidence that a person who has withdrawn blood from a person submitting to a chemical test under the implied consent statute was qualified to do so, and it is not necessary to present the testimony of, or certification by, the person who withdrew the blood to establish the chain of custody of such evidence in an implied consent case. 21 Del.C. §2746.
	Doctor Patient Privilege
	The doctor-patient privilege does not apply to the disclosure to law enforcement personnel, or the admissibility into evidence in any criminal proceeding, of the results of a

chemical test of a person's blood, breath or urine for the purpose of determining the drug content. 21 Del.C. §2750(b).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No):

No¹⁸⁰

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

No

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

Yes – the court may order a PSI for any person convicted of a felony, or a misdemeanor that resulted in injury or death. 11 Del.C. §4331.

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription:

Yes. 21 Del.C. §4177(b)(3)(b).

Therapeutic Concentration:

No

Involuntary Intoxication:

Yes. 11 Del.C. §423.

Other:

Sanctions for Refusal to Submit to a Chemical Test:

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

N/A

Preliminary Breath Test – Other:

N/A

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

None

Implied Consent Chemical Test - Other:

N/A

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:

First offense – Not more than **12 months** and/or not less than **\$500** or more than **\$1,500**;

Second offense¹⁸¹ (within 10 years) – Not less than **60 days** or more than **18 months** and not less than **\$750** or more than **\$2,500**;

Third offense (any time after 2 prior offenses) (Class G felony) – Not less than **1 year** or more than **2 years** and not more than **\$5,000**;

Fourth offense (any time after 3 prior offenses) (Class E felony) – Not less than **2 years** or more than **5 years** and not more than **\$7,000**;

Fifth offense (any time after 4 prior offenses) (Class E felony) – Not less than **3 years** or more than **5 years** and not more than **\$10,000**;

¹⁸⁰ A first offender cannot substitute the probation-before-judgment-program for the program under 21 Del.C. §4177B. 11 Del.C. §4218(b)(4). An offender is not eligible for the probation-before-judgment-program if that person has participated within a 5-year period or has other violation “enhancements” such as elevated BAC. 21 Del.C. §4177B(a); 11 Del.C. §4218(d).

¹⁸¹ First and second offenses are unclassified misdemeanors. 11 Del.C. §4202(b).

Sixth offense (any time after 5 prior offenses) (Class D felony) – Not less than **4 years** or more than **8 years** and not more than **\$10,000**;

Seventh or subsequent offense (any time after 6 prior offenses) (Class C felony) – Not less than **5 years** or more than **15 years** and not more than **\$15,000**. 21 Del.C. §§4177(d); 4177B(e)(2).

Vehicular Assault – second degree (Class B misdemeanor): Negligent driving while under the influence of a drug or with a prohibited drug content, causes physical injury to another person – Up to **6 months** incarceration and up to a **\$1,150** fine. 11 Del.C. §§628A(2); 4206(b).

Vehicle Assault – first degree (Class F felony): Negligent driving while under the influence of a drug or with a prohibited drug content, causes serious physical injury to another person – Up to **3 years**’ incarceration. The court may impose a fine as it deems appropriate. 11 Del.C. §§629; 4205(b)(6), (k).

Mandatory Minimum Term/Fine:

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

Second offense (within 10 years) – **60 days**¹⁸²/**\$750**;

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

Fourth offense – **6 months**;

Fifth offense – **3 years**;

Sixth offense – **4 years**;

Seventh and subsequent offenses – **5 years**. 21 Del.C. §4177(d).

Community Service:

Yes.¹⁸³ Discretionary. 11 Del.C. §4332A.

Restitution:

Yes. The court may order the defendant to pay compensation to a victim. 11 Del.C. §4204(c)(9). Additionally, a victim of a DUI-D offense is eligible for compensation from the State’s Violent Crime Compensation Board. 11 Del.C. §9002(5)(f), *et seq.*

Child Endangerment:

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

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

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

¹⁸² The sentencing Court may suspend the minimum sentence upon the condition that the offender successfully complete the Court of Common Pleas Driving Under the Influence Treatment Program, which includes 30 days of community service. 21 Del.C. §4177(d)(2).

¹⁸³ The total number of community service hours that may be imposed cannot exceed the maximum term of incarceration for the offense, or if no incarceration is provided by law, the maximum number of community service hours shall not exceed 100. 11 Del.C. §4332A(b).

	21 Del.C. §4177(d)(10). This is considered an “aggravating circumstance” for sentencing purposes. 21 Del.C. §4177(d)(10).
Other:	Assessment: An additional amount equal to 18% of any fine (whether or not the fine is suspended) is assessed against the defendant. The assessment is deposited in the Victim compensation fund. 11 Del.C. §9016.
<u>Administrative Sanctions – Post-Conviction:</u>	
Substance Abuse Education:	Yes. 21 Del.C. §§4177(f); 4177D.
Substance Abuse Treatment:	Yes. 21 Del.C. §§4177(f); 4177D.
Vehicle Impoundment/Confiscation:	Impoundment of a vehicle or surrender of license plates/registration is authorized if the vehicle operator was operating the vehicle while under license suspension or revocation for a DUI-D offense, implied consent refusal or other situations that require mandatory license revocation. Impoundment is for 90 days for a first offense, and 1 year for a subsequent offense. 21 Del.C. §2756(c)(1).
Authorized by Specific Statutory Authority:	Yes. 21 Del.C. §2756(c)(1).
Terms Upon Which Vehicle Will Be Released:	A party with a legal or equitable interest in the vehicle may show cause why the impoundment of the vehicle should cease. 21 Del.C. §2756(c)(1).
Other Miscellaneous Sanctions:	“House arrest” may be used as an alternative to imprisonment. 11 Del.C. §§4332; 4347(j); 4392(c). The court may suspend any or all misdemeanor and felony sentences that have no mandatory minimum. 11 Del.C. §§4205(d), (e); 4206(d).
<u>Homicide by Vehicle:</u>	
State Has Such a Law:	Yes. <u>First degree</u> (death caused by criminally negligent driving while DUI-D) (Class C felony). 11 Del.C. §630A. <u>Second degree</u> (death caused by criminally negligent driving or negligent driving while DUI-D) (Class D felony). 11 Del.C. §630(a)(2).
Imprisonment/Fine:	<u>First degree</u> – Not less than 2 years (18 mo. mand) or more than 15 years ; <u>Second degree</u> – Not less than 1 year or more than 8 years . Fines for each offense are ordered if the court deems appropriate. 11 Del.C. §§630(b); 630A(b); 4205(b)(3), (4); 4205(k).
Mandatory Minimum Term/Fine:	The terms above are mandatory.
Other:	N/A
<u>DUI-D Offenses and Commercial Motor Vehicles (CMV):</u>	
	A person is “disqualified” from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while operating CMV, that person: (1) is convicted of

DUI-D; or (2) refuses to submit to a chemical test for alcohol concentration. For a subsequent violation or a combination of two or more violations of any of the above listed items, the “disqualification” is for life. The lifetime “disqualification” may be reduced to 10 years (mand) if certain conditions are satisfied. 21 Del.C. §2612.

Special Note:

I. It is an unclassified misdemeanor to operate a CMV while either suspended, revoked, disqualified or under a CDL out-of-service order.

For a first offense, a person is subject to a fine of not less than \$200 or more than \$2,500;

For a subsequent offense, a person is subject to an imprisonment term of not more than 90 days and/or a fine of not less than \$500 or more than \$5,000. 21 Del.C. §§2607(b); 2622.

II. Under separate provisions of law, the following sanctions may be imposed for a violation of an “out-of-service” order.

First conviction: A fine of not less than \$2,500 or more than \$3,500;

Second or subsequent conviction (within 10 years): A fine of not less than \$5,000 or more than \$6,000. 21 Del.C. §2612(h)(4).

Disqualification:

First violation – not less than 180 days (mandatory) or more than 1 year;

Second violation (within 10 years) – not less than 2 years or more than 5 years (1 year mandatory);

Third or subsequent violation (within 10 years) – not less than 3 years or more than 5 years (3 years mand).

If the driver was either transporting hazardous materials or driving a vehicle designed to transport > 15 persons, the following disqualification periods apply:

First violation – not less than 180 days (mandatory) or more than 2 years;

Second violation (within 10 years) – not less than 3 years or more than 5 years (3 years mandatory). 21 Del.C. §2612(h).

DUI-D While Driving or Operating CMV (unclassified misdemeanor) – A person may not drive, operate, or have physical control of a commercial motor vehicle after having used a controlled substance or any drug which impairs driving ability.

For a first offense, a person is subject to a fine of not less than \$200 or more than \$2,500;

For a subsequent offense, a person is subject to an imprisonment term of not more than 90 days and/or a fine of not less than \$500 or more than \$5,000. 21 Del.C. §§2622; 4177M.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

No specific statutory provision on this subject. Sanctions given are for the general offense of operating a motor vehicle while driving privileges are suspended or revoked.

Misdemeanor (Unclassified)

First offense– Not less than **30 days** or more than **6 months** and a fine of not less than **\$600** or more than **\$1,000**.

Subsequent offense (within 3 years) – Not less than **60 days** or more than **1 year** and not less than **\$1,000** or more than **\$4,000**. 21 Del.C. §2756.

Mandatory Minimum Fine/Imprisonment:

First offense – **\$600**;¹⁸⁴

Subsequent offense (within 3 years) – **\$1,000/60 days**. 21 Del.C. §2756.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. 21 Del.C. §§2801, *et seq.*

Grounds for Being Declared Habitual Offender:

3 or more serious violations¹⁸⁵ within a 5-year period, or 10 or more minor moving violations in a 3-year period. 21 Del.C. §2802.

Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):

Misdemeanor (Unclassified). 11 Del.C. §§233(c); 4202(b).

First offense– Not less than **90 days** or more than **30 months** and not more than **\$1,150**;¹⁸⁶

Subsequent offense– Not less than **180 days** or more than **5 years** and not more than **\$2,300**. 21 Del.C. §2810.

Mandatory Minimum Term/Fine:

The terms above are mandatory.

Other State Laws Related to Drug Use:

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

Yes. 21 Del.C. §2740.

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes

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

No

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

No

Drug Chemical Tests on Persons Involved in Traffic Crashes:

Yes. 21 Del.C. §2740.

¹⁸⁴ If the original revocation was based on a DUI offense related to death or injury, there is a mandatory 30-day period of imprisonment and a mandatory fine of \$2,000.

¹⁸⁵ These include (but are not limited to) vehicular manslaughter, DUI-D offense, driving on a suspended/revoked license. 21 Del.C. §2802(1).

¹⁸⁶ Under 21 Del.C. §2810, the court cannot suspend an imprisonment term. This essentially makes the minimum period of incarceration mandatory.

Marijuana – Possession and Use Laws

Legal for Medical Use. 16 Del.C. §§4764; 4901A, *et seq.*; 4903A.

Possession < 18:

Possession of any amount (Unclassified Misdemeanor) – Fine of not more than **\$100**. 16 Del.C. §4764(b).

Possession of any amount and Aggravating Factor¹⁸⁷ (Class B Misdemeanor) – Not more than **6 months** and a fine of not more than **\$1,150**. 11 Del.C. §4206(b); 16 Del.C. §4764(a).

Possession ≥ 18:

Possession ≤ 1 oz. in Public or Moving Vehicle (Unclassified Misdemeanor) – Not more than **5 days** and/or a fine of not more than **\$200**. 16 Del.C. §4764(d).

Possession > 1 oz. (Unclassified Misdemeanor) – Not more than **3 months** and/or a fine of not more than **\$575**. 16 Del.C. §4764(b).

Possession > 1 oz. and Aggravating Factor (Class B Misdemeanor) – Not more than **6 months** and a fine of not more than **\$1,150**. 11 Del.C. §4206(b) and 16 Del.C. §4764(a).

Possession 18 < 21 and ≤ 1 oz.:

First Offense - \$100 civil penalty. 16 Del.C. §4764(c).

Second or subsequent offense (Unclassified Misdemeanor) - \$100 fine. 16 Del.C. §4764(c).

Possession ≥ 21:

Possession ≤ 1 oz. (Decriminalized) – **\$100 civil penalty**. 16 Del.C. §4764(c).

Intoxicant Exclusion Law (UPPL):

Yes. 18 Del.C. §3325.

¹⁸⁷ Aggravating factors include: (a) the offense was committed within a protected school zone; (b) within a protected park or recreation area, church, synagogue or other place of worship; (c) in a vehicle; (d) the defendant was ≥ 18 and the offense involved a person < 18, and the defendant was > 4 years older than the juvenile; (e) the defendant during or immediately following the commission of the offense intentionally prevented or attempted to prevent a law enforcement officer from effecting an arrest or detention by use of force or violence, or by intentionally fleeing from a law enforcement officer in a vehicle thereby creating a substantial risk of physical injury to other persons. 4751A(1).

	DISTRICT OF COLUMBIA
General Reference:	D.C. Code Weil's Code of D.C. Municipal Regulations (DCMR)
<u>Type of DUI-D Law:</u>	Under the Influence/Ability Impaired ¹⁸⁸
<u>Basis for DUI-D Charge:</u>	Under the Influence (DUI) - D.C. Code §50-2206.11. Ability Impaired (OWI) – D.C. Code §50-2206.14.
Standard DUI-D Offense:	I. Operate or be in physical control of any vehicle ¹⁸⁹ while under the influence ¹⁹⁰ of any drug ¹⁹¹ . D.C. Code §50-2206.11. II. Operate or be in physical control of any vehicle while ability to operate or be in physical control of a vehicle is impaired ¹⁹² by the consumption of any drug, or a combination of alcohol and any drug. D.C. Code §50-2206.14.
Illegal Per Se Law:	N/A
Presumption Based on Drugs – State Has (Yes/No):	No
Other:	Driving while impaired is not a lesser included offense of driving while under the influence. <i>Scott v. District of Columbia</i> , 539 A.2d 1085, 1086-87 (D.C. 1988)
<u>Chemical Testing for Drug Concentration:</u>	
Preliminary Breath Test Law – State Has Such a Law (Yes/No):	Yes. D.C. Code §50-1904.01.
Preliminary Breath Test Law – Applies to Drugs (Yes/No):	Yes. D.C. Code §50-1904.01.
Implied Consent Law:	Yes. ¹⁹³ D.C. Code §50-1904.02.
Arrest Required (Yes/No):	Yes. D.C. Code §50-1904.02.
Implied Consent Law Applies to Drugs (Yes/No):	Yes. D.C. Code §50-1904.02.
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes – Criminal and Civil Cases. D.C. Code §§50-1905(c);

¹⁸⁸ In the District of Columbia, operating a vehicle while under the influence in violation of D.C. Code §50-2206.11, is referred to as “DUI;” Operating a vehicle while ability impaired in violation of D.C. Code §50-2206.14, is referred to as “OWI.” *See, e.g., Anand v. District of Columbia*, 901 A.2d 951, 955 (D.C. 2002).

¹⁸⁹ A “vehicle” includes any appliance moved over a highway on wheels or traction tread, including street cars, draft animals, and beasts of burden. D.C. Code §50-2206.01(21).

¹⁹⁰ A person is “under the influence” of a drug if he or she is to the slightest degree less able, either mentally or physically or both to exercise the clear judgment and steady hand necessary to handle as powerful and dangerous a mechanism as an automobile with safety to himself and the public. *Thomas v. District of Columbia*, 942 A.2d 645, 649 (D.C. 2008).

¹⁹¹ A “drug” includes any chemical substance that affects the processes of the mind or body, including but not limited to a controlled substance as defined in D.C. Code §48-901.02(4), and any prescription or non-prescription medication. D.C. Code §50-2206.01(6).

¹⁹² “Impaired” means a person’s ability to operate or be in physical control of a vehicle is affected, due to consumption of alcohol or a drug or a combination thereof, in a way that can be perceived or noticed. D.C. Code §50-2206.01(8).

¹⁹³ The implied consent statute only applies when a law enforcement officer has reasonable grounds to believe that a person was operating or in physical control of a motor vehicle within the District while “intoxicated” by alcohol, or while the person’s ability to operate a vehicle is impaired by the consumption of a drug. It does not appear to apply when a law enforcement officer only has reasonable grounds to believe a person is “under the influence” of a drug. D.C. Code §50-1904.02(a).

Other Information:

A person shall submit two specimens for chemical testing of blood, breath or urine. D.C. Code §50-1904.02.

Rebuttable Presumption

If a person refuses to submit to a chemical test, and the person has had a prior DUI or OWI conviction, there is a rebuttable presumption that the person is under the influence of alcohol or a drug, or any combination thereof. D.C. Code §50-1905(b).

Independent Testing

A person may also submit specimens for chemical testing administered by a medical professional of his/her own choosing. The failure or inability of the person to obtain additional specimens or chemical tests does not preclude the admission of chemical test results that were the product of the law enforcement officer's request. D.C. Code §50-1905(c).

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

Blood:

Yes. D.C. Code §50-1904.02.

Urine:

Yes. D.C. Code §50-1904.02.

Other:

A person may object to blood collection on valid religious or medical grounds. In such case, the person shall only be required to submit breath or urine specimens. D.C. Code §50-1904.02(b).

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:
Entity Establishing Testing Protocols:

Yes. A medical professional acting at the request of a law enforcement officer. D.C. Code §§50-1903(a); 1904.02(b).
No. Results of chemical testing pertaining to blood or urine are admissible as long as the testing was performed at a forensic laboratory, hospital, other equivalent medical facility, or at a laboratory contracted by a hospital or medical facility to perform chemical testing for specimens supplied by the hospital or equivalent medical facility. D.C. Code §50-2206.52c.

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:
Other:

No

Adjudication of DUI-D Charges:

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

No
No
Yes. Subsequent DUI-D/OWI offenders must complete a drug abuse assessment.
D.C. Code §50-2206.54.

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription	No ¹⁹⁴
Therapeutic Concentration	Yes ¹⁹⁵
Involuntary Intoxication	Note ¹⁹⁶
Other:	Insanity Due to Prolonged Use of Drug(s). <i>See McNeil v. United States</i> , 933 A.2d 354 (D.C. 2008).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail):	None
Preliminary Breath Test – Other:	N/A

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	No ¹⁹⁷
Implied Consent Chemical Test - Other:	N/A

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:	<p>Under the Influence:</p> <p><u>First offense</u> – A fine of \$1,000 and/or incarceration for not more than 180 days;</p> <p><u>Second offense</u>¹⁹⁸ – Not less than \$2,500 or more than \$5,000 and not less than 10 days or more than 1 year;</p> <p><u>Third and subsequent offenses</u>¹⁹⁹ – Not less than \$2,500 or more than \$10,000 and a sentence of not less than 15 days or more than 1 year.²⁰⁰ D.C. Code §50-2206.13.</p> <p>Impaired:</p> <p><u>First offense</u> – A fine of \$500 and/or not more than 90 days;</p> <p><u>Second offense</u>²⁰¹ – Not less than \$1,000 or more than \$2,500 and/or not less than 5 days or more than 1 year;</p>
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¹⁹⁴ The definition of “drug” as used in the DUI and OWI statutes includes prescription medications. D.C. Code §§50-2206.01(6); 50-2206.11; 50-2206.14.

¹⁹⁵ It appears based upon the language of the statute that if a “therapeutic” concentration would not render a person “under the influence,” or “impair” the person’s ability to operate a vehicle, arguing that the level of the substance detected was merely therapeutic would be a valid defense. D.C. Code §§50-2206.11; 50-2206.14.

¹⁹⁶ It does not appear that any District of Columbia statutes or appellate cases have addressed this defense.

¹⁹⁷ However, if a person under arrest refuses and such person has had a prior conviction for DUI or OWI, there shall be a rebuttable presumption that such person is under the influence of alcohol, a drug or any combination thereof. D.C. Code §50-1905(b).

¹⁹⁸ A prior offense includes either a DUI offense under D.C. Code §50-2206.11 or an OWI offense under D.C. Code §50-2206.14.

¹⁹⁹ A prior offense includes either a DUI offense under D.C. Code §50-2206.11 or an OWI offense under D.C. Code §50-2206.14.

²⁰⁰ An additional 30-day mandatory minimum term of incarceration shall be imposed for each additional violation if the person has 3 prior offenses and is being sentenced on the current offense. D.C. Code §50-2206.13.

²⁰¹ A prior offense includes either a DUI offense under D.C. Code §50-2206.11 or an OWI offense under D.C. Code §50-2206.14.

Mandatory Minimum Term/Fine:	<p><u>Third or subsequent offense</u>²⁰² – Not less than \$1,000 or more than \$5,000 and a sentence of not less than 10 days or more than 1 year. D.C. Code §50-2206.15.</p> <p>Under the Influence:</p> <p><u>First offense</u> – None.</p> <p><u>First offense w/ blood containing a Schedule I chemical or controlled substance, PCP, cocaine, methadone, morphine, or one of its metabolites or analogs</u> - 15 days;</p> <p><u>Second offense</u> - 10 days;</p> <p><u>Second offense w/ blood containing a Schedule I chemical or controlled substance, PCP, cocaine, methadone, morphine, or one of its metabolites or analogs</u> - 20 days;</p> <p><u>Third and subsequent offenses</u> - 15 days;</p> <p><u>Third and subsequent w/ blood containing a Schedule I chemical or controlled substance, PCP, cocaine, methadone, morphine, or one of its metabolites or analogs</u> - 25 days.</p> <p>D.C. Code §50-2206.13.</p> <p>Impaired:</p> <p><u>First offense</u> – None;</p> <p><u>Second offense</u> – 5 days;</p> <p><u>Third or subsequent offense</u> – 10 days.</p> <p>D.C. Code § 50-2206.15.</p>
Community Service:	<p>The court may, in addition to any other sentence, require a person convicted of any offense as a condition of probation or as a sentence itself, to complete community service. D.C. Code §16-712.</p>
Restitution:	<p>Yes. Victim’s Compensation Fund (D.C. Code §4-501, <i>et seq.</i>) awards are limited to a maximum amount of \$25,000. D.C. Code §4-507. A defendant may be required to pay restitution to a victim. D.C. Code §16-711.</p>
Child Endangerment:	<p>Yes. Any person driving under the influence while transporting a person under age 18 shall be fine an additional minimum of \$500 and not more than \$1,000 per minor and sentenced to a mandatory-minimum term of 5 days per minor who are restrained in a car seat/booster seat, and 10 days per minor if not restrained in a car seat/booster seat. D.C. Code §50-2206.18.</p>
Other:	<p>Assessments: Offenders are required to pay \$50-250 for a drunk-driving offense and \$100-5,000 for a felony offense. D.C. Code §4-516(a).</p>
<p><u>Administrative Sanctions – Post-Conviction:</u></p>	
Substance Abuse Education:	<p>A person previously convicted of a DUI or OWI offense shall receive an assessment of the person’s degree of drug abuse and treatment, as appropriate. D.C. Code §50-2206.54.</p>

²⁰² A prior offense includes either a DUI offense under D.C. Code §50-2206.11 or an OWI offense under D.C. Code §50-2206.14.

Substance Abuse Treatment:	As appropriate. D.C. Code §50-2206.54.
Vehicle Impoundment/Confiscation:	Yes – Limited Impoundment: Under D.C. Code §50-2206.56, a vehicle driven by a person arrested for any drunk driving offense shall be impounded for a limited time period (up to 24 hours).
Authorized by Specific Statutory Authority:	Yes. D.C. Code §50-2206.56.
Terms Upon Which Vehicle Will Be Released:	An impounded vehicle shall be released at any time to a registered owner of the vehicle (other than the arrested person), or 24 hours after the arrest to the arrested person. D.C. Code §50-2206.56.
Other Miscellaneous Sanctions:	Limited Registration Suspension: The registrations of all vehicles owned by a person who has been convicted of <u>any</u> DUI or OWI offense must be suspended until the offender gives and maintains proof of financial responsibility. However, registrations for vehicles owned by the United States government, the District of Columbia, a State, or a political subdivision of a State shall not be suspended. D.C. Code §§50-1301.37; 50-1301.38.
<u>Homicide by Vehicle:</u> State Has Such a Law:	Yes. Felony Negligent Homicide. D.C. Code §50-2203.01. Manslaughter. D.C. Code §22-2105.
Imprisonment/Fine:	Negligent Homicide – Not more than 5 years and may be fined not more than \$12,500 . D.C. Code §§50-2203.01; 22-3571.01. Manslaughter – Not more than 30 years and may be fined not more than \$75,000 . D.C. Code §§22-2105; 22-3571.01.
Mandatory Minimum Term/Fine:	None
Other:	N/A
<u>DUI-D Offenses and Commercial Motor Vehicles (CMV):</u>	A person is “disqualified” from operating a CMV for 1 year (3 years if transporting hazardous material) if convicted of driving a CMV while under the influence of a controlled substance. A second violation within a 10-year period results in a “disqualification period” of 10 years to life. For a third violation within 10 years, the “disqualification period” is for life. D.C. Code §50-406; 18 DCMR 1306.1.
<u>Driving While License Suspended for DUI-D Offense:</u>	
Criminal (Fine/Imprisonment):	Note. ²⁰³ Not more than 1 year and/or a fine of not more than \$2,500 . D.C. Code §50-1403.01(e); 18 DCMR §305.
Mandatory Minimum Fine/Imprisonment:	None
Other:	N/A

²⁰³ There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended/revoked.

Habitual Traffic Offender Law:

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

Other State Laws Related to Drug Use:

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

Drug Chemical Test Given to Deceased Driver Killed in Crash: **No statutory provision.**

Drug Chemical Test Given to Deceased Vehicle Passengers Killed in Crash: **No statutory provision.**

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash: **No statutory provision.**

Drug Chemical Tests on Persons Involved in Traffic Crashes: **No**

Marijuana – Possession and Use Laws:

Legal for Recreational and Medical Use. D.C. Code §§7-1671.05, *et seq.*; 48-904.01(a)(1)(A).

≥ 21:

Possession of < 2 oz. or 6 plants - Decriminalized. D.C. Code §48-904.01(a)(1)(A).

Possession of > 2 oz. or > 6 plants (Misdemeanor) – Not more than **180 days** and/or a fine of not more than **\$1,000**. D.C. Code §48-904.01(d)(1).

Second or Subsequent Offense – Not more than 12 months and/or a fine of not more than \$2,000. D.C. Code §§48-904.01(d)(1); 48-904.08.

Possession < 21 – Not more than **180 days** and/or a fine of not more than **\$1,000**. D.C. Code §48-904.01(d)(1).

Consumption of Marijuana in Public Place (Misdemeanor) – Not more than **60 days** or a fine of not more than **\$500**. D.C. Code §§22-3571.01; 48-911.01(c).

Intoxicant Exclusion Law (UPPL):

No. D.C. Code §31-3103(e)(1).

STATE

General Reference:

FLORIDA

Florida Statutes Annotated (F.S.A.)

Type of DUI-D Law:**Under the Influence**Basis for a DUI-D Charge:

F.S.A. §316.193

Standard DUI-D Offense:

Drive or be in actual physical control of a vehicle²⁰⁴ while under the influence of any chemical substance listed in F.S.A. §877.111, or any substance controlled under F.S.A. §893.01, *et seq.*, when affected to the extent that the person's normal faculties²⁰⁵ are impaired. F.S.A. §316.193(1)(a).

Illegal Per Se Law:

N/A

Presumption Based on Drugs – State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

Yes - Persons under 21. F.S.A. §322.2616(17).

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

No

Implied Consent Law:

Yes. F.S.A. §§316.1932(1).

Arrest Required (Yes/No):

Yes. However, an arrest is not required for taking a blood sample if the driver is taken to a medical facility for treatment as a result of an accident. F.S.A. §316.1932(1)(c). An arrest is also not required in cases where an officer has probable cause to believe that a person was driving or in actual physical control of a motor vehicle and caused the death or serious bodily injury of a human being. F.S.A. §316.1933(1)(a).

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

Yes.²⁰⁶ F.S.A. §316.1932(1)(a)(1.b), (c).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes²⁰⁷ – Criminal proceeding. F.S.A. §§316.1932(1)(a)(1.b), (e).

²⁰⁴ A “vehicle” includes every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks. F.S.A. §316.003(95).

²⁰⁵ “Normal faculties” include, but are not limited to: the ability to see, hear, walk, talk, judge distances, drive an automobile, make judgments, act in emergencies, and, in general, normally perform the many mental and physical acts of daily life. F.S.A. §316.1934(1).

²⁰⁶ A breath test under the implied consent statute appears to apply only to the detection of alcohol—such test may not be used under the implied consent statute to detect the presence of drugs/controlled substances. F.S.A. §316.1932(1)(a).

²⁰⁷ A refusal to submit to field sobriety testing is admissible into evidence at a DUI trial. *State v. Taylor*, 648 So.2d 701 (Fla. 1995).

Other Information:

Note.²⁰⁸

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

Blood:

Yes. A blood test, for the purposes of implied consent, may be taken only if: 1) the law enforcement has “reasonable cause” to believe that the person was DUI-D; 2) the driver appears for treatment at a medical facility; and 3) the administration of a breath/urine test is impractical or impossible. F.S.A. §316.1932(1)(c).

Urine:

Yes. F.S.A. §316.1932(1)(a)(1.b)

Other:

Independent Testing

If the arresting officer does not request a chemical test, the person may request the arresting officer to have a chemical test done. F.S.A. §316.1932(d).

The person tested may, at his/her own expense, have an additional independent test administered. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of the test taken at the direction of the law enforcement officer. F.S.A. §316.1932(f)(3).

Admission of Evidence During Possession Trial

The results of a test administered pursuant to the implied consent statute to detect the presence of controlled substances is not admissible in evidence in a criminal prosecution for the possession of a controlled substance. F.S.A. §316.1932(f)(2).

Blood Sample Withdrawn for Medical Purposes

Test results from blood withdrawn for medical purposes, independent of the implied consent statute, are admissible in a criminal trial. *Robertson v. State*, 604 So. 2d 783 (Fla. 1992)

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. A physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, duly licensed clinical laboratory

²⁰⁸ In Florida, a driver may be compelled to provide a blood sample for testing if he/she has been: (1) involved in an accident resulting in either death or serious bodily injury of a human being ²⁰⁸(F.S.A. §316.1933(1)) and there is reasonable cause to believe a DUI occurred; (2) the driver is at a hospital for treatment and a breath or urine test is impractical; or (3) the person is unconscious or otherwise unable to refuse. F.S.A. §316.1932(1)(c). However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court’s decisions in *Birchfield v. North Dakota*, 579 U.S. ____ (2016) (holding that the search incident to arrest exception to the warrant requirement does not apply to warrantless DUI blood draws); and *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

	director, supervisor, technologist, or technician, acting at the request of a law enforcement officer. F.S.A. §316.1932(f)(2)(a). ²⁰⁹
Entity Establishing Testing Protocols:	Yes. The Department of Law Enforcement. F.S.A. §316.1932(3).
Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:	No
Other:	Search Warrant Limitation - A search warrant for a sample of a DUI-D suspect’s blood is only authorized when probable cause exists to believe the subject has committed felony DUI-D, not misdemeanor DUI-D. <i>See</i> F.S.A. §933.02; and <i>State v. Geiss</i> , 70 So. 3d 642, 650 (Fla. 5th DCA 2011).
<u>Adjudication of DUI-D Charges:</u>	
Mandatory Adjudication Law (Yes/No):	Yes. Applies to DUI-D, manslaughter resulting from the operation of a motor vehicle and vehicle homicide offenses. F.S.A. §316.656.
Anti-Plea-Bargaining Statute (Yes/No):	Yes. Applies to DUI-D with an alcohol concentration of 0.15 or more, DUI-D where there has been physical injury, death or property damage, DUI-D manslaughter related to the operation of a motor vehicle and vehicle homicide. F.S.A. §316.656(2).
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Discretionary in felony cases. F.S.A. §921.231. All convicted DUI offenders must undergo a “psychosocial evaluation.” F.S.A. §316.193(5).
<u>Affirmative Defenses to DUI-D Charge:</u>	
Legal Entitlement/Valid Prescription:	No
Therapeutic Concentration:	Yes ²¹⁰
Involuntary Intoxication:	No- Unless it rises to level of legal insanity. ²¹¹
Other:	
<u>Sanctions for Refusal to Submit to a Chemical Test:</u>	
Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail):	None
Preliminary Breath Test – Other:	
Refusal to Take Implied Consent Chemical Test – Criminal Sanction ²¹² (Fine/Jail):	A subsequent refusal is punishable as a first degree misdemeanor, which carries a jail term of up to 1 year and/or

²⁰⁹ Additionally, the blood test shall be performed in a “reasonable” manner. F.S.A. §316.1932(c).

²¹⁰ It appears based upon the language of the statutes that if a “therapeutic” concentration would not render a person “under the influence,” to such an extent so as to impair the person’s normal faculties, F.S.A. §316.193(1)(a), then arguing that the level of the substance detected was merely therapeutic would be a valid defense.

²¹¹ A successful intoxication defense results in acquittal only in specific intent crimes, not general intent crimes. *Linehan v. State*, 476 So.2d 1262 (Fla. 1985). However, a successful insanity defense results in acquittal on the theory that one cannot be held criminally responsible for acts that he or she did not know were wrong. *Miller v. State*, 805 So. 2d 885, 887 (Fla. App. 2d, 2001).

a fine of up to \$1,000. F.S.A. §§316.1932(1)(c); 316.1939; 775.082; 775.083.

Implied Consent Chemical Test - Other:

Under F.S.A. §322.291, an implied consent law violator is required to complete a driver-training course.

Criminal Sanctions Following a DUI-D

Conviction:

Imprisonment/Fine:

First conviction (misdemeanor) – Not more than **6 months** and not less than **\$500** or more than **\$1,000**;

Second conviction (within 5 years, misdemeanor) – Not less than **10 days** or more than **9 months** and not less than **\$1,000** or more than **\$2,000**;

Third offense (within 10 years = 3rd degree felony) – Not less than **30 days** or more than **5 years** and/or not more than **\$5,000**;

Third conviction (outside of 10 years = misdemeanor) – Not more than **12 months** and not less than **\$2,000** or more than **\$5,000**;

Fourth or subsequent conviction (3rd degree felony) – Not more than **5 years** and not less than **\$2,000**. F.S.A. §§316.193; 775.08; 775.083.²¹³

DUI-D – Property Damage/Personal Injury (1st degree misdemeanor) – Not more than **1 year** and/or not more than **\$1,000**. F.S.A. §316.193(3)(c)(1).

DUI – Serious Bodily Injury (3rd degree felony) – Not more than **5 years** and/or not more than **\$5,000**. F.S.A. §316.193(3)(c)(2).

Mandatory Minimum Term/Fine:

Second conviction (within 5 years of a previous DUI conviction) – **10 days**;

Third conviction (within 10 years of a previous DUI conviction) – **30 days**. F.S.A. §316.193(6). The fines appear to be mandatory.

Community Service:

First offense – **50 hours**, or if the court thinks it is in the best interests of the State, a **\$10 fine** for each hour of community work otherwise required notwithstanding other sanctions. This sanction for first offenders is part of mandatory probation that is not to exceed **1 year**. F.S.A. §316.193(6)(a). Additionally, the court may order a defendant (a first or sub-offender) to perform specified public service. F.S.A. §775.091.

Restitution:

The court must order a defendant to pay restitution to a victim. F.S.A. §775.089. Additionally, the State has a victim's compensation fund. A victim of DUI-D offense is

²¹² The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

²¹³ The court in its discretion may require a defendant to serve all or any part of a sentence of imprisonment for a DUI offense in an alcohol or a drug residential treatment program. F.S.A. §316.193(6)(k).

eligible to receive payments from this fund. F.S.A. §960.01, *et seq.*

Child Endangerment:

Driving with a Passenger < 18:

First conviction – Not more than **9 months** and not less than **\$1,000** or more than **\$2,000**;

Second conviction – Not more than **12 months** and not less than **\$2,000** or more than **\$4,000**;

Third or subsequent conviction – Not more than **12 months** and not less than **\$4,000**. F.S.A. §§316.193(4); 775.082; 775.083

Other:

Mandatory Probation: First offenders must be placed on probation for 1 year. F.S.A. §316.193(6)(a).

Crimes Compensation Trust Fund: The following surcharges, costs and fines are paid into the Crimes Compensation Trust Fund: (1) A **surcharge** which is **5 percent** of the fine; (2) a special cost of **\$50**; and (3) if injury or death resulted from the offense, a special fine of not more than **\$10,000**.²¹⁴ F.S.A. §§938.03; 938.04; 775.0835(1).

Special Court Cost: A court cost of **\$135** is added to any fine and is distributed as follows: **\$25** is deposited into the EMS Trust Fund; **\$50** is deposited into the Operating Trust Fund of the Department of Law Enforcement; and, **\$60** is deposited into the Brain and Spinal Cord Injury Rehabilitation Trust Fund. F.S.A. §938.07.

Alcohol/Drug Assessment: In addition to any other fine, a defendant may be assessed an amount not to exceed the maximum fine authorized for the offense. This assessment is used to finance alcohol and drug programs. F.S.A. §893.165.

Reinstatement Fee: In addition to any other license reinstatement fee, a person, who has been either convicted of a DUI-D offense or found in violation of the admin. per se law, must pay a special fee of **\$130** to be paid into the Highway Safety Operating Trust Fund. F.S.A. §322.21(8). Under F.S.A. §322.291, a defendant is required to complete a driver-training course.

Release: A DUI offender cannot be released from custody until he/she is no longer under the influence of a chemical substance, or (2) or 8 hours have elapsed from the time of his/her arrest. F.S.A. §316.193(9).

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

Yes. A substance abuse course/treatment program is required for a defendant convicted of any DUI-D offense. F.S.A. §§316.193(5); 322.291. Such a course must be successfully completed by defendants who have been convicted of two

²¹⁴ The court must find that the defendant has the present ability to pay the fine and the impact of the fine on the defendant's dependents will not cause such dependents to become dependent upon public welfare. F.S.A. §775.0835(1).

Substance Abuse Treatment:

DUI offenses (within 5 years) or 3 such offenses (within 10 years) before the license can be restored. F.S.A. §322.03(2).

Yes. See Substance Abuse Education.

Additionally, a defendant may be required to serve all or any portion of his/her term of imprisonment in a residential drug abuse treatment program. F.S.A. §316.193(m).

Vehicle Impoundment/Confiscation:

Yes.

Impoundment or Immobilization:

First offense– **10 days**;²¹⁵

Second offense (within 5 years) – **30 days**;²¹⁶

Third offense (within 10 years) – **90 days**. F.S.A.

§316.193(6).

Note: The court shall dismiss the order of impoundment or immobilization if the court finds that the family of the vehicle owner “has no other public or private or public means of transportation.”

The court may dismiss the order of impoundment or immobilization of any vehicles that are owned by the defendant but that are operated solely by the employees of the defendant or any business owned by the defendant. The court may also dismiss the order if the defendant provides satisfactory proof of ignition interlock installation. F.S.A. §316.193(6)(g), (h), (i).

Forfeiture (Limited) – A DUI offender's vehicle is subject to **forfeiture**, if at the time of the DUI offense, that person was driving on a suspended or revoked license for a prior DUI driving offense. F.S.A. §322.34(9)(a).

Authorized by Specific Statutory Authority:

F.S.A. §§316.193; 322.34(9)(a); 932.701(2)(a)(9).

Terms Upon Which Vehicle Will Be Released:

None.

Other Miscellaneous Sanctions:

Medical Facility Visitation Requirement: A DUI-D offender under 18 may be ordered by the court to visit medical facilities that treat victims of traffic accidents. F.S.A. §322.0602.

Probation Requirements: A court, under its general probation powers, may require a person convicted of a DUI-D offense to place a **bumper sticker** on his vehicle that identifies him as a convicted DUI offender who is operating a motor vehicle on a restricted license, or to place, at his own expense, **an advertisement in a local newspaper** along with their photograph that identifies them as DUI offender. These probation conditions have been held to be constitutional under both the Federal and State constitutions. *Goldschmitt v.*

²¹⁵ Applies only to vehicles used in the offense or to one vehicle owned by the offender. The term is 10 days or for the unexpired term of a rental or lease agreement that expires within 10 days. This action is a condition of probation and must not occur concurrently with incarceration. F.S.A. §316.193(6)(a).

²¹⁶ Applies to all vehicles owned by the offender. The term is 30 days or for the unexpired term of a rental or lease agreement that expires within 30 days. This action may not be concurrent with incarceration, but must be concurrent with the driver's license revocation. F.S.A. §316.193(6)(b), (c).

State, 490 So. 2d 123 (Fla.2nd DCA 1986) (upholding the use of a bumper sticker); *Lindsay v. State*, 606 So. 2d 652 (Fla. 4th DCA1992) (upholding the requirement to place an ad in a local newspaper). Such a condition can also require a person to abstain from the use of alcohol. *Spry v. State*, 750 So. 2d 123 (Fla. 2nd DCA 2000).

Homicide by Vehicle:

State Has Such a Law:

Yes.²¹⁷

DUI-D Manslaughter²¹⁸ (2nd degree felony). F.S.A. §§316.193(3)(c)(3); 782.071.

Vehicular Homicide²¹⁹ (2nd degree felony). F.S.A. §782.071.²²⁰

Imprisonment/Fine:

Not more than **15 years** and/or not more than **\$10,000**. F.S.A. §§775.082(3)(c); 775.083(1)(b).

Mandatory Minimum Term/Fine:

DUI-D Manslaughter – 4 years. F.S.A. §316.193(3)(c)(3).
Vehicular Homicide – None.

Other:

I. A defendant may be required to pay restitution to a victim. F.S.A. §775.089.

II. A defendant must complete a driver-training course or a substance abuse education course, which shall include a psychosocial evaluation and treatment if referred. F.S.A. §322.291.

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A commercial motor vehicle operator may be prosecuted under F.S.A. §316.193.

A law enforcement officer may disqualify the holder of a commercial driver's license from operating any commercial motor vehicle if the license holder is arrested for F.S.A. §316.193 (DUI). F.S.A. §322.64(1)(a). Such person shall be disqualified from operating a CMV for 1 year (3 years if carrying hazardous material) for a first offense. F.S.A. §322.61(3)(b)(1). For a second offense, the disqualification shall be permanent. F.S.A. §322.61(5).

Any driver who violates an out-of-service order shall be disqualified for not less than 180 days or more than 1 year (first violation); at least 2 years but not more than 5 years

²¹⁷ Under F.S.A. §322.34(6), it is third degree felony for a person to carelessly or negligently cause death or serious bodily injury to another with a motor vehicle while the person's license is either suspended or revoked and where the basis of the suspension or revocation was: (1) a second DUI offense; (2) vehicular manslaughter; (3) vehicular homicide; or (4) a DUI offense that requires an enhanced sanction. Sanctions include incarceration for not more than 5 years and a fine of not more than \$5,000. F.S.A. §§775.082(3)(e); 775.083(1)(c).

²¹⁸ The unlawful killing of a viable fetus by any injury to the mother of such child which would be murder if it resulted in the death of such mother shall be deemed murder in the same degree as that which would have been committed against the mother. F.S.A. §782.09.

²¹⁹ The killing of a human being, or the killing of an unborn child by any injury to the mother, caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another.

²²⁰ Vehicular homicide can also be a felony of the first degree, punishable as provided in F.S.A. §§775.082 and 775.083 or 775.084, if (1) at the time of the accident, the person knew or should have known, that the accident occurred; and (2) failed to give information or render aid as required by F.S.A. §316.062.

(second violation within 10 years); at least 3 years but not more than 5 years (third or subsequent violations within 10 years). F.S.A. §322.61(8).

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

First offense (2nd degree misdemeanor) – Not more than **60 days** and/or not more than **\$500**;

Second offense (1st degree misdemeanor) – Not more than **1 year** and/or not more than **\$1,000**;

Third or subsequent offense or driving while license permanently revoked (felony third degree) – Not more than **5 years** and/or not more than **\$5,000**. F.S.A. §§322.34(2); 322.341; 775.082; 775.083.

Mandatory Minimum Fine/Imprisonment:

None

Other:

The vehicle used in the offense, if it is owned by the driver, is impounded by law enforcement officials. The vehicle remains impounded until the owner presents proof of insurance or of sale of the vehicle to another person. F.S.A. §322.34(8), (9).

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. F.S.A. §322.264.

Grounds for Being Declared Habitual Offender:

3 serious²²¹ or 15 normal moving violations within a 5-year period.

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

3rd degree felony. F.S.A. §322.34(5).

Imprisonment (Term):

Not more than **5 years** and/or not more than **\$5,000**. F.S.A. §§322.34; 775.082; 775.083.

Mandatory Minimum Term/Fine:

None

Other State Laws Related to Drug Use:

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

Yes.²²² F.S.A. §316.1933.

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes. F.S.A. §316.1933.

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

No

²²¹ These violations include manslaughter resulting from the operation of a motor vehicle, DUI, driving on a revoked or suspended license, and driving a CMV while privilege is disqualified. F.S.A. §322.264(1).

²²² This statute authorizes a law enforcement officer to use reasonable force, if necessary, to require such person to submit to the administration of the blood test. F.S.A. §322.1933(1)(a). This legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court's decisions in *Birchfield v. North Dakota*, 579 U.S. _____ (2016) (holding that the search incident to arrest exception to the warrant requirement does not apply to warrantless DUI blood draws); and *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

Drug Chemical Test Given to Deceased
Pedestrian Killed in Crash:

No

Drug Chemical Tests on Persons Involved
in Traffic Crashes:

Yes. F.S.A. §316.1933.

Marijuana – Possession and Use Laws:

Legal for Medical Use.²²³

Criminal Penalties:

Possession ≤ 20 grams (Misdemeanor) – Not more than **1 year** and a fine of not more than **\$1,000**.

Possession > 20 grams (3rd Degree Felony) – Not more than **5 years** and a fine of not more than **\$5,000**. F.S.A. §§775.082; 775.083; 893.13.

Intoxicant Exclusion Law (UPPL):

Yes. F.S.A. §627.629

²²³ The Florida Medical Marijuana Legalization Initiative was approved by voters as a constitutional amendment on November 8, 2016, and became effective on January 3, 2017. F.S.A. Const. Art. 10 §29.

STATE

GEORGIA

General Reference:

Official Code of Georgia Annotated (OGCA)

Type of DUI-D Law:

Zero Tolerance/Under the Influence

Basis for a DUI-D Charge:

OGCA §40-6-391(a)(2), (3), (4), (6).

Standard DUI-D Offense:

Drive or be in actual physical control of a moving vehicle²²⁴ while under the influence of any drug, glue, aerosol, or other toxic vapor, or any of these substances combined with alcohol, to the extent that it is less safe²²⁵ for the person to drive. OGCA §40-6-391(a)(2), (3), (4).

Illegal Per Se Law:

Drive or be in actual physical control of a moving vehicle with any amount of marijuana or a controlled substance²²⁶ present in the person’s blood and/or urine, including the metabolites and derivatives of either/both. OGCA §40-6-391(a)(6).

Presumption Based on Drugs – State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

No²²⁷

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

N/A

Implied Consent Law:

Yes. OGCA §40-5-55.

Arrest Required (Yes/No):

Yes.²²⁸ OGCA §40-5-55(a).

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

Yes. OGCA §40-5-55(a).

Refusal to Submit to Chemical Test

Yes²²⁹ – Criminal Cases. OGCA §40-6-392(d).

²²⁴ A “vehicle” includes every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks. OGCA §40-1-1(75).

²²⁵ The question is whether a person’s ingestion of an intoxicant has affect the person to the extent that the person is a less safe driver than the person would have been had the person not been affected by the intoxicant; or, stated another way, whether the ingestion of an intoxicant has made the person unable to drive as safely as the person would have had he/she not ingested the intoxicant. *State v. Kachwalla*, 561 S.E.2d 403 (Ga. 2002).

²²⁶ A “controlled substance” means a drug, substance, or immediate precursor in Schedules I through V of OGCA §16-13-25 through 16-13-29, and Schedules I through V of 21 C.F.R. §1308. OGCA §§16-13-21(4); 40-6-391(a)(6).

²²⁷ Law enforcement officers are using preliminary breath testing devices without express legislative authorization. However, OGCA §40-6-392(f) provides for the use of a self-authenticating certificate with regard to the inspection of a breath-test instrument. Further, the Georgia Supreme Court has held that the implied consent statute did not apply to an initial alcohol screening test used to determine probable cause to arrest drunk drivers and, thus, a law enforcement officer is not required to advise a defendant of his right to an independent alcohol level test before requiring the defendant to undergo a preliminary screening test. *Keenan v. State*, 436 S.E.2d 475 (Ga. 1993).

²²⁸ It appears that an arrest is not required if there are “reasonable grounds” to believe that a person was under the influence and he/she was involved in an accident that resulted in either serious injury or death. OGCA §40-5-55(a). *See also Cooper v. State*, 587 S.2.2d 605 (Ga. 2003) (holding that probable cause is required).

²²⁹ If proper and objective warnings are not given, evidence of refusal (of a chemical test) may not be admissible. *State v. Leviner*, 443 S.E.2d 688 (Ga.App. 1994).

Admitted into Evidence:

Other Information:

Refusal to submit to alco-sensor (PBT) and field sobriety tests may be admitted into evidence. *Turner v. State*, 504 S.E.2d 229 (Ga.App. 1998).

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

Blood:

Yes. OGCA §40-5-55(a).

Urine:

Yes. OGCA §40-5-55(a).

Other:

“Other Bodily Substances.” OGCA §40-5-55(a).

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. A physician, registered nurse, laboratory technician, emergency medical technician, or other qualified person. OGCA §40-6-392(a)(2).

Entity Establishing Testing Protocols:

Yes

Chemical analysis of blood withdrawn pursuant to the implied consent statute must be performed according to methods approved by the Division of Forensic Sciences of GA Bureau of Investigation, using a machine which was operated with all its electronic and operating components prescribed by its manufacturer properly attached and in good working order, and by an individual possessing a valid permit issued by the Division of Forensic Sciences for this purpose. OGCA §40-6-392(a)(1)(A).

The Division of Forensic Sciences of the GA Bureau of Investigation is in charge of approving satisfactory techniques or methods to ascertain the qualifications and competence of individuals to conduct analyses and to issue permits, as well as with requirements for properly operating and maintaining any testing instruments, and to issue certificates certifying that such instruments have met the requirements. *Id.*

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:

No²³⁰

Other:

Voluntary Consent and Search Warrant

A blood sample may be obtained by voluntary consent or by a search warrant. OGCA §40-5-67.1(d.1).

Independent Testing

The subject of an implied consent blood test may have a physician or qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer one

²³⁰ The requirements of OGCA §40-6-392 only apply to evidentiary tests conducted pursuant to the implied consent statute; these requirements do not apply in cases where a search warrant was used to obtain a blood sample. *Massey v. State*, 771 S.E.2d 122 (Ga. App. 2015).

or more additional chemical test(s). The justifiable failure or inability to obtain an additional test does not preclude the admission of evidence relating to the test(s) taken at the direction of a law enforcement officer. OGCA §40-6-392(a)(3).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No): **No**²³¹
 Anti-Plea-Bargaining Statute (Yes/No): **No**
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes**
First offense (discretionary);
Second or subsequent offense (mand). OGCA § 40-6-391(c).

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription: **No.**²³² OGCA §40-6-391(b).
 Therapeutic Concentration: **Yes – Limited to Under the Influence.**²³³
 Involuntary Intoxication: **Yes.**²³⁴ *Crossley v. State*, 582 S.E.2d 204 (Ga. App. 2003).
 Other:

Sanctions for Refusal to Submit to a Chemical Test:

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

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

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine: First offense (within 10 years) (misdemeanor) – Not less than **10 days** or more than **12 months** and not less than **\$300** or more than **\$1,000**;

²³¹ The court cannot accept a *nolo contendere* plea in two situations: (1) For a violation of the illegal per se provision, where the offender’s BAC or BrAC was ≥ .15; or (2) for a violation of OGCA §40-6-391(k), where a person under 21 was operating a motor vehicle with a BAC or BrAC ≥ .02. OGCA §§40-6-391(k)(3); 40-6-391.1(a).

²³² The statute indicates that if a person was legally entitled to use the drug, he/she may not be convicted for DUI-D unless it is proven that the person was “rendered incapable of driving safely” as a result. OGCA §40-6-391(b). This has been held to be legally equivalent to the “less safe to drive” standard. *State v. Kachwalla*, 561 S.E.2d 403 (Ga. 2002).

²³³ It appears based upon the language of the statute that if a “therapeutic” concentration would not render a person “under the influence,” arguing that the level of the substance detected was merely therapeutic would be a valid defense to an “under the influence” charge. OGCA §40-6-391(a)(2), (3), (4).

²³⁴ In Georgia, “[a] person shall not be found guilty of a crime when, at the time of the act, omission, or negligence constituting the crime, the person, because of involuntary intoxication, did not have sufficient mental capacity to distinguish between right and wrong in relation to such act.” OGCA §16-3-4(a). The defense of “involuntary intoxication” is a defense of temporary insanity. Additionally, if charged under OGCA §40-6-391(a)(3), the subject must be under the “intentional” influence of a glue, aerosol, or other toxic vapor.

Second offense (within 10 years) (misdemeanor) – Not less than **90 days** or more than **12 months** and not less than **\$600** or more than **\$1,000**;

Third offense (within 10 years) (high and aggravated misdemeanor) – Not less than **120 days** or more than **12 months** and not less than **\$1,000** or more than **\$5,000**;

Fourth or subsequent offense (within 10 years) (felony) – Not less than **1 year** or more than **5 years** and not less than **\$1,000** or more than **\$5,000**. OGCA §40-6-391(c).

Serious Injury

DUI-D where there is a serious injury (i.e., where a member of a person’s body has been deprived, rendered useless or disfigured) is a felony. The sanction for this offense is imprisonment of not less than **1 year** or more than **15 years**. OGCA §40-6-394.

School Bus

DUI-D while operating a school bus – Imprisonment for not less than **1 year** or more than **5 years** and/or a fine of not less than **\$1,000** or more than **\$5,000**. OGCA §40-6-391.3.

Mandatory Minimum Term/Fine:

Note.²³⁵

First offense – **None** for DUI-D, **24 hours** if BAC/BrAC was **≥ .08**;

Second offense (within 10 years) – **72 hours**;

Third offense (within 10 years) – **15 days**;

Fourth or subsequent offense (within 10 years) – **90 days**.

The base fines are mandatory. However, if payment of the fine will impose an economic hardship, the judge may order the defendant to pay in installments, or may suspend up to one-half of the fine imposed if the defendant undergoes substance abuse treatment. OGCA §40-6-391(g).

Community Service:

First offense (misdemeanor) – Not less than **40 hours**;

Second offense – Not less than **30 mandatory days**;

Third offense – Not less than **30 mandatory days**;

Fourth or subsequent offense – Not less than **60 days**, which may be suspended if the defendant is sentenced to serve 3 years of actual imprisonment. OGCA §40-6-391(c).

Restitution:

Yes. (1) A defendant may have to pay restitution (or other relief to a victim) as a condition of probation. OGCA §17-14-1, et seq. (2) A victim may also receive payment from the State’s victims’ compensation fund. OGCA §17-15-1, et seq.

Child Endangerment:

Child Endangerment: It is a separate offense to transport a child under age 14 years while driving under the influence. The sanctions for this offense are as follows:

First or Second offense (misdemeanor) – imprisonment for not more than **12 months** and/or a fine of not more than

²³⁵ An offender is subject to both a period of mandatory jail and mandatory community service. *Gidey v. State*, 491 S.E.2d 406 (Ga.App. 1997).

\$1,000;

Third or Subsequent offense (felony) – imprisonment for not less than **1 year** or more than **3 years** and/or a fine of not less than **\$1,000** or more than **\$5,000**. OGCA §§16-12-1(d); 40-6-391(l).

Other:

Photo, Name and Address Publication:

For a Second or subsequent offense, a defendant’s name, address and photograph shall be published in the legal organ of the county in which the defendant resides or was convicted. OGCA §40-6-391(j).

Special Fine: An additional fine equal to 5% of the original fine is imposed and deposited into the Peace Officer’s Annuity and Benefit fund. OGCA §15-21-131.

Special Penalty: An additional fine equal to 10% of the original fine is imposed and deposited into the Brain and Spinal Injury Trust fund. OGCA §§15-21-149; 15-21-150.

Assessment: A mandatory assessment penalty of \$26 or 11% of the original fine, whichever is less. This penalty is used to support the Crime Victims Emergency Fund. OGCA §15-21-112.

Probation: If jail is < 12 months, there is mandatory probation for any period of time not served in confinement. OGCA §40-6-391(c).

License Plates Surrendered: A Second or subsequent DUI offender (within five years) must have the license plates of all vehicles owned surrendered to the court. Specially numbered plates may be issued for such vehicles provided the offender has a limited or probationary license or some other member of the offender’s household has a valid license and there is a hardship requiring the use of a vehicle or vehicles. Such special plates shall not constitute probable cause to stop a motor vehicle. OGCA §40-2-136.

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

Yes

Substance Abuse Treatment:

Yes

Following all DUI-D convictions, a defendant must complete an “alcohol or drug use risk-reduction program,” as well as a clinical evaluation and, if recommended upon evaluation, a substance abuse treatment program. For a first conviction, the court may waive the clinical evaluation requirement. OGCA §40-6-391(c).

Vehicle Impoundment/Confiscation:

Yes – Forfeiture: A person’s vehicle is subject to forfeiture if convicted of a fourth DUI offense and such offense occurred while operating a vehicle in habitual offender status based on 3 prior DUI convictions. OGCA §40-6-391.2.

In lieu of forfeiture and based on the financial hardship to the defendant’s family, the court may order that the vehicle’s title

<p>Authorized by Specific Statutory Authority: Terms Upon Which Vehicle Will Be Released:</p>	<p>be transferred to another family member who is licensed and who needs the vehicle for employment or other family needs. Yes. OGCA §40-6-391.2.</p>
<p>Other Miscellaneous Sanctions:</p>	<p>None The court has the authority to order a defendant “to wear a fluorescent pink plastic bracelet imprinted with the words “D.U.I. CONVICT’....” as a condition of probation. <i>Ballenger v. State</i>, 436 S.E.2d 793, 794 (Ga.App. 1993).</p>
<p><u>Homicide by Vehicle:</u> State Has Such a Law:</p>	<p>Yes. Vehicular Homicide in the first degree (felony) – Death where there is no “malice aforethought” but where there is either reckless driving or a DUI offense. Vehicular Homicide in the second degree (misdemeanor) – Where the death is caused “without an intention to do so” and where there is neither reckless driving nor a DUI offense. Vehicular Homicide in the first degree (felony) – Death where the defendant is a “Habitual Violator”, the license has been revoked <u>and</u> there is no “malice aforethought.” OGCA §§16-1-3(5) (defines a felony offense); 40-6-393.</p>
<p>Imprisonment/Fine:</p>	<p>First Degree – Not less than 3 years or more than 15 years. OGCA §40-6-393(a) Second Degree– Not more than 12 months or more than \$1,000. OGCA §§17-10-3; 40-6-393(c). Habitual Offender – First Degree – Not less than 5 years or more than 20 years. OGCA §40-6-393(d).</p>
<p>Mandatory Minimum Term/Fine:</p>	<p>Note.²³⁶ Habitual Offender – First Degree – 1 year. OGCA §40-6-393.</p>
<p>Other:</p>	<p>N/A</p>
<p><u>DUI-D Offenses and Commercial Motor Vehicles (CMV):</u></p>	<p>A person is “disqualified” from operating a CMV for not less than 1 mandatory year (not less than 3 years if transporting hazardous materials) if convicted of driving a CMV while under the influence of any drug; or by refusing to submit to a chemical test. OGCA §§40-5-142(2), (13.1); 40-5-151; 40-5-153. For a subsequent violation or a combination of two or more violations of any of the above listed items, the “disqualification” is for life (10 years mand).</p>
<p><u>Driving While License Suspended for DUI-D Offense:</u></p>	<p><u>First conviction</u> – Not less than 2 days or more than 12</p>
<p>Criminal - Fine/Imprisonment:</p>	

²³⁶ Under OGCA §17-10-8, the court as a condition of probation for a felony offense may require an offender to pay a fine of not more than \$100,000.

	months and may be fined not less than \$500 or more than \$1,000 ;
	<u>Second or third conviction</u> (within 5 years) (high and aggravated misdemeanor) – Not less than 10 days or more than 12 months and may be fined not less than \$1,000 or more than \$2,500 ;
	<u>Fourth or subsequent conviction</u> (within 5 years) (felony)– Not less than 1 year or more than 5 years and may be fined not less than \$2,500 or more than \$5,000 . OGCA §40-5-121(a).
Mandatory Minimum Fine/Imprisonment:	The terms above appear to be mandatory.
Other:	No specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are suspended or revoked.
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	Yes. OGCA §40-5-58.
Grounds for Being Declared Habitual Offender:	3 or more serious violations within 5 years. ²³⁷
Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status:	Felony. ²³⁸ OGCA §§16-1-3(5); 40-5-58(c)(1), (2).
Imprisonment (Term):	Not less than 1 year or more than 5 years and/or a fine of not less than \$750 , or \$1,000 (if HO status was based only on DUI offense convictions). OGCA § 40-5-58(c)(1), (2).
Mandatory Minimum Term/Fine:	None
<u>Other State Laws Related to Drug Use:</u>	
Drug Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes. OGCA §§40-5-55(b); 45-16-46. ²³⁹
Drug Chemical Test Given to Deceased Driver Killed in Crash:	Yes. OGCA § 40-5-55.
Drug Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	Possible ²⁴⁰
Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:	Possible
Drug Chemical Tests on Persons Involved in Traffic Crashes:	Yes , but probable cause must exist to conduct the test. OGCA §40-5-55; <i>Cooper v. State</i> , 587 S.E.2d 605 (2003)
<u>Marijuana – Possession and Use Laws:</u>	Illegal. <u>Possession ≤ 1 oz. (Misdemeanor)</u> ²⁴¹ – Up to 12 months

²³⁷ Serious violations include racing, reckless driving, any DUI offense, and eluding. OGCA §40-5-58(a)(1).

²³⁸ It is a misdemeanor (jail – not more 12 months; fine – not more than \$1,000) to operate a vehicle without a license after the 5-year revocation has passed. OGCA §§17-10-3(a); 40-5-58(c).

²³⁹ At the request of either a coroner or police officer, the medical examiner may take a blood sample from a person who has been killed for the purpose of determining the presence of intoxicating substances in such person.

²⁴⁰ OGCA §40-5-55(b) states that “[a]ny person who is dead, unconscious, or otherwise in a condition rendering such person incapable of refusal shall be deemed not to have withdrawn the consent...” (emphasis added.)

and/or a fine of up to **\$1,000**. OGCA §16-13-2(b).
Possession > 1 oz. (Felony) – Not less than **1 year** or more
than **10 years**. OGCA §16-13-30(j)(2).

Intoxicant Exclusion Law (UPPL):

Yes. OGCA §33-29-4(b)(9).

²⁴¹ A first offender may receive a deferred disposition and dismissal of the charge. OGCA §16-13-2.

STATE

General Reference:

HAWAII

Hawai'i Revised Statutes Annotated (HRS)

Type of DUI-D Law:**Under the Influence**Basis for DUI-D Charge:

HRS §291E-61(a)(2).

Standard DUI-D Offense:

Operate or assume actual physical control of a vehicle²⁴² while under the influence of any drug²⁴³ that impairs the person's ability to operate the vehicle in a careful and prudent manner. HRS §291E-61(a)(2).

Illegal Per Se Law:

No.

Presumption Based on Drugs – State Has (Yes/No):

Yes – The presence of one or more drugs in an amount sufficient to impair the person's ability to operate a vehicle in a careful and prudent manner within three hours after the time of the alleged violation. HRS §291E-3(a)(3).

Other:

Note.²⁴⁴Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

Yes.²⁴⁵ HRS §291E-11(f).

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Yes²⁴⁶

Implied Consent Law:

Yes. HRS §291E-11(a)

Arrest Required (Yes/No):

Yes. HRS §291E-11(b).

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

Yes. HRS §291E-11(a).

Refusal to Submit to Chemical Test Admitted into Evidence:

No – Criminal and Civil Cases. However, there is an exception for administrative hearings related to test refusals (license suspension). HRS § 291E-65; see *Freitas v. Admin. Director of Courts*, 116 P.3d 673 (Hawai'i, 2005).

Other Information:

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

Blood:

Yes. HRS §291E-11(a).

Urine:

Yes. HRS §291E-11(a).

²⁴² A “vehicle” means a device by which any person or property is or may be transported or drawn upon a highway, but excludes devices moved by human power or devices used exclusively upon stationary rails or tracks and mopeds. HRS §286-2.

²⁴³ A “drug” includes (1) substances recognized as drugs in the official U.S. Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) substances other than food intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of these, but not any device or their components, parts, or accessories. HRS §329-1.

²⁴⁴ In addition to the elements of the offense listed in HRS §291E-61(a)(2), an “intentional, knowing, or reckless” mens rea must be included in a complaint for DUI-D. *State v. Nesmith*, 276 P.3d 617 (Hawai'i, 2012).

²⁴⁵ The law does not specifically authorize the use of PBTs, but does allow for PBT test results to “determining probable cause for the arrest.” The PBT is not a substitute for usual chemical tests under the implied consent law. HRS §§291E-1; 291E-11(f).

²⁴⁶ Although it should be noted that the statute refers to the PBT as “a preliminary alcohol screening device.”

Other:

Compelled Chemical Testing – Note.²⁴⁷**Independent Testing**

The subject of an implied consent test may choose to have an additional test or tests conducted. The failure or inability to obtain an additional test does not preclude the admission of the test administered at the direction of the law enforcement officer. HRS §291E-13.

Admissibility of Tests in Other Proceedings

Any results reflecting the presence of drugs or metabolic products obtained from a blood or urine specimen obtained pursuant to implied consent are not admissible in a proceeding brought under the Uniform Controlled Substances Act, HRS §329-1 *et seq.*, or for an offense against public health or morals, HRS §712-1, *et seq.* HRS §291E-22.

Payment of Costs

Offenders shall make restitution to the police department or other agency for cost of blood and urine tests. HRS §291E-61(k).

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. A physician, physician assistant, registered nurse, phlebotomist who is qualified by the director of a clinical laboratory licensed by the State, person licensed in a designated clinical laboratory occupation. HRS §291E-12.

Entity Establishing Testing Protocols:

Yes. Hawai'i State Department of Health. HI ADC §11-113-1, *et seq.*

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:

Yes. A physician, registered nurse, a person with a clinical laboratory personnel license, or a phlebotomist deemed qualified by the director of a clinical laboratory licensed by the State. HI ADC §11-113-7(2).

Other:

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No):

No

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

No

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

Yes. Substance abuse assessment is required. HRS §291E-61(h).

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription:

No²⁴⁸

²⁴⁷ Technically in Hawaii a driver may be compelled to submit to a chemical test if involved in a crash resulting in either death or serious personal injury to another person and there is reason to believe that the driver was under the influence of alcohol or drugs. HRS §291E-21(c). However, these legislative exceptions to the search warrant requirement should be relied upon with caution in light of the United States Supreme Court's decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

Therapeutic Concentration:	Yes ²⁴⁹
Involuntary Intoxication:	Yes. HRS §702-230 and <i>State v. Nesmith</i> , 276 P.3d 617 (Hawai'i 2012).
Other:	

Sanctions for Refusal to Submit to a Chemical Test:

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

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail) ²⁵⁰ :	<u>Petty Misdemeanor</u> - Up to 30 days in jail. §§291E-15; 291E-68; 701-107(4); 706-663.
Implied Consent Chemical Test - Other:	N/A

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:	Note. ²⁵¹ <u>First offense</u> –72 hours of community service work, not less than 48 hours or more than 5 days of imprisonment, or not less than \$150 or more than \$1,000 ; <u>Second offense</u> (within 5 years) – 240 hours of community service work or not less than 5 days or more than 14 days of imprisonment, and not less than \$500 or more than \$1,500 ; <u>Third offense</u> (within 5 years) – Not less than 10 days or more than 30 days and not less than \$500 or more than \$2,500 . HRS §291E-61(b).
Mandatory Minimum Term/Fine:	<u>Second offense</u> (within 5 years) – \$500 ; <u>Third offense</u> (within 5 years) – \$500/10 days (with at least 48 consecutive hours). HRS §291E-61(b).
Community Service:	<u>First offense</u> – 72 hours may be imposed; <u>Second offense</u> (within 5 years) – Not less than 240 hours may be imposed; ²⁵² HRS §291E-61(b).
Restitution:	Restitution may be ordered. HRS §351-1, <i>et seq.</i>
Child Endangerment:	Offenders ≥18 who were operating a motor vehicle with a passenger < 15 at the time of the offense are subject to the following <u>additional mandatory</u> sanctions: (1) A mandatory

²⁴⁸ The definition of “drug” encompasses those drugs that would be legally prescribed. HRS §329-1. It does not appear that any exception has been carved out under the DUI-D statute for legally prescribed drugs.

²⁴⁹ It appears based upon the language of the statutes that if a “therapeutic” concentration would not render a person “under the influence,” such that it would impair the person’s ability to operate the vehicle in a careful and prudent manner, HRS §291E-61(a)(2), then arguing that the level of the substance detected was merely therapeutic would be a valid defense. Additionally, the presence of a drug does not trigger a presumption unless it is present “in an amount sufficient to impair the person’s ability to operate a vehicle in a careful and prudent manner.” HRS §291E-3(a)(3).

²⁵⁰ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

²⁵¹ A person must be sentenced to one of these sanctions but may be sentenced to more than one. HRS §291E-61(b)(1)(C).

²⁵² Either community service or incarceration shall be imposed, but not both. HRS §291E-61(b)(2)(B)

fine of \$500; and (2) 48 hours of imprisonment. However, the total imprisonment time imposed for first, second or third offenses cannot exceed the maximum term of imprisonment provided for first, second and subsequent DUI offenses. (1), (2), or (3). The revocation period shall not be less than 2 years. HRS §291E-61(b)(4).

Other:

Surcharge: \$25 for neurotrauma special fund. Additionally, up to \$25 (first offense) or \$50 (subsequent offense) may be deposited into trauma system special fund if the court so orders. HRS §291E-61(b).

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

Yes – See Substance Abuse Treatment.

Substance Abuse Treatment:

First offense – **14-hour** substance abuse rehabilitation program including education and counseling or other program as deemed appropriate by the court.

All offenders are referred to the driver’s education program for an assessment by a certified substance abuse counselor, of the offender’s substance abuse or dependence and the need for treatment. HRS §§291E-61(b)(1)(A), (h); 291E-41(d).

Vehicle Impoundment/Confiscation:

Forfeiture – Limited to a vehicle owned and operated by a person convicted three or more times for DUI, or one or more times for habitually operating a vehicle under the influence.

Authorized by Specific Statutory Authority:
Terms Upon Which Vehicle Will Be Released:

HRS §291E-61.5(d).

N/A.

Other Miscellaneous Sanctions:

Bodily Injury Related to Motor Vehicle Operation:

I. Serious bodily injury caused by negligent vehicle operation (negligent injury in the first degree) Class C felony: Not more than **5 years** (1 year, 8 months mand. if victim is blind, paraplegic, quadriplegic, age 60 or older, or age 8 or younger) and not more than **\$10,000**.

II. Substantial bodily injury caused by negligent vehicle operation (negligent injury in the 2nd degree) Misdemeanor: Not more than **1 year** and not more than **\$2,000**. HRS §§706-640; 706-660; 706-660.2; 706-663; 707-705; 707-706.

Homicide by Vehicle:

State Has Such a Law:

Yes.

(1) Death caused by negligent vehicle operation while DUI-D (negligent homicide in the first degree) – Class B felony;

(2) Death caused by negligent vehicle operation (negligent homicide in the second degree) – Class C felony;

(3) Death caused by simple negligence (negligent homicide in the third degree) – Misdemeanor. HRS §§706-640; 706-660; 706-663; 707-702.5; 707-703; 707-704.

Imprisonment/Fine:

Negligent homicide in the first degree – Not less than **5 years** or more than **10 years** and may be fined not more than

	<p>\$25,000; <u>Negligent homicide in the second degree</u> – Not less than 1 year or more than 5 years and may be fined not more than \$10,000; <u>Negligent homicide in the third degree</u> – Not more than 1 year or not more than \$2,000. HRS §§706-640; 706-660; 706-663; 707.702.5; 707-703; 707-704.</p>
Mandatory Minimum Term/Fine:	<p>The following mandatory imprisonment sanctions apply when the person killed is 60 or older, blind, paraplegic, quadriplegic, or 8 or younger: <u>Negligent homicide in the first degree</u> - 3 years, 4 months; <u>Negligent homicide in the second degree</u> - 1 year, 8 months. HRS §§706-620; 706-660.2.</p>
Other:	N/A
<u>DUI-D Offenses and Commercial Motor Vehicles (CMV):</u>	<p>A person is “disqualified” from operating a CMV for not less than 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person is under the influence of a controlled substance or any drug which impairs driving ability; or refuses to submit to a chemical test for an alcohol concentration. The CMV “disqualification” provision, based on a refusal, applies only to a refusal to submit to a chemical test for alcohol concentration; however, the CMV implied consent provision applies to testing for alcohol or controlled substances. For either a subsequent violation or a combination of two or more violations of any of the above listed items, the “disqualification” is for life (mand). HRS §§286-2; 286-231; 286-240; 286-243.</p>
<u>Driving While License Suspended for DUI-D Offense:</u>	
Criminal - Fine/Imprisonment:	<p><u>First offense</u> – Not less than 3 consecutive days or more than 30 days and not less than \$250 or more than \$1,000; <u>Second offense</u> (within 5 years) – 30 days and \$1,000; <u>Subsequent offense</u> (within 5 years) – 1 year and \$2,000. HRS §291E-62(a), (c).</p>
Mandatory Minimum Fine/Imprisonment:	The terms above are mandatory.
Other:	
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	Yes – Habitually operating a vehicle under the influence of an intoxicant. HRS §291E-61.5.
Grounds for Being Declared Habitual Offender:	Convicted three or more times within 10 years ²⁵³ of operating a vehicle under the influence of an intoxicant at the time the person is convicted of driving impaired offense. HRS §291E-

²⁵³“Convicted three or more times for offenses of operating a vehicle under the influence” means that, at the time of the behavior for which the person is charged under this section, the person had three or more times within 10 years of the instant offense. See HRS §291E-61.5(b) for details.

<p>Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):</p>	<p>61.5(a). Class C felony. HRS §291E-61.5(c). Either indeterminate term of imprisonment of 5 years, or 5 years' probation, with not less than 10 days imprisonment (48 hours served consecutively) and may be fined not more than \$10,000. Additionally, referral to a certified substance abuse counselor shall be made. \$25 surcharge shall be paid to the neurotrauma special fund, and a surcharge of up to \$50 may be ordered for the trauma system special fund. HRS §§291E-61.5(d); 706-640. The \$25 surcharge and 10 days imprisonment are mandatory.</p>
<p>Mandatory Minimum Term/Fine:</p>	
<p><u>Other State Laws Related to Drug Use:</u></p>	
<p>Drug Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):</p>	<p>Yes. HRS §291E-21.</p>
<p>Drug Chemical Test Given to Deceased Driver Killed in Crash:</p>	<p>Yes</p>
<p>Drug Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:</p>	<p>Possible. HRS §§291E-21; 841-3.</p>
<p>Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:</p>	<p>Possible. HRS §§291E-21; 841-3.</p>
<p>Drug Chemical Tests on Persons Involved in Traffic Crashes:</p>	<p>Yes. HRS §291E-21.</p>
<p><u>Marijuana – Possession and Use Laws:</u></p>	
<p></p>	<p>Legal for Medical Use. HRS §329-122. Criminal Penalties: <u>< 1 oz. (Petty Misdemeanor)</u> – Up to 30 days and/or a fine of up to \$1000. <u>≥ 1 oz. Marijuana (Misdemeanor)</u> – Not more than 1 year and a fine of not more than \$2,000. <u>≥ 25 Marijuana Plants (Class C Felony)</u> – Not more than 5 years and a fine of not more than \$10,000. HRS §§706-660; 706-663; 706-640; 712-1247; 712-1248; 712-1249. The presence of marijuana in a motor vehicle is prima facie evidence of knowing possession by every person in the vehicle at the time the drug was found. HRS §712-1251 and <i>State v. Brighter</i>, 595 P.2d 1072 (Hawai'i 1979).</p>
<p><u>Intoxicant Exclusion Law (UPPL):</u></p>	<p>Yes. HRS §431:10A-106(10).</p>

STATE	IDAHO
General Reference:	Idaho Code (I.C.)
<u>Type of DUI-D Law:</u>	Under the Influence
<u>Basis for DUI-D Charge:</u>	I.C. §18-8004(1)(a).
Standard DUI-D Offense:	Drive or be in actual physical control of a motor vehicle ²⁵⁴ while under the influence ²⁵⁵ of drugs ²⁵⁶ or any other intoxicating substances, or a combination of alcohol and drugs and/or any other intoxicating substances. I.C. §18-8004(1)(a).
Illegal Per Se Law:	N/A
Presumption Based on Drugs – State Has (Yes/No):	None
Other:	Quantity of Drugs The State is not required to establish the quantity of drugs present in a subject’s system to maintain a prosecution for DUI-D. <i>State v. Lesley</i> , 981 P.2d 748 (Idaho 1999).
<u>Chemical Testing for Drug Concentration:</u>	
Preliminary Breath Test Law – State Has Such a Law (Yes/No):	No
Preliminary Breath Test Law – Applies to Drugs (Yes/No):	N/A
Implied Consent Law:	Yes. I.C. §18-8002.
Arrest Required (Yes/No):	No ²⁵⁷
Implied Consent Law Applies to Drugs (Yes/No):	Yes. I.C. §18-8002(1).
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes – Criminal Cases. <i>See State v. Rocha</i> , 335 P.3d 586 (Idaho App. 2014).
Other Information:	
<u>Non-Breath Chemical Tests for Drug Concentration Authorized Under the Implied Consent Law:</u>	

²⁵⁴ A “motor vehicle” includes any self-propelled device in, upon, or by which any person or property is or may be transported or drawn upon a public highway. I.C. §49-101. The term includes motorcycles and ATVs. *See State v. Carpenter*, 749 P.2d 501 (Idaho 1988); and *State v. Barnes*, 987 P.2d 290 (Idaho 1999). The term does not include devices moved by human power or used exclusively upon stationary rails or tracks. I.C. §49-101.

²⁵⁵ To prove that a driver was “under the influence,” the State must show impairment of the subject’s physical or mental function that relates to one’s ability to drive. *State v. Bronnenberg*, 856 P.2d 104 (Idaho 1993). It is not necessary to prove that the subject could not drive safely or prudently, or to prove impairment to any specified degree. *See State v. Gleason*, 844 P.2d 691 (Idaho 1992); *State v. Andrus*, 800 P.2d 107 (Idaho 1990).

²⁵⁶ A “drug” means (1) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances, other than food, intended to affect the structure of any function of the body of man or animals; and (4) substances intended for use as a component of these, but not any device or their components, parts, or accessories. I.C. §37-2701(m).

²⁵⁷ The police need only “reasonable grounds” of a DUI-D offense before the implied consent law is applicable. I.C. §18-8002(1).

Blood: **Yes.** I.C. §18-8004.
 Urine: **Yes.** I.C. §18-8004.
 Other: Note²⁵⁸

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform: **Yes. A licensed physician, qualified medical technologist, registered nurse, phlebotomist trained in a licensed hospital or educational institution or other medical personnel trained in a licensed hospital or education institution to withdraw blood.** I.C. §18-8003(1).

Entity Establishing Testing Protocols: **Yes – Limited to Alcohol Analysis.** The Director of the Idaho State Police. I.C. §67-2901. *See also* ID ADC 11.03.01.000 *et seq.*
 There do not appear to be any parallel statutes or regulations authorizing a particular entity to approve methods for analyzing blood or other bodily substances to detect and/or quantify the presence of other intoxicants.

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:
 Other:

No

Costs

Upon conviction, the court may order restitution for the reasonable costs incurred by law enforcement agencies to withdraw blood samples, perform laboratory analysis, transport and preserve evidence, preserve evidentiary test results and for testimony relating to the analysis in judicial proceedings, including travel costs associated with the testimony. I.C. §18-8003(2).

Independent Testing

The person tested may, at his own expense, have a person of his own choosing, administer an evidentiary test for alcohol concentration. This section does not mention an independent test for drug concentration.
 I.C. §§18-8002(4)(e); 18-8003(3).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No):

No

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

No

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

Yes – Alcohol evaluation required, even if conviction based solely upon consumption of a substance other than alcohol.
 I.C. §§18-8005(11).

²⁵⁸ Technically under I.C. §18-8002(6)(b), a law enforcement officer may order a “qualified person” to withdraw blood from a driver for evidential purposes in cases where there is probable cause to believe that such driver has committed a DWI aggravated or homicide offense. In light of the United States Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance), the Idaho Supreme Court has recognized that this statutory language does not create a valid exception to the warrant requirement. *State v. Wulff*, 337 P.3d 575 (Idaho 2014).

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription:	No. I.C. §18-8004(7). <i>See also State v. Goerig</i> , 822 P.2d 1005 (Idaho 1991).
Therapeutic Concentration:	Yes ²⁵⁹
Involuntary Intoxication:	Yes. I.C. §18-116.
Other:	

Sanctions for Refusal to Submit to a Chemical Test:

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

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	No – However, there is a civil penalty of \$250 for refusing an evidentiary test. I.C. §18-8002(4)(c).
Implied Consent Chemical Test - Other:	N/A

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:	<p><u>First offense</u> (Misdemeanor) – Not more than 6 months and/or not more than \$1,000;</p> <p><u>Second offense</u> (within 10 years) (Misdemeanor) – Not less than 10 days or more than 1 year and may be fined not more than \$2,000;</p> <p><u>Third and subsequent offense</u> (within 10 years) (Felony) – Not less than 30 days or more than 10 years and may be fined not more than \$5,000. I.C. §18-8005.</p> <p>Aggravated DUI-D offense (bodily harm or disfigurement) (Felony) – Not less than 30 days or more than 15 years and may be fined not more than \$5,000. I.C. §18-8006.</p>
Mandatory Minimum Term/Fine:	<p><u>First offense</u> – None;</p> <p><u>Second offense</u> (within 10 years) – 5 days (first 48 hours must be consecutive);²⁶⁰</p> <p><u>Third and subsequent offense</u> (within 10 years) – 10 days (first 48 hours must be consecutive). I.C. §18-8005.</p> <p>Aggravated DUI-D offense (if bodily harm/disfigurement) – 30 days (must serve 48 consecutive hours). I.C. §18-8006.</p>
Community Service:	N/A
Restitution:	<p>Yes</p> <p>I. Under I.C. §19-5304, a person who has been convicted of any criminal offense may be ordered to pay restitution to a</p>

²⁵⁹ It appears based upon the language of the statutes that if a “therapeutic” concentration would not render a person “under the influence,” then arguing that the level of the substance detected was merely therapeutic would be a valid defense. I.C. §18-8004(1)(a).

²⁶⁰ The court may assign an offender to a work detail program within the custody of the county sheriff during the period of incarceration. §18-8005(4)(a)

victim.

II. Aggravated DUI-D offense: A defendant shall be ordered to pay restitution to a victim. I.C. §18-8006(1)(e).

III. Victim's compensation fund: A defendant shall be assessed a special fine (not less than \$75 for any felony, and \$37 for any misdemeanor) that is paid into the crime victim's compensation fund. I.C. §72-1025.

Child Endangerment:

It is an offense for a person >18 to operate a motor vehicle in violation of the DUI laws while transporting a "minor."

No injury/death (misdemeanor) – Not more than **6 months** and may be fined not more than **\$1000**;

Injury or death (felony) – Not more than **10 years** (unless a more severe penalty is otherwise prescribed by law) I.C. §§18-113; 18-1501(3).

Other:

Electronic Monitoring. The court may require the defendant to use an "electronic monitoring" device to record his/her movements while he/she is on probation to insure compliance with curfew hours, driving privilege restrictions, or home confinement requirements. I.C. §18-8008(3).

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

N/A²⁶¹

Substance Abuse Treatment:

N/A

Vehicle Impoundment/Confiscation:

Impoundment – A peace officer may impound any vehicle found upon a highway when the person driving it has been arrested. I.C. §49-662(3)(c).

Authorized by Specific Statutory Authority:

I.C. §49-662.

Terms Upon Which Vehicle Will Be Released:

N/A

Other Miscellaneous Sanctions:

Surcharge: A mandatory **\$15** surcharge is added to all fines. Funds collected from this surcharge are deposited into a special account which is used either (1) to purchase ignition interlock or electronic monitoring devices or (2) for misdemeanor DUI offense probation programs. I.C. §18-8010.

Labor on Public Works: An offender may be required to perform labor on Federal, State or other governmental works. I.C. §20-617.

Homicide by Vehicle:

State Has Such a Law:

Yes. Vehicular Manslaughter. I.C. §18-4006(3)(b).

Imprisonment/Fine:

Not more than **15 years** and/or not more than **\$15,000**. I.C. §18-4007(3)(b).

Mandatory Minimum Term/Fine:

None

Other:

Death of a Parent – If a parent of a minor was fatally injured,

²⁶¹ A court may require a DUI-D offender to participate in an alcohol treatment program. I.C. §18-8005(11), (12), (14). No such evaluation, education, or treatment seems to exist concerning other substances.

the offender may be required to pay child support until the minor reaches 18. I.C. §18-4007(3)(d).

DUI-D Offenses and Commercial Motor Vehicles (CMV):

I. A person is “disqualified” from operating a CMV for 1 year (mand) (3 years if transporting hazardous materials) if, while driving a CMV, that person is under the influence of a controlled substance (not all drugs) or refuses to submit to a chemical test for drug concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the “disqualification” is for life (mand).

II. A person who operates a CMV under the influence of any drug/intoxicating substance commits a DUI-D offense and is subject to same criminal sanctions as other DUI-D offenders. I.C. §§49-335; 18-8002(3)(a); 18-8004(1)(b), (1)(c); 18-8005.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

Note.²⁶²

First offense – Misdemeanor – Not less than **2 days** or more than **6 months** and may be fined not more than **\$1,000**;

Second offense – Misdemeanor (within 5 years) – Not less than **20 days** or more than **1 year** and may be fined not more than **\$1,000**;

Third and subsequent offenses– Misdemeanor (within 5 years) – Not less than **30 days** or more than **1 year** and may be fined not more than **\$3,000**. I.C. §18-8001.

Mandatory Minimum Fine/Imprisonment Term:

First offense – **2 days**;

Second offense – **20 days**;

Third offense – **30 days**.

Other:

N/A

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No²⁶³

Other State Laws Related to Drug Use:

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

Yes. I.C. §49-1314.

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes

Drug Chemical Test Given to Deceased

No

²⁶² If a person is convicted of a DUI-D offense and such person had no driving privileges at the time of arrest, the penalties imposed under I.C. §18-8001 are in addition to any penalties imposed for a DUI-D driving offense conviction. I.C. §18-8001(7).

²⁶³ However, under I.C. §19-2514, a person convicted for committing a third felony offense shall be deemed a “persistent violator of law,” and is subject to a term of imprisonment of 5 years to life.

Vehicle Passengers Killed in Crash:
 Drug Chemical Test Given to Deceased
 Pedestrian Killed in Crash:
 Drug Chemical Tests on Persons Involved
 in Traffic Crashes:

Yes**No**

Marijuana – Possession and Use Laws:

Illegal.**Criminal Penalties:**

Possession of ≤ 3 oz. (Misdemeanor): Not more than **1 year**
 and/or a fine of not more than **\$1,000**. I.C. §37-2732(c)(3).

Possession > 3 oz. (Felony) – Not more than **5 years** and/or a
 fine of not more than **\$10,000**. I.C. §37-2732(e).

Intoxicant Exclusion Law (UPPL):

Yes. I.C. §41-2127.

STATE

General Reference:

ILLINOIS

West's Smith-Hurd Illinois Compiled Statutes Annotated (ILCS)

Type of DUI-D Law:**Under the Influence/Zero Tolerance**Basis for DUI-D Charge:

625 ILCS 5/11-501(a)(3), (4), (5), (6), (7).

Standard DUI-D Offense:

Drive or be in physical control of a vehicle²⁶⁴ while under the influence of any intoxicating compound or combination of intoxicating compounds, or drug or combination of drugs, to a degree that renders the person incapable of driving safely. 625 ILCS 5/11-501(a)(3), (4), (5).

Illegal Per Se Law:

I. Any amount of a drug, substance or compound in the person's blood, breath, urine, or other bodily substance resulting from the unlawful use or consumption of:

- A **controlled substance** listed in the Illinois Controlled Substances Act;²⁶⁵
- An **intoxicating compound** listed in the Use of Intoxicating Compounds Act;²⁶⁶
- **Methamphetamine** as listed in the Methamphetamine Control and Community Protection Act.²⁶⁷ 625 ILCS 5/11-501(a)(1), (6).

II. Within 2 hours of driving or being in actual physical control of a vehicle, **≥ 5 nanograms** delta-9-tetrahydrocannabinol per milliliter of whole blood, or **≥ 10 nanograms** delta-9-tetrahydrocannabinol per milliliter of other bodily substance.²⁶⁸ 625 ILCS 5/11-501(a)(7).

Presumption Based on Drugs – State Has (Yes/No):

Yes.

≥ 5 nanograms delta-9-tetrahydrocannabinol per milliliter of whole blood, or **≥ 10 nanograms** delta-9-tetrahydrocannabinol per milliliter of other bodily substance. 625 ILCS 5/11-501.2(b-5).

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

Yes.²⁶⁹ 625 ILCS 5/11-501.5(a).

²⁶⁴ A “vehicle” includes every device in, upon or by which any person or property is or may be transported or drawn upon a highway or requiring a certificate of title, except devices moved by human power, devices used exclusively upon stationary rails or tracks and snowmobiles. 625 ILCS 5/1-217.

²⁶⁵ See 720 ILCS 570/100 *et seq.*

²⁶⁶ For a list of “intoxicating compounds,” see 720 ILCS 690/1.

²⁶⁷ See 720 ILCS 646/1 *et seq.*

²⁶⁸ Excludes lawful consumption of cannabis by a qualifying patient licensed under the Compassionate Use of Medical Cannabis Pilot Program Act who is in possession of a valid registry card issued under that Act, unless the person is impaired by the use of cannabis. 625 ILCS 5/11-501(a)(6).

²⁶⁹ A law enforcement officer may use a PBT to determine whether probable cause exists to arrest for committing a DUI offense. The State may not use as evidence the results of a PBT in its case-in-chief in a criminal trial, but may use the results in any administrative or criminal hearing to determine probable cause in a DUI offense. 625 ILCS 5/11-501.5; *People v. Davis*, 695 N.E.2d 1363 (Ill.App. 3 Dist. 1998).

Preliminary Breath Test Law – Applies to Drugs (Yes/No)	Yes
Implied Consent Law:	Yes. 625 ILCS 5/11-501.1.
Arrest Required (Yes/No):	Yes. 625 ILCS 5/11-501.1.
Implied Consent Law Applies to Drugs (Yes/No):	Yes. 625 ILCS 5/11-501.1(a).
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes – Criminal and Civil Cases. 625 ILCS 5/11-501.2(c)(1).
Other Information:	

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

Blood:	Yes. 625 ILCS 5/11-501.1.
Urine:	Yes. 625 ILCS 5/11-501.1.
Other:	Other bodily substance. 625 ILCS 5/11-501.1.

Tests Conducted During Medical Treatment

The results of blood, other bodily substance, or urine tests performed for the purpose of determining the content of drugs and/or intoxicating compounds upon persons receiving medical treatment in a hospital emergency room for injuries resulting from a motor vehicle accident shall be disclosed to law enforcement upon request, and are admissible in evidence during a trial for DUI-D. 625 ILCS 5/11-501.4(a).

Obtaining Non-Implied Consent Samples – Note.²⁷⁰

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:	Yes. A physician authorized to practice medicine, a licensed physician assistant, a licensed advanced practice nurse, a registered nurse, a trained phlebotomist, or licensed paramedic, or other qualified person approved by the Department of State Police. 625 ILCS 5/11-501.2(a)(2).
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Entity Establishing Testing Protocols:	The chemical analysis must be performed according to standards promulgated by the Department of State Police . The Department of State Police is authorized to approve satisfactory techniques and methods that shall be used to conduct chemical tests. 625 ILCS 5/11-501.2(a)(2).
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²⁷⁰ In Illinois, a blood sample could previously be taken without consent or by force for a DUI offense (injury or non-injury related) as long as police have probable cause of such offense. See 625 ILCS 5/11-501.2(c)(2) as interpreted by *People v. Yant*, 570 N.E.2d 3 (Ill.App. 2 Dist. 1991) and *People v. Jones*, 824 N.E.2d 239 (2005). However, such exception to the search warrant requirement should now be relied upon with caution in light of the United States Supreme Court’s decisions in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance) and *Birchfield v. North Dakota*, 579 U.S. ____ (2016). See also *People v. Harrison*, ___ N.E.3d ___, 2016 IL App. (5th) 150048 (Feb. 18, 2016) (recognizing that the constitutionality of 625 ILCS 5/11-501.2(c)(2) may be called into question in the wake of *Missouri v. McNeely*).

Blood Drawn Pursuant to Search Warrant –
State Has Limited Who May Perform:

Laboratories that test for the presence of cannabis or other drugs must comply with ISO/IEC 17025:2005. 625 ILCS 5/11-501.2(e). *See also* 20 IL ADC 1286.170.

Yes.

Samples Collected in Illinois - A licensed physician, physician assistant, licensed advanced practice nurse, registered nurse, trained phlebotomist, or certified paramedic.

When a blood test of a person who has been taken to an adjoining State for medical treatment is requested by an Illinois police officer, the blood may be withdrawn only by a **physician authorized to practice medicine in the adjoining State, physician assistant, licensed advanced practice nurse, registered nurse, trained phlebotomist acting under the direction of the physician, or certified paramedic.** 20 IL ADC 1286.320(b).

Other:

Independent Testing

The person tested may have an additional chemical test or tests administered. The failure or inability to obtain an additional test does not preclude the admission of evidence relating to the test(s) taken at the direction of a law enforcement officer. 625 ILCS 5/11-501.2(a)(3).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No):

No

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

No

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

Yes. Drug evaluation (screening required) with appropriate treatment. 625 ILCS 5/11-501.01(a).

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription:

Under the Influence – **No.** 625 ILCS 5/11-501(b).

Per Se – **No, with the exception of Cannabis.**²⁷¹ 625 ILCS 5/11-501(a)(6), (b).

Therapeutic Concentration:

Under the Influence – **Yes.**²⁷²

Per Se – **No.**

Involuntary Intoxication:

No²⁷³

Other:

²⁷¹ Lawful consumption of cannabis by a qualifying patient licensed under the Compassionate Use of Medical Cannabis Pilot Program Act who is in possession of a valid registry card issued under that Act, unless the person is impaired by the use of cannabis. 625 ILCS 5/11-501(a)(6), (b).

²⁷² It appears based upon the language of the statute that if a “therapeutic” concentration would not render a person “under the influence” to a degree that renders the person incapable of driving safely, 625 ILCS 5/11-501(a)(3), (4), (5), then arguing that the level of the substance detected was merely therapeutic would be a valid defense.

²⁷³ DUI-D is a strict liability offense, requiring no intent. *People v. Ciechanowski*, 884 N.E. 2d 714 (2008).

Sanctions for Refusal to Submit to a Chemical Test:

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

None

Preliminary Breath Test – Other:

N/A

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

None

Implied Consent Chemical Test - Other:

Injury/Death Related Implied Consent Law. Under another separate and independent implied consent law, (625 ILCS 5/11-501.6) if a law enforcement officer has arrested a driver for any moving violation under the vehicle code and the driver has been involved in an accident that has resulted in an injury or a fatality, the officer may request that the person submit to a chemical test of the blood, breath, urine, or other bodily substance, for the purpose of determining the drug content in such person’s blood. If a driver refuses to submit to such a test, his/her driving privileges are suspended.

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:

First offense (Class A misdemeanor) – Up to **1 year** and **\$2,500**;

Second offense (Class A misdemeanor) – Not less than **5 days**²⁷⁴ or more than **1 year** and not more than **\$2,500**;

Third offense²⁷⁵ (Class 2 felony) – Probationable, or not less than **3 years** or more than **7 years**²⁷⁶ and not more than **\$25,000**;

Fourth offense (Class 2 felony) (non probationable offense) – Not less than **3 years** or more than **7 years** and not more than **\$25,000**;

Fifth offense (Class 1 felony) (non probationable offense) – Not less than **4 years** or more than **15 years** and not more than **\$25,000**;

²⁷⁴ The law provides that the sentence can be *either* 5 days of imprisonment *or* 240 hours of community service in addition to any other sanction. 625 ILCS 5/11-501(c)(2).

²⁷⁵ This offense is termed “aggravated driving under the influence” and includes: (1) a third or subsequent DUI violation; (2) a violation while driving a school bus with one or more passengers aboard; (3) a DUI violation causing an accident that resulted in great bodily harm or permanent disability or disfigurement to another (violation was the proximate cause of the injuries); (4) a second DUI violation where there has been a prior DUI related reckless homicide or great bodily harm or permanent disability or disfigurement; (5) a DUI violation (at any speed) in a school zone when the 20 mph limit was in effect and such person was involved in an accident causing great bodily harm or permanent disability or disfigurement; (6) a DUI which was the proximate cause of an accident that resulted in a death; (7) DUI while suspended or revoked for DUI, or without a valid driver’s license; (8) DUI while revoked for reckless homicide; (9) DUI when the person knew or should have known the vehicle driven was not covered by a liability insurance policy; (10) a DUI offense resulting in bodily harm, but not great bodily harm, to a child < 16 years of age that the person was transporting (if the DUI was the proximate cause of the injury); (11) a second DUI violation while transporting a child < 16; (12) DUI while transporting passengers in a vehicle for hire. Any of these violations is a Class 4 felony. 625 ILCS 5/11-501(d).

²⁷⁶ If probation or conditional discharge is ordered, the person must serve a mandatory 90 days and pay a minimum of \$2,500. 625 ILCS 5/11-501(d).

Sixth or subsequent offense (Class X felony) (non probationable offense) – Not less than **6 years** or more than **30 years** and not more than **\$25,000**. 625 ILCS 5/11-501(c), (d); 730 ILCS 5/5-4.5-25, *et seq.*

Great bodily harm or permanent disability or disfigurement (Class 4 felony) – Probationable or not less than **1 year** or more than **12 years** and not more than **\$25,000**. 625 ILCS 5/11-501(d)(1)(C), (d)(2)(F).

Bodily harm to a child < 16:

First offense (Class 4 felony) – Mandatory **\$2,500** and 25 days community service benefitting children and not less than **1 year** or more than **3 years**. 625 ILCS 5/11-501(d).

Mandatory Minimum Term/Fine:

The terms above are mandatory, as listed.

Community Service:

Mandatory terms of community service are listed where required.

Restitution:

Yes. Paid directly by a defendant to a victim. 730 ICLS 5/5-5-3; 730 ILCS 5/5-5-6. There is also a victim's compensation fund. 740 ILCS 45/1, *et seq.*

Child Endangerment:

Transporting child < 16:

First offense – “Subject to” **6 months imprisonment** and a mandatory additional **\$1,000** and 25 days community service;

Second offense of transporting a child < 16 (Class 2 felony) – Mandatory **\$2,500** and 25 days community service benefitting children and not less than **3 years** or more than **7 years**.

Third or subsequent offense committed while transporting a child < 16 (Class 2 felony) – mandatory **\$25,000** and 25 days community service benefitting children and not less than **3 years** or more than **7 years**. 625 ILCS 5/11-501(c), (d).

Other:

Visitation program: DUI-D offenders who are under 21 may be ordered by the court to participate in a special visitation program. An offender may be required to visit: (1) a rehabilitation facility that cares for DUI victims, (2) a facility that cares for persons who are terminally ill from alcoholism, or (3) a morgue to observe persons who have been killed as a result of DUI related accidents. 625 ILCS 5/11-501.7.

Attendance to victim impact panel: A court may require an offender to attend a victim impact panel. 625 ILCS 5/11-501.01(b).

Additional Fees/Costs/Surcharges:

(1) A fee of up to **\$30** may be assessed against DUI-D offenders for court costs, or **\$100** for a second or subsequent offender. 55 ILCS 5/5-1101(a), (d).

(2) A surcharge of **\$4** for every \$40 (or fraction thereof) of the fine imposed. 625 ILCS 5/16-104a.

(3) An additional penalty of **\$15** for each \$40 (or fraction thereof) of the fine imposed. 730 ILCS 5/5-9-1(c).

(4) An additional **\$100** fee (specific to DUI offenses to be

deposited into the Trauma Center Fund). 730 ILCS 5/5-9-1(c-5).

(5) An additional **\$5** (specific to DUI offenses to be deposited into the Spinal Cord Injury fund). 730 ILCS 5/5-9-1(c-7).

(6) A DUI analysis fee of **\$150**. 730 ILCS 5/5-9-1.9.

(7) Special restitution to the Illinois Secretary of State for any costs incurred by that official's office in obtaining evidence associated with the DUI offense. 625 ILCS 5/2-115(b).

(8) A **\$750** penalty (first offender) or **\$1,000** (subsequent offender) to be distributed to the law enforcement agency making the arrest and the State Treasurer. 625 ILCS 5/11-501.01(f).

(9) A fee of up to **\$30** per month to the Secretary of State DUI Administration Fund for any second or subsequent offender each month the person uses an ignition interlock offense. 625 ILCS 5/11-501.01(e).

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

Yes. 625 ILCS 5/11-501.01(a).

Substance Abuse Treatment:

Yes. 625 ILCS 5/11-501.01(a).

Vehicle Impoundment/Confiscation:

Limited Impoundment: Following a DUI-D arrest, a person's vehicle may be impounded for not more than **12 hours** by law enforcement officers if such officers "reasonably believe" that the arrested person, upon release, will commit another DUI offense. 625 ILCS 5/4-203(e).

Second offense – Impoundment for **24 hours**;

Third offense – Impoundment for **48 hours**. However, with the owner's consent, the vehicle may be released sooner to a person who is a competent driver. 625 ILCS 5/4-203(e-5).

Authorized by Specific Statutory Authority:

Seizure/Forfeiture (Not Mandatory): A vehicle is subject to seizure and forfeiture if it is used with the knowledge and consent of the owner: (1) in a third or subsequent DUI offense; (2) the driver commits a DUI offense while suspended or revoked due to a DUI or without having a valid driver's license; (3) the driver commits a violation of the implied consent law; (4) the driver is convicted of leaving the scene; or (5) the driver commits reckless homicide; (6) the driver commits a DUI and knew or should have known the vehicle was not covered by a liability insurance policy. 720 ILCS 5/36-1. If seized for committing a third or subsequent offense or for committing DUI while suspended or revoked as described above, based on a showing of "financial hardship," the vehicle will not be forfeited but its title must be transferred to either a spouse or other family member. 720 ILCS 5/36-1(d).

Terms Upon Which Vehicle Will Be Released:

The vehicle may be released sooner if permission is given to another competent person and that person possesses a valid operator's license. 625 ILCS 5/4-203(e).

Other Miscellaneous Sanctions: Under 730 ILCS 5/5-6-1 and 730 ILCS 5/5-6-3.1, a DUI-D offender may be placed in a court-supervised diversion program. However, an offender cannot be placed in such a program if that person had a previous DUI conviction or been in such a diversion program before. As a supervision condition, he/she may be required to only operate motor vehicles equipped with ignition interlock devices. There must be a finding of guilt prior to the disposition being entered.

Homicide by Vehicle:

State Has Such a Law:

Yes. Aggravated DUI-D resulting in death. 625 ILCS 5/11-501(d)(1)(F).

Imprisonment/Fine:

Class 2 felony – Not less than **3 years** or more than **14 years** (for death of 1 person) or not less than **6 years** or more than **28 years** (for death of 2 or more persons) and not more than **\$25,000**. The offender is required to serve 85% of any term of imprisonment. The court may not sentence the offender to probation unless the court finds that “extraordinary circumstances” exist requiring probation. 625 ILCS 5/11-501(d)(2)(G); 730 ILCS 5/5-4.5-50(b).

Mandatory Minimum Term/Fine:

None

Other:

N/A

DUI-D Offenses and Commercial Motor Vehicles (CMV):

First Violation - A person’s privilege to operate a CMV is disqualified administratively for not less than **12 months** if, while operating **any** vehicle, that person refuses to submit to a chemical test for drugs under 625 ILCS 5/11-501.1 or, while operating a CMV, and under 625 ILCS 5/11-501.1, submits to such a test which indicates he/she was driving with any amount of a drug, substance, or compound in the person’s blood, urine, or other bodily substance, resulting from the person’s unlawful use of cannabis, a controlled substance, or methamphetamine.

Second or Subsequent Violation: The “disqualification” is for life (10 years mand); however, there is a mandatory lifetime disqualification if, after the driver’s CDL has been reinstated after the 10-year mandatory period, he/she commits another violation as noted above. In addition, a CMV operator who has any amount of alcohol or other drug(s) in their system must be placed “out-of-service” for 24 hours.

625 ILCS 5/1-115.3; 625 ILCS 5/6-208.1; 625 ILCS 5/6-500; 625 ILCS 5/6-514; 625 ILCS 5/6-515; 625 ILCS 5/6-517; 625 ILCS 5/11-501.1.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

Driving on suspended/revoked license (because of DUI-D offense): (625 ILCS 5/6-303)

First violation (Class A misdemeanor) – Not less than **10 days** and up to **1 year** and/or not more than **\$2,500**. 625 ILCS 5/6-303(c).

Second violation, prior non-DUI related (Class A misdemeanor) – Not less than **10 days** (mand) and up to **1 year, 100 hours of community service** (mand), and/or not more than **\$2,500**. 625 ILCS 5/6-303(c), (c-1).

Second violation, prior DUI-related (Class 4 felony) – Not less than **30 days**²⁷⁷ or more than **3 years** and not more than **\$25,000**. 625 ILCS 5/6-303(d).

Third or subsequent violation, priors non-DUI related (Class A misdemeanor) – Not less than **30 days** or more than **1 year** and not more than **\$2,500**. 625 ILCS 5/6-303(d-1).

Third violation, priors DUI-related (Class 4 felony) – Not less than **30 days** (mand) or more than **3 years** and not more than **\$25,000**. 625 ILCS 5/6-303(d-2).

Fourth-Ninth violations, priors DUI-related (Class 4 felony) – Not less than **180 days** or more than **3 years** and not more than **\$25,000**. 625 ILCS 5/6-303(d-3).

Tenth-Fourteenth violations, priors DUI-related (Class 3 felony) – Not less than **2 years** or more than **5 years** and not more than **\$25,000**. 625 ILCS 5/6-303(d-4).

Fifteenth or subsequent violation (Class 2 felony) – Not less than **3 years** or more than **7 years** and not more than **\$25,000**. 625 ILCS 5/6-303(d-5). *See also* 730 ILCS 5/5-4.5-25, *et seq.*; 730 ILCS 5/5-9-1.

DUI-D offense while license is suspended/revoked (because of DUI offense) (Class 4 felony): Not less than **3 years** or more than **6 years** and not more than **\$25,000**. 625 ILCS 5/11-501(d); 730 ILCS 5/5-9-1.

Mandatory Minimum Fine/Imprisonment:

Driving on suspended/revoked license (because of DUI offense):

First violation – **10 consecutive days** or **30 days** community service;

Second violation, prior non-DUI related – **10 days** and **100 hours** community service;

Second violation, prior DUI-related – **30 days** or **300 hours** community service;

Third or subsequent violation, priors non-DUI related – **30 days**;

Third violation, priors DUI-related – **30 days**;

Fourth-Ninth violations, priors DUI-related – **180 days**;

Tenth-Fourteenth violations, priors DUI-related – **2 years**;

Fifteenth or subsequent violation – **3 years**. 625 ILCS 5/6-303.

²⁷⁷ The court may impose a sentence of 300 hours of community service in lieu of the 30-day minimum for a second violation or third violation with the prior non-DUI related violations.

**DUI-D offense while license is suspended/revoked
(because of DUI offense):**

First or second violation – **10 days** or **480 hours** community service. 625 ILCS 5/11-501(d); 730 ILCS 5/5-9-1.

Other:

Offender's motor vehicle is subject to seizure and forfeiture. 625 ILCS 5/6-303(g).

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Other State Laws Related to Drug Use:

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

Yes. 55 ILCS 5/3-3013; 625 ILCS 5/11-501.6.

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes

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

No

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

Yes – 16 or older.

Drug Chemical Tests on Persons Involved in Traffic Crashes:

Yes. 625 ILCS 5/11-501.6.

Marijuana – Possession and Use Laws:

Legal for Medical Use. 410 ILCS 130/1 *et seq.*

Penalties for Possession:

≤ 10 grams (Civil violation) – A **civil penalty** of not less than **\$100** or more than **\$200**.

10 < 30 grams (Class B Misdemeanor) – Not more than **6 months**, and/or a fine of not more than **\$1,500**.

30 < 100 grams (Class A Misdemeanor) – Not more than **1 year** and a fine of not more than **\$2,500**.

Second or Subsequent 30 < 100 grams (Class 4 Felony) – Not less than **1 year** or more than **3 years**, and a fine of not more than **\$25,000**.

100 < 500 grams (Class 4 Felony) – Not less than **1 year** or more than **3 years**, and a fine of not more than **\$25,000**.

Second or Subsequent 100 < 500 grams (Class 3 Felony) – Not less than **2 years** or more than **5 years**, and a fine of not more than **\$25,000**.

500 < 2,000 grams (Class 3 Felony) – Not less than **2 years** or more than **5 years**, and a fine of not more than **\$25,000**.

2,000 < 5,000 grams (Class 2 Felony) – Not less than **3 years** or more than **7 years**, and a fine of not more than **\$25,000**.

> 5,000 grams (Class 1 Felony) – Not less than **4 years** or more than **15 years**, and a fine of not more than **\$25,000**.

720 ILCS 550/4; 730 ILCS 5/5-4.5-30; 730 ILCS 5/5-4.5-35; 730 ILCS 5/5-4.5-40; 730 ILCS 5/5-4.5-45; 730 ILCS 5/5-

4.5-50; 730 ILCS 5/5-4.5-55; 730 ILCS 5/5-4.5-60.

Intoxicant Exclusion Law (UPPL):

No. 215 ILCS 5/367k.

STATE

General Reference:

Type of DUI-D Law:Basis for a DUI-D Charge:

Standard DUI-D Offense:

Illegal Per Se Law:

Presumption Based on Drugs – State Has (Yes/No):

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Implied Consent Law:

Arrest Required (Yes/No):

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

Refusal to Submit to Chemical Test Admitted into Evidence:

Other Information:

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

Blood:

Urine:

Other:

Individuals Authorized to Perform Chemical Testing (Blood):

INDIANA

Indiana Code Annotated (IC)

While Intoxicated/Zero Tolerance

IC §§9-30-5-1(c); 9-30-5-2.

I. Operating a vehicle²⁷⁸ while intoxicated²⁷⁹. IC §9-30-5-2.II. Operating a vehicle with a controlled substance²⁸⁰ or its metabolite in the person's body. IC §9-30-5-1(c).**Any amount of a controlled substance or its metabolite.**
IC §9-30-5-1(c).**No****Permissible.** Mandatory PBT for injury/death offenses. IC §§9-30-7-2; 9-30-7-3.**Yes****Yes.** IC §9-30-6-1.**No.** An actual arrest is not required. Nevertheless, a request for a test must still be based on probable cause. IC §9-30-6-2.**Yes.** IC §9-30-6-2.**Yes** – Criminal and Civil Cases. IC §9-30-6-3(b).**Yes**²⁸¹**Yes****Any other bodily substance**

²⁷⁸ A “vehicle” means a device for transportation by land or air. IC §9-13-2-196(d). The term does not include an electric personal assistive mobility device. *Id.*

²⁷⁹ “Intoxicated” means under the influence of: (1) alcohol; (2) a controlled substance (defined in IC §35-48-1); (3) a drug other than alcohol or a controlled substance; (4) an inhalant (as listed in IC §35-56-6-2 or IC 35-46-6-3); (5) any combination of the aforementioned substances; (6) any other substance, not including food and food ingredients (defined in IC §6-2.5-1-20), tobacco (defined in IC §6-2.5-1-28) or a dietary supplement (defined in IC §6-2.5-1-6), so that there is an impaired condition of thought and action and the loss of normal control of a person’s faculties. IC §9-13-2-86.

²⁸⁰ Listed in schedule I or II of IC §35-48-2.

²⁸¹ The implied consent law requires a driver to submit one or more “chemical tests.” The substances that may be tested are breath, blood, urine or any other bodily substance. IC §§9-30-6-1; 9-30-6-6(a).

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:	Yes. I. Outside of a licensed hospital ²⁸² : a physician or person trained in obtaining bodily substance samples and acting under the direction of or under a protocol prepared by a physician. IC §9-30-6-6(g). II. At a licensed hospital: a physician holding an unlimited license to practice medicine or osteopathy, a registered nurse, a licensed practical nurse, an advanced emergency medical technician, a paramedic, any other person qualified through training, experience, or education to obtain a bodily substance sample. IC §9-30-6-6(j). III. A law enforcement officer who is otherwise qualified to obtain a bodily substance sample as described above may obtain such sample if (1) before January 1, 2013, the officer obtained a bodily substance sample from an individual as part of the officer’s official duties as a law enforcement officer; and (2) the person consents to the officer obtaining a bodily substance sample, or obtaining the bodily substance sample is authorized by a search warrant. IC §9-30-6-6(l).
Entity Establishing Testing Protocols:	No
Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:	No
Other:	Physician-Patient Privilege The privileges arising from a patient-physician relationship do not apply to chemical testing for DUI-D offenses. IC §9-30-6-6(c). Methods The sample shall be obtained in “a medically accepted manner.” IC §9-30-6-6(i). Search Warrant Authorized The provisions of the implied consent law do not prevent a law enforcement officer from obtaining a blood sample pursuant to a search warrant. <i>Brown v. State</i> , 774 N.E.2d 1001, 1007 (Ind. Ct. App. 2002), <i>trans. denied</i> . Use of Force in Obtaining Sample – Note. ²⁸³
 <u>Adjudication of DUI-D Charges:</u>	
Mandatory Adjudication Law (Yes/No):	No
Anti-Plea-Bargaining Statute (Yes/No):	No

²⁸² As defined in IC §§16-18-2-179(a) and 16-18-2-179(b).

²⁸³ Pursuant to the Code, a law enforcement officer may use reasonable force to assist an individual authorized (by law) to take a bodily substance sample from a person who does not consent and resists the taking of such sample. This applies in cases where there is serious bodily injury or death of another. IC §9-30-6-6(g), (h). However, such exception to the search warrant requirement should now be relied upon with caution in light of the United States Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a per se exigent circumstance).

Pre-Sentencing Investigation Law (PSI)
(Yes/No): **Yes.** IC §9-30-5-15.

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription:

Per Se – **Yes.**

While Intoxicated – **No.** IC §9-30-5-1(d).

Therapeutic Concentration:

Per Se – **No.**

While Intoxicated – **Yes.**²⁸⁴

Involuntary Intoxication:

Yes. IC §35-41-3-5.

Other:

Sanctions for Refusal to Submit to a
Chemical Test:

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

Class C Infraction – Up to **\$500.**

Class A Infraction (if offender has 1 previous DUI conviction) – Up to **\$10,000.** IC §§9-30-7-5(a); 34-28-5-4.

Preliminary Breath Test – Other:

N/A

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

Class C Infraction – Up to **\$500.**

Class A Infraction (if offender has 1 previous DUI conviction) – Up to **\$10,000.** IC §§9-30-7-5(a); 34-28-5-4.
See also IC §§9-27-5-4(b); 9-30-7-1, *et seq.*²⁸⁵

Implied Consent Blood Tests - Note.²⁸⁶

Implied Consent Chemical Test - Other:

N/A

Criminal Sanctions Following a DUI-D
Conviction:

Imprisonment/Fine:

While Intoxicated/Per Se:

First offense (Class C Misdemeanor) – Not more than **60 days** and may be fined not more than **\$500;**

Subsequent offense (within 5 years) (Level 6 Felony²⁸⁷) – A fixed term between **6 months** and **2-1/2 years** (advisory sentence = **1 year**) and may be fined not more than **\$10,000.** IC §§9-30-5-1(a), (c); 9-30-5-3; 35-50-2-7; 35-50-3-4.

Serious Injury:

²⁸⁴ It appears based upon the language of the statute that if a “therapeutic” concentration would not render a person “intoxicated” pursuant to IC §9-30-5-2, then arguing that the level of the substance detected was merely therapeutic would be a valid defense.

²⁸⁵ Under a separate implied consent law, a driver involved in a fatal or serious bodily injury accident may be asked by a law enforcement officer to submit to a chemical test. A person does not have to submit to this test if offered but refusal is a Class C Infraction or Class A infraction (if one previous) with a possible fine of up to \$500. The court may impose a license suspension for one 1 year. IC §§9-27-5-4(b); 9-30-7-1, *et seq.*

²⁸⁶ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

²⁸⁷ A person convicted of a Level 6 felony may, at the court’s discretion, be sentenced as if they had been convicted of a Class A misdemeanor (Jail: Not more than 1 year and possible fine of not more than \$5,000) provided that this was the person’s first felony conviction, no bodily injury was caused and at least 3 years have passed since the person completed the sentence. IC §35-50-2-7.

First offense (Level 6 Felony) – A fixed term between **6 months** and **2-1/2 years** (advisory sentence = **1 year**) and may be fined not more than **\$10,000**;

Subsequent offense (within 5 years) (Level 5 Felony) – A fixed term of between **1 year** and **6 years** (advisory sentence = **3 years**) and may be fined not more than **\$10,000**. IC §§9-30-5-4; 35-50-2-6; 35-50-2-7.

Mandatory Minimum Term/Fine:

Community Service:

Second offense: A person may be ordered to complete at least 180 hours of community service or be imprisoned for at least 5 days;

Third offense: A person may be ordered to complete at least 360 hours of community service or be imprisoned for at least 10 days. IC §9-30-5-15.

Restitution:

Yes. The court may order a defendant to pay direct compensation to a victim. IC §35-50-5-3. There is also a victims' compensation fund. IC §5-2-6.1-40.

Child Endangerment:

A person who commits a DUI-D offense with a passenger < 18 commits a Level 6 Felony. Punishment is a fixed term between **6 months** and **2-1/2 years** (advisory sentence = **1 year**) and a possible fine not more than **\$10,000**. IC §§9-30-5-1(b); 9-30-5-2; 35-50-2-7; 35-50-3-4.

Other:

Alcohol and Drug Countermeasures Fee: The clerk shall collect a fee of **\$200** for a conviction of a DUI-D offense. IC §33-37-5-10.

Emergency Medical Services Fund: The court may order a defendant to make "restitution" of not more than **\$1,000** to the emergency medical services fund for any needed services provided by emergency services personnel as a result of their actions. IC §9-30-5-17(b).

Victim Impact Program: A defendant may be ordered by the court to participate in programs with DUI-D offense victims. IC §9-30-14-2.

Visitation Program: A defendant may be required to visit emergency care facilities, coroner facilities or alcoholism treatment centers. IC §9-30-14-3(3).

Court Costs: Under IC §34-28-5-4, a person who commits a moving violation that is a Class C infraction may be required to pay various capped penalties in addition to court costs.

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

Yes. IC §§ 9-30-5-15; 9-30-9-3.

Substance Abuse Treatment:

Yes

Vehicle Impoundment/Confiscation:

Forfeiture.

Authorized by Specific Statutory Authority:

Forfeiture of a motor vehicle permitted if driven by a person who has at least two prior DUIs within five years if that person commits additional DUI or driving with a suspended license. IC §34-24-1-1(a)(15).

Terms Upon Which Vehicle Will Be Released:	Vehicle is not the subject of seizure if such vehicle is operated by a person who is not the owner or the spouse of the person who owns the vehicle. IC §34-24-1-1(e).
Other Miscellaneous Sanctions:	“ Home detention ” may be ordered in lieu of the minimum imprisonment sentence for certain offenses including DUI-D. “Home detention” using electronic monitoring also may be ordered as a part of probationary work release program. IC §§35-38-1-21; 35-38-2-2.3(a)(16); 35-38-2.5-1, <i>et seq.</i> ; 35-38-3-5.
<u>Homicide by Vehicle:</u> State Has Such a Law:	Yes. While Intoxicated/Per Se <u>First offense</u> – Level 5 Felony; <u>Subsequent offense</u> (within 5 years) – Level 4 Felony. Per Se ≥ 21 – Level 4 Felony. IC §9-30-5-5. <u>Level 4 Felony</u> – A fixed term of between 2 years and 12 years (advisory sentence of 6 years) and may be fined not more than \$10,000 ; IC §35-50-2-5. <u>Level 5 Felony</u> – A fixed term of between 1 year and 6 years (advisory sentence of 3 years) and may be fined not more than \$10,000 . IC §35-50-2-6.
Imprisonment/Fine:	
Mandatory Minimum Term/Fine:	N/A
Other:	N/A
<u>DUI-D Offenses and Commercial Motor Vehicles (CMV):</u>	N/A ²⁸⁸
<u>Driving While License Suspended for DUI-D Offense:</u> Criminal - Fine/Imprisonment:	I. <u>Class A Misdemeanor</u> – Not more than 1 year and may be fined not more than \$5,000 . IC §§9-24-19-3; 35-50-3-2. II. <u>Where there is Bodily Injury</u> (Level 6 Felony) – A fixed term between 6 months and 2-1/2 years (advisory sentence = 1 year) and may be fined not more than \$10,000 . III. <u>Where there is a Death</u> (Level 5 felony) – A fixed term of between 1 year and 6 years (advisory sentence of 3 years) and may be fined not more than \$10,000 . IC §§9-24-19-4; 35-50-2-6; 35-50-2-7.
Mandatory Minimum Fine/Imprisonment:	N/A
Other:	These sanctions apply when a person operates a motor vehicle while the license is suspended/ revoked and where the licensing action was the result of the commission of a criminal offense (e.g., DUI-D). IC §9-24-19-3.

²⁸⁸ Indiana’s statutes pertaining to DUI-D while driving a CMV were repealed effective July 1, 2016. *See* P.L. 198-2016, SEC.451.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. IC §9-30-10-4.

Grounds for Being Declared Habitual Offender:

I. 2 convictions (within 10 years) for traffic law violations related to death offenses;²⁸⁹II. 3 convictions (within 10 years) for major offenses;²⁹⁰

III. 10 convictions for any moving violations (within 10 years) of any traffic infraction (except parking or equipment violations) with at least one of the offenses having been a conviction listed in I or II above. IC §9-30-10-4.

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

Level 6 Felony. IC §9-30-10-16.

Imprisonment (Term):

A fixed term between **6 months** and **2-1/2 years** (advisory sentence = **1 year**) and may be fined not more than **\$10,000**. IC §§9-30-10-16; 35-50-2-7.

Mandatory Minimum Term/Fine:

NoneOther State Laws Related to Drug Use:

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

No

Drug Chemical Test Given to Deceased Driver Killed in Crash:

No

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

No

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

No

Drug Chemical Tests on Persons Involved in Traffic Crashes:

NoMarijuana – Possession and Use Laws:**Illegal.**1st Offense Possession (Class B Misdemeanor) – Not more than **180 days** and/or not more than **\$1,000**.2nd or Subsequent Offense Possession and < 30 grams (Class A Misdemeanor) – Not more than **1 year** and/or not more than **\$5,000**.2nd or Subsequent Offense Possession and > 30 grams (Level 6 Felony) – Not less than **6 months** or more than **2.5 years**, and a fine of not more than **\$10,000**. IC §§35-48-4-11; 35-50-2-7; 35-50-3-2; 35-50-3-3.Intoxicant Exclusion Law (UPPL):**Yes.** IC §27-8-5-3(b)(10).²⁸⁹ These include reckless homicide, voluntary or involuntary manslaughter involving operation of a motor vehicle and operation of a motor vehicle while intoxicated (resulting in death). IC §9-30-10-4(a).²⁹⁰ These include reckless driving, drag racing, and operation of a motor vehicle while intoxicated. IC §9-30-10-4(b).

STATE

General Reference:

IOWA

Iowa Code Annotated (I.C.A.)

Type of DUI-D Law:Basis for a DUI-D Charge:

Standard DUI-D Offense:

Illegal Per Se:

Presumption Based on Drugs – State Has (Yes/No):

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Implied Consent Law:

Arrest Required (Yes/No):

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

Refusal to Submit to Chemical Test Admitted into Evidence:

Other Information:

Under the Influence/Zero Tolerance

I.C.A. §321J.2(1)(a), (c).

Operate a motor vehicle²⁹¹:I. Under the influence²⁹² of a drug²⁹³, or a drug combined with alcohol; orII. While any amount of a controlled substance²⁹⁴ is present in the person. I.C.A. §321J.2(1)(a), (c).**Any amount of a controlled substance** in the blood or urine. I.C.A. §321J.2(1)(c).**No****Yes.** I.C.A. §321J.5.**Yes****Yes.** I.C.A. §321J.6.**No.**²⁹⁵ I.C.A. §321J.6(1).**Yes.** I.C.A. §321J.6.**Yes** – Criminal and Civil Cases. I.C.A. § 321J.16.**N/A**Non-Breath Chemical Tests for Drug Concentration Authorized Under the

²⁹¹ A “motor vehicle” means every self-propelled device in, upon, or by which any person or property is or may be transported or drawn upon a highway. I.C.A. §321.1(42), (90). However, a motor vehicle does not include a vehicle operated upon rails, a device moved by human power, or specified parts of other vehicles. *Id.*

²⁹² “Under the influence” means that the consumption of an intoxicant affects the person’s reasoning or mental ability, impairs a person’s judgment, visibly excites a person’s emotions, or causes a person to lose control of bodily actions. *State v. Truesdell*, 679 N.W.2d 611 (Iowa, 2004).

²⁹³ A “drug” includes any substance that affects the body so as to impair an individual’s ability to operate a motor vehicle. *State v. Bond*, 493 N.W.2d 826, 828 (Iowa, 1992). This definition includes, but is not limited to, (a) a substance recognized as a drug in the current official United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia, or other drug compendium of any supplement to any of them; (b) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; (c) a substance, other than food, intended to affect the structure or any function of the body of humans or other animals; (d) a substance intended for use as a component of any afore-mentioned substance; (e) a controlled substance. *Id.* (citing I.C.A. §155A.3(13); and I.C.A. §203B.8).

²⁹⁴ Pursuant to I.C.A. §321J.1, a “controlled substance” includes any drug, substance, or compound listed in I.C.A. §§124.204 or 124.206, or any metabolite or derivative of the drug, substance, or compound.

²⁹⁵ A request to submit to a test is based on reasonable grounds of a DUI-D offense AND any one of the following: (1) arrest; (2) accident resulting in injury or death; (3) PBT refusal; (4) PBT reading of $\geq .08$ ($\geq .04$ for CMV operators; $\geq .02$ for persons under the age of 21); or (5) reasonable grounds that the driver was under the influence of drugs or a combination of drugs and alcohol but a PBT reading is $< .08$. I.C.A. §321J.6(1).

Implied Consent Law:

Blood: **Yes.** I.C.A. §321J.6(2).

Urine: **Yes.** I.C.A. §321J.6(2).

Other:

Use of Search Warrant Limited for DUI-D Blood Testing

A person may only be required to submit to a chemical test pursuant to a search warrant issued in an investigation of involuntary manslaughter (I.C.A. §707.5) or homicide/serious injury by vehicle (I.C.A. §707.6A) where a traffic accident has resulted in a death or in a personal injury likely to cause death and there is evidence of a DUI offense. I.C.A. §§ 321J.9(1); 321J.10.

Independent Testing

A person may have an independent chemical test or tests administered at the person's own expense. The failure or inability of the person to obtain an independent test does not preclude the admission of evidence of the results of the test(s) administered at the direction of the peace officer.

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. A licensed physician, licensed physician assistant, medical technologist, or registered nurse. I.C.A. §321J.11.

Entity Establishing Testing Protocols:

Yes. The Department of Public Safety is in charge of adopting nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation's initial laboratory screening test for controlled substances. I.C.A. §321J.2(12)(c).

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:

Yes. A licensed physician, licensed physician assistant, medical technologist, or registered nurse. I.C.A. §§321J.10(4)(a) and 321J.11.

Other:

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No):

No. Deferred judgment may be available for first offenders who have a BAC < .15, and no bodily injury resulted. I.C.A. §§321J.2(b)(1); 907.3.

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

No

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

Yes. An offender, at his own expense, must submit to a substance abuse evaluation. I.C.A. §§321J.2(3)(e); 321J.3; 321J.17. Also, the court may order an evaluation if it thinks that the defendant "regularly abuses" controlled substances. I.C.A. §901.4A.

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription:

Yes.

Under the Influence – A person charged with driving under the influence of a drug must prove the substance was

prescribed for the person and taken under the prescription and in accordance with the directions of a medical practitioner, or, if the substance was dispensed by a pharmacist without a prescription, pursuant to the rules of the board of pharmacy, if there was no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain from operating a motor vehicle. I.C.A. §321J.2(11)(a).

Per Se – A defendant charged with a per se offense may assert that the controlled substance present in the person’s blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labelling directions of the pharmacy. I.C.A. §321.2(11)(b).

Therapeutic Concentration:

Yes. See Legal Entitlement/Valid Prescription.

Involuntary Intoxication:

No. See I.C.A. §701.5 and *Houston v. State*, 871 N.W.2d 127 (Iowa App., 2015).

Other:

Sanctions for Refusal to Submit to a Chemical Test:

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

None

Preliminary Breath Test – Other:

N/A

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

None

Implied Consent Chemical Test - Other:

N/A

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:

First offense (Serious misdemeanor) – Not less than **48 hours** or more than **1 year** and a fine of **\$1,250**;²⁹⁶

Second offense (aggravated misdemeanor) – Not less than **7 days** or more than **2 years** and not less than **\$1,875** or more than **\$6,250**;

Third and each subsequent offense (Class D felony) – Not less than **30 days** or more than **5 years**²⁹⁷ (or up to 1 year in the county jail if the court suspends the commitment to the custody of the director of the department of corrections) does not and not less than **\$3,125** or more than **\$9,375**.

Serious injury related to a DUI-D offense (Class D felony) – Not more than **5 years** and not less than **\$750** or more than

²⁹⁶ The court may waive up to \$625 of the fine when the defendant presents to the court a restricted license after the minimum period of suspension/revocation. Additionally, the court may order the offender to perform community service as an alternative to a portion or all of the fine. I.C.A. §321J.2(3)(c).

²⁹⁷ If the court suspends the commitment of the offender to the director of the department of corrections, then the court shall order the offender to serve not less than 30 days or more than 1 year in the county jail. I.C.A. §321J.2(5)(a)).

Mandatory Minimum Term/Fine:	<p>\$7,500. I.C.A. §§321J.2(2), (3); 707.6A; 902.9; 903.1. <u>First offense – 48 hours</u>;²⁹⁸ <u>Second offense – 7 consecutive days</u>;²⁹⁹ <u>Third and each subsequent offense – 30 consecutive days (if jail); mandatory incarceration but no minimum (if prison)</u>;³⁰⁰ <u>Serious injury related to a DUI-D offense –</u> Not more than 10 years. I.C.A. §§321J.2; 707.6A; 902.9; 903.1.</p>
Community Service:	<p><u>First offense</u> – Community service in lieu of part of or the entire fine. I.C.A. §321J.2(3)(c)(2). Under separate provisions, the court may order an offender to perform community service equivalent in value to any fine imposed. I.C.A. §909.3A.</p>
Restitution:	<p>Yes. A victim is eligible for restitution from the defendant as well as compensation from the State crime reparation fund. I.C.A. §§321J.2(13)(a); 915.1, <i>et seq.</i> In the event a victim receives payment from the State fund, the court must order the defendant to repay the State fund.</p>
Child Endangerment:	<p>Yes. Any person who is the parent, guardian, or person having custody or control over a child/minor under age 18 with a mental or physical disability, or a person who is a member of the household in which a child/minor resides who knowingly acts in a manner that creates a substantial risk to a child/minor’s physical, mental or emotional health or safety shall be guilty of an aggravated misdemeanor, punishable of not more than 2 years imprisonment and a fine of not less than \$625 or more than \$6,250. <u>Bodily injury</u> = Class D felony, punishable by not more than 5 years imprisonment and not less than \$750 or more than \$7,500. <u>Serious bodily injury</u> = Class C felony, punishable by not more than 10 years imprisonment and a fine of not less than \$1,000 or more than \$10,000. <u>Death</u> = Class B felony, punishable by not more than 50 years imprisonment. I.C.A. §726.6.</p>
Other:	<p>Surcharges: A surcharge of 35% of the fine actually imposed is assessed against anyone convicted of a State criminal offense <u>and</u> a drug abuse resistance education surcharge of</p>

²⁹⁸ For a first offense, there is a mandatory imprisonment sentence of 48 hours and a fine as indicated if the offender had a BAC/BrAC > .15, refused to submit to a chemical test under implied consent law or committed a DUI offense that injured another person. I.C.A. §§321J.2(3)(a); 907.3(2).

²⁹⁹ For second and subsequent offenders the 7-day and 30-day jail sanctions respectively must be served consecutively. I.C.A. §321J.2(3)(d). However, if consecutive minimum jail terms would cause a hardship on the defendant or if there is insufficient jail space, the minimum terms may be served in segments of at least 48 hours. In that case, the defendant must perform community service, with the period of community service decided by the court – as it deems appropriate. I.C.A. §321J.2(3)(d).

³⁰⁰ An offender is subject to a 30-consecutive-day mandatory minimum incarceration sanction only if the court sentences him to county jail. However, if an offender is sentenced to the State Department of Corrections, the offender will be incarcerated in prison for an indeterminate 5-year sentence, with no mandatory minimum period of sentence; release is at the discretion of the board of parole.

\$10 must also be paid. I.C.A. §§911.1; 911.2.

Civil Penalty: An additional civil penalty of \$200 is assessed against a person who has had the license revoked as a result of either a DUI conviction, admin. per se violation or implied consent law refusal. This penalty must be paid before restricted driving privileges can be granted. I.C.A. §§321.218A.

Emergency Response Costs: The court may order an offender to pay the costs of an emergency response resulting from a DUI offense. The cost cannot exceed \$500 for each public agency for each response. I.C.A. §321J.2(13)(b).

Home Detention: Persons sentenced to the county jail may be assigned “home detention” instead of incarceration. I.C.A. §356.26.

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

Yes. First and subsequent offenses. I.C.A. §§321J.2(3)(e); 321J.3; 321J.17(2); 321J.22.

Substance Abuse Treatment:

Yes.

I. Based upon a substance abuse evaluation, a court may order a DUI-D offender to attend a treatment program. Such a program could include inpatient treatment, which could be a condition to a suspended sentence. The time the offender spends in this inpatient treatment program is credited towards his sentence. I.C.A. §321J.3.

II. In addition, the court may order a defendant to complete a treatment program pursuant to an evaluation for drug abuse. I.C.A. §§901.4A; 901.5.

Vehicle Impoundment/Confiscation:

Yes

Authorized by Specific Statutory Authority:

Impoundment or Immobilization. For a second or subsequent offense, the vehicle used by the defendant in the offense is subject to impoundment or may be immobilized³⁰¹ for the period of the driver’s license revocation or for 180 days whichever is longer. I.C.A. §321J.4B(2)(a), (5)(d).

Terms Upon Which Vehicle Will Be Released:

Immediate return of the vehicle (without payment of costs associated with impoundment/immobilization) shall be made to: (1) the owner of the vehicle (if the offender is not the co-owner); (2) a motor vehicle rental or leasing agency that owns the vehicle; or (3) a person charged but not convicted. I.C.A. §321J.4B(5)(a).

Other Miscellaneous Sanctions:

Court-ordered visitation program: This is a “supervised educational tour” where a court may order a defendant to visit a hospital or other emergency medical facility to observe the treatment of victims of motor vehicle accidents (including DUI accidents). Additionally, a defendant may be ordered to

³⁰¹ “Immobilized” means the installation of a device in a motor vehicle that completely prevents a motor vehicle from being operated, or the installation of an ignition interlock device of a type approved by the commission or public safety. I.C.A. §321J.4B(1)(a).

visit a substance abuse facility or a morgue. I.C.A. §321J.24.

Homicide by Vehicle:

State Has Such a Law:

Yes. I.C.A. §707.6A.

Imprisonment/Fine:

Class B felony – Not more than **25 years**.

Mandatory Minimum Term/Fine:

I.C.A. §902.9. There is no fine.

If the offender failed to stop at the scene of the accident, then such offender is not eligible for parole or work release until he has served at least 7/10 of the maximum term of his sentence. I.C.A. §902.12.

Other:

Restitution: In addition to any other pecuniary damages, an offender must pay at least \$150,000 in restitution to a victim's estate. I.C.A. §910.3B.

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is “disqualified” from operating a CMV for one mandatory year (3 years mand if transporting hazardous materials) if, while driving a CMV, that person is under the influence of drugs or a controlled substance or refuses to submit to a chemical test for drug concentrations. For a subsequent violation or a combination of two or more violations of any of the above-listed items, the “disqualification” is for life (10 years mandatory). I.C.A. §§321.1(11); 321J.6; 321J.8(1)(c).

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

Serious misdemeanor. Not more than **1 year** and not less than **\$315** or more than **\$1,875**, with an additional assessment of **\$1,000**. I.C.A. §§321J.21; 903.1(1)(b).

Mandatory Minimum Fine/Imprisonment Term:

The base fine of **\$315** appears to be mandatory, and the additional assessment of **\$1,000** is mandatory.

Other:

N/A

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. I.C.A. §321.555.

Grounds for Being Declared Habitual Offender:

Three or more serious offenses (within 6 years), or six or more minor offenses (within 2 years).³⁰² I.C.A. §321.555.

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

Aggravated misdemeanor.

Imprisonment (Term):

I.C.A. §§321.561; 903.1.

Not more than **two years** and not less than **\$625** or more than **\$6,250**. I.C.A. §903.1(2).

Other State Laws Related to Drug Use:

³⁰² Serious offenses include: (1) vehicular manslaughter; (2) DUI; (3) driving on a revoked/suspended license; (4) perjury to department of public safety; (5) a felony traffic offense; (6) failing to stop and render aid; (7) eluding; and (8) serious injury by vehicle. Minor offenses include moving violations but do not include parking violations, equipment violations, weights and measures violations and speeding violations of less than 15 mph over the speed limit. I.C.A. §321.555.

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

No

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes. I.C.A. §321J.7.

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

No

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

No

Drug Chemical Tests on Persons Involved in Traffic Crashes:

Yes. I.C.A. §321J.6.

Marijuana – Possession and Use Laws:

Illegal.

First offense (Serious misdemeanor) – Not more than **6 months** and/or a fine of not more than **\$1,000**.

Second offense (Serious misdemeanor) – Not more than **1 year**, and a fine of not less than **\$315** or more than **\$1,875**.

Third offense (Aggravated misdemeanor) – Not more than **2 years**, and a fine of not less than **\$625** or more than **\$6,250**.
I.C.A. §§124.401(5); 903.1(1)(b), (2).

Intoxicant Exclusion Law (UPPL):

No. I.C.A. §514A.3(2)(k).

STATE

General Reference:

KANSAS

Kansas Statutes Annotated (K.S.A.)

Type of DUI-D Law:**Under the Influence**Basis for a DUI-D Charge:

K.S.A. §8-1567(a)(4), (5).

Standard DUI-D Offense:

Operating or attempting to operate any vehicle³⁰³ while under the influence of a drug³⁰⁴, combination of drugs, or alcohol and any drug(s), to a degree that renders the person incapable of safely driving a vehicle. K.S.A. §8-1567(a)(4), (5).

Illegal Per Se:

N/A

Presumption Based on Drugs – State Has (Yes/No):

No

Other:

Evidence that there was present in the person’s bodily substance a narcotic, hypnotic, somnifacient, stimulating or other drug, may be considered to determine if the person was under the influence of drugs, or both alcohol and drug(s) to a degree that rendered the person incapable of safely driving. K.S.A. §8-1005(c).

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

Yes. K.S.A. §§8-1001(a); 8-1012.

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Yes

Implied Consent Law:

Yes. K.S.A. §8-1001(a).

Arrest Required (Yes/No):

No. K.S.A. §§8-1001(b); 8-1012(a), (b).

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

Yes. K.S.A. §8-1001(a).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal Cases. K.S.A. §8-1001(n).

Other Information:

Preliminary saliva test for drugs permitted pursuant to K.S.A. §8-1012.

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

Blood:

Yes. K.S.A. §8-1001(a).

Urine:

Yes. K.S.A. §8-1001(a).

Other:

Other Bodily Substances. K.S.A. §8-1001(a).

³⁰³ “Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except electronic personal assistive mobility devices or devices moved by human power or used exclusively upon stationary rails or tracks. K.S.A. §8-1485.

³⁰⁴ A “drug” includes (1) substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances, other than food, intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of these, but not any device or their components, parts, or accessories. K.S.A. §21-5701(e).

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. (1) A person licensed to practice medicine and surgery, licensed as a physician assistant, a person acting under the direction of any such licensed person; (2) a registered nurse or a licensed practical nurse; (3) any qualified medical technician, including, but not limited to an emergency medical technician-intermediate, mobile intensive care technician, an emergency medical technician-intermediate defibrillator, an advanced emergency medical technician or a paramedic authorized by medical protocol; or (4) a phlebotomist. K.S.A. §8-1001(c).

Entity Establishing Testing Protocols:

Yes. The **Secretary of Health and Environment** may adopt rules and regulations establishing the procedures and testing protocols for testing blood samples for drug testing. K.S.A. §65-1,107(a).

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:

No

Other:

Persons Authorized to Collect Urine Sample

(1) A person licensed to practice medicine and surgery, licensed as a physician assistant, or a person acting under the direction of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) a law enforcement officer of the same sex as the person being tested. K.S.A. §8-1001(i).

Search Warrant

The Kansas implied consent statute no longer contains any prohibition against an officer obtaining a search warrant supported by probable cause to obtain blood from a driver, even after the driver refuses to provide a sample. *City of Dodge City v. Webb*, 329 P.3d 515, 522 (Kan. App., 2014). *See also* K.S.A. §8-1001(t).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No):

No

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

Yes. K.S.A. §8-1567(m). However, certain diversion programs may be an exception.

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

Yes. K.S.A. §8-1008(c), (d).

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription:

No. K.S.A. §8-1567(d).

Therapeutic Concentration:

Yes³⁰⁵

Involuntary Intoxication:

No. *City of Wichita v. Hull*, 724 P. 699 (Kan. App., 1986).

³⁰⁵ It appears based upon the language of the statute that if a “therapeutic” concentration would not render a person under the influence “to a degree that renders the person incapable of safely driving a vehicle,” K.S.A. §8-1567(a)(4), (5), then arguing that the level of the substance detected was merely therapeutic would be a valid defense.

Other:

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **Yes – Infraction:** A fine of **\$105**. K.S.A. §§8-1012(c); 8-2118.
 Preliminary Breath Test – Other: **N/A**

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): Note³⁰⁶
 Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine: First conviction (Class B misdemeanor) – Not less than **48 consecutive hours** or more than **6 months** and not less than **\$750** or more than **\$1,000**;
Second conviction (Class A misdemeanor) – Not less than **90 days** or more than **1 year** and not less than **\$1,250** or more than **\$1,750**;
Third conviction (Class A misdemeanor) – Not less than **90 days** or more than **1 year** and not less than **\$1,750** or more than **\$2,500**;
Third conviction (within 10 years) (felony) – Not less than **90 days** or more than **1 year** and not less than **\$1,750** or more than **\$2,500**;
Fourth or subsequent conviction (felony) – Not less than **90 days** or more than **1 year** and **\$2,500**. K.S.A. §8-1567.
 Mandatory Minimum Term/Fine: First conviction– **None**;³⁰⁷
Second conviction – **5 consecutive days** (or 48 consecutive hours, then work release or house arrest);
Third conviction (misdemeanor or felony) – **90 days** (or 48 consecutive hours, then work release or house arrest);
Fourth or subsequent conviction – **90 days** (or 72 consecutive hours, then work release). K.S.A. § 8-1567.
 Community Service: First offense – **100 hours** (in lieu of imprisonment);
Second and subsequent offenses – may be ordered in lieu of fine. A \$5 credit is allowed on the fine for every hour of community service. K.S.A. § 8-1567(f).
 Restitution: **Yes**. Direct compensation by defendants to victims as a condition of probation or parole. K.S.A. §8-1019(c). Victims

³⁰⁶ A person age 18 or older who has a prior refusal or prior DUI conviction on or after 7/1/2001, may be charged with a separate crime of refusing to submit to a test. Penalties are greater than or equal to those of driving under the influence. K.S.A. §8-1001(k)(4). However, such criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

³⁰⁷ The court may order 48 consecutive hours or 100 hours community service, one of which the offender must complete before he is eligible for a suspended sentence, probation or reduction of sentence. K.S.A. §8-1567(b).

may also receive restitution for damages from the State's crime victims' compensation fund. The maximum amount that can be received from this fund is \$25,000. K.S.A. §§74-7302; 74-7305.

Child Endangerment:

A driver who commits DUI-D with a child under age 14 in the vehicle shall have his/her punishment enhanced by 1 month of imprisonment which is mandatory and must be served consecutively to any other mandatory minimum penalty imposed. K.S.A. § 8-1567(c).

Other:

Assessment: If eligible for diversion, an offender must pay a fee of not less than **\$150** for an alcohol and drug evaluation report. K.S.A. §8-1008(e).

In a municipal court charge, an offender is assessed **\$20** in addition to any fine; to be used to fund various law enforcement and crime victim activities. K.S.A. §12-4117(a).

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

See Substance Abuse Treatment.

Substance Abuse Treatment:

All Offenders

Every DUI-D defendant must participate in an alcohol and drug evaluation and follow any recommendation made by the provider after such evaluation. K.S.A. §8-1567(b)(4).

Treatment During Incarceration

The court may order for a third conviction within ten years, or for a fourth or subsequent conviction, that all or part of the term of imprisonment be served in a State facility for substance abuse treatment. K.S.A. §8-1567(b)(2).

Post-Incarceration

An offender must participate in a multidisciplinary model of services for substance use disorders, which includes recovery management and mental health counseling, during post-incarceration supervision for DUI-D third or subsequent offense. K.S.A. §8-1567(b)(3).

Vehicle Impoundment/Confiscation:

No

Authorized by Specific Statutory Authority:

N/A

Terms Upon Which Vehicle Will Be Released:

N/A

Other Miscellaneous Sanctions:

N/A

Homicide by Vehicle:

State Has Such a Law:

Yes

Involuntary Manslaughter while DUI-D – An unintentional death while DUI – **Severity Level 4 Person Felony**. K.S.A. §21-5405.

Vehicle Homicide – Death caused by operation of a vehicle in a manner that causes unreasonable risk and which constitutes a material deviation from the standard of care

<p>Imprisonment/Fine:</p>	<p>which a reasonable person would observe under the same circumstances. Class A Personal Misdemeanor. K.S.A. §21-5406.</p> <p><u>Severity Level 4 Person Felony</u> – 38-172 months³⁰⁸ and not more than \$300,000.</p> <p><u>Class A Misdemeanor</u> – Not more than 1 year and not more than \$2,500. K.S.A. §§21-6602; 21-6611; 21-6804.</p>
<p>Mandatory Minimum Term/Fine:</p>	<p>None</p>
<p>Other:</p>	<p>N/A</p>
<p><u>DUI-D Offenses and Commercial Motor Vehicles (CMV):</u></p>	<p>A person is “disqualified” from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person: is under the influence of any drug; or refuses to submit to a chemical test for either alcohol or drug concentrations. For a subsequent violation or a combination of two or more violations of any of the above listed violations, the "disqualification" is for life (10 years mand). A person operating a CMV while under the influence of drugs is subject to the regular DUI-D criminal sanctions. Also, a CMV operator who refuses to take a test must be placed "out-of-service" for 24 hours. K.S.A. §§8-2,128; 8-2,137; 8-2,142; 8-2,144; 8-2,145; 8-1001(I), (o); 8-1002; 8-1567.</p>
<p><u>Driving While License Suspended for DUI-D Offense:</u></p>	
<p>Criminal - Fine/Imprisonment:</p>	<p>Ordinary Driving on Suspended/Revoked License:</p> <p><u>First offense</u> (Class B Nonperson Misdemeanor) – Not less than 5 days or more than 6 months and/or not less than \$100 or more than \$1,000;</p> <p><u>Second or subsequent offense</u> (Class A Nonperson Misdemeanor) – Not less than 5 days (mand) or more than 1 year and/or not less than \$100 or more than \$2,500;³⁰⁹</p> <p>Driving on Suspended/Revoked Where Basis Was DUI-D Offense: Same as terms above, except 90 days shall be mandatory and the fine shall be imposed in addition to the term of imprisonment. K.S.A. §8-262.</p>
<p>Mandatory Minimum Fine/Imprisonment:</p>	<p><i>See section above.</i></p>

³⁰⁸ Sentencing Guidelines: Imprisonment sanctions for felony offenses are determined by a sentencing guidelines grid and supporting statutory provisions. For a Severity Level 4 Person Felony, there is a "presumed" incarceration. The grid also provides for increased incarceration periods for subsequent felony offenses. Depending on a person’s criminal history, the range to be served is between 32-172 months. For criminal history purposes if the charge is DUI Manslaughter every DUI conviction counts as a person felony to determine sentence. http://www.sentencing.ks.gov/docs/default-source/2014-forms/2014_nondrug_and_drug_grid_quick_reference_guide.pdf?sfvrsn=2

³⁰⁹ For a third or subsequent class A nonperson misdemeanor offense, the person shall be sentenced to not less than 90 days (mand) and not less than \$1,500 if such person’s license was suspended/revoked because of: (1) refusal to submit to testing; (2) a conviction relating to vehicle liability coverage (K.S.A. §40-3104); (3) was convicted of vehicle homicide or involuntary manslaughter while driving under the influence or any other murder or manslaughter crime resulting from the operation of a motor vehicle; or (4) was convicted of being a habitual offender. K.S.A. §8-262(c)(1).

Other:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. K.S.A. §§8-285; 8-286.

Grounds for Being Declared Habitual Offender:

Three serious offenses³¹⁰ within 5 years. K.S.A. §8-285(a).

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

Class A Misdemeanor.

K.S.A. §8-287.

Imprisonment (Term):

Not more than **1 year** and/or not more than **\$2,500**;

Third or subsequent conviction = Not less than **90 days** and not less than **\$1,500**. K.S.A. §§8-287; 21-6602; 21-6611.

Mandatory Minimum Term/Fine:

None

Other State Laws Related to Drug Use:

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

No³¹¹

Drug Chemical Test Given to Deceased Driver Killed in Crash:

No statutory provision

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

No statutory provision

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

No statutory provision

Drug Chemical Tests on Persons Involved in Traffic Crashes:

Yes. K.S.A. §8-1001(b)(2). However, probable cause that the person was operating or attempting to operate a vehicle under the influence of drugs or alcohol must exist. A traffic infraction combined with an injury or fatality does not rise to probable cause. *State v. Declerck*, 317 P.3d 794 (Kan. Ct. App. 2014).

Marijuana – Possession and Use Laws:

Illegal.

Possession of Any Amount:

First Offense (Class B Nonperson Misdemeanor) - Not more than **6 months** in jail and a fine of not more than **\$1,000**.

Second Offense (Class A Nonperson Misdemeanor) - Not more than **1 year** in jail and a fine of not more than **\$2,500**.

Third Offense (Drug Severity Level 5 Felony) – Not less than **14** or more than **16 months** in prison, and a fine of not more than **\$100,000**. K.S.A. §§21-5706(c)(3); 21-6611; 21-6602; 21-6805; 65-4105.

Intoxicant Exclusion Law (UPPL):

Yes. K.S.A. §40-2203(B)(11).

³¹⁰ These include: (1) vehicular homicide; (2) DUI offense; (3) driving while license is canceled, suspended or revoked; (4) any crime punishable as a felony if a motor vehicle was used in the perpetration of the crime; and (5) failing to stop at the scene of an accident. K.S.A. §8-285(a).

³¹¹ There are no statutory provisions requiring testing on persons killed in traffic accidents. However, a dead or unconscious person is deemed not to have withdrawn consent. K.S.A. §8-1001(a).

STATE	KENTUCKY
General Reference:	Kentucky Revised Statutes (KRS)
<u>Type of DUI-D Law:</u>	Under the Influence/Zero Tolerance
<u>Basis for a DUI-D Charge:</u>	KRS §189A.010.
Standard DUI-D Offense:	Operate or be in physical control of a motor vehicle ³¹² : I. While under the influence of any substance ³¹³ or combination of substances which impairs one's driving ability, KSA §189A.010(1)(c), (e); II. While the presence of a controlled substance ³¹⁴ is detected in the blood, KSA §189A.010(1)(d).
Illegal Per Se Law:	Any Schedule I controlled substance ³¹⁵ except marijuana; Alprazolam; Amphetamine; Buprenorphine; Butalbital; Carisoprodol; Cocaine; Diazepam; Hydrocodone; Meprobamate; Methadone; Methamphetamine; Oxycodone; Promethazine; Propoxyphene; and Zolpidem. KRS §189A.010(1)(d), (12).
Presumption Based on Drugs – State Has (Yes/No):	No
Other:	
<u>Chemical Testing for Drug Concentration:</u>	
Preliminary Breath Test Law – State Has Such a Law (Yes/No):	Yes. KRS §189A.100.
Preliminary Breath Test Law – Applies to Drugs (Yes/No):	No
Implied Consent Law:	Yes. KRS §189A.103.
Arrest Required (Yes/No):	No. KRS §189A.103(1), (3). Only reasonable grounds that a DUI-D offense has been committed are needed in order to request that a person submit to a chemical test.

³¹² “Motor vehicle” includes (a) all agencies for the transportation of persons or property over or upon the public highways of the Commonwealth; and (2) all vehicles passing over or upon the highways. KSA §189.010(19). A “motor vehicle” does not include: road rollers, road graders, farm tractors, vehicles on which power shovels are mounted, construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways, vehicles that travel exclusively upon rails, vehicles propelled by electric power obtained from overhead wires while being operated within any municipality or where the vehicles do not travel more than five miles beyond the city limits of any municipality, and vehicles propelled by muscular power. *Id.*

³¹³ Such substances include those which have the propensity to impair one's driving ability, and substances which ordinarily do not have such a propensity, but because of the amount ingested have in fact impaired a person's driving ability. *Hayden v. Commonwealth*, 766 S.W.2d 956 (Ky. App. 1989).

³¹⁴ A “controlled substance” includes Any Schedule I controlled substance except marijuana; Alprazolam; Amphetamine; Buprenorphine; Butalbital; Carisoprodol; Cocaine; Diazepam; Hydrocodone; Meprobamate; Methadone; Methamphetamine; Oxycodone; Promethazine; Propoxyphene; and Zolpidem. KRS §189A.010(1)(d), (12). Schedule I controlled substances can be found at KRS §218a.050. The presence of the controlled substance must be detected in the blood, as measured by a scientifically reliable test or tests, taken within two hours of cessation of operation or physical control of the motor vehicle. KRS §189A.010(1)(d).

³¹⁵ Schedule I controlled substances are listed in KRS §218a.050.

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

Yes. KRS §189A.103(1).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal Cases. KRS §189A.105(2)(a)(1).

Other Information:

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

Blood:

Yes. KRS §189A.103(1).

Urine:

Yes. KRS §189A.103(1).

Other:

None

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. A physician, registered nurse, phlebotomist, medical technician, medical technologist not otherwise prohibited by law. KSA §189A.103(6).

Entity Establishing Testing Protocols:

Yes. The Department of State Police. 500 KAR 8:030, Section 2(5).

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:

Yes. Limited to those designated to withdraw samples pursuant to implied consent. 500 KAR §8:030(2); and KSA §189A.103(6).

Other:

Search Warrants – Limitation

The law *only* allows a court to issue a search warrant requiring that either a blood or a urine sample be obtained for chemical testing in a DUI-D case involving either a death or physical injury. KRS §189A.105(2)(b). *See also Combs v. Commonwealth*, 965 S.W.2d 161 (Ky. 1998).

Right to Contact Attorney

During the period immediately preceding the administration of a chemical test, a person must be afforded an opportunity of at least ten minutes, but not more than fifteen minutes to attempt to contact and communicate with an attorney. The person must be informed of this right. However, inability to communicate with an attorney during this period does not relieve the person of his obligation to submit to the tests, and the penalties for refusal remain applicable. A person does not have a right to have an attorney present during the test itself, but an attorney may be present if the attorney can physically appear at the location where the test is to be administered within the requisite time period. KRS §189A.105(3).

Independent Testing

A person has a right to have an independent sample taken for testing. Unavailability of the person chosen to administer the test(s) will not render the evidence obtained via implied consent inadmissible. KRS §§189A.103(7); 189A.105(4).

Testing Procedures

Specific procedures have been established for chemical tests of blood for alcohol or other substances, which appear to apply to both implied consent and search warrant cases. 500 KAR §8:030(2).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No):

No

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

Yes. Plea bargaining is not permitted if any one of the following conditions exists: (1) a defendant ≥ 21 has a BAC/BrAC $\geq .08$; (2) a defendant < 21 has a BAC/BrAC $\geq .02$; or (3) a defendant refused to submit to a chemical test under the implied consent law. However, this does not apply if the State's witnesses are unavailable for trial or the chemical test results are in error. The court must record the reasons for any change in the original charges. KRS §189A.120.

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

Following a felony conviction, a court must order a presentence investigation. KRS §532.050.

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription:

Legal Entitlement – **No.** KRS §189A.010(4)(a).

Valid Prescription – **No.** However, laboratory test(s) for a controlled substance are not admissible as evidence in a prosecution for a *per se* DUI-D offense upon a finding by the court that the defendant consumed the substance under a valid prescription from a practitioner acting in the course of his/her professional practice. KRS §189A.010(4)(b).

Therapeutic Concentration:

Under the Influence – **Yes.**³¹⁶

Per Se – **No.**

Involuntary Intoxication:

Note.³¹⁷

Other:

Sanctions for Refusal to Submit to a Chemical Test:

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

None. KRS §189A.100(1).

Preliminary Breath Test – Other:

N/A

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

None

Implied Consent Chemical Test - Other:

N/A

³¹⁶ It appears based upon the language of the statutes that if a “therapeutic” concentration would not render a person “under the influence,” such that it would impair the person’s driving ability, KRS §189A.010(1)(c), (e), then arguing that the level of the substance detected was merely therapeutic would be a valid defense.

³¹⁷ Pursuant to KRS §501.080, “Intoxication is a defense to a criminal charge only if such condition either: (1) Negatives the existence of an element of the offense; or (2) Is not voluntarily produced and deprives the defendant of substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law.” It does not appear that an appellate court in Kentucky has addressed whether this defense would apply in a DUI-D context.

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:

First offense (within 10 years) – Not less than **48 hours** or more than **30 days**³¹⁸ and/or not less than **\$200** or more than **\$500**;

Second offense (within 10 years) – Not less than **7 days** or more than **6 months** and not less than **\$350** or more than **\$500**;

Third offense (within 10 years) – Not less than **30 days** or more than **12 months** and not less than **\$500** or more than **\$1,000**;

Fourth and subsequent offense (within 10 years - Class D felony) – Not less than **120 days** or more than **5 years** and may be fined not less than **\$1,000** or more than **\$10,000**. KRS §§ 189A.010(5), (8); 532.020; 532.060; 534.030.

Mandatory Minimum Term/Fine:

First offense – **48 hours**;³¹⁹

Second offense (within 5 years) – **7 days/\$350** (with 48 consecutive hours);

Third offense – **30 days/\$500** (with 48 consecutive hours);

Fourth and subsequent offenses – **120 days/\$1,000** (with 48 consecutive hours). KRS §189A.010(5), (8).

Aggravating Circumstances: A person who has been convicted of a DUI-D offense is subject to enhanced mandatory incarceration by committing one or more of the following aggravating circumstances during the offense: (1) Driving > 30 mph over the speed limit; (2) driving in the wrong direction on a limited access highway; (3) causing an accident that resulted in either a death or a serious physical injury; (4) driving with a BAC ≥ .15; (5) refusing to submit to a chemical test under the implied consent law; (6) operating a motor vehicle transporting a passenger under age 12. KRS §189A.010(11).

A first-time DUI offender is not subject to enhancement where the aggravating circumstance is refusal to submit to a chemical test. *Commonwealth v. Gaitherwright*, 70 S.W.3d 411 (Ky. 2002).

The mandatory minimum sentences imposed are:

First offense – **4 days**;

Second offense – **14 days**;

Third offense – **60 days**;

Fourth or subsequent offense – **240 days**.

KRS §189A.010(5)(a)-(d).

Community Service:

First offense – Not less than **48 hours** or more than **30 days**

³¹⁸ Weekend Confinement: For either a first or second offense, a defendant may be permitted to serve his term on weekends, provided he spends at least 24 hours in confinement. This does not apply to any mandatory 48-hour jail term. KRS §189A.030.

³¹⁹ For a first offense, a defendant must be sentenced to at least one of the penalties listed: (1) 48 hours in jail; (2) a \$200 fine; or (3) 48 hours of community service. KRS §189A.010(5)(a), (9).

	in lieu of fine and/or imprisonment; <u>Second offense</u> – Not less than 10 days or more than 6 months ; ³²⁰ <u>Third offense</u> – Not less than 10 days or more than 12 months ; KRS §189A.010(5).
Restitution:	Yes – Victim’s compensation board (KRS §346.010 <i>et seq.</i>). Also, the court shall order a defendant to pay restitution directly to a victim as a condition of probation. KRS §§532.358; 533.030(3).
Child Endangerment:	A person who transports a child under 12 is subject to the following enhanced penalties: <u>First offense</u> – a mandatory minimum term of 4 days; <u>Second offense</u> – a mandatory minimum term of 14 days; <u>Third offense</u> – a mandatory minimum term of 60 days; <u>Fourth or subsequent offense</u> – a mandatory minimum term of 240 days. KRS §189A.010(5), (11)(f).
Other:	Service Fee: A DUI-D offender must pay a \$375 service fee in addition to any other fine. KRS §189A.050.
<u>Administrative Sanctions – Post-Conviction:</u>	
Substance Abuse Education:	Yes. For a first offense, participation in a substance education or treatment program for 90 days is mandatory. Costs are to be paid by the offender up to his ability. KRS §189A.040(1).
Substance Abuse Treatment:	Yes. For subsequent DUI-D offense convictions, the defendant <u>must</u> be sentenced to an alcohol or substance abuse treatment program for 1 year. KRS §189A.040(2), (3).
Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	Impoundment For a <u>second or subsequent offense</u> , if the court does not order the installation of <u>ignition interlock devices</u> on <u>all</u> the vehicles owned by an offender, it MUST impound the license plates of such vehicles for a period of time not exceeding the period of license action. KRS §189A.085.
Terms Upon Which Vehicle Will Be Released:	A hardship exemption is available to other family members allowing only them to use the affected vehicles. KRS §189A.085.
Other Miscellaneous Sanctions:	Reimbursement: If a person is placed on probation or given conditional release from incarceration, the court may require payment to either an education or treatment program for drug or alcohol abuse or for periodic testing. The amount of this payment is not to exceed the amount of any fine that could have been imposed for the offense. KRS §533.030. Incarceration Costs: An offender may be required to reimburse the State or local government for incarceration costs. KRS §§532.352; 532.358.

³²⁰ For second or third offenses not related to aggravating circumstances, the law provides for discretionary community service as a sentencing option that is in addition to incarceration. KRS §189A.010(8).

Homicide by Vehicle:

State Has Such a Law:

Yes.³²¹

Manslaughter in the Second Degree – when a person wantonly causes the death of another person including situations where the death results from the person’s operation of a motor vehicle. KRS §507.040; *Springer v. Com.*, 998 S.W.2d 439 (Ky. 1999).

Reckless Homicide – when a person, with recklessness causes the death of another person. KRS §507.050; *Farmer v. Com.*, 6 S.W.3d 144 (Ky.App. 1999).

Imprisonment/Fine:

Manslaughter in the Second Degree (Class C Felony) - Not less than **5 years** or more than **10 years** and may be fined not less than **\$1,000** or more than **\$10,000**.

Reckless Homicide (Class D Felony) - Not less than **1 year** or more than **5 years** and may be fined not less than **\$1,000** or more than **\$10,000**. KRS §§532.060; 534.030.

Mandatory Minimum Term/Fine:

See above.

Other:

N/ADUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is “disqualified” from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person is under the influence of a controlled substance; or has refused to submit to a chemical test for either alcohol or drugs. For a subsequent violation or a combination of two or more violations of any of the above-listed items, the “disqualification” is for life (10 years mand). In addition, a CMV operator who has any measurable (or detectable) amount of a controlled substance in the system must be placed “out-of-service” for 24 hours.

If a CMV operator refuses to submit to a chemical test (for an alcohol concentration or for the presence of other drugs) under the CMV implied consent law provisions, the operator’s privilege to operate a CMV can be either suspended or revoked:

First refusal – the CMV privilege is suspended for one year (mand);

Subsequent refusal – the privilege is suspended for life (mand).

However, if the operator fails to appear at the implied consent hearing, which is automatically scheduled in refusal situations, the CMV privilege is revoked; the length of this revocation is not specified.

The pre-trial and implied consent provisions of Ch. 189A also apply to CMV operators (KRS §281A.220(2)). KRS §§281A.010; 281A.190; 281A.210; 281A.2102; 281A.220.

³²¹ The difference between the two manslaughter statutes lies within their degrees of culpability. Manslaughter in the second degree requires wantonness, which inherently includes recklessness. This is similar to voluntary manslaughter. Reckless homicide requires only recklessness, which is similar to involuntary manslaughter.

A person is prohibited from operating a CMV during either a CDL disqualification or a CDL out-of-service order.

KRS §281A.090(2). However, neither this section nor any other provision of Chapter 281A provides a sanction for this prohibition.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

First offense (within 10 years; Class B misdemeanor) – Not more than **90 days** and/or not more than **\$250**;

Also in violation of DUI laws (Class A misdemeanor) – Not more than **12 months** and/or not more than **\$500**;

Second offense (within 10 years; Class A misdemeanor) – Not more than **12 months** and/or not more than **\$500**;

Also in violation of DUI laws (Class D felony) – Not less than **1 year** or more than **5 years** and may be fined not less than **\$1,000** or more than **\$10,000**;

Third and subsequent offense (within 10 years; Class D felony) – Not less than **1 year** or more than **5 years** and may be fined not less than **\$1,000** or more than **\$10,000**. KRS §§189A.090(2); 532.060; 532.090; 534.030; 534.040.

Mandatory Minimum Fine/Imprisonment:

None

Other:

N/A

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No³²²

Other State Laws Related to Drug Use:

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

Yes. KRS §72.025.³²³

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes. KRS §72.025.

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

Yes. KRS §72.025.

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

Yes. KRS §72.025.

Drug Chemical Tests on Persons Involved in Traffic Crashes:

No

Marijuana – Possession and Use Laws:

Illegal.

³²² While the Kentucky statutes specifically do not contain habitual offender laws related to motor vehicles, there is a “persistent felony offender” statute that allows for sentencing enhancement based on a defendant’s prior criminal history. KRS §532.080.

³²³ Coroners shall require a post-mortem examination to be performed under certain circumstances surrounding death, to include when the death appears to be the result of a motor vehicle accident and the operator of the motor vehicle has left the scene, or the body has been found in or near a roadway or railroad. Additionally, coroners are mandated to report in writing to the State Police the death of any person as a result of an accident involving a motor vehicle. KRS §189.590.

First and Subsequent Possession < 8 oz.³²⁴ (Class B Misdemeanor) - Not more than **45 days** and/or a fine of not more than **\$250**. KRS §§218A.1421; 218A.1422; 534.040.

Intoxicant Exclusion Law (UPPL):

Yes. KRS §304.17-290.

³²⁴ The unlawful possession by any person of eight or more ounces of marijuana is prima facie evidence that the person possessed the marijuana with the intent to sell or transfer it. KRS §218A.1421(5).

STATE

General Reference:

LOUISIANA

West's Louisiana Statutes Annotated: Revised Statutes (La. R.S.)

Type of DUI-D Law:**Under the Influence**Basis for a DUI-D Charge:

La. R.S. §14:98(A)(1)(c), (d), (e).

Standard DUI-D Offense:

Operating a motor vehicle³²⁵, aircraft, watercraft, vessel, or other means of conveyance, while under the influence³²⁶ of (1) any controlled dangerous substance³²⁷; or (2) one or more drugs³²⁸ that are not controlled dangerous substances and that are legally obtainable with or without a prescription; or (3) one or more of the aforementioned drugs combined with alcohol. La. R.S. §14:98(A)(1)(c), (d), (e).

Illegal Per Se Law:

No

Presumption Based on Drugs – State Has (Yes/No):

No

Other:

N/AChemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

No

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

N/A

Implied Consent Law:

Yes. La. R.S. §32:661.

Arrest Required (Yes/No):

Yes. La. R.S. §32:661.

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

Yes. La. R.S. §32:661(A).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal cases.³²⁹ La. R.S. §§32:666(A)(2)(c).

Other Information:

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

³²⁵ A “motor vehicle includes any motor driven car, van or truck required to be registered which is used, or is designed to be used, for the transporting of passengers or goods for public, private, commercial, or fore hire purposes. La. R.S. §32:1252(34).

³²⁶ This term refers to the impairment, however slight, to the ability of a person to operate an automobile. The impairment need not be complete, but only to the degree that the influence causes a person to operate his car in a manner different from that in which it would be operated by an ordinarily cautious and prudent person. *State v. Reeder*, 189 So.3d 401 (La. App. 5 Cir., 2015).

³²⁷ Such substance must be listed in Schedule I, II, III, IV, or V of La. R.S. §40:964.

³²⁸ A “drug” includes (1) articles recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) articles other than food intended to affect the structure or any function of the body of man or animals; and (4) articles intended for use as a component of these, but not any device or their components, parts, or accessories. La. R.S. 40:961(16).

³²⁹ Refusal to submit to a field sobriety test can also be admitted into evidence at a DUI-D trial. See *State v. Washington*, 498 So.2d 136 (La.App.5 Cir. 1986).

Blood: **Yes.** La. R.S. §32:661.
 Urine: **Yes.** La. R.S. §32:661.
 Other: **Other bodily substances.** La. R.S. §32:661.

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform: **Yes.** A physician, physician assistant, registered nurse, licensed practical nurse³³⁰, emergency medical technician, chemist, nurse practitioner, or other qualified technician. La. R.S. §664(A).

Entity Establishing Testing Protocols: **Yes.** Chemical analyses of a person’s blood, urine, breath, or other bodily substance must be performed according to methods approved and promulgated by the **Department of Public Safety and Corrections** and performed by an individual or laboratory possessing a valid permit issued by said department. The Department of Public Safety and Corrections is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals or laboratories to conduct such analyses, and to issue permits which are subject to termination or revocation at the discretion of the Department in accordance with regulations approved and promulgated by the Department pursuant to the Administrative Procedure Act. La. R.S. §32:663(A)(1).

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform: **Yes.** Examination or testing of bodily samples seized pursuant to a search warrant shall be at the direction of the attorney general, the district attorney, or the investigating agency. LSA-C.Cr.P. Art. 163.1(D).

Other: **Independent Testing**
 The person tested may have a qualified person of his own choosing administer chemical test(s) in addition to any administered at the direction of a law enforcement officer. The person bears the cost of the independent test. The failure or inability of the person to obtain an additional test does not preclude the admission of the implied consent test into evidence at trial. La. R.S. §32:664(B).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No): **No**
 Anti-Plea-Bargaining Statute (Yes/No): **No**
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **No**³³¹

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription: **No**

³³⁰ A licensed practical nurse may only withdraw blood pursuant to a subpoena or court order. La. R.S. §32:664(D).

³³¹ Rather, offenders may be required to participate in a substance abuse program after sentencing. La. R.S. §14:98(D),(E),(G).

Therapeutic Concentration:	Yes ³³²
Involuntary Intoxication:	Yes. <u>Under the Influence of a combination of alcohol and one or more drugs that are not controlled dangerous substances and that are legally obtainable with or without a prescription</u> – It is an affirmative defense that the label on the container of the prescription drug or the manufacturer’s package of the drug does not contain a warning against combining the medication with alcohol. La. R.S. §14:98(A)(1)(d)(ii). <u>Under the Influence of one or more drugs that are not controlled dangerous substances and that are legally obtainable with or without a prescription</u> – It is an affirmative defense that the operator did not knowingly consume quantities of the drug(s) that substantially exceed the dosage prescribed by the physician or the dosage recommended by the manufacturer of the drug. La. R.S. §14:98(A)(1)(e)(ii).
Other	
<u>Sanctions for Refusal to Submit to a Chemical Test:</u>	
Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail):	N/A
Preliminary Breath Test – Other:	N/A
Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	Note. ³³³ Not less than 10 days ³³⁴ or more than 6 months and not less than \$300 or more than \$1,000 . La. R.S. §§14:98.7(B)(1); 32:666.
Implied Consent Chemical Test - Other:	N/A
<u>Criminal Sanctions Following a DUI-D Conviction:</u>	
Imprisonment/Fine:	<u>First conviction</u> – Not less than 10 days or more than 6 months and not less than \$300 or more than \$1,000 ; La. R.S. §14:98.1; <u>Second conviction</u> ³³⁵ – Not less than 30 days or more than 6 months and not less than \$750 or more than \$1,000 ; La. R.S. §14:98.2;

³³² It appears based upon the language of the statute that if a “therapeutic” concentration would not render a person “under the influence,” such that it would impair the ability of a person to operate an automobile, La. R.S. §14:98, then arguing that the level of the substance detected was merely therapeutic would be a valid defense.

³³³ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

³³⁴ These terms only apply where the person has refused a test on two separate prior occasions, or in a case where a fatality has occurred or a person has sustained a serious bodily injury in a crash. Imposition of sentence shall not be suspended unless: (1) the offender is placed on probation with a minimum condition that he serve 2 days in jail and participate in substance abuse and driver improvement programs; or (2) the offender is placed on probation with a minimum condition that he perform four 8-hour days of community service and participate in substance abuse and driver improvement programs. La. R.S. §14:98.7(B).

	<p><u>Third conviction</u> – Not less than 1 year or more than 5 years and a fine of \$2,000; La. R.S. §14:98.3;</p> <p><u>Fourth or subsequent conviction</u> – Not less than 10 years or more than 30 years and a fine of \$5,000. La. R.S. §14:98.4.</p> <p>DUI-D Related Injury:</p> <p><u>Vehicular negligent injuring</u> – Not more than 6 months and/or a fine of not more than \$1,000;</p> <p><u>First degree vehicular negligent injuring</u> (serious bodily injury) – Not more than 5 years and/or a fine of not more than \$2,000. La. R.S. §§14:39.1; 14:39.2.</p>
Mandatory Minimum Term/Fine:	<p><u>First conviction</u> – 2 days or 32 hours of community service;</p> <p><u>Second conviction</u> – 48 hours;</p> <p><u>Second conviction (arrest within 1 year of first offense)</u> – 30 days;</p> <p><u>Third conviction</u>³³⁶ – 1 year;</p> <p><u>Fourth or subsequent conviction</u> – 2 years. La. R.S. §14:98, <i>et seq.</i></p>
Community Service:	<p><u>First conviction</u> – 32 hours of community service may be ordered if an offender seeks a suspended imposition or execution of sentence. La. R.S. §14:98.1.</p> <p><u>Second conviction</u> – 240 hours of community service may be ordered if an offender seeks a suspended imposition or execution of sentence. La. R.S. §14:98.2.</p> <p><u>Third conviction</u> – any offender placed on probation shall perform 240 hours of community service. La. R.S. §14:98.3.</p> <p><u>Fourth or subsequent conviction</u> – any offender placed on probation shall perform 320 hours of community service. La. R.S. §14:98.4.</p>
Restitution:	<p>An offender must pay restitution to a victim where there is “actual pecuniary loss” or where the victim has incurred costs in connection with a criminal prosecution. LSA-C.Cr.P. Art. 883.2. Additionally, crime victims’ reparation is available for victims of drunk-driving incidents. La. R.S. §46:1801, <i>et seq.</i></p>
Child Endangerment:	<p>Any person violating the DUI-D laws with a passenger 12 or younger, shall be subject to the mandatory minimum term without the option of a suspended minimum term. La. R.S. §14:98(B).</p>
Other:	<p>Substance Abuse Programs Costs: An offender shall pay the cost of participation unless unable to do so. La. R.S. §14:98.5(A)(1).</p>

Administrative Sanctions – Post-Conviction:

³³⁵ On a second offense where the first offense was vehicular homicide or vehicular negligent injuring the sanction is not less than 1 year or more than 5 years and a fine of \$2,000. At least 6 months must be served. La. R.S. §14:98.2(D).

³³⁶ Third and fourth convictions may be suspended *only* if the offender is accepted into a drug diversion probation program. If an offender, convicted of a fourth offense has previously participated in such a program, he/she shall be imprisoned for not less than 10 years or more than 30 years, with at least 3 of those years mandatory. La. R.S. §§14:983; 14:98.4.

Substance Abuse Education:	Yes. La. R.S. §§14:98.1; 14:98.2; 14:98.3; 14:98.4.
Substance Abuse Treatment:	Yes. La. R.S. §§14:98.1; 14:98.2; 14:98.3; 14:98.4.
Vehicle Impoundment/Confiscation:	Yes
Authorized by Specific Statutory Authority:	<u>Third or subsequent offense</u> , the vehicle used by the offender shall be seized, impounded and sold at auction. La. R.S. §§14:98(F); 14:98.3(C); 14:98.4(D).
Terms Upon Which Vehicle Will Be Released:	The vehicle shall be exempt from sale if it was stolen, or if the driver at the time was not the owner and the owner did not know the driver was operating while intoxicated. The vehicle shall not be released from impoundment until towing and storage fees have been paid. La. R.S. §14:98(F).
Other Miscellaneous Sanctions:	Home Incarceration: Any person convicted of a third or subsequent DUI-D offense may not serve the minimum sentence on home incarceration unless such a sentence is recommended by the Department of Public Safety and Corrections or the district attorney. La. R.S. §14:98.5(B)(1). School Bus Operators: A person who tests positive for the presence of marijuana, opioids, amphetamines, phencyclidine or other controlled dangerous substance must be prohibited by public education authorities from operating a school bus. La. R.S. §17:491.2(A).
<u>Homicide by Vehicle:</u>	
State Has Such a Law:	Yes – Vehicular Homicide. La. R.S. §14:32.1.
Imprisonment/Fine:	Not less than 5 years or more than 30 years and not less than \$2,000 or more than \$15,000 . La. R.S. §14:32.1(B)
Mandatory Minimum Term/Fine:	3 years. ³³⁷
Other:	The offender shall be required to participate in a substance abuse and may be required to participate in a driver improvement program. La. R.S. §14:32.1(B). If the offender proximately or directly causes the death of two or more human beings (including an unborn child), the offender shall be sentenced separately for each victim, and such sentences shall run consecutively. La. R.S. §14:32.1(C), (D).
<u>DUI-D Offenses and Commercial Motor Vehicles (CMV):</u>	A person is “disqualified” from (i.e., his CDL is suspended, revoked or cancelled for) operating a CMV for minimum period of 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person: is under the influence of alcohol or a controlled substance; or refuses to submit to a chemical test for either drug concentrations. For a subsequent violation or a combination of two or more violations of any of the above-listed items, the “disqualification” is for life (10 years mand). It is a criminal offense to operate a CMV while under the

³³⁷ If BAC \geq .15, or this is a second/subsequent offense, then there is a mandatory minimum of 5 years. La. R.S. §14:32.1(B).

influence of alcohol/controlled substance, or to refuse to submit to a chemical test. The sanctions for this offense are a jail term of not more than 6 months and a fine of not less than \$10 or more than \$500. There is also a civil penalty of not more than \$1,250. In addition, a CMV operator, who has a “detected presence” of a controlled substance in their system, must be placed “out-of-service” for 24 hours. La. R.S. §§32:414.2; 32:427(A)(2).

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

Note.³³⁸

Misdemeanor – Not more than **6 months** and/or up to **\$500**.

If such violation was simultaneous with a second or subsequent DUI conviction, then the offender shall be fined not less than **\$300** or more than **\$500** and not less than **7 days** or more than **6 months**. La. R.S. §32:415.

Mandatory Minimum Fine/Imprisonment Term:

7 days/\$300 if such violation was simultaneous with a second or subsequent DUI-D offense conviction.

Other:

A civil penalty of up to **\$1,250** may be imposed. La. R.S. §32:415(C)(1).

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. La. R.S. §32:1472.

Grounds for Being Declared Habitual Offender:

Convictions for 10 or more traffic law offenses within 3 years involving moving violations in the operation of a motor vehicle which are required to be reported to the Department of Public Safety and Corrections. La. R.S. §32:1472(A).

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

An offender is sentenced in the manner that the code prescribes for the specific crime committed. A person deemed a habitual offender is then subject to a portion of time added onto the base sentence. An offender can be sentenced only as a habitual offender if the requirements under La. R.S. §15:529.1 are met. Additional imprisonment depends on the number of prior felonies and types committed. Additionally, if more than 10 years have elapsed between the date of the commission of the current offense(s) and the expiration of the maximum sentence(s) of the previous conviction(s), then the current offense shall not be counted as a subsequent offense. La. R.S. §15:529.1(C).

Imprisonment (Term):

See above.

Other State Laws Related to Drug Use:

Drug Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law

Yes. La. R.S. §32:661(A)(2)(b), (B).

³³⁸ There are no specific sanctions for driving on a suspended/revoked license where the basis was a DUI. The sanctions listed are for ordinary driving on a suspended/revoked license, unless otherwise stated.

(Yes/No):

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes

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

Yes (if a victim)

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

Yes (if a victim)

Drug Chemical Tests on Persons Involved in Traffic Crashes:

No

Marijuana – Possession and Use Laws:

Legal for Medical Use. La. R.S. §40:966(I).

Criminal Penalties:

First offense (< 14 grams) – Not more than **15 days** in jail and/or a fine of not more than **\$300**.

First offense (14 grams < 2.5 lbs.) – Not more than **6 months** in jail and/or a fine of not more than **\$500**.

Second offense (< 2.5 lbs.) – Not more than **6 months** in jail and/or a fine of not more than **\$1,000**.

Third offense (< 2.5 lbs.) – Not more than **2 years imprisonment** (with or without hard labor) and/or a fine of not more than **\$2,500**.

Fourth or subsequent offense (< 2.5 lbs.) – Not more than **8 years** in prison (with or without hard labor), and/or a fine of not more than **\$5,000**.

Possession ≥ 2.5 lbs. but < 60 lbs. – Not less than **2 years**, or more than **10 years** (with or without hard labor) and a fine of not less than **\$10,000** or more than **\$30,000**.

Possession ≥ 60 lbs. but < 2,000 lbs. – Not less than **5 years** or more than **30 years imprisonment at hard labor**, and a fine of not less than **\$50,000** or more than **\$100,000**.

Possession ≥ 2,000 lbs. but < 10,000 lbs. – Not less than **10 years** or more than **40 years imprisonment at hard labor**, and a fine of not less than **\$100,000** or more than **\$400,000**.

Possession ≥ 10,000 lbs. – Not less than **25 years** or more than **40 years imprisonment at hard labor**, and a fine of not less than **\$400,000** or more than **\$1,000,000**. La. R.S. §40:966(E).

Intoxicant Exclusion Law (UPPL):

Yes. La. R.S. §22:975(B)(10).

STATE

General Reference:

Type of DUI-D Law:Basis for a DUI-D Charge:

Standard DUI-D Offense:

Illegal Per Se Law:

Presumption Based on Drugs – State Has (Yes/No):

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Implied Consent Law:

Arrest Required (Yes/No):

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

Refusal to Submit to Chemical Test Admitted into Evidence:

Other Information:

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

Blood:

Urine:

Other:

Individuals Authorized to Perform Chemical

MAINE

Maine Revised Statutes Annotated (MRSA)

Under the Influence

29-A M.R.S.A. §2411(1-A)(A)(1).

Note.³³⁹Operate a motor vehicle³⁴⁰ while under the influence³⁴¹ of intoxicants³⁴².**No****No****No****N/A****Yes.** 29-A M.R.S.A. §2521**No** – Police must have “probable cause” before a suspected driver has to submit to a chemical test. 29-A M.R.S.A. §2521(1).**Yes.** 29-A M.R.S.A. §2521(1).**Yes** – Criminal Cases. 29-A M.R.S.A. §2521(3)(B).**Yes.** 29-A M.R.S.A. §2521(1).**Yes.** 29-A M.R.S.A. §2521(1).**None**³³⁹ Maine refers to the crime as an “OUI” offense (operating under the influence).³⁴⁰ A “motor vehicle” means a self-propelled vehicle not operated exclusively on railroad tracks. A “motor vehicle” does not include a snowmobile, an all-terrain vehicle (unless the all-terrain vehicle is permitted in accordance with 29-A M.R.S.A. §501(8) or is operated on a way and 29-A M.R.S.A. §2080 applies), or a motorized wheelchair or electric personal assistive mobility device. 29-A M.R.S.A. §101(42).³⁴¹ “Under the influence” means that the offender’s mental or physical faculties were impaired, however slightly, or to any extent, by alcohol, drugs, or other intoxicants. *State v. Soucy*, 36 A.3d 910 (Me. 2012).³⁴² An “intoxicant” includes alcohol, a drug other than alcohol, a combination of drugs, or a combination of alcohol and drugs. 29-A M.R.S.A. §2401(13). A “drug” includes scheduled drugs defined under 17-A M.R.S.A. §1101, as well as any natural or artificial chemical substance that, when taken into the human body, can impair the ability of the person to safely operate a motor vehicle. 29-A M.R.S.A. §2401(4).

Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform: **Yes. A physician, registered physician’s assistant, registered nurse or person whose occupational license or training allows that person to draw blood samples.** 29-A M.R.S.A. §2524(1).

Entity Establishing Testing Protocols: **Yes.** Procedures for blood sample testing are established by the **Department of Health and Human Services.** 29-A M.R.S.A. §§2524(4), (5), (6); 2527.

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:

No

Other:

Persons Qualified to Analyze Blood Samples

A person conducting an analysis of blood for the presence of a drug or drug metabolite must be certified by the Department of Health and Human Services. 29-A M.R.S.A. §2524(2).

Independent Testing

At the request and expense of the person charged, a portion of the sample collected will be saved for an independent test. 29-A M.R.S.A. §2527(3).

Note³⁴³

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No): **No**

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

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

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription: **No.** *See, e.g., State v. Curtis*, 828 A.2d 795 (Me. 2003).

Therapeutic Concentration: **Yes**³⁴⁴

Involuntary Intoxication: **No.** *State v. Soucy*, 36 A.3d 910 (Me. 2012).

Sanctions for Refusal to Submit to a Chemical Test:

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

Preliminary Breath Test – Other: **N/A**

³⁴³ In Maine, technically a person shall be required to submit to a chemical test if he is involved in a crash that results or may result in death of any other person. 29-A M.R.S.A. §2522. However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court’s decisions in *Birchfield v. North Dakota*, 579 U.S. _____ (2016) (holding that the search incident to arrest exception to the warrant requirement does not apply to warrantless DUI blood draws); and *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

³⁴⁴ It appears based upon the language of the statutes that if a “therapeutic” concentration would not render a person “under the influence,” such that it would impair the offender’s mental or physical faculties, 29-A M.R.S.A. §2411(1-A)(A)(1), then arguing that the level of the substance detected was merely therapeutic would be a valid defense.

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

Notes.^{345 346}

First offense – Not less than **96 hours** and not less than **\$600**;
Second offense (within 10 years) – Not less than **12 days** and not less than **\$900**;

Third offense (within 10 years) – Not less than **40 days** and not less than **\$1,400**;

Fourth offense (within 10 years) – Not less than **6 months, 20 days** and not less than **\$2,500**. 29-A M.R.S.A. §2411(5).

Implied Consent Chemical Test - Other:

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:

First offense – A fine of not less than **\$500**;

First offense and BAC ≥ 0.15/Speeding 30+/Eluding or Attempting to Elude/Operating w/ Passenger < 21 – Not less than **48 hours** or more than **12 months** and not less than **\$500** or more than **\$2,000**.

Second offense (within 10 years) – Not less than **7 days** or more than **12 months** and not less than **\$700** or more than **\$2,000**;

Third offense (within 10 years) – Not less than **30 days** or more than **12 months** and not less than **\$1,100** or more than **\$2,000**;

Fourth offense (within 10 years) – Not less than **6 months** or more than **5 years** and not less than **\$2,100** or more than **\$5,000**.

Serious bodily injury – Not less than **6 months** or more than **5 years** and not less than **\$2,100** or more than **\$5,000**.

Prior conviction of a Class C felony crime (DUI) or prior DUI criminal homicide – Not less than **6 months** or more than **10 years** and not less than **\$2,100** or more than **\$20,000**. 17-A M.R.S.A. §§1252; 1301; 29-A M.R.S.A. §2411.

Mandatory Minimum Term/Fine:

The terms above appear to be mandatory.

Community Service:

Community service may be ordered as a condition of probation. 17-A M.R.S.A. §1204(2-A)(L).

Restitution:

Yes. As a condition of probation or as part of the incarceration sanction, or by way of the crime victims' compensation fund. 5 M.R.S.A. §3360; 17-A M.R.S.A. §§1204(2-A)(B); 1252(3); 1321.

Child Endangerment:

N/A

Other:

Surcharge: A **\$30** surcharge must be charged. If, however, the conviction is for operating under the influence of drugs or

³⁴⁵ These criminal sanctions apply when the offender is also convicted of operating the vehicle while under the influence.

³⁴⁶ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

a combination of liquor and drugs, the surcharge is **\$125**. 29-A M.R.S.A. § 2411(7).

State surcharges of 14% and 5% must be added to every fine, forfeiture or penalty. 4 M.R.S.A. §1057(2-A).

Administrative Sanctions –Post-Conviction:

Substance Abuse Education:

Yes

Substance Abuse Treatment:

Yes. All offenders must participate in and **complete** an alcohol or drug program before their driving privileges can be restored. 29-A M.R.S.A. §2504.

Second and subsequent offenders must participate in an alcohol and drug treatment program. 29-A M.R.S.A. §2411(5)(F).

Vehicle Impoundment/Confiscation:

Yes

Authorized by Specific Statutory Authority:

29-A M.R.S.A. §§2421; 2422(1).

Forfeiture: A motor vehicle must be forfeited to the State when the defendant is the sole owner-operator of that vehicle and was convicted of DUI *and* a simultaneous offense of operating after suspension when the suspension was imposed from a prior DUI conviction.

Seizure: A motor vehicle operated by a sole owner is subject to seizure when the owner-operator operates or attempts to operate that motor vehicle under the influence or with a BAC .08 *and* that person is under suspension or revocation from a previous DUI conviction.

Terms Upon Which Vehicle Will Be Released:

The motor vehicle may be released after at least an 8-hour period and payment of any towing and storage fees. 29-A M.R.S.A. §2422(3).

Other Miscellaneous Sanctions:

N/A

Homicide by Vehicle:

State Has Such a Law:

Yes – Class B Crime.

29-A M.R.S.A. §2411(5)(D-2).

Imprisonment/Fine:

Not less than **6 months** or more than **10 years** and not less than **\$2,100** or more than **\$20,000**. 17-A M.R.S.A. §1252; 1301; 29-A M.R.S.A. §2411(5)(D-2).

Mandatory Minimum Term/Fine:

The terms above appear to be mandatory.

Other:

Driver Education/Substance Abuse Program: If drugs are involved in a criminal homicide caused by the operation of a motor vehicle, a defendant must complete a driver education program and, if needed, a substance abuse and/or an after-care program prior to license restoration. 29-A M.R.S.A. §2455(3).

DUI-D Offenses and Commercial Motor Vehicles (CMV):

Via regulations, a person's CDL is suspended if that person operates a CMV and is under the influence of a controlled substance. If the person has neither a prior OUI offense

conviction nor administrative license adjudication (e.g., driving with BAC \geq .04) related to CMV operations, his/her CDL is suspended for 1 mandatory year (3 years if transporting hazardous materials). If that person has either a prior DUI-D offense conviction or administrative license adjudication related to CMV operations, the CDL is permanently suspended (mand).

Under statutory provisions, if a person refuses to submit to a chemical test to determine the presence of drug metabolite where there is probable cause to believe that they were operating a CMV while under the influence of drugs, their privilege to operate a CMV is suspended for 1 mand year (3 years if transporting hazardous materials) for a first refusal and permanently for a second or subsequent refusal. 29-A M.R.S.A. §§1253; 2458(2)(M); 2523; 49 U.S.C.A § 31310.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

First offense – **7 days** and a minimum of **\$600**;

Second offense (within 10 years) – **30 days** and a minimum of **\$1,000**;

Third offense (within 10 years) – **60 days** and a minimum of **\$2,000**;

Fourth offense (within 10 years) – **6 months** and a minimum of **\$3,000**. 29-A M.R.S.A. §2412-A.

Mandatory Minimum Fine/Imprisonment Term:

These terms are mandatory.

Other:

N/A

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. 29-A M.R.S.A. §2551-A, *et seq.*

Grounds for Being Declared Habitual Offender:

Convictions of 3 designated offenses³⁴⁷ within 5 years, or convictions of 10 or more moving violations within 5 years.

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

First offense – Class D crime;

Subsequent offense (within 10 years) – Class C crime. 29-A M.R.S.A. §2557-A(2).

Imprisonment (Term):

Operating After Habitual Offender Revocation:

First offense – Not less than **30 days** or more than **1 year** and **\$500**;

Second offense (within 10 years) – Not less than **6 months** or more than **5 years** and **\$1,000**;

Third offense (within 10 years) – Not less than **9 months** or more than **5 years** and **\$1,000**;

³⁴⁷ Such offenses are listed under 29-A M.R.S.A. §2551-A(1)(A), and include among others: homicide resulting from operation of motor vehicle, DUI conviction, driving to endanger, operating after suspension/revocation, operating without a license, knowingly making a false affidavit or swearing/affirming falsely in a statement, operating without an ignition interlock device if license is reinstated based on that provision, hit and run, eluding, and speeding 30 miles or more over the speed limit.

Fourth offense (within 10 years) – Not less than **2 years** or more than **5 years** and **\$1,000**.

Aggravated Operating After Habitual Offender Revocation:³⁴⁸

First offense – Not less than **6 months** or more than **12 months** and not less than **\$500** or more than **\$2,000**;

Second offense (within 10 years) – Not less than **1 year** or more than **5 years** and not less than **\$1,000** or more than **\$5,000**;

Third offense (within 10 years) – Not less than **2 years** or more than **5 years** and not less than **\$2,000** or more than **\$5,000**;

Fourth offense (within 10 years) – **5 years** and not less than **\$3,000** or more than **\$5,000**. 17-A M.R.S.A. §§1252; 1301; 29-A M.R.S.A. §§2557-A(2); 2558.

Other State Laws Related to Drug Use:

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

No

Drug Chemical Test Given to Deceased Driver Killed in Crash:

N/A

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

N/A

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

N/A

Drug Chemical Tests on Persons Involved in Traffic Crashes:

No

Marijuana – Possession and Use Laws:

≤ 2.5 oz. Legal for Recreational Use.³⁴⁹

Legal for Medical Use. 22 M.R.S.A. 2421, *et seq.*

Criminal Penalties:

> 2.5 oz. to 8 oz. (Class E Crime) – Not more than **6 months**, and a fine of not more than **\$1,000**.

> 8 oz. to 16 oz. (Class D Crime) – Not more than **1 year**, and a fine of not more than **\$2,000**.

> 1 lb. to 20 lbs. (Class C Crime) – Not more than **5 years**, and a fine of not more than **\$5,000**.

> 20 lbs. (Class B Crime) – Not more than **10 years**, and a fine of not more than **\$20,000**. 17 M.R.S.A. §§1107-A(1)(F); 22 M.R.S.A. §§1252; 1301.

Intoxicant Exclusion Law (UPPL):

No. 24-A M.R.S.A. §2728.

³⁴⁸ At the time of habitual traffic offender revocation, a violator commits one of the following: (1) DUI; (2) driving to endanger; (3) eluding officer; (4) passing a roadblock; (5) exceeding maximum speed limit by 30 mph or more. 29-A M.R.S.A. §2558(1).

³⁴⁹ The Maine Marijuana Legalization Act was approved by voters November 8, 2016, and went into effective January 30, 2017.

STATE

General Reference:

MARYLAND

Annotated Code of Maryland (MD Code, Transportation)
Code of Maryland Regulations (COMAR)Type of DUI-D Law:Basis for a DUI-D Charge:

Standard DUI-D Offense:

Under the Influence

MD Code, Transportation §21-902(c)(1), (d).

Drive or attempt to drive any vehicle³⁵⁰ while:I. So far impaired by any drug³⁵¹, any combination of drugs, or any drug(s) combined with alcohol that he cannot drive a vehicle safely. MD Code, Transportation §21-902(c)(1).II. Impaired by any controlled or dangerous substance³⁵², if the person is not legally entitled to use the controlled dangerous substance. MD Code, Transportation §21-902(d)(1).

Illegal Per Se Law:

No

Presumption Based on Drugs – State Has (Yes/No):

No

Other:

Anyone arrested for DUI-D may not drive for 12 hours after the arrest.

MD Code, Transportation §21-902.1.

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

Yes. MD Code, Transportation §16-205.2.

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

No

Implied Consent Law:

Yes. MD Code, Transportation §16-205.1.

Arrest Required (Yes/No):

No. MD Code, Transportation §16-205.1(a)(2).

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

Yes. MD Code, Transportation §16-205.1.

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal and Civil Cases. MD Code, Courts & Judicial Proceedings §10-309(a)(2); *Wyatt v. State*, 817 A.2d 901 (Md. Ct. Spec. App. 2003).

³⁵⁰ A “vehicle” means any device in, on, or by which any individual or property is or might be transported or towed on a highway, including a low speed vehicle and an off-highway recreational vehicle. MD Code, Transportation §11-176(a). A “vehicle” does not include an electric personal assistive mobility device. MD Code, Transportation §11-176(b).

³⁵¹ A “drug” includes (1) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) substances other than food intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of these, but not any device or their components, parts, or accessories. MD Code, Criminal Law §5-101(n)(1).

³⁵² A “controlled dangerous substance” means (1) a drug or substance listed in Schedule I through Schedule V of MD Code, Criminal Law §5-401, *et seq.*; or (2) an immediate precursor to a drug or substance listed in Schedule I through Schedule V of MD Code, Criminal Law §5-401, *et seq.* that (a) by regulation the Department designates as being the principal compound commonly used or produced primarily for use to manufacture a drug or substance listed in Schedule I through Schedule V; (b) is an immediate chemical intermediary used or likely to be used to manufacture a drug or substance listed in Schedule I through Schedule V; or (c) must be controlled to prevent or limit the manufacture of a drug or substance listed in Schedule I through Schedule V. MD Code, Criminal Law §5-101(g)(1). A “controlled dangerous substance” does not include distilled spirits, wine, malt beverages, or tobacco. *Id.*

Other Information:

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

Blood: **Yes.** MD Code, Transportation §16-205.1.
 Urine: **No**
 Other: **Breath.** MD Code, Transportation §16-205.1(c).

Search Warrants for Blood Samples

It appears that in Maryland, a person cannot be compelled to submit to a chemical test unless the person was involved in a motor vehicle accident that resulted in the death of, or a life threatening injury to, another person. MD Code, Courts & Judicial Proceedings §10-309(a)(1).

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform: **Yes.** A **“qualified medical person,” which includes any person permitted by law to withdraw blood from humans.** MD Code, Courts & Judicial Proceedings §10-304.

Entity Establishing Testing Protocols: **Yes. The Toxicologist under the Postmortem Examiners Commission.** MD Code, Courts & Judicial Proceedings §10-304(c)(2).

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform: **Yes.** In situations where a person can be compelled to submit to a chemical test, the same restrictions apply. §§10-304 and 10-309(a)(1); MD Code, Transportation §16-205.1(c).

Other:

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No): **No**

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

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

Yes. A defendant may be placed on the “stet docket” or have his case nolle prosequied. In order to use a “stet”, the defendant may be required to complete any alcohol/substance abuse programs successfully and pay any fines or courts costs. At the end of successful completion, no finding of guilt is ever made (stet) or the case is dismissed (nolle prosequied). MD Code, Criminal Procedure §6-229. Additionally, a defendant may be ordered to complete an alcohol treatment program as part of probation before the court enters any judgment (finding of guilt) against such defendant. MD Code, Criminal Procedure §6-220(b), (c).

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription: Drugs/Drug(s) Combined with Alcohol - **No.** MD Code, Transportation §21-902(c)(2).

Controlled Dangerous Substance – **Yes.** MD Code,

Therapeutic Concentration:	Transportation §21-902(d)(1). Yes. ³⁵³
Involuntary Intoxication:	<u>Drugs/Drug(s) Combined with Alcohol</u> - Yes. MD Code, Transportation §21-902(c)(2). <u>Controlled Dangerous Substance</u> – No. MD Code, Transportation §21-902(d).
Other:	
<u>Sanctions for Refusal to Submit to a Chemical Test:</u>	
Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail):	None
Preliminary Breath Test – Other:	N/A
Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	Note. ³⁵⁴ Not more than 2 months and/or not more than \$500 . ³⁵⁵ MD Code, Transportation §27-101(x)(3).
Implied Consent Chemical Test - Other:	N/A
<u>Criminal Sanctions Following a DUI-D Conviction:</u>	
Imprisonment/Fine:	Driving while impaired by drugs and/or alcohol/Driving within 12 hours after arrest First offense – Not more than \$500 and/or not more than 2 months . Second offense – Not more than \$500 and/or not more than 1 year . Third or subsequent offense – Not more than \$3,000 and/or not more than 3 years . MD Code, Transportation §§21-902(c); 21-902.1; 27-101(c), (f). Driving while under the influence/Driving while impaired by a controlled dangerous substance Note. ³⁵⁶ <u>First offense</u> – Not more than 2 months and/or not more than \$500 ; <u>Second offense</u> – Not more than 1 year and/or not more than \$500 ;

³⁵³ It appears based upon the language of the statutes that if a “therapeutic” concentration would not render a person “under the influence,” under MD Code, Transportation §21-902(c), (d), then arguing that the level of the substance detected was merely therapeutic would be a valid defense.

³⁵⁴ The listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

³⁵⁵ This applies only when the trier of fact finds beyond a reasonable doubt that the person knowingly refused to take a test arising out of the same circumstances as the violation.

³⁵⁶ Imprisonment includes confinement in an inpatient rehabilitation or treatment center or home detention that includes electronic monitoring. MD Code, Transportation §27-101(j).

	<p><u>Third or subsequent offense</u> – Not more than 3 years and/or not more than \$3,000. MD Code, Transportation. §§21-902(a), (d); 27-101 (k).</p> <p>Life Threatening Injury:</p> <p><u>While impaired by drugs</u> – Not more than 2 years and/or not more than \$3,000;</p> <p><u>While impaired by a controlled dangerous substance</u> – Not more than 3 years and/or not more than \$5,000. MD Code, Criminal Law §3-211(e), (f).</p>
Mandatory Minimum Term/Fine:	<p>Driving while impaired by drugs and/or alcohol/Driving within 12 hours after arrest – None.</p> <p>Driving while under the influence/Driving while impaired by a controlled dangerous substance</p> <p><u>First offense</u> – None;</p> <p><u>Second offense within 5 years</u> – 5 days;</p> <p><u>Third or subsequent offense</u> – 10 days. MD Code, Transportation §27-101(j).</p>
Community Service:	<p>Community service may be ordered as part of any suspended sentence or probation. MD Code, Criminal Procedure §§6-219; 6-220.</p>
Restitution:	<p>The court may order a defendant to pay restitution. MD Code, Criminal Procedure §11-603(a)(2). Also, a victim may receive payments under the Criminal Injuries Compensation Act. MD Code, Criminal Procedure §11-801, <i>et seq.</i></p>
Child Endangerment:	<p>Driving While Impaired by Drugs and Transporting a Minor:</p> <p><u>First offense</u> – Not more than 6 months and/or not more than \$1,000;</p> <p><u>Second offense</u> – Not more than 1 year and/or not more than \$2,000</p> <p><u>Third or subsequent offense</u> – Not more than 4 years and/or not more than \$4,000. MD Code, Transportation §27-101(q)(2).</p> <p>Driving While Impaired by a Controlled Dangerous Substance and Transporting a Minor:</p> <p><u>First offense</u> – Not more than 2 years and/or not more than \$2,000;</p> <p><u>Second offense</u> – Not more than 3 years and/or not more than \$3,000;</p> <p><u>Third or subsequent offense</u> – Not more than 4 years and/or not more than \$4,000. MD Code, Transportation §27-101(q)(1).</p>
Other:	<p>N/A</p>
<u>Administrative Sanctions – Post-Conviction:</u>	
Substance Abuse Education:	<p>Yes. Drug education/treatment is required as a condition of probation. Any offender may be required to attend a driver</p>

	improvement or a drug education program as a condition of reinstatement of their driving privilege. MD Code, Criminal Procedure §6-219(c); MD Code, Transportation §16-212.
Substance Abuse Treatment:	Yes.
Vehicle Impoundment/Confiscation:	Limited Impoundment
Authorized by Specific Statutory Authority:	MD Code, Transportation §27-111. A vehicle may be impounded as a sentence or part of a sentence, or condition of probation for not more than 180 days if a driver was driving the vehicle while his licenses was suspended or revoked for any DUI/impairment offense.
Terms Upon Which Vehicle Will Be Released:	Upon a showing of bona fide sale, gift or transfer to another person prior to the date of the hearing. Additionally, the court shall take into consideration whether the vehicle is the primary means of transportation available for the use of the individual's immediate family. MD Code, Transportation §27-111(c).
Other Miscellaneous Sanctions:	License Restrictions: The Administration shall impose a three-year alcohol restriction that prohibits a person from driving or attempting to drive with alcohol in his blood, when such person has been convicted of two or more violations of MD Code, Transportation §21-902(a), (b), or (c), within 5 years. This does not include DUI-Controlled Dangerous Substances. MD Code, Transportation §16-113(g)(1).
<u>Homicide by Vehicle:</u>	
State Has Such a Law:	Yes. Homicide while Impaired (Drugs) – MD Code, Criminal Law §2-505; Homicide while Impaired (Controlled Dangerous Substances) – MD Code, Criminal Law §2-506. Homicide while Impaired (Drugs) <u>First Offense</u> - Not more than 3 years and/or not more than \$5,000 . <u>Second Offense</u> – Not more than 5 years and/or not more than \$10,000 . Homicide while Impaired (Controlled Dangerous Substances) <u>First Offense</u> - Not more than 3 years and/or not more than \$5,000 . <u>Second Offense</u> - Not more than 5 years and/or not more than \$10,000 .
Imprisonment/Fine:	
Mandatory Minimum Term/Fine:	None
Other:	N/A
<u>DUI-D Offenses and Commercial Motor Vehicles (CMV):</u>	A person is “disqualified” from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV has violated MD Code, Transportation § 21-902 or a similar Federal law or refuses to

submit to a chemical test for drug concentration. For a subsequent violation or a combination of two or more violations of any of the above listed items, the “disqualification” is for life.

The lifetime disqualification is mandatory unless a reduced period is provided by Federal regulations. A CMV operator is also subject to DUI-D criminal sanctions and administrative actions against his regular driving privileges. Additionally, a CMV operator, who has any “detectable” amount of alcohol in the system, must be placed “out-of-service” for 24 hours. MD Code, Transportation §§11-109; 11-111.1; 16-205.1(b)(1)(iii); 16-208.1; 16-812; 16-813.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

Misdemeanor. There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are suspended or revoked. MD Code, Transportation §16-303.

First offense – Not more than **1 year** and/or not more than **\$1,000**;

Subsequent offense – Not more than **2 years** and/or not more than **\$1,000**. MD Code, Transportation §§16-303; 27-101.

Mandatory Minimum Fine/Imprisonment:

None

Other:

I. If a person drives a motor vehicle with a suspended or revoked license (for drug or alcohol offense), the registration of the vehicle may be suspended for not more than 120 days. MD Code, Transportation §13-705.1.

II. If a person drives a motor vehicle with a suspended or revoked license (for a DUI-D offense), the vehicle used in the offense may be impounded or immobilized for not more than 180 days. MD Code, Transportation §27-111(c).

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. MD Code, Transportation §§16-404(c)(2); 16-404.1(i).

A person is deemed a habitual offender if he has four or more DUI convictions (drugs and/or alcohol). Such person’s license shall be suspended for 24 months.

Other State Laws Related to Drug Use:

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

No

Drug Chemical Test Given to Deceased Driver Killed in Crash:

N/A

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

N/A

Drug Chemical Test Given to Deceased

N/A

Pedestrian Killed in Crash:
 Drug Chemical Tests on Persons Involved
 in Traffic Crashes:

Yes. MD Code, Transportation §16-205.1(c)(1).

Marijuana – Possession and Use Laws:

Legal for Medical Use. MD Code, Criminal Law §5-601(c)(3)(ii-iii).

Possession < 10 grams Decriminalized:

First offense – **Civil offense** not more than **\$100**.

Second offense – **Civil offense** not more than **\$250**.

Third or subsequent offense – **Civil offense** not more than **\$500**, and the court shall order the person to attend an approved drug education program, refer the person to an assessment for substance abuse disorder, and refer the person to substance abuse treatment, if necessary.

Persons < 21 and < 10 grams – In addition to the penalties outlined above, a court shall order the person to attend an approved drug education program, refer the person to an assessment for substance abuse disorder, and refer the person to substance abuse treatment, if necessary.

Possession ≥ 10 grams (Misdemeanor) – Not more than **1 year** and/or not more than **\$1,000**.

Smoking Marijuana in a Public Place – **Civil offense** not more than **\$500**. MD Code, Criminal Law §5-601(c).

Intoxicant Exclusion Law (UPPL):

No. COMAR 31.10.28.03(C).

STATE

MASSACHUSETTS

General Reference:

Massachusetts General Laws Annotated (M.G.L.A.)
Code of Massachusetts Regulations (CMR)

Type of DUI-D Law:

Under the Influence

Basis for a DUI-D Charge:

M.G.L.A. 90 §24(1)(a)(1).

Standard DUI-D Offense:

Operate a motor vehicle³⁵⁷ while under the influence of marijuana, narcotic drugs³⁵⁸, depressant or stimulant substances³⁵⁹, or the vapors of glue. M.G.L.A. 90 §24(1)(a)(1).

Illegal Per Se Law:

No

Presumption Based on Drugs – State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

No

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

N/A

Implied Consent Law:

Yes. M.G.L.A. 90 §24(1)(f).

Arrest Required (Yes/No):

Yes

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

No. The code provision only refers to driving under the influence of intoxicating liquor.

Refusal to Submit to Chemical Test Admitted into Evidence:

No. Prohibited by statute in both criminal and civil cases except that the registrar may use evidence in an administrative proceeding to suspend the driving license. M.G.L.A. 90 §24(1)(e).

³⁵⁷ A “motor vehicle” includes all vehicles designed for propulsion by power other than muscular power including such vehicles when pulled or towed by another motor vehicle, except railroad cars, vehicles operated by the system known as trolley motor, vehicles running only upon rails or tracks, vehicles used for other purposes than the transportation of property and incapable of being driven at a speed exceeding twelve miles per hour and which are used exclusively for the building, repair and maintenance of highways, wheelchairs owned and operated by invalids and vehicles which are operated or guided by a person on foot. M.G.L.A. 90 §1. The term “motor vehicle” does not include motorized bicycles. Id.

³⁵⁸ A narcotic drug includes any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (a) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate; (b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the aforementioned substances, but not including the isoquinoline alkaloids of opium; (c) opium poppy and poppy straw; (d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine. M.G.L.A. 94C §1.

³⁵⁹ A “depressant or stimulant substance includes (a) a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid; or any derivative of barbituric acid which the United States Secretary of Health, Education, and Welfare has by regulation designated as habit forming; or (b) a drug which contains any quantity of amphetamine or any of its optical isomers; any salt of amphetamine or any salt of an optical isomer of amphetamine; or any substance which the United States Attorney General has by regulation designated as habit forming because of its stimulant effect on the central nervous system; or (c) lysergic acid diethylamide; or (d) any drug except marijuana which contains any quantity of a substance which the United States Attorney General has by regulation designated as having a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect. M.G.L.A. 94C §1.

Other Information:

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

Blood:

N/A

Urine:

N/A

Other:

Search Warrant Requirement

Massachusetts' Implied Consent Statute does not apply to blood testing in a DUI-D case. M.G.L.A. 90 §24(1)(f). Therefore, a search warrant would be required to obtain a blood sample.

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

N/A

Entity Establishing Testing Protocols

N/A

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:

No

Other:

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No):

Yes.³⁶⁰ M.G.L.A. 90 §24(1)(a)(1), (3).

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

No

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

Yes. M.G.L.A. 90 §24(1)(a)(4).

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription:

No

Therapeutic Concentration:

Yes³⁶¹

Involuntary Intoxication:

Yes³⁶²

Other:

Sanctions for Refusal to Submit to a Chemical Test:

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

N/A

³⁶⁰ The prosecution of any subsequent DUI offense shall not be placed on file or disposed of in any manner except trial, judgment and sentencing. If the interests of justice require an alternative disposition, then it must be done upon motion in writing stating specifically the reasons. M.G.L.A. 90 §24(3).

³⁶¹ It appears based upon the language of the statute that if a “therapeutic” concentration would not render a person “under the influence” pursuant to M.G.L.A. 90 §24, then arguing that the level of the substance detected was merely therapeutic would be a valid defense.

³⁶² *Commonwealth v. Darch*, 767 N.E.2d 1096 (Mass. App. Ct. 2002); *Cf. Commonwealth v. Bishop*, 935 N.E.2d 361 (Mass. App. Ct. 2010).

Preliminary Breath Test – Other: N/A

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

Implied Consent Chemical Test - Other: N/A

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine: First offense – Not more than **2½ years** and/or not less than **\$500** or more than **\$5,000**;
Second offense – Not less than **60 days** or more than **2½ years** and not less than **\$600** or more than **\$10,000**;
Third offense – Not less than **180 days** or more than **2½ years** (or not less than **2½ years** or more than **5 years** in State prison) and not less than **\$1,000** or more than **\$15,000**;
Fourth offense – Not less than **2 years** or more than **2½ years** (or not less than **2½ years** or more than **5 years** in State prison) and not less than **\$1,500** or more than **\$25,000**;
Fifth or subsequent offense – **2½ years** (or not less than **2½ years** or more than **5 years** in State prison) and not less than **\$2,000** or more than **\$50,000**.

Recklessly and Negligently Causing Serious Bodily Injury – Not less than **2½ years** or more than **10 years** (or not less than **6 months** or more than **2½ years** in a jail/house of correction) and not more than **\$5,000**.

Causing Serious Bodily Injury – Not more than **2½ years** and/or not less than **\$3,000**. M.G.L.A. 90 §§24(1)(a)(1); 24L; M.G.L.A. 274 §1.

Mandatory Minimum Term/Fine: First offense – **None**;
Second offense – **30 days/\$600**;
Third offense – **150 days/\$1,000**;
Fourth offense – **12 months/\$1,500**;
Fifth and subsequent offense – **24 months/\$2,000**. M.G.L.A. 90 §24(1);
Serious bodily injury – **6 months**. M.G.L.A. 90 §24L.
Assessment: \$250 and \$50 shall be assessed to any person who is convicted of, placed on probation for, or is granted a continuance without a finding for, or otherwise pleads guilty to or admits to a finding of sufficient facts of DUI-D. M.G.L.A. 90 §24(a)(1).

Community Service: The court may order a defendant to serve a minimum of **30 hours** of community service as a condition of probation. M.G.L.A. 90 §24D.

Restitution: **Yes**. As a condition of probation. M.G.L.A. 276 §92.

By a compensation fund. M.G.L.A. 258C §2.

Child Endangerment: Any person who commits a DUI-D offense with a child age 14 or younger in the vehicle shall be sentenced to an

enhanced penalty of imprisonment and fine:³⁶³

First offense – Not less than **90 days** or more than **2½ years** and not less than **\$1,000** or more than **\$5,000**;

Subsequent offense – Not less than **6 months** (mand) or more than **2½ years** (or not less than **3 years** or more than **5 years** in State prison) and not less than **\$5,000** or more than **\$10,000**.

There is a mandatory minimum term of 6 months. M.G.L.A. 90 §24V.

License Suspension:

First offense – **Suspension 1 year**;

Subsequent offense – **Suspension 3 years**. M.G.L.A. 90 §24V.

Other:

A first DUI-D offender may receive an alternative sentence of 2 years’ probation with an alcohol education program, substance abuse treatment and/or rehabilitation program, and a 45-90 day loss of license. M.G.L.A. 90 § 24D.

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

Yes. *See* Substance Abuse Treatment.

Substance Abuse Treatment:

Yes.

First offense – A first offender who has not caused major injury or death may be placed on probation for not more than 2 years. M.G.L.A. 90 §24D.

Individuals shall be placed on probation for not more than two years and shall, as a condition of probation, be assigned to a driver alcohol education program and, if deemed necessary by the court, to a controlled substance abuse treatment or rehabilitation program or to both, and such person’s license or right to operate shall be suspended for a period of no less than forty-five nor more than ninety days; provided, however, that if such person was under age 21 when the offense was committed, the person’s license or right to operate shall be suspended for two hundred and ten days, and such person shall be assigned to a program specifically designed by the department of public health for the education and treatment of drivers who operates a motor vehicle after or while consuming alcohol, controlled substances or the vapors of glue, except for a person aged 17 to 21, inclusive, whose blood alcohol percentage, by weight, was not less than .20, in which case such person shall be assigned to a driver alcohol treatment and rehabilitation program known as the “14-day second offender in-home program.”

Second or subsequent offense – In lieu of imprisonment, defendant may serve all or part of the mandatory

³⁶³ This sentence shall run consecutively to the predicate violation (DUI-D). M.G.L.A. 90 §24V.

imprisonment term in a residential alcohol³⁶⁴ treatment program for not less than 14 days and participate in an outpatient counseling program. M.G.L.A. 90 §24(1)(a)(1).

Repeat violation - The violator shall complete an assessment of the level of the offender's addiction to alcohol or drugs, and the department's recommended course of treatment. M.G.L.A. 90 §24Q.

Vehicle Impoundment/Confiscation:

Forfeiture

Authorized by Specific Statutory Authority:

Fourth conviction – If the vehicle is owned by the operator, it may be forfeited. M.G.L.A. 90 §24W.

Terms Upon Which Vehicle Will Be Released:

If the vehicle is jointly owned (before the second DUI conviction) by a parent, spouse, child, grandparent, brother, sister, or parent of the spouse living in the defendant’s household, the court may consider releasing such vehicle if such family member shows he/she is dependent upon the vehicle for livelihood or maintenance of family. M.G.L.A. 90 §24W.

Other Miscellaneous Sanctions:

Homicide by Vehicle:

State Has Such a Law:

Yes.³⁶⁵ **Homicide by motor vehicle.** M.G.L.A. 90 §24G.

Manslaughter while operating a motor vehicle. M.G.L.A. 265 §13 ½.

Imprisonment/Fine:

Homicide:

Negligently or recklessly – Not less than **2½ years** or more than **15 years** (or not less than **1 year** or more than **2½ years** in jail or house of correction) and not more than **\$5,000**;

No negligence or recklessness – Not less than **30 days** or more than **2½ years** and/or not less than **\$300** or more than **\$3,000**. M.G.L.A. 90 §24G.

Manslaughter – Not less than **5 years** or more than **20 years** and not more than **\$25,000**. M.G.L.A. 265 §13 ½.

Mandatory Minimum Term/Fine:

Homicide: Negligently or recklessly – **1 year**;

No negligence or recklessness – **None**.

Manslaughter – **5 years**. M.G.L.A. 265 §13 ½.

Other:

N/A

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is “disqualified” from operating a CMV for not less than 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person is under the influence of a controlled substance, or refused to submit to a chemical test. For a subsequent violation or a combination of two or more violations of any of the above listed items, the

³⁶⁴ The statute specifies “alcohol” and does not refer to a residential treatment program option for other substances.

³⁶⁵ The State has the discretion to charge an offender with either manslaughter or homicide involving DUI, but it cannot charge both if the act is based on DUI only. The purpose of proscribing homicide by motor vehicle was to provide a middle ground between the felony of manslaughter and misdemeanor of driving so as to endanger. Vehicular homicide is not a lesser-included of manslaughter. See *Commonwealth v. Jones*, 416 N.E.2d 502 (Mass. 1981) for further explanation.

“disqualification” is for life. M.G.L.A. 90F §§9; 11.

Pursuant to the CMV Implied consent statute, a person who operates a CMV is deemed to have given consent to test(s) of that person’s blood, breath, or urine for the purpose of determining that person’s alcohol or drug concentration. However, the investigating law enforcement officer is required to have probable cause to believe the person was operating a CMV while having alcohol in his system. M.G.L.A. 90F §11.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment: Not less than **60 days** or more than **2½ years** and not less than **\$1,000** or more than **\$10,000**.

If a person commits a DUI offense and his license is revoked or suspended, punishment is not less than **1 year** or more than **2½ years** and not less than **\$2,500** or more than **\$10,000**. M.G.L.A. 90 §23.

Mandatory Minimum Fine/Imprisonment Term: **60 days/\$1,000**;
Other: While violating DUI offense – **1 year/\$2,500**.
N/A

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No): **Yes**. M.G.L.A. 90 §22F.

Grounds for Being Declared Habitual Offender: Any combination of three or more serious traffic offenses³⁶⁶ within 5 years, or 12 convictions within 5 years for traffic offenses.³⁶⁷

Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: **Misdemeanor**. M.G.L.A. 274 §1.

Imprisonment (Term): Not more than **2 years** and/or not less than **\$500** or more than **\$5,000**. M.G.L.A. 90 §23.

Mandatory Minimum Term/Fine: **None**

Other State Laws Related to Drug Use:

Drug Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No): **Yes – limited**. M.G.L.A. 38 §4A.

Drug Chemical Test Given to Deceased Driver Killed in Crash: **Yes**.³⁶⁸

Drug Chemical Test Given to Deceased **No**

³⁶⁶ These include DUI, negligent/reckless endangerment, hit and run and driving on a suspended/revoked license.

³⁶⁷ These are offenses that required the suspension or revocation of license for 30 days or more, including serious traffic offenses.

³⁶⁸ In the case of a single vehicle accident, the law requires medical examiners to submit to the police laboratory blood samples of drivers who die of injuries received in auto accidents within 4 hours of an accident. However, the law only applies if, at the time of the accident, the driver was the only occupant of the vehicle and no other individuals were involved. M.G.L.A. 38 §4A.

Vehicle Passengers Killed in Crash:
 Drug Chemical Test Given to Deceased
 Pedestrian Killed in Crash: **No**
 Drug Chemical Tests on Persons Involved
 in Traffic Crashes: **No**

Marijuana – Possession and Use Laws: **≤ 1 oz. Legal for Recreational Use.**³⁶⁹
Legal for Medical Use. M.G.L.A. 94C App. 1-2, *et seq.*
Decriminalized: Criminal
Possession > 1 oz. but ≤ 2 oz. – Civil offense \$100.
Possession > 1 oz. but ≤ 2 oz. by Persons < 21 - Civil offense
\$100 and completion of drug awareness program. M.G.L.A.
 94G §13 (effective December 15, 2016).

Intoxicant Exclusion Law (UPPL): **No.** M.G.L.A. 175 §108.³⁷⁰

³⁶⁹ The Massachusetts Marijuana Legalization Act was approved by voters on November 8, 2016, and became effective on December 15, 2016. M.G.L.A. 94G §13.

³⁷⁰ In 1971, former subsection (11) was stricken by the Massachusetts legislature.

STATE

General Reference:

MICHIGAN

Michigan Compiled Laws Annotated (M.C.L.A.)

Michigan Administrative Code (Mich. Admin. Code R)

Type of DUI-D LawBasis for a DUI-D Charge:

Standard DUI-D Offense:

Under the Influence/Zero Tolerance

M.C.L.A. §257.625(1)(a), (3), (8).

I. Operate a vehicle³⁷¹ while under the influence³⁷² of a controlled substance³⁷³, or other intoxicating substance³⁷⁴, either by itself or combined with alcohol. M.C.L.A. §257.625(1)(a).

II. Operate a vehicle when, due to the consumption of a controlled substance, or other intoxicating substance, or a combination of such substance with alcohol, the person's ability to operate a vehicle is visibly impaired.³⁷⁵ M.C.L.A. §257.625(3).

III. Operate a vehicle while having any amount of a controlled substance³⁷⁶ in the person's body. M.C.L.A. §257.625(8).

Illegal Per Se Law:

Any amount of a controlled substance listed in Schedule I of M.C.L.A. §333.7212, or a rule promulgated under that section, or a controlled substance described in M.C.L.A. §333.7214(a)(iv). M.C.L.A. §257.625(8).

Presumption Based on Drugs – State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

Yes. M.C.L.A. §257.625a(2).

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Yes

Implied Consent Law:

Yes. M.C.L.A. §257.625c.

Arrest Required (Yes/No):

Yes. M.C.L.A. §257.625c(1)(a).

³⁷¹ A “vehicle” means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices exclusively moved by human power or used exclusively upon a highway, except devices exclusively moved by human power or used exclusively upon stationary rails or tracks and except. M.C.L.A. §257.79.

³⁷² “Under the influence” means that the defendant was substantially deprived of normal control or clarity of mind. *Bloomfield Tp. v. Kane*, 839 N.W.2d 505 (Mich. App. 2013).

³⁷³ For the purposes of this subsection, a “controlled substance” means a drug, substance, or immediate precursor included in schedules I through V of M.C.L.A. §333.7201, *et seq.* M.C.L.A. §333.7104(2).

³⁷⁴ An “intoxicating substance” means any substance, preparation, or combination of substances and preparations other than alcohol or a controlled substance, that is either (1) recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (2) substances other than food taken into a person's body, including but not limited to, vapors or fumes, and used in a manner or for a purpose for which it was not intended and that may result in a condition of intoxication. M.C.L.A. §257.625(25)(a).

³⁷⁵ In Michigan, this offense is referred to as “OWI” or “DWI,” and is lesser included offense of operating a vehicle while under the influence. *Oxendine v. Secretary of State*, 602 N.W.2d 847 (Mich. App. 1999).

³⁷⁶ For the purposes of this subsection, the controlled substance at issue must be listed in Schedule I of M.C.L.A. §333.7212, or a rule promulgated under that section, or a controlled substance described in M.C.L.A. §333.7214(a)(iv).

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

Yes. M.C.L.A. §257.625c(1).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes (limited) – In a criminal case a person’s refusal to submit to a chemical test is admissible only to show that a test was offered to the defendant, but not as evidence in determining the defendant’s innocence or guilt. M.C.L.A. §257.625a(9).

Other Information:

Court Order for Sample Following Refusal

Following a refusal to submit to a chemical test under the implied consent law, a law enforcement officer can seek a court order for such test. M.C.L.A. §§257.625a(6)(b)(iv); 257.625d(1).

Persons Deemed Not to Have Consented to Blood Draw

A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician is not considered to have given consent to the withdrawal of blood. M.C.L.A. §257.625c(2).

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

Blood:

Yes. M.C.L.A. §257.625c(1).

Urine:

Yes. M.C.L.A. §257.625c(1).

Other:

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. A licensed physician, or an individual operating under the delegation of a licensed physician, qualified to withdraw blood and acting in a medical environment. M.C.L.A. §257.625a(6)(c).

Entity Establishing Testing Protocols:

Yes. The **Department of State Police** is charged with promulgating uniform rules in compliance with the Administrative Procedures Act, M.C.L.A. §§24.201 through 24.328, for the administration of chemical tests pursuant to the implied consent statute. M.C.L.A. §257.625a(6)(g).

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:

No

Other:

Independent Sample

A person has the right to demand that an independent sample be taken. M.C.L.A. §257.625a(6)(b), (d).

Search Warrant Procedures

When a blood test is obtained on the basis of a search warrant, the results of the test are not subject to evidentiary or procedural restrictions set forth in the DUI statute. *People v. Snyder*, 449 N.W.2d 703 (Mich. App. 1989).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea-Bargaining Statute (Yes/No):	Limited. A person who is charged with driving while under the influence, driving while visibly impaired or illegal per se offenses cannot enter a plea of guilty or <i>nolo contendere</i> to driving with “any bodily alcohol content” in exchange for dismissal of the original charge. However, the court, upon the prosecuting attorney’s motion, may dismiss the charge. M.C.L.A. §257.625(16).
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes. M.C.L.A. §257.625b(5).
<u>Affirmative Defenses to DUI-D Charge:</u>	
Legal Entitlement/Valid Prescription:	<u>Under the Influence/Visibly Impaired - No.</u> <u>Per Se - Limited:</u> For a <i>per se</i> charge, a patient registered under the Michigan Medical Marihuana Act (“MMMA”) <u>is</u> allowed to drive when he or she has indications of marijuana in his or her system, but is not otherwise under the influence of marijuana. <i>People v. Koon</i> , 832 N.W.2d 724 (2013).
Therapeutic Concentration:	<u>Under the Influence/Visibly Impaired – Yes.</u> ³⁷⁷ <u>Per Se – No.</u>
Involuntary Intoxication:	<u>Under the Influence/Visibly Impaired/Per Se - No.</u> <i>Bloomfield Tp. v. Kane</i> , 839 N.W.2d 505 (Mich. App. 2013). Limited Exception for Under the Influence/Visibly Impaired by an “Intoxicating Substance.” ³⁷⁸
Other:	
<u>Sanctions for Refusal to Submit to a Chemical Test:</u>	
Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail):	Civil infraction – A fine of not more than \$100 plus court costs. M.C.L.A. §§257.625a(2)(d); 257.907. It is a misdemeanor for a CMV operator to refuse to submit to a PBT. M.C.L.A. §§257.319d; 257.625a(4).
Preliminary Breath Test – Other:	
Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	None
Implied Consent Chemical Test - Other:	N/A
<u>Criminal Sanctions Following a DUI-D Conviction:</u>	
Imprisonment/Fine:	Driving Under the Influence/Per Se Controlled Substance

³⁷⁷ It appears based upon the language of the statutes that if a “therapeutic” concentration would not render a person “under the influence,” or “visibly impaired,” M.C.L.A. §257.625(1)(a), (3), then arguing that the level of the substance detected was merely therapeutic would be a valid defense.

³⁷⁸ It appears based on the language of the statutes that if a person were charged with driving under the influence, or while visibly impaired by an “intoxicating substance” that was not recognized as a drug, and was a substance other than food, used in manner or for a purpose for which it was intended, this would constitute a defense to the charge. M.C.L.A. §257.625(1)(a), (3), (25)(a).

(misdemeanor):

First offense – Not more than **93 days** and/or community service for not more than **360 hours** and/or a fine of not less than **\$100** or more than **\$500**;

Second offense (within 7 years) – Not less than **\$200** or more than **\$1,000** and not less than **5 days** or more than **1 year** and/or not less than **30 days** or more than **90 days** of community service;

Third or subsequent offense (felony) – Not less than **\$500** or more than **\$5,000** and either of the following:

- not less than **1 year** or more than **5 years**; or
- probation with imprisonment in the county jail for not less than **30 days** or more than **1 year** and community service for not less than **60 days** or more than **180 days**.

M.C.L.A. §257.625(9).

Driving While Visibly Impaired:

First offense – Not more than **93 days** and/or not more than **\$300** and/or not more than **360 hours** of community service;

Second offense (within 7 years) – Not less than **\$200** or more than **\$1,000** and not less than **5 days** or more than **1 year** and/or not less than **30 days** or more than **90 days** of community service;

Third or subsequent offense (felony) – Not less than **\$500** or more than **\$5,000** and either of the following:

- not less than **1 year** or more than **5 years**; or
- probation with imprisonment in the county jail for not less than **30 days** or more than **1 year** and community service for not less than **60 days** or more than **180 days**.

M.C.L.A. §257.625(11).

DUI-D Causing Serious Impairment of Bodily Function (felony):

Not more than **5 years** and/or not less than **\$1,000** or more than **\$5,000**;

(With BAC \geq .17 and within 7 years of prior conviction) – not more than **10 years** and/or not less than **\$1,000** or more than **\$5,000**. M.C.L.A. §257.625(5);

Mandatory Minimum Term/Fine:

Driving Under the Influence/Per Se Controlled Substance

First offense – **None**;

Second offense – **5 days** (with **48 consecutive hours**) / **\$200**;

Third or subsequent offense – either **1 year** (if imprisoned with department of corrections) or **30 days** (with **48 consecutive hours**) (if probation with imprisonment in the county jail) / **\$500**. M.C.L.A. §257.625(9)(d).

Driving While Visibly Impaired:

First offense – **None**;

Second offense – **5 days** (with **48 consecutive hours**) / **\$200**;

Third or subsequent offense – either **1 year** (if imprisoned

with department of corrections) or **30 days** (with **48 consecutive hours**) (if probation with imprisonment in the county jail) / **\$500**. M.C.L.A. §257.625(11)(d).

Serious Impairment of Bodily Function – \$1,000.
M.C.L.A. §257.625(5).

Community Service:

See Imprisonment/Fine.

Restitution:

Yes. Restitution is ordered by the court and may also be a condition of probation. M.C.L.A. §§771.3(1)(e); 780.766.

Child Endangerment:

Operating with a Minor < age 16:

First offense (misdemeanor) – Not less than **\$200** or more than **\$1,000** and either of the following:

- not less than **5 days** or more than **1 year**; or
- not less than **30 days** or more than **90 days** of community service.

Second offense (within 7 years) or subsequent offense (felony) – Not less than **\$500** or more than **\$5,000** and to either of the following:

- not less than **1 year** or more than **5 years**; or
- probation with imprisonment in the county jail for not less than **30 days** or more than **1 year** and community service for not less than **60 days** or more than **180 days**.

Mandatory Minimum:

First offense –**\$200**;

Second or subsequent offense - either **1 year** (if imprisoned with department of corrections) or **30 days** (with **48 consecutive hours**) (if probation with imprisonment in the county jail) / **\$500**. M.C.L.A. §257.625(7)(a).

Other:

Assessments: A person convicted of a crime must pay the following assessments. Felony – **\$130**; Misdemeanor – **\$75**. Juveniles pay an assessment of **\$25**. M.C.L.A. §780.905(1), (3).

Costs of Prosecution: A DUI-D offender may be required to pay the costs of prosecution. M.C.L.A. §§257.625(13); 769.1f(1).

EMS Costs: A DUI-D offender may be required to pay the emergency response costs incurred by State or local government as a result of such offense. M.C.L.A. §769.1f(1), (3).

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

Yes. M.C.L.A. §§257.625b(5); 771.3(2)(i).

Substance Abuse Treatment:

Yes. M.C.L.A. §§257.625b(5); 771.3(2)(g).

Vehicle Impoundment/Confiscation:

Vehicle Immobilization³⁷⁹ / **Forfeiture**

Authorized by Specific Statutory Authority:

Immobilization:

³⁷⁹ “Vehicle immobilization” means requiring the motor vehicle involved in the violation immobilized in a manner that locks the ignition, wheels or steering wheel, or otherwise prevents any person from operating the vehicle. M.C.L.A. §257.904d(8)(b).

- I. For any convictions for DUI-D, visible impairment, and driving with a minor < 16, the court may order vehicle immobilization for not more than **180 days**.
- II. For any convictions for serious impairment of bodily function and death resulting from DUI/visible impairment, the court shall order vehicle immobilization for not more than **180 days**.
- III. For any second DUI convictions within 7 years, the court shall order vehicle immobilization for not less than **90 days** or more than **180 days**.
- IV. For any third DUI conviction within 10 years, the court shall order vehicle immobilization for not less than **1 year** or more than **3 years**. M.C.L.A. §257.904d.

Forfeiture: The court may impose vehicle forfeiture as a sanction for convictions of: (1) DUI/impairment resulting in death; (2) DUI/impairment resulting in serious impairment of bodily function; (3) second or subsequent convictions of DUI (alcohol and controlled substance), impairment and driving with a minor < 16. If forfeiture is not ordered in these instances, then immobilization may/shall be order according to the terms above. M.C.L.A. §257.625n.

Terms Upon Which Vehicle Will Be Released:

The court may order the offender to pay the costs associated with immobilization and storage. M.C.L.A. §257.904e(1).

Other Miscellaneous Sanctions:

The court may order such vehicle immobilized to be stored at a location approved by the court. M.C.L.A. § 257.904e(1).

Homicide by Vehicle:

Yes – DUI – Death (felony). M.C.L.A. §257.625(4).

State Has Such a Law:

I. Not more than **15 years** and/or not less than **\$2,500** or more than **\$10,000**. M.C.L.A. §257.625(4)(a).

Imprisonment/Fine:

II. If a driver fails to exhibit due care and caution when approaching and passing a stationary authorized emergency vehicle giving visual signal and causes the death of a police officer, firefighter or other emergency response personnel, punishment is: not more than **20 years** and/or a fine of not less than **\$2,500** or more than **\$10,000**. M.C.L.A. §257.625(4)(c).

Mandatory Minimum Term/Fine:

Note.³⁸⁰

I. No law enforcement officer: **\$2,500**.

II. Law enforcement officer: **12 years/\$2,500**. M.C.L.A. §§257.625(4); 777.63; 777.64.

Other:

If the vehicle is not ordered forfeited, then the court shall order vehicle immobilization in the judgment of the sentence. M.C.L.A. §§257.625(4)(a); 257.625n; 257.904d.

³⁸⁰ Michigan follows sentencing guidelines that lay out minimum sentence ranges (actual time to serve). The range is determined, however, by variables such as the offender’s prior criminal record. These ranges do not change the overall sentencing range permitted by law. M.C.L.A. §777.61, *et seq.* The terms listed assume no prior criminal record.

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person's privilege to operate a CMV is suspended for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person: commits a DUI-D offense or refuses to submit to a chemical test for the presence of controlled substances. For a subsequent violation or a combination of two or more violations of any of the above listed items, a revocation for not less than 10 years. M.C.L.A. §257.625f(1)(b), (c).

It is a misdemeanor for a person to refuse to submit to a PBT while operating a CMV. Sanctions are not more than 93 days and/or not more than \$100, with a 24-hour out-of-service order. M.C.L.A. §257.625a(4), (5).

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

There are not statutory provisions specifically addressing this category. The provisions below address basic driving on suspended/revoked license.

First offense (misdemeanor) – Not more than **93 days** and/or not more than **\$500**;

Second and subsequent offenses (misdemeanor) – Not more than **1 year** and/or not more than **\$1,000**. M.C.L.A. §257.904(1), (3).

If the offense resulted in **death** of another person - Not more than **15 years** and/or not less than **\$2,500** or more than **\$10,000**. M.C.L.A. §257.904(4).

If the offense resulted in **serious impairment of a body function** (felony) – Not more than **5 years** and/or not less than **\$1,000** or more than **\$5,000**. M.C.L.A. §257.904(5).

Mandatory Minimum Fine/Imprisonment:

None

Other:

For death or serious impairment, the court may order forfeiture of the vehicle. If the vehicle is not forfeited, then the court shall order immobilization. M.C.L.A. §257.904(6).

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes

Grounds for Being Declared Habitual Offender:

I. 2 convictions of reckless driving within 7 years.

II. 2 or more convictions within 7 years of crimes including, but not limited to felony in which motor vehicle was used and vehicular homicide.

III. 2 convictions, or a combination of 1 conviction for DUI (under 21) and 1 conviction within 7 years of crimes including DUI.³⁸¹

IV. 3 convictions, or a combination of 2 convictions for DUI (under 21) and 1 conviction within 7 years of crimes including DUI. M.C.L.A. §257.303.

³⁸¹ See M.C.L.A. §257.303(c), (g) for a list of crimes other than DUI.

Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status:	None. Habitual Offender status, criminally speaking, applies to DUI 3rd and provides for sentencing enhancement only. Therefore, if subsequent felony is punishable by a term less than life, the court may place the offender on probation or sentence the person to imprisonment for the maximum term that is not more than 1½ times the longest term prescribed for a first conviction of that offense or for a lesser term. M.C.L.A. §769.10.
Imprisonment (Term):	N/A
Mandatory Minimum Term/Fine:	N/A
<u>Other State Laws Related to Drug Use:</u>	
Drug Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes. M.C.L.A. §257.625a(6)(f).
Drug Chemical Test Given to Deceased Driver Killed in Crash:	Yes. M.C.L.A. §257.625a(6)(f).
Drug Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	No
Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:	No
Drug Chemical Tests on Persons Involved in Traffic Crashes:	Yes. M.C.L.A. §257.625a(1)(a).
<u>Marijuana – Possession and Use Laws:</u>	
	Legal for Medical Use. M.C.L.A. §333.26424. Criminal Penalties (Any Amount): <u>Possession (Misdemeanor)</u> - Not more than 1 year and/or not more than \$2,000 . M.C.L.A. §333.7403(2)(d). <u>Use (Misdemeanor)</u> - Not more than 90 days and/or not more than \$100 . M.C.L.A. §333.7404(2)(d).
<u>Intoxicant Exclusion Law (UPPL):</u>	Yes. No statutory provisions, but <i>see Bruce v. Cuna Mut. Ins. Soc.</i> , 555 N.W.2d 718 (Mich.App., 1996)

STATE

MINNESOTA

General Reference:

Minnesota Statutes Annotated (M.S.A.)

Type of DUI-D Law:**Under the Influence/Zero Tolerance**Basis for a DUI-D Charge:

M.S.A. §169A.20, subd. 1(2), (3), (4), (7).

Standard DUI-D Offense:

Drive, operate, or be in physical control of any motor vehicle³⁸² when:I. Under the influence³⁸³ of a controlled substance³⁸⁴;II. Knowingly under the influence of a hazardous substance³⁸⁵ that affects the nervous system, brain, or muscles of the person so as to substantially impair the person's ability to drive or operate the motor vehicle;

III. Under the influence of a combination of any of the above substances, or any such substance combined with alcohol;

IV. The person's body contains any amount of a controlled substance listed in Schedule I or Schedule II³⁸⁶, or its metabolite, other than marijuana or tetrahydrocannabinol.

M.S.A. §169A.20, subd. 1(2), (3), (4), (7).

Illegal Per Se Law:

Any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinol. M.S.A. §169A.20(7).

Presumption Based on Drugs – State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

Yes. M.S.A. §169A.41.

³⁸² A “motor vehicle” includes every self-propelled device by which any person or property is or may be transported or drawn upon a highway, and every such device that is propelled by electric power obtained from overhead trolley wires, including motorboats in operation and off-road recreational vehicles. M.S.A. §§169.011, subd. 92; 169A.03, subd. 15, subd. 25. The term does not include a vehicle moved solely by human power, or devices used exclusively upon stationary rails or tracks. *Id.*

³⁸³ A person is “under the influence” if the person does not possess that clearness of intellect and control of himself that he otherwise would have. *State v. Ards*, 816 N.W.2d 679 (Mich. App. 2012).

³⁸⁴ A “controlled substance” refers to a drug, substance, or immediate precursor in Schedules I through V of M.S.A. §152.02. M.S.A. §§152.01, subd. 4; 169A.03, subd. 6. The term does not include distilled spirits, wine, malt beverages, intoxicating liquors or tobacco. *Id.*

³⁸⁵ A “hazardous substance” means a chemical or substance, or mixture of chemicals and substances which: (1) is regulated by the Federal Occupational Safety and Health Administration under 29 C.F.R. §1910(z); or (2) is either toxic or highly toxic, an irritant, corrosive, strong oxidizer, strong sensitizer, combustible, flammable, dangerously reactive, pyrophoric, pressure-generating, compressed gas, carcinogen, teratogen, mutagen, reproductive toxic agent, or that otherwise, according to generally accepted documented medical or scientific evidence, may cause substantial acute or chronic personal injury or illness during or as a direct result of any customary or reasonably foreseeable accidental or intentional exposure to the chemical or substance; or (3) is determined by the commissioner as a part of the standard for the chemical or substance or mixture of chemicals and substances to present a significant risk to worker health and safety or imminent danger of death or serious physical harm to an employee as a result of foreseeable use, handling, accidental spill, exposure, or contamination. M.S.A. §182.651, subd. 14. A hazardous substance does not include a substance being developed or handled by a technically qualified individual in a research, medical research, medical diagnostic, or medical educational laboratory or in a health care facility or a clinic associated with the laboratory or health care facility, or in a pharmacy registered and licensed under M.S.A. §151, *et seq.* *Id.* This exemption applies only to technically qualified individuals and not to persons working in the same work area who are not technically qualified. *Id.*

³⁸⁶ Schedules I and II can be found at M.S.A. §152.02, subd. 2 and 3.

Preliminary Breath Test Law – Applies to Drugs (Yes/No):	Yes
Implied Consent Law:	Yes. M.S.A. §169A.51.
Arrest Required (Yes/No):	No
Implied Consent Law Applies to Drugs (Yes/No):	Yes – controlled substances and their metabolites, or hazardous substances. M.S.A. §169A.51, subd. 1.
Refusal to Submit to Chemical Test Admitted into Evidence:	No. ³⁸⁷
Other Information:	

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

Blood:	No ³⁸⁸
Urine:	No ³⁸⁹
Other:	Warrantless Blood and Urine Testing ³⁹⁰

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:	N/A
Entity Establishing Testing Protocols:	Yes – Limited to Alcohol Analysis. The Director of the Forensic Science Laboratory, Bureau of Criminal Apprehension, Minnesota Department of Public Safety. Minn. Rules §7502.0700.

There do not appear to be any parallel statutes or regulations authorizing a particular entity to approve methods for

³⁸⁷ Previously, a person’s refusal to submit to a chemical test (including a preliminary breath test) was penalized by admitting such a fact in to evidence. M.S.A. §§169A.41; 169A.45, subd 3. However, in *State v. Thompson*, 873 N.W. 2d 873 (Minn. App. 2015), the Minnesota Court of Appeals deemed warrantless blood and urine testing, as well as penalizing a person’s refusal to submit to a chemical breath test, unconstitutional. At the time of publication, this decision was currently under review.

³⁸⁸ Minnesota’s Implied Consent law authorizes a blood test. M.S.A. §169A.51, subd. 1. However in *State v. Thompson*, 873 N.W. 2d 873 (Minn. App. 2015), the Minnesota Court of Appeals deemed warrantless blood and urine testing, as well as penalizing a person’s refusal to submit to a chemical breath test unconstitutional. At the time of publication, this decision was currently under review.

³⁸⁹ Minnesota’s Implied Consent law authorizes a urine test. M.S.A. §169A.51, subd. 1. However in *State v. Thompson*, 873 N.W. 2d 873 (Minn. App. 2015), the Minnesota Court of Appeals deemed warrantless blood and urine testing, as well as penalizing a person’s refusal to submit to a chemical breath test unconstitutional. At the time of publication, this decision was currently under review.

³⁹⁰ In Minnesota, technically a driver is required to submit to a chemical test if there is probable cause to believe that the person violated criminal vehicular homicide or injury laws. M.S.A. §§169A.51, sub. 2(3); 169A.52, subd 1. Additionally, a person may be administered a blood test without consent if there is “probable cause” that the person committed an offense where blood test results could be used as evidence of a crime. See *State v. Lee*, 585 N.W.2d 378 (Minn. 1998). However, such statutory exception to the search warrant requirement should now be relied upon with caution in light of the United States Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a per se exigent circumstance). See also *State v. Thompson*, 873 N.W. 2d 873 (Minn. App. 2015).

Blood Drawn Pursuant to Search Warrant –
State Has Limited Who May Perform:

analyzing blood or other bodily substances to detect and/or quantify the presence of other intoxicants.

Yes. A person trained as a physician, registered nurse, medical technologist, medical technician, physician’s trained mobile intensive care paramedic, or laboratory assistant. Minn. Rules §7502.0300.

Other:

Persons Qualified to Perform Urine Tests

Any person may administer a urine test. Minn. Rules §7502.0500.

Qualifications of Persons Interpreting Blood/Urine Tests

Educational Qualifications – A bachelor’s or higher degree in chemistry, biochemistry, biology, biological sciences, pharmacology, criminalistics, forensic science, toxicology, or medical technology.

Occupational Qualifications – Employment or self-employment as a criminalist, crime laboratory analyst, forensic analyst, toxicologist, pathologist, chemist, biochemist, medical technologist, medical laboratory technician, or medical laboratory assistant. Minn. Rules §7502.0600.

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No):

No

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

No

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

Yes. M.S.A. §§169A.70; 609.115.

Affirmative Defenses to DUI-D Charge:

Legal Entitlement/Valid Prescription:

Per Se – **Yes.** M.S.A. §169A.46, subd. 2.

Under the Influence – **No.**

Therapeutic Concentration:

Per Se – **No.**

Under the Influence – **Yes.**³⁹¹

Involuntary Intoxication:

Per Se/Under the Influence – **Yes (Narrowly Defined).**³⁹²

Under the Influence of a Hazardous Substance – **Yes.**

Other:

Sanctions for Refusal to Submit to a

Chemical Test:

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

None

³⁹¹ It appears based upon the language of the statutes that if a “therapeutic” concentration would not render a person “under the influence,” M.S.A. §169A.20(2), (3), (4), then arguing that the level of the substance detected was merely therapeutic would be a valid defense.

³⁹² A defendant must establish that he ingested the substance without knowing, or having reason to know, that it would likely have an intoxicating effect, and, by a preponderance of the evidence, he committed the offense while laboring under such a defect of reason from the involuntary intoxication as not to know the nature of his act or that it was wrong (temporary insanity). *See City of Minneapolis v. Altimus*, 238 N.W.2d 851 (Minn. 1976).

Preliminary Breath Test – Other: N/A

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**³⁹³

Implied Consent Chemical Test - Other: **Conditional Release:**
Unless maximum bail is imposed, a person charged with certain DUI offenses may be released from detention only if such person agrees to abstain from alcohol and submit to electronic monitoring, involving at least daily measurements of the person’s alcohol concentration, pending resolution of the charged offense. M.S.A. §169A.44.

Criminal Sanctions Following a DUI-D

Conviction:

Imprisonment/Fine:

(1) **Fourth Degree DUI-D** (no aggravating factors³⁹⁴) (misdemeanor) – Not more than **90 days** and/or not more than **\$1,000**; M.S.A. §169A.27.

(2) **Third Degree DUI-D** (1 aggravating factor) (gross misdemeanor) – Not more than **1 year** and/or not more than **\$3,000**; M.S.A. §169A.26.

(3) **Second Degree DUI-D** (2 or more aggravating factors) (gross misdemeanor) – Not more than **1 year** and/or not more than **\$3,000**; M.S.A. §169A.25.

(4) **First Degree DUI-D** (felony) – within 10 years of the first 3 or more prior DUI incidents; or previously convicted of felony DUI; or previously convicted of DUI homicide – Not more than **7 years** and/or not more than **\$14,000**. M.S.A. §169A.24.

Criminal Vehicular Injury:³⁹⁵

³⁹³ Under the Code, a person’s refusal to submit to a chemical test is penalized as follows:

- First refusal – Revocation not less than 90 days;
- Refusal occurring within 10 years of a prior impaired driving – Revocation not less than 1 year and until the court has certified that treatment or rehabilitation has been successfully completed;
- Second refusal (within 10 years of first) – Revocation not less than 2 years and denial of license until rehabilitation has been established;
- Third refusal (within 10 years of first) – Revocation not less than 3 years and denial of license until rehabilitation has been established;
- Fourth refusal (within 10 years of first) – Revocation for not less than 4 years;
- Fifth or subsequent refusal – Revocation for not less than 6 years. M.S.A. §§169A.52; 169A.54 subds. 1, 6.

In *State v. Thompson*, 873 N.W. 2d 873 (Minn. App. 2015), the Minnesota Court of Appeals deemed the legislative penalization of a person’s refusal to submit to a chemical breath test unconstitutional. At the time of publication, this decision was currently under review. Additionally, the listed criminal penalties for refusal to submit to an implied consent chemical test no longer apply to cases where a person has refused to submit to a blood test. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

³⁹⁴“Aggravating factor” means: (1) qualified prior DUI incidents within 10 years of the current offense; (2) having BAC of $\geq .08$ at the time or within 2 hours of the offense; or (3) having a child < 16 in the motor vehicle at the time of the offense and such child is more than 36 months younger than the offender. M.S.A. §169A.03.

³⁹⁵ The elements of this crime include: (1) operating a motor vehicle in a grossly negligent manner; (2) in a negligent manner while under the influence of alcohol, a controlled substance or any combination; (3) while having a BAC of $\geq .08$; (4) while having a BAC of $\geq .08$ within 2 hours of driving; (5) in a negligent manner while knowingly under the influence of a hazardous substance; or (6) in a negligent manner while any amount of a controlled schedule I or II substance (other than marijuana or tetrahydrocannabinols) is present in the body. M.S.A. §609.2113.

- (1) **Bodily Harm** – Not more than **1 year** and/or not more than **\$3,000**;
 (2) **Substantial Bodily Harm** – Not more than **3 years** and/or not more than **\$10,000**;
 (3) **Great Bodily Harm** – Not more than **5 years** and/or not more than **\$10,000**. M.S.A. § 609.2113.

Mandatory Minimum Term/Fine:

Note.³⁹⁶

First offense – **None**;

Second offense (within 10 years) – **30 days with 48 consecutive hours**;³⁹⁷

Third offense (within 10 years) –

(1) **90 days with 30 consecutive days** (not more than 60 days may be served on home detention or intensive probation³⁹⁸);

or

(2) **6 days** of incarceration followed by intensive probation.

Fourth offense (within 10 years) –

(1) Not less than **3 years** (if first degree DUI-D); or

(2) **180 days with 30 consecutive days** (not more than 150 days may be served on home detention or intensive probation); or

(3) **6 days** of incarceration followed by intensive probation.

Fifth or subsequent offense (within 10 years) –

(1) Not less than **3 years** (if first degree DUI-D); or

(2) A minimum of **1 year with 60 consecutive days** (the remainder of the minimum sentence may be served via on intensive probation with electronic monitoring or home detention); or

(3) **6 days** of incarceration followed by intensive probation.

M.S.A. §§169A.74; 169A.275; 169A.276.

Community Service:

First offense– 8 hours of community service for each day less than 30 of incarceration as an alternative to mandatory jail.

M.S.A. §169A.275, subd. 1(a)(2). The court may permit an offender to perform community service in lieu of a fine.

M.S.A. §609.101, subd. 5.

³⁹⁶ For felony offenses, mandatory fines are based on 30% of the maximum statutory fine. For a gross misdemeanor or misdemeanor, mandatory fines are based on 30% of the maximum statutory fine *or* on 30% of the maximum fine for such offenses in the uniform fine schedule (which is lower than the statutory fine). Additionally, if the court finds that imposition of a fine would create an undue hardship for the convicted person or that person's immediate family, the court may reduce the fine amount to not less than \$50. M.S.A. §609.101.

³⁹⁷ Based on mitigating circumstances, the court may sentence a person without regard to the mandatory sanctions. However, any sanction that is imposed must include not less than 48 hours of consecutive incarceration or at least 80 hours of community service. M.S.A. §169A.275, subd. 1(d). Additionally, a judge is not required to sentence a person under the mandatory sentence provision if the judge requires the person as a condition of probation to drive only motor vehicles equipped with an ignition interlock device. M.S.A. §169A.275, subd. 7.

³⁹⁸ Intensive Probation (Supervision) Program: Counties may receive State grants to start "intensive probation" programs for repeat drunk driving law offenders. This program provides for: (1) chemical dependency assessment; (2) a period of incarceration (or detention); (3) home detention; (4) abstinence from the use of alcohol/drugs; (5) decreased levels of program contact over the period of probation; (6) a provision that offenders continue or seek employment; and (7) the costs of the program to be paid in whole or in part by the defendant. M.S.A. §169A.74.

Restitution:	Yes. Victim’s fund ³⁹⁹ and direct payment by the defendant to a victim. M.S.A. §§611A.04; 611A.54; 609.10; 609.125.
Child Endangerment:	Driving with a child under age 16, with such child being more than 36 months younger than the driver is an “aggravating factor.” This may increase the crime to a gross misdemeanor. <i>See</i> Criminal Sanctions, above.
Other:	Surcharge: For a chemical assessment, there is a surcharge of \$25 (additional \$5 if there has been a prior conviction within 5 years). M.S.A. §169A.284, subd. 1. The court shall impose a \$75 surcharge on every person convicted of any felony, gross misdemeanor, misdemeanor or petty misdemeanor offense. M.S.A. §357.021, subd. 6.

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:	Yes. M.S.A. §169A.275, subd 5.
Substance Abuse Treatment:	Yes. M.S.A. §169A.275, subd 5. Except for mandatory criminal sanctions, the court may <u>stay</u> imposition of fine or jail sentence but not the licensing action if defendant submits to treatment as recommend by the assessment report under M.S.A. §169A.70 or as otherwise determined by the court. M.S.A. §169A.283.
Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	Vehicle Impoundment; Vehicle Forfeiture Vehicle Impoundment: A law enforcement officer may impound a vehicle following the arrest or taking into custody of the driver for a DUI-D violation. M.S.A. §169A.42, subd. 2. Vehicle Forfeiture (Administrative or Judicial): A vehicle is subject to forfeiture if it was used in the commission of a designated offense or was used in conduct resulting in a designated license revocation. <u>Designated offense</u> – DUI-D (first or second degree); DUI-D where operator’s license was cancelled or operator received a restricted license with conditions that he/she may not consume any amount of alcohol or a controlled substance. <u>Designated license revocation</u> – Revocation for third test failure or test refusal within 10 years of the first of two; license disqualification (CDL) resulting from third test failure or test refusal within 10 years of the first of two. M.S.A. §169A.63, subd. 1(d), (e), subd. 7.
Terms Upon Which Vehicle Will Be Released:	Vehicle Impoundment: The vehicle must be released only: (1) if the registered owner or lien holder provides proof of ownership, valid Minnesota driving privileges and proof of insurance; (2) if the vehicle is subject to a rental or lease agreement, to a renter/lessee with valid Minnesota driving privileges who provides a copy of the rental/lease agreement and proof of insurance; or (3) to an agent of a towing company authorized by the registered owner if the owner

³⁹⁹ Payments to all claimants as to the injury or death of one victim shall not exceed \$50,000. M.S.A. §611A.54.

provides proof of ownership and insurance. M.S.A. §169A.42, subd. 2.

Vehicle Forfeiture: A vehicle will be released only if the owner can show by clear and convincing evidence that he/she did not have knowledge that the vehicle was used contrary to law or that the owner took reasonable steps to prevent its use by the offender. However, if the offender is a family or household member and has 3 or more prior DUI convictions, then the owner is presumed to know of any vehicle use. M.S.A. §169A.63, subd. 7(d).

Other Miscellaneous Sanctions:

N/A

Homicide by Vehicle:

State Has Such a Law:

Yes. Death as a result of operating a motor vehicle: (1) in a grossly negligent manner; (2) in a negligent manner while under the influence of alcohol/controlled substance or combination of the two; (3) with a BAC \geq .08; (4) with a BAC \geq .08 within 2 hours of the time of driving; (5) in a negligent manner while knowingly under the influence of a hazardous substance; or (6) with any amount of controlled substance in the body. M.S.A. §609.2112.

Imprisonment/Fine:

Not more than **10 years** and/or not more than **\$20,000**. M.S.A. §609.2112.

Mandatory Minimum Term/Fine:

None

Other:

N/A

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is “disqualified” from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person is under the influence of a controlled substance or refuses to submit to a chemical test, when the officer has probable cause to believe the person was driving a CMV with the presence of alcohol. For a subsequent violation or a combination of two or more violations of any of the above listed items, the “disqualification” is for not less than 10 years (10 years mand). M.S.A. § 169A.51, subd. 1(c); 169A.52; 169A.54, subd. 1, 7; 171.165.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

No specific statutory provision on this subject. Sanctions given are for the general offense of operating a motor vehicle while driving privileges are suspended, revoked, cancelled, or disqualified. M.S.A. §171.24.

Misdemeanor – Not more than **90 days** and/or not more than **\$1,000**. M.S.A. §§171.24; 609.03(3).

Gross misdemeanor (if license was originally cancelled or denied because the commissioner found good cause to

believe operation of a motor vehicle would be inimical to public safety or welfare) – Not more than **1 year** and/or not more than **\$3,000**. M.S.A. §§171.24, subd. 5; 609.03.

Mandatory Minimum Fine/Imprisonment Term:
Other:

None

N/A

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Other State Laws Related to Drug Use:

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

Yes. M.S.A. §169.09, subd. 11.

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes. M.S.A. §169.09, subd. 11.

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

No

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

Yes: ≥ 16 years old. M.S.A. §169.09, subd. 11.

Drug Chemical Tests on Persons Involved in Traffic Crashes:

Yes. M.S.A. §169A.51, subd. 1.

Marijuana – Possession and Use Laws:

Legal for Medical Use. M.S.A. §152.21, *et seq.*

Possession of ≤ 42.5 grams Decriminalized (Petty Misdemeanor) – Not more than **\$200**, participation in a drug education program.

Possession > 42.5 grams – Not more than **5 years** and/or a fine of not more than **\$10,000**. M.S.A. §§152.01(16); 152.02; 152.025; 152.027(4)(a).

Intoxicant Exclusion Law (UPPL):

Yes –M.S.A. 62A.04, subd. 3(11)(non-prescription narcotics) and *Thompson v. Bankers' Mut. Cas. Ins. Co.*, 151 N.W.180 (1915) (alcohol).⁴⁰⁰

⁴⁰⁰ By interpretation, this case upholds an insurer's alcohol exclusion provision. The issue in this case was whether the insurer met its burden to prove intoxication.

STATE

General Reference:

MISSISSIPPI

Mississippi Code Annotated (Miss. Code Ann.)

Type of DUI-D Law:Basis for a DUI-D Charge:

Standard DUI-D Offense:

Illegal Per Se Law:

Presumption Based on Drugs – State Has (Yes/No):

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Implied Consent Law:

Arrest Required (Yes/No):

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

Refusal to Submit to Chemical Test Admitted into Evidence:

Non-Breath Chemical Tests for Drug Concentration Authorized Under the**Under the Influence**

Miss. Code Ann. §63-11-30(1).

Operate a vehicle⁴⁰¹ while under the influence⁴⁰² of:I. Any substance other than intoxicating liquor that has impaired the person's ability to operate a motor vehicle⁴⁰³; orII. Any drug⁴⁰⁴ or controlled substance⁴⁰⁵, the possession of which is unlawful. Miss. Code Ann. §63-11-30(1).

N/A

No

No

N/A

Yes. Miss. Code Ann. §63-11-5.

No. However, a request to submit to a test must be based on reasonable grounds and probable cause of DUI.

Miss. Code Ann. §63-11-5(1).

No. Miss. Code Ann. §63-11-5(1). However, a person **shall** give his consent to chemical test(s) of his breath, blood, or urine for the purpose of determining the presence in his body of substances besides alcohol which would impair the person's ability to drive. *Id.*

Yes – Criminal cases. Miss. Code Ann. §63-11-41.

⁴⁰¹ A “vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks. Miss. Code Ann. §63-3-103(a).

⁴⁰² A person is “under the influence” circumstances indicate that his ability to operate a vehicle was impaired by the consumption of a substance other than liquor, or a controlled substance. *See, e.g., Oatis v. State*, 146 So.3d 1015 (Miss. App. 2014).

⁴⁰³ A “motor vehicle” means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. Miss. Code Ann. §63-3-103(b). The term does not include electric personal assistive mobility devices. *Id.*

⁴⁰⁴ The term “drug” includes (1) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) substances other than food intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of these, but not any device or their components, parts, or accessories. HRS §329-1. Miss. Code Ann. §41-29-105(n).

⁴⁰⁵ The term “controlled substance” means a drug, substance, or immediate precursor in Schedules I through V of Miss. Code Ann. §§41-29-113 through 41-29-121. Miss. Code Ann. §§41-29-105(f); 63-11-30(1)(c).

Implied Consent Law:

Blood:	No. Miss. Code Ann. §63-11-5. However, a person shall give his consent to chemical test(s) of his blood for the purpose of determining the presence in his body of substances besides alcohol which would impair the person's ability to drive. <u>Id.</u>
Urine:	No. Miss. Code Ann. §63-11-5. However, a person shall give his consent to chemical test(s) of his urine for the purpose of determining the presence in his body of substances besides alcohol which would impair the person's ability to drive. <u>Id.</u>
Other:	No

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform: **Yes** – For DUI-D cases, appears to only be limited where a fatal accident has occurred, **to persons trained to withdraw blood in the course of their employment duties including but not limited to laboratory personnel, phlebotomist, emergency medical personnel, nurses and doctors.** Miss. Code Ann. §§63-11-3; 63-11-8. *See also Cutchens v. State*, 310 So.2d 273 (Miss. 1975).

Entity Establishing Testing Protocols: **Yes – Limited to Implied Consent Testing. The Commissioner of Public Safety and the Mississippi Forensics Laboratory** created pursuant to Miss. Code Ann. §45-1-17 are authorized to adopt procedures, rules, and regulations applicable to the Implied Consent Law. Miss. Code Ann. §§63-11-5(5); 63-11-19.
It appears that the procedures formally adopted in the Mississippi Administrative Code only pertain to blood alcohol testing. *See MS 31-5-2:1750.000, et seq.*

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform: **No**

Other:

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No): **No**⁴⁰⁶

Anti-Plea-Bargaining Statute (Yes/No): **Yes.** A DUI charge cannot be reduced. Miss. Code Ann. §63-11-39. For subsequent offenses, mandatory sanctions cannot be suspended or reduced through a plea agreement.⁴⁰⁷ Miss. Code Ann. §63-11-30(2)(b), (c).

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

Affirmative Defenses to DUI-D Charge:

⁴⁰⁶ A DUI-D offense cannot be dismissed upon the completion of court imposed conditions. Miss. Code Ann. §99-15-26(1); see e.g., MS AG Op. Atty. Gen. No. 93-0889 (Stephens, January 12, 1994) (1994 WL 32564).

⁴⁰⁷ A case may be deferred at any stage of the proceedings before conviction in the discretion of the court; the court may withhold adjudication of guilt, defer sentencing, and enter an order imposing requirements on the offender pursuant to the conditions of Miss. Code Ann. §63-11-30(14)(c).

Legal Entitlement/Valid Prescription: Under the Influence of a Drug/Controlled Substance (Possession of Which is Unlawful) – Yes.
Under the Influence of another Substance – No.
 See Op. Atty. Gen. No. 2005-0188 (Mitchell, Feb. 3, 2006) (2006 WL 1900653).

Therapeutic Concentration: **Yes**⁴⁰⁸
 Involuntary Intoxication: **Note**⁴⁰⁹
 Other:

Sanctions for Refusal to Submit to a Chemical Test:

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

Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **Note.**⁴¹⁰
First refusal – Not less than **\$250** or more than **\$1,000** and/or not more than **48 hours** in jail;
Second refusal (within 5 years) – Not less than **\$600** or more than **\$1,500** and not less than **5 days** (mand) or more than **1 year**;
Third or subsequent refusal (within 5 years) (Felony) – Not less than **\$2,000** or more than **\$5,000** and not less than **1 year** or more than **5 years**. Miss. Code Ann. §§63-11-21; 63-11-30(2).

Implied Consent Chemical Test - Other: A trial *de novo* may be held following administrative hearings on these suspensions. Miss. Code Ann. §63-11-25.

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine: First offense – Not less than **\$250** or more than **\$1,000** and/or not more than **48 hours**⁴¹¹ in jail;
Second offense (within 5 years) – Not less than **\$600** or more than **\$1,500** and not less than **5 days** (mand) or more than **1 year**;
Third offense (within 5 years) – Not less than **\$2,000** or more than **\$5,000** and not less than **1 year** or more than **5 years**.
Fourth offense (without regard to time period) – Not less than **\$3,000** or more than **\$10,000**, and not less than **2 years** or more than **10 years**.

⁴⁰⁸ It appears based upon the language of the statute that if a “therapeutic” concentration would not render a person “under the influence,” Miss. Code Ann. §63-11-30(1), then arguing that the level of the substance detected was merely therapeutic would be a valid defense.

⁴⁰⁹ It does not appear that any Mississippi statutes or appellate cases have addressed this defense in a DUI-related context.

⁴¹⁰ The listed criminal penalties for refusal to submit to an implied consent chemical test only apply to cases where a person has refused to submit to a breath test—not a blood test. Miss. Code Ann. §63-11-21. Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

⁴¹¹ Attendance at a victim impact panel may be ordered in lieu of 48 hours in jail. Miss. Code Ann. §63-11-30(2).

	DUI w/ Death or Mutilation/Injury:
	<u>First offense</u> – Not less than 5 years or more than 25 years and may be fined not more than \$10,000 . ⁴¹² Miss. Code Ann. §63-11-30.
Mandatory Minimum Term/Fine:	<u>First offense</u> – \$250 ; ⁴¹³ <u>Second offense</u> – 5 days/\$600 ; <u>Third or subsequent offense</u> – 1 year/\$2,000 . Miss. Code Ann. §63-11-30(2)(b), (c).
	DUI with Death or Mutilation/Injury – 5 years . Miss. Code Ann. §63-11-30(5).
Community Service:	<u>Second offense</u> – Not less than 10 days or more than 6 months . Miss. Code Ann. §63-11-30(2)(b).
Restitution:	A defendant may be ordered by the court to make direct restitution to a victim, but not more than \$5,000. Miss. Code Ann. §99-37-3. A victim may also obtain limited compensation from the State Crimes Victims' Compensation Fund. Miss. Code Ann. §99-41-1, <i>et seq.</i>
Child Endangerment:	A person who transports a child under age 16 shall be punished as follows: <u>First conviction (no serious injury or death) (misdemeanor)</u> - Not more than \$1,000 and/or not more than 12 months ; <u>Second conviction (no serious injury or death) (misdemeanor)</u> - Not less than \$1,000 or more than \$5,000 and/or 1 year ; <u>Third or subsequent conviction (no serious injury or death) (felony)</u> - Not less than \$10,000 and/or not less than 1 year or more than 5 years ; <u>Causes serious injury or death (felony)</u> - Not less than \$10,000 and not less than 5 years or more than 25 years . Miss. Code Ann. §63-11-30(12).
Other:	Implied Consent Violation Assessment: \$243.50 in addition to any other fine or penalty. Miss. Code Ann. §99-19-73(2).
<u>Administrative Sanctions – Post-Conviction:</u>	
Substance Abuse Education:	First offense (required before license can be reinstated). Miss. Code Ann. §63-11-32.
Substance Abuse Treatment:	Second and third offenses. Miss. Code Ann. §63-11-30(2)(e).
Vehicle Impoundment/Confiscation:	Impoundment/Immobilization; Forfeiture.
Authorized by Specific Statutory Authority:	Impoundment/Immobilization: For <u>third or subsequent offenses</u> , all vehicles owned by the offender must be impounded/immobilized for the length of the license suspension. Miss. Code Ann. §§63-11-30(2)(c), (d); 63-11-49(1). Forfeiture: For a <u>third offense</u> (within 5 years), the vehicle

⁴¹² For a second or subsequent conviction, the sentence may run consecutive to or concurrent with the first. Miss. Code Ann. §63-11-30(5).

⁴¹³ An offender may attend a victim impact panel in lieu of 48 hours of incarceration. Miss. Code Ann. §63-11-30(2)(a)

	used in the offense may be forfeited. For <u>third or subsequent offenses</u> , the vehicle shall be seized. However, the vehicle owner's spouse may obtain possession of the vehicle by demonstrating the vehicle is the only means of transportation. Miss. Code Ann. §§63-11-30(2)(c), (d); 63-11-49.
Terms Upon Which Vehicle Will Be Released:	Upon a showing by the spouse that the seized vehicle is the only source of transportation, the chief law enforcement officer shall declare the vehicle is forfeited to such spouse. This applies only to one forfeiture per vehicle. Miss. Code Ann. §63-11-49.
Other Miscellaneous Sanctions:	Bus Drivers and Operators of Vehicles for Hire: The privilege to operate a bus/vehicle for hire may be suspended/revoked if a person drives such a vehicle while intoxicated. Miss. Code Ann. §§21-27-137; 21-27-155.
<u>Homicide by Vehicle:</u> State Has Such a Law:	Yes – Felony. Miss. Code Ann. §63-11-30(5).
Imprisonment/Fine:	Not less than 5 years or more than 25 years and may be fined not more than \$10,000 . Miss. Code Ann. §§63-11-30(5); 99-19-32.
Mandatory Minimum Term/Fine:	None
Other:	
<u>DUI-D Offenses and Commercial Motor Vehicles (CMV):</u>	A person's privilege to operate a CMV is "suspended" for 1 mandatory year (3 years if transporting hazardous materials) if the person's license or permit to drive has been administratively suspended or, while driving a CMV, that person: is under the influence of a controlled substance or drug. For a subsequent violation, the "suspension" is for life (or a lesser period as established by Federal law). Miss. Code Ann. §§63-1-216; 63-11-30(1)(d).
<u>Driving While License Suspended for DUI-D Offense:</u> Criminal - Fine/Imprisonment:	Misdemeanor. Miss. Code Ann. §63-11-40. Not less than 48 hours or more than 6 months and not less than \$200 or more than \$500 . Miss. Code Ann. §63-11-40.
Mandatory Minimum Fine/Imprisonment Term:	48 hours
Other:	N/A
<u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No):	No
<u>Other State Laws Related to Drug Use:</u> Drug Chemical Tests on Persons Killed in	No

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

Drug Chemical Test Given to Deceased
Driver Killed in Crash: **No**

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

Drug Chemical Test Given to Deceased
Pedestrian Killed in Crash: **No**

Drug Chemical Tests on Persons Involved
in Traffic Crashes: **No**

Marijuana – Possession and Use Laws:

Illegal.

Possession ≤ 30 grams - A fine of not less than **\$100** or more than **\$250**.

Second offense (w/in 2 years) – A fine of **\$250** and not more than **60 days** in jail, mandatory participation in an approved drug education program.

Third or subsequent w/in 2 years (Misdemeanor) – Not less than **\$250** or more than **\$1,000**, and not more than **6 months** in jail. Miss. Code Ann. §41-29-139(c)(2)(A).

Intoxicant Exclusion Law (UPPL):

Yes. Miss. Code Ann. §83-9-5(2)(h).

STATE	MISSOURI ⁴¹⁴
General Reference:	Missouri Statutes Annotated (V.A.M.S.)
<u>Type of DUI-D Law:</u>	Driving While Intoxicated
<u>Basis for DUI-D Charge:</u>	V.A.M.S. §577.010.
Standard DUI-D Offense:	Operate a motor vehicle ⁴¹⁵ while in an intoxicated or drugged condition . ⁴¹⁶
Illegal Per Se Law:	No
Presumption Based on Drugs - State Has (Yes/No):	No
Other:	
 <u>Chemical Testing for Drug Concentration:</u>	
Preliminary Breath Test Law – State Has Such a Law (Yes/No):	Yes. V.A.M.S. §577.021.
Preliminary Breath Test Law – Applies to Drugs (Yes/No):	Yes. V.A.M.S. §577.021.
Implied Consent Law:	Yes. V.A.M.S. §577.020.1.
Arrest Required (Yes/No):	Yes. V.A.M.S. §577.020.1(1). ⁴¹⁷
Implied Consent Law Applies to Drugs (Yes/No):	Yes. V.A.M.S. §577.020.1.
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes. V.A.M.S. §577.041.1 (Criminal cases).
Other Information:	
 <u>Non-Breath Chemical Tests for Drug Concentration Authorized Under the Implied Consent Law:</u>	
Blood:	Yes. V.A.M.S. §577.020.1.
Urine:	Yes. V.A.M.S. §577.020.1.
Other:	Saliva. V.A.M.S. §577.020.1.
 <u>Individuals Authorized to Perform Chemical Testing (Blood):</u>	
Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:	Yes. Testing shall be performed only by licensed medical personnel or by a person possessing a valid permit issued

⁴¹⁴ Effective January 1, 2017 a majority of the applicable Missouri code sections will be amended or merged with existing code sections and/or re-numbered.

⁴¹⁵ “Motor vehicle” means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires. The term includes motorboats in operation and off-road recreational vehicles, but does not include a vehicle moved solely by human power. V.A.M.S. §169A.03.

⁴¹⁶ For purposes of a prosecution for driving while intoxicated (DWI), the term “drugged condition” has been equated with “intoxicated condition” and, as a result, the two terms may be used interchangeably. *State v. Honsinger*, 386 S.W.3d 827 (App. S.D. 2012). In this circumstance, a person is in an “intoxicated condition” when a person is under the influence of alcohol, a controlled substance, or drug, or any combination thereof. V.A.M.S. §577.001(3).

⁴¹⁷ Exceptions: (1) Reasonable grounds for belief is sufficient for persons under age 21; (2) A person was involved in a vehicle collision which resulted in a fatality, a readily apparent serious physical injury, or serious physical injury. V.A.M.S. §577.020.1.

Entity Establishing Testing Protocols:	by the State Department of Health and Senior Services for this purpose. V.A.M.S. §577.020(3).
Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:	Yes. Testing shall be performed according to methods approved by the State Department of Health and Senior Services by licensed medical personnel or by a person possessing a valid permit issued by the State Department of Health and Senior Services for this purpose. The State Department of Health and Senior Services shall approve satisfactory techniques, devices, equipment, or methods to be considered valid and shall establish standards to ascertain the qualifications and competence of individuals to conduct analyses and to issue permits which shall be subject to termination or revocation by the State Department of Health and Senior Services. V.A.M.S. §577.020(3), (4).
Other:	No Independent Testing: The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person at the choosing and expense of the person to be tested, administer a test in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test taken at the direction of a law enforcement officer. V.A.M.S. §577.020(5).
<u>Adjudication of DUI-D Charges:</u>	Non-Implied Consent Blood Draws: Any legislative exceptions to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court’s decision in <i>Missouri v. McNeely</i> , 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a <i>per se</i> exigent circumstance).
Mandatory Adjudication Law (Yes/No):	No. Deferred imposition of sentence is available for certain driving while intoxicated offenses and require a minimum of two years of probation. V.A.M.S. §577.010(2).
Anti-Plea-Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	No
<u>Affirmative Defenses to DUI-D Charge:</u>	No. <i>State v. Walter</i> , 918 S.W.2d 927 (App. E.D. 1996).
Legal Entitlement/Valid Prescription:	No
Therapeutic Concentration:	Yes. V.A.M.S. §562.076
Involuntary Intoxication:	1. A person who is in an intoxicated or drugged condition, whether from alcohol, drugs or other substance, is criminally responsible for conduct unless such condition is involuntarily

produced and deprived him of the capacity to know or appreciate the nature, quality or wrongfulness of his conduct.
2. The defendant shall have the burden of injecting the issue of intoxicated or drugged condition.

Other:

Justification. *State v. Karr*, 968 S.W.2d 712 (App. W.D. 1998).⁴¹⁸

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail):	N/A
Preliminary Breath Test – Other:	N/A
Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	None
Implied Consent Chemical Test - Other:	N/A

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:

First offense (Class B Misdemeanor) – Not more than **6 months** and/or not more than **\$500**;

Prior offender⁴¹⁹ (Class A Misdemeanor) – Not more than **1 year** and/or not more than **\$1,000**;

Persistent offender (Class D Felony) – Not more than **4 years** or not more than **1 year** in the county jail and/or not more than **\$5,000**;

Aggravated offender (Class C Felony) – Not more than **7 years** or not more than **1 year** in the county jail and/or not more than **\$5,000**;

Chronic offender (Class B Felony) – Not less than **5 years** or more than **15 years**. V.A.M.S. §§557.011; 558.011; 560.011; 560.016; 577.010; 577.012; 577.023.

Assault in 2nd degree (Class C Felony) – Not more than **7 years** or not more than **1 year** in the county jail and/or not more than **\$5,000**. V.A.M.S. §565.060.1(4).

Mandatory Minimum Term/Fine:

First offense – **None**;

Prior offender – **10 days**;

Persistent offender – **30 days**;

Aggravated offender – **60 days**;

⁴¹⁸ In order for defendant to be entitled to instruction on affirmative defense of justification by emergency or necessity, defendant has burden of producing substantial evidence that he performed criminal act to avoid significant harm, that there was no adequate alternative to this illegal conduct, and that harm caused was not disproportionate to harm avoided.

⁴¹⁹ A “prior offender” means a person who has had one previous alcohol related driving offense conviction within 5 years of the presently charged offense. A “persistent offender” means a person who has had two or more alcohol related driving offense convictions or a vehicular homicide/assault conviction. An “aggravated offender” means a person who has had three or more alcohol related driving offense convictions or one or more vehicular homicide/assault convictions where alcohol was involved. A “chronic offender” means a person who has had: (1) four or more alcohol related driving offense convictions; (2) two or more vehicular homicide/assault convictions where alcohol was involved; or (3) two or more alcohol related driving offense convictions and any vehicular homicide/assault conviction. V.A.M.S. §577.023.1.

	<u>Chronic offender – 2 years.</u> V.A.M.S. §§558.011; 560.011; 577.023.6;577.010
Community Service:	The court may order 30 days involving at least 240 hours for a “prior offender” or 60 days involving at least 480 hours for a “persistent offender.” If ordered, community service must be a condition of parole or probation. V.A.M.S. §577.023.6.
Restitution:	A victim’s compensation fund is available. Additionally, a court may order direct compensation by defendants to victims. V.A.M.S. §§559.100; 595.010, <i>et seq</i> ; 595.200.
Child Endangerment:	It is a class A misdemeanor to drive under the influence with a child under age 17. Punishment is not more than 1 year and/or not more than \$1,000 . V.A.M.S. §§568.050; 558.011; 560.016.
Other:	A first offender may be granted a suspended imposition of sentence so long as that person is placed on probation for a minimum of 2 years. V.A.M.S. §577.010.2, 3.
<u>Administrative Sanctions – Pre-Conviction:</u>	
Administrative Per Se Law – State Has One (Yes/No):	Yes. V.A.M.S. §§302.309.3(5); 302.505.
Administrative Per Se Law – Applies to DUI-D cases (Yes/No):	Yes
Other:	Yes. V.A.M.S. §577.049.1.
Substance Abuse Treatment:	Yes. V.A.M.S. §577.049.1.
Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	Impoundment/Forfeiture: V.A.M.S. §82.1000, Yes. Certain cities with populations over 100,000 may enact motor vehicle impoundment or forfeiture ordinances. I. A motor vehicle is subject to such action if the driver has had one or more intoxicated related traffic offense convictions (including illegal per se) and is operating the vehicle while on a suspended or revoked license either for an intoxicated related traffic offense or for involuntary manslaughter related to intoxicated driving. II. A motor vehicle is subject to such action if the driver has had two or more intoxicated related traffic offense convictions (including illegal per se) and has a BAC/BrAC \geq .08 (\geq .02 if $<$ 21) or refuses to submit to chemical test under the implied consent law. III. The above actions apply to the vehicle operated by the offender irrespective of its ownership. V.A.M.S. §82.1000.
Terms Upon Which Vehicle Will Be Released:	When a non-operator owner/co-owner (not previously been the operator or owner of a motor vehicle subject to forfeiture) pays all associated costs of towing, storage and impoundment, the vehicle may be released, upon execution of a written agreement stipulating and consenting to the seizure and forfeiture of such vehicle if it is subsequently operated by the same operator under circumstances which would allow forfeiture. V.A.M.S. §82.1000.5.
Other Miscellaneous Sanctions:	DUI Enforcement Cost: A court may require a person

convicted of a DUI offense to reimburse the State or local governments for the costs associated with the person's DUI arrest. V.A.M.S. §488.5334.

Homicide by Vehicle:

State Has Such a Law:

Yes

Death to any person – **Class C felony**. V.A.M.S. §565.024.1(2), .2;

Death to any person not a passenger, to two or more persons, or while BAC is at least 0.18 – **Class B felony**. V.A.M.S. §565.024.1(3).

Imprisonment/Fine:

Class B felony – Not less than **5 years** or more than **15 years**.

Class C felony – Not more than **7 years** and/or not more than **\$5,000**. V.A.M.S. §§558.011.1(2); 560.011.1(1).

Mandatory Minimum Term/Fine:

Class B felony – **5 years**.

Other:

N/A

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is “disqualified” from operating a CMV for not less than 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person is under the influence of alcohol or drugs; or refuses to submit to a chemical test for either alcohol or drug concentrations. For a subsequent violation or a combination of two or more violations of any of the above listed items, the “disqualification” is for life (10 years mand). V.A.M.S. §§302.750.2; 302.755.

It is a Class B misdemeanor to drive a CMV while under the influence of a controlled substance classified under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), including any substance listed in schedules I -V of 21 CFR, part 1308. V.A.M.S. §302.780.1(3).

The sanctions for this offense are imprisonment for not more than 6 months and/or a fine of not more than \$500. V.A.M.S. §§558.011; 560.016.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

First offense (misdemeanor) – Fine not more than \$300;

Second or third offense – Not more than **1 year** and/or fine not more than **\$1000**;

Fourth or subsequent offense (within 10 years) (Class D felony) – Not more than **4 years** or not more than **1 year** in the county jail and/or not more than **\$5,000**; V.A.M.S. §§302.321.2; 558.011; 560.011.

Mandatory Minimum Fine/Imprisonment Term:

48 consecutive hours (in lieu of imprisonment, the defendant may perform at least 10 days involving at least 40 hours of community service.) V.A.M.S. §302.321.

Other: Restricted hardship driving privileges may be granted.
V.A.M.S. §302.309.3.

Habitual Traffic Offender Law:

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

Other State Laws Related to Drug Use:

Drug Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No): **Yes. V.A.M.S. §58.445.**

Drug Chemical Test Given to Deceased Driver Killed in Crash: **Yes. V.A.M.S. §58.445.**

Drug Chemical Test Given to Deceased Vehicle Passengers Killed in Crash: **Yes. V.A.M.S. §58.445.**

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash: **Yes. V.A.M.S. §58.445.**

Drug Chemical Tests on Persons Involved in Traffic Crashes: **Yes, if the crash resulted in a fatality or serious physical injury. V.A.M.S. §577.021.2.**

Marijuana – Possession and Use Laws: **Illegal.**⁴²⁰

Criminal Penalties:

Possession < 35 grams (Class A misdemeanor) - Not more than **1 year** and/or not more than **\$100**. V.A.M.S. §§560.011; 560.016.1(1); 558.011.1(3), (5); 192.202; 195.017.

Intoxicant Exclusion Law (UPPL): **Yes. V.A.M.S. §376.777.2(11).**

⁴²⁰ **Marijuana is defined as** “all parts of the plant genus Cannabis in any species or form thereof, including, but not limited to Cannabis Sativa L., Cannabis Indica, Cannabis Americana, Cannabis Ruderalis, and Cannabis Gigantea, whether growing or not, the seeds thereof, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.” V.A.M.S. §195.010(24).

STATE

General Reference:

MONTANA

Montana Code Annotated (MCA)

Type of DUI-D Law:**Under the Influence**Basis for a DUI-D Charge:

MCA §61-8-401.

Standard DUI-D Offense:

Under the influence⁴²¹ of any drug⁴²², a dangerous drug⁴²³, or alcohol and any dangerous or other drug. MCA §61-8-401(1).

Illegal Per Se Law:

While the person's delta-9-tetrahydrocannabinol level **is ≥ 5 ng/ml or more** as shown by blood level analysis. MCA §61-8-411.

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has One (Yes/No):

Yes. MCA §61-8-409.⁴²⁴

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

No

Implied Consent Law:

Yes. MCA §61-8-402.

Arrest Required (Yes/No):

Yes. MCA §61-8-402(2)(a)(i).

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

Yes. MCA §61-8-402(1).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal Cases. MCA §61-8-404(2).

Other Information:

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

Blood:

Yes. MCA §61-8-402(1).

Urine:

No

Other:

N/AIndividuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. Only a physician, registered nurse, or other qualified person acting under the supervision and direction of a

⁴²¹ “Under the influence” means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished. MCA §61-8-401.

⁴²² “Drug” means a substance: (a) recognized as a drug in any official compendium or supplement; (b) intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals; (c) other than food, intended to affect the structure or function of the body of humans or animals; and (d) intended for use as a component of a substance specified in subsection (16)(a), (16)(b), or (16)(c). MCA §37-7-101(16).

⁴²³ A “dangerous drug” is defined as a drug, substance, or immediate precursor in Schedules I through V set forth in MCA §50-32-2. MCA §50-32-101(6).

⁴²⁴ The results of a PBT test may be used as evidence in a DUI trial. MCA §61-8-404(1).

	physician or registered nurse may, at the request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. MCA §61-8-405.
Entity Establishing Testing Protocols:	The Montana Department of Justice in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary. MCA §§61-8-405(5); ARM 23.4.201.
Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:	Yes. Same as under Implied Consent statute. MCA §61-8-405.
Other:	Independent Testing: A person may request that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. MCA §61-8-405(2). Non-Implied Consent Blood Draws: Any legislative exceptions to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court’s decision in <i>Missouri v. McNeely</i> , 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a <i>per se</i> exigent circumstance).
<u>Adjudication of DUI-D Charges:</u>	
Mandatory Adjudication Law (Yes/No):	No. However, a DUI-D offender is not eligible for pretrial diversion. MCA §46-16-130(4).
Anti-Plea-Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes. Discretionary for any crime carrying a sentence of incarceration of less than 1 year. MCA §§61-8-732(2); 46-18-111(2).
<u>Affirmative Defenses to DUI-D Charges:</u>	
Legal Entitlement Valid/Prescription:	No. MCA §61-8-401(2). ⁴²⁵
Therapeutic Concentration:	Yes ⁴²⁶
Involuntary Intoxication:	Yes ⁴²⁷
Other:	

⁴²⁵ The fact that any person is or has been entitled to use alcohol or a drug under the laws of this State does not constitute a defense. MCA §61-8-401(2).

⁴²⁶ It appears based upon the language of the statute that if a “therapeutic” concentration would not render a person incapable of operating a vehicle safely, arguing that the level of the substance detected was merely therapeutic would be a valid defense.

⁴²⁷ See *City of Missoula v. Paffhausen*, 289 P.3d 141, 367 Mont. 80 (2012) (since the State had to prove that the defendant committed the act of driving or being in actual physical control of a vehicle, defendant should be allowed to offer rebuttal evidence that she did not do so voluntarily as contemplated and provided for by Montana law).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail):	No
Preliminary Breath Test – Other:	N/A
Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	None
Implied Consent Chemical Test - Other:	N/A

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:	<p><u>First conviction</u>– Not less than 24 consecutive hours or more than 6 months and not less than \$600 or more than \$1,000;</p> <p><u>Second conviction</u> – Not less than 7 days or more than 1 year and not less than \$1200 or more than \$2,000;</p> <p><u>Third conviction</u> – Not less than 30 days or more than 1 year and not less than \$2,500 or more than \$5,000</p> <p><u>Fourth or subsequent conviction</u> (felony) – Not less than 13 months or more than 2 years and not less than \$5,000 or more than \$10,000. MCA §61-8-714(1)(a), (2)(a), (3)(a), (4); 61-8-731.</p> <p>Excessive delta-9-tetrahydrocannabinol level (misdemeanor):</p> <p><u>First conviction</u> – Not more than 6 months and not less than \$1,200 or more than \$2,000;</p> <p><u>Second conviction</u> – Not less than 5 days or more than 1 year and not less than \$1,200 or more than \$2,000;</p> <p><u>Third conviction</u>– Not less than 30 days⁴²⁸ or more than 1 year and not less than \$2,500 or more than \$5,000;</p> <p><u>Fourth or subsequent conviction</u> (felony) – Not less than 13 months or more than 5 years and not less than \$5,000 or more than \$10,000. MCA §§61-8-722(1), (2)(a), (3)(a), (4); 61-8-731(3).</p> <p>Negligent Vehicle Assault (misdemeanor):⁴²⁹ Not more than 1 year and/or not more than \$1,000. MCA §45-5-205(2).</p> <p>Negligent Vehicle Assault (felony) – Not more than 10 years and/or not more than \$10,000. MCA §45-5-205(3).</p>
Mandatory Minimum Term/Fine:	<p><u>First conviction</u> – 24 consecutive hours;</p> <p><u>Second conviction</u> – 5 days;</p>

⁴²⁸ For a second or third offense, the mandatory minimum shall be served in the county jail and not on home arrest. This may not be suspended unless a judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being. The remainder of the sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependence program. MCA §61-8-722(2), (3).

⁴²⁹ Negligent Vehicle Assault – A person commits a misdemeanor by causing bodily injury to another person while driving while under the influence of alcohol, a dangerous drug, any drug or any combination of these; a person commits a felony by causing serious bodily injury.

	<p><u>Third conviction</u> – 10 days;</p> <p><u>Fourth or subsequent conviction</u> – 13 months. MCA §§61-8-714; 61-8-731.</p> <p>Excessive delta-9-tetrahydrocannabinol:</p> <p><u>First conviction</u> – None;</p> <p><u>Second conviction</u> – 5 days;</p> <p><u>Third conviction</u> – 30 days;</p> <p><u>Fourth or subsequent conviction</u> – 13 months. MCA §§61-8-722; 61-8-731.</p>
Community Service:	Yes – Imposed as part of deferred sentencing. MCA §46-18-201(4)(j).
Restitution:	<p>Yes</p> <p>I. If a person has suffered a pecuniary loss as a result of the defendant's illegal actions, the court <u>must</u> order the defendant to pay restitution to such person. A defendant may be ordered to participate in community service if financially unable to pay restitution. MCA §§46-18-201(5); 46-18-241(1), (3).</p> <p>II. A victim also can receive compensation from the State's Victims' Compensation Fund. MCA §53-9-101, <i>et seq.</i></p> <p>III. Persons convicted of <u>serious</u> bodily negligent vehicle assault <u>shall</u> be ordered to pay restitution. MCA §§45-5-205(3); 46-18-241.</p>
Child Endangerment:	<p>Passenger < 16:</p> <p><u>First conviction</u> – Not less than 48 consecutive hours or more than 1 year and not less than \$1,200 or more than \$2,000;</p> <p><u>Second conviction</u> – Not less than 14 days or more than 1 year and not less than \$2,400 or more than \$4,000;</p> <p><u>Third conviction</u> – Not less than 60 days or more than 1 year and not less than \$5,000 or more than \$10,000. MCA §§61-8-714(1)(a), (2)(a), (3)(a).</p> <p>Excessive delta-9-tetrahydrocannabinol with Passenger < 16:</p> <p><u>First conviction</u> – Not more than 6 months and not less than \$1200 or more than \$2,000;</p> <p><u>Second conviction</u> – Not less than 10 days or more than 1 year and not less than \$2,400 or more than \$4,000; <u>Third conviction</u> – Not less than 60 days or more than 1 year and not less than \$5,000 or more than \$10,000. MCA §61-8-722(1), (2)(a), (3)(a); 61-8-714.</p>
Other:	<p>Surcharges: \$15 for any misdemeanor offense; \$20 or 10% of the fine imposed, whichever is greater, for any felony offense; and \$50 for any DUI/Excessive BAC offense. These surcharges are in addition to any fine sanction. MCA §46-18-236(1), (3).</p> <p>When deferring imposition of sentence or suspending all or a portion of execution of sentence, the judge may require participation in the sobriety program for a second or</p>

subsequent violation. MCA §46-18-201(4)(o).

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

Yes. MCA §61-8-714(1)(c).

Substance Abuse Treatment:

Yes. MCA §61-8-732(1)(a)-(c).

Vehicle Impoundment/Confiscation:

Seizure/Forfeiture. MCA §61-8-733(1)(c).

Authorized by Specific Statutory Authority:

For a second or subsequent DUI/excessive delta-9-tetrahydrocannabinol conviction or a suspension because of refusal, the court shall order that each motor vehicle owned by the person at the time of the offense be seized and subject to forfeiture. MCA §61-8-733(1)(c).

Terms Upon Which Vehicle Will Be Released:

If the court grants a probationary license, then the vehicle seized shall be equipped with an ignition interlock device, but shall not be forfeited. MCA §61-8-733(1)(a).

Other Miscellaneous Sanctions:

N/A

Homicide by Vehicle:

State Has Such a Law:

Yes. Vehicular homicide while under the influence. MCA §45-5-106.

Imprisonment/Fine:

Not more than **30 years** and/or not more than **\$50,000**.

Mandatory Minimum Term/Fine:

There is a mandatory term, as the imposition of the sentence cannot be deferred. The specific term, however, is not listed. MCA §45-5-106(3).

Other:

N/A

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is suspended from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person: is convicted of a DUI-D offense or operates a commercial vehicle while the person's delta-9-tetrahydrocannabinol level is 5 ng/ml or more as shown by blood level analysis. MCA §§61-5-208(4); 61-8-802(1)(a); 61-8-806(5)(a), (b); 61-8-411.

For a subsequent refusal to submit to a chemical test, the suspension is for life with 10 years mandatory as may be allowed by Federal regulations. MCA §61-8-806(5)(b).

For a second DUI offense conviction associated with operating a CMV, the suspension is for life with 10 years mandatory, except as allowed by Federal regulations. MCA §61-8-802(1)(b).

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

Misdemeanor. Not less than **2 days** or more than **6 months** and/or not more than **\$2,000**. MCA §61-5-212(b)(ii).

Mandatory Minimum Fine/Imprisonment Term:

2 days

Other: I. The court may order an offender to perform up to 40 hours of community service. MCA §61-5-212(1)(b)(ii).
 II. The vehicle must be seized or rendered inoperable by the county sheriff of the convicted person’s county of residence for 30 days. MCA §61-5-212(3).

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No): **Yes.** MCA §61-11-201, *et seq.*
 Grounds for Being Declared Habitual Offender: **Accumulation of 30 or more conviction points in a 3-year period.** MCA §61-11-203(1)(b).
 Term of License Revocations While on Habitual Offender Status: **Revocation 3 years.** MCA §§61-11-211; 61-11-212.
 Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: **Misdemeanor.** MCA §61-11-213.
 Imprisonment (Term): Not less than **14 days** nor more than **1 year** and/or not more than **\$1,000.** MCA §61-11-213.

Other State Laws Related to Drug Use:

Drug Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No): **No**
 Drug Chemical Test Given to Deceased Driver Killed in Crash: **N/A**
 Drug Chemical Test Given to Deceased Vehicle Passengers Killed in Crash: **N/A**
 Drug Chemical Test Given to Deceased Pedestrian Killed in Crash: **N/A**
 Drug Chemical Tests on Persons Involved in Traffic Crashes: **Yes.** MCA §61-8-402(2)(a)(iii)(B).

Marijuana – Possession and Use Laws:

Legal for Medical Use. Note⁴³⁰
Illegal Possession: Possession of < 60 grams of marijuana or < 1 gram of hashish.⁴³¹
First offense (misdemeanor)⁴³² - punishable by a fine of not less than **\$100** or more than **\$500** and by imprisonment in county jail for not more than **6 months**. The minimum fine must be imposed as a condition of a suspended or deferred sentence.
Second Offense (misdemeanor) - punishable by not more than **\$1,000** or by imprisonment for not more than **1 year** or in the State prison for not more than **3 years**, or by both.

⁴³⁰ “Marijuana” means all plant material from the genus Cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination. “Hashish”, as distinguished from marijuana, means the mechanically processed or extracted plant material that contains tetrahydrocannabinol (THC) and is composed of resin from the cannabis plant. MCA §50-32-101(15), (18)

⁴³¹ This subsection does not apply to the possession of synthetic cannabinoids listed as dangerous drugs in MCA §50-32-222.

⁴³² A person convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment. MCA §45-9-102(7).

Possession > 60 grams marijuana/ > 1 gram hashish (felony) - punishable by imprisonment in the State prison for a term not more than **5 years** and/or not more than **\$50,000**. MCA §45-9-102(2), (6).

Legal Possession: The Montana Marijuana Act is designed to improve the regulatory system to make the Montana marijuana program safe, functional, and transparent. The Act permits (1) legal protections to persons with debilitating medical conditions⁴³³ who engage in the use of marijuana to alleviate the symptoms of the debilitating medical condition; (2) limited cultivation, manufacture, delivery, and possession of marijuana as permitted by this part by persons who obtain registry identification cards; (3) individuals to assist a limited number of registered cardholders with the cultivation and manufacture of marijuana or marijuana-infused products; (4) licensing requirements for cultivation of and manufacture of marijuana infused products; (5) dispensaries and permits employees to transport marijuana and marijuana infused products (6) establishment of reporting requirements for production of marijuana and marijuana-infused products and inspection requirements for premises; and (7) local governments a role in establishing standards for the cultivation, manufacture, and use of marijuana that protect the public health, safety, and welfare of residents within their jurisdictions. MCA §50-46-301.⁴³⁴

It is unlawful for a person subject to the above conditions to: (a) be convicted of a drug offense; (b) allow another person to be in possession of the person's (i) registry identification card; or (ii) mature marijuana plants, seedlings, usable marijuana, or marijuana-infused products; or (c) fail to cooperate with the department concerning an investigation or inspection if the person is registered and cultivating or manufacturing marijuana. A violation is punishable by a fine of not more than **\$500** or by imprisonment in a county jail for not more than **6 months**, or both. MCA §50-46-330.

Intoxicant Exclusion Law (UPPL): **Yes.** MCA §33-22-231.

⁴³³ Debilitating medical condition” means: (a) cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency syndrome when the condition or disease results in symptoms that seriously and adversely affect the patient's health status; (b) cachexia or wasting syndrome; (c) severe chronic pain that is persistent pain of severe intensity that significantly interferes with daily activities as documented by the patient's treating physician and by: (i) objective proof of the etiology of the pain, including relevant and necessary diagnostic tests that may include but are not limited to the results of an x-ray, computerized tomography scan, or magnetic resonance imaging; or (ii) confirmation of that diagnosis from a second physician who is independent of the treating physician and who conducts a physical examination; (d) intractable nausea or vomiting; (e) epilepsy or an intractable seizure disorder; (f) multiple sclerosis; (g) Crohn's disease; (h) painful peripheral neuropathy; (i) a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms; (j) admittance into hospice care in accordance with rules adopted by the department; or (k) any other medical condition or treatment for a medical condition approved by the legislature. MCA §50-46-302.2

⁴³⁴ See MCA §50-46-319 for legally permissible amounts.

STATE

General Reference:

NEBRASKA

Revised Statutes of Nebraska (Neb.Rev.St.)

Type of DUI-D Law:**Under the Influence**Basis for a DUI-D Charge:

Neb.Rev.St. §60-6,196(1)(a).

Standard DUI-D Offense:

Operate or be in the actual physical control of any motor vehicle⁴³⁵ while under the influence⁴³⁶ of any drug.⁴³⁷

Illegal Per Se Law:

No

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has One (Yes/No):

Yes. Neb.Rev.St. §§60-6,197.04; 60-6,211.02(2).

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

No

Implied Consent Law:

Yes. Neb.Rev.St. §60-6,197.

Arrest Required (Yes/No):

Yes.⁴³⁸ Neb.Rev.St. §60-6,197(2).

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

Yes. Neb.Rev.St. 60-6,197(1).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal Cases. Neb.Rev.St. §60-6,197(6).

Other Information:

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

Blood:

Yes. Neb.Rev.St. §60-6,197(1).

Urine:

Yes. Neb.Rev.St. §60-6,197(1).

Other:

NoneIndividuals Authorized to Perform Chemical Testing (Blood):Blood Drawn Pursuant to Implied Consent – **Yes. Only a physician, registered nurse, or other trained**

⁴³⁵ Motor vehicle shall mean every self-propelled land vehicle, not operated upon rails, except bicycles, mopeds, self-propelled chairs used by persons who are disabled, and electric personal assistive mobility devices. Neb.Rev.St. §60-638.

⁴³⁶ Under the influence can be shown “by evidence of physical impairment plus other well-known indicia of intoxication.” These indicia can include, but not limited to, confused demeanor, lack of balance, odor of alcohol, and driving behavior. *State v. Smith*, 4 Neb.App. 66, 537 N.W.2d 539 (1995).

⁴³⁷ Drug means (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals, and (c) substances intended for use as a component of any article specified in subdivision (a) or (b) of this subdivision, but does not include devices or their components, parts, or accessories. Neb.Rev.St. §28-401(11).

⁴³⁸ Probable cause (not an arrest) is needed prior to requesting a person under 21 to submit to a chemical test. Neb.Rev.St. §60-6,211.02(2).

State Has Limited Who May Perform:	person employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act or a clinical laboratory certified pursuant to the Federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the Federal Social Security Act to withdraw human blood for scientific or medical purposes, acting at the request of a peace officer, may withdraw blood for the purpose of determining the concentration of alcohol or the presence of drugs, but this limitation shall not apply to the taking of a urine or breath specimen. Neb.Rev.St. §60-6,204.
Entity Establishing Testing Protocols:	Yes. To be considered valid, tests of blood, breath, or urine shall be performed according to methods approved by the Department of Health and Human Services . Neb.Rev.St. §60-6,201(3).
Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:	No
Other:	Independent Testing: The person tested shall be permitted to have a physician of his or her choice evaluate his or her condition and perform or have performed whatever laboratory tests he or she deems appropriate in addition to and following the test or tests administered at the direction of the officer. If the officer refuses to permit such additional test to be taken, then the original test or tests shall not be competent as evidence. Upon the request of the person tested, the results of the test or tests taken at the direction of the officer shall be made available to him or her. Neb.Rev.St. §60-6,199.
<u>Adjudication of DUI-D Charges:</u>	
Mandatory Adjudication Law (Yes/No):	No. Pretrial diversion of DUI-D cases is prohibited. Neb.Rev.St. §29-3604.
Anti-Plea-Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes. Any person shall submit to and participate in an alcohol assessment during a presentence evaluation. Neb.Rev.St. §60-6,197.08.
<u>Affirmative Defenses to DUI-D Charge:</u>	
Legal Entitlement Valid/Prescription:	No
Therapeutic Concentration:	Yes ⁴³⁹
Involuntary Intoxication:	No ⁴⁴⁰

⁴³⁹ Based on the language of the DUI-D statute, it appears to be a valid defense that the concentration of a drug would not have rendered the person “under the influence.” Neb.Rev.St. §60-6,196.

⁴⁴⁰ A person who is intoxicated is criminally responsible for his or her conduct. Intoxication is not a defense to any criminal offense and shall not be taken into consideration in determining the existence of a mental state that is an element of the criminal offense unless the defendant proves, by clear and convincing evidence, that he or she did not (1) know that it was an intoxicating

Other:

Sanctions for Refusal to Submit to a Chemical Test:

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

Class V Misdemeanor: A maximum of **\$100 fine**.
Neb.Rev.St. §§28-106; 60-6,197(3); 60-6,197.04.

Preliminary Breath Test – Other:

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

See Sanctions Following a Conviction for a DUI-D Offense, below.⁴⁴¹

Implied Consent Chemical Test - Other:

Sanctions:

First offense – Not more than **\$100**;

Second offense (within 1 year) – Not more than **\$200**;

Third or subsequent offense (within 1 year) – Not more than **\$300**. Neb.Rev.St. §§60-6,211.02(3); 60-689.

Admin. Action: **90 days** license “impoundment”. Restricted driving privileges for employment are available. The driver licensing record for this administrative action must be expunged after 120 days. Neb.Rev.St. §§6,211.02(3); 60-6,211.03

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:

First offense (Class W misdemeanor) – Not more than **60 days** and not more than **\$500**;

Second offense (within 15 years) (Class W misdemeanor) – Not more than **6 months** and not more than **\$500**;

Third offense (within 15 years) (Class W misdemeanor) – Not more than **1 year** and not more than **\$1,000**;

Fourth offense (within 15 years) (Class IIIA felony) – Not less than **180 days** or more than **3 years** and/or not more than **\$10,000**;

Fifth or subsequent offense (within 15 years) (Class IIA felony) – Not less than **2 years** or more than **20 years** and/or not more than **\$25,000**; Neb.Rev.St. §§60-6,197.03; 28-105; 28-106.

DUI Serious Bodily Injury (Class IIIA Felony) – Not more than **3 years** and/or not more than **\$10,000**. Neb.Rev.St. §§60-6,198; 28-106.

Mandatory Minimum Term/Fine:

Mandatory Sanctions:

Probation/suspension of sentence not granted:

First offense – **\$500/7 days**;

Second offense – **\$500/30 days**;

Third offense – **\$1000/90 days**; Neb.Rev.St. §§28-106; 60-

substance when he or she ingested, inhaled, injected, or absorbed the substance causing the intoxication or (2) ingest, inhale, inject, or absorb the intoxicating substance voluntarily. Neb.Rev.St. §29-122.

⁴⁴¹ It should be noted Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

6,197.03.

Probation/suspension of sentence granted:

First offense – **\$500**;

Second offense – **\$500/5 days** or not less than **240 hours** of community service;

Third offense – **\$1,000/30 days**;

Fourth offense (within 15 years) – **\$2,000/90 days**;

Fifth or subsequent offense – **\$2,000/180 days**; Neb.Rev.St. §§28-106; 60-6,197.03.

Community Service:

Except when the violation requires a mandatory minimum sentence, community service may be ordered as an alternative to a fine, in lieu of incarceration, as a condition of probation or in addition to another sentence. Neb.Rev.St. §29-2278.⁴⁴²

Restitution:

A court may order a defendant to pay restitution to a victim. Additionally, a victims' compensation fund is available. Neb.Rev.St. §§29-2280; 81-1801, *et seq.*

Child Endangerment:

N/A

Other:

Driver Education Program: Offenders who have accumulated 12 or more points within 2 years must attend and successfully complete a driver's education program of at least 8 hours in duration before any license may be reinstated. Neb.Rev.St. §60-4,183.

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

Yes. Neb.Rev.St. §60-6,197.08.

Substance Abuse Treatment:

Yes

Vehicle Impoundment/Confiscation:

Impoundment/Immobilization.

Authorized by Specific Statutory Authority:

Neb.Rev.St. §60-4,110.

Neb.Rev.St. §60-6,197.01(1)(a), (b).

Terms Upon Which Vehicle Will Be Released:

Impoundment: Any motor vehicle impounded shall be released to the holder of a bona fide lien, the title owner when such owner is the lessor, or to the registered owner, registered co-owner, or his spouse upon good cause shown by affidavit that the impounded motor vehicle is essential to the livelihood of such person. Neb.Rev.St. §60-4,110(2)(a)-(c).

Immobilization: A co-owner of the vehicle may have the vehicle released to him or her if there is a need to use such vehicle to continue employment or for the well-being of the co-owner's children or parents. Neb.Rev.St. §60-6,197.01(1)(a)(ii).

Other Miscellaneous Sanctions:

Impoundment: Every motor vehicle, regardless of the registered owner, being operated by a person whose license has been suspended, revoked or impounded because of DUI convictions is declared to be a "public nuisance." Upon

⁴⁴² See Neb.Rev.St. §29-2279 for a list of community service period that may be ordered by the court.

arrest, the motor vehicle shall be impounded for not less than 10 days or more than 30 days. Neb.Rev.St. §60-4,110.

Immobilization: A person who has been convicted of either a second or subsequent drunk-driving/IMPLIED consent refusal offense must have all of the motor vehicles that person owns “immobilized” for not less than 5 days nor more than 8 months. Neb.Rev.St. §60-6,197.01(1).

Homicide by Vehicle:

State Has Such a Law:

Yes. Unintentionally causing death while engaged in the operation of a motor vehicle where the proximate cause of death of another is the operation of a motor vehicle in violation of a DUI law is a Class IIA felony. Neb.Rev.St. §28-306(3)(b), (c).

Imprisonment/Fine:

Class II felony If the defendant has a prior DUI conviction or driving on a revoked license where DUI was the cause for revocation it is a Class II felony. Neb.Rev.St. §28-105.

Class IIA felony – Not more than **20 years**;

Class II felony – Not less than **1 year** or more than **50 years**. Neb.Rev.St. §28-105.

Mandatory Minimum Term/Fine:

1 year for Class II felony.

Other:

N/A

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is disqualified from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person is under the influence of alcohol or a controlled substance or refuses to submit to a chemical test. For a subsequent violation or a combination of two or more violations of any of the above-listed items, the disqualification is for life (mand). Neb.Rev.St. §60-4,168.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

There are no specific sanctions where the basis of suspension/revocation was a DUI offense.

Driving While Revoked – Class II misdemeanor;

Driving While Suspended – Class III misdemeanor;

Driving While Revoked (4th or subsequent offense) – Class I misdemeanor. Neb.Rev.St. §§60-4,108; 60-4,109.

Class I misdemeanor – Not more than **1 year** and/or not more than **\$1,000**;

Class II misdemeanor – Not more than **6 months** and/or not more than **\$1,000**;

Class III misdemeanor – Not more than **3 months** and/or not more than **\$500**. Neb.Rev.St. §28-106.

Mandatory Minimum Fine/Imprisonment Term: **None**
 Other: In each of the offenses above, the court shall also order such person not to operate any motor vehicle for any purpose.

Habitual Traffic Offender Law:
 State Has Such a Law (Yes/No): **No**

Other State Laws Related to Drug Use:

Drug Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No): **Yes.** Neb.Rev.St. §60-6,102.

Drug Chemical Test Given to Deceased Driver Killed in Crash: **Yes**, if death occurs within 4 hours of the accident.

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

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash: **Yes**, if at least 16 years of age and death occurs within 4 hours of the accident.

Drug Chemical Tests on Persons Involved in Traffic Crashes: **No**

Marijuana – Possession and Use Laws: **Illegal.** Note.⁴⁴³ Neb.Rev.St. §28-405(c)(7); 28-404.

Possession of marijuana > 1 oz. but < 1 lb. (class III misdemeanor) - punishable by not more than **3 months** in jail or a fine of **\$500**, either or both;

Possession of marijuana > 1 lb. (class IV felony) - punishable by not more than **2 years** in prison and **12 months** of post release supervision or a fine of **\$10,000**, either or both.
 Neb.Rev.St. §§28-106; 28-105

Possession of marijuana ≤ 1 oz.:

First offense (infraction) - fine of **\$300** and be assigned to attend a course as prescribed in section 29-433 if the judge determines that attending such course is in the best interest of the individual defendant;

Second offense (class 4 misdemeanor) - fine of **\$400** and a term of jail not more than 5 days;

Third or subsequent offenses (class IIIA misdemeanor) - fine

⁴⁴³ Marijuana means all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, but does not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, the sterilized seed of such plant which is incapable of germination, or cannabidiol obtained pursuant to sections 28-463 to 28-468. When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it means its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time. When industrial hemp as defined in section 2-5701 is in the possession of a person as authorized under section 2-5701, it is not considered marijuana for purposes of the Uniform Controlled Substances Act. Neb.Rev.St. §28-401(13).

of **\$500**, and a term of jail of not more than **7 days**.
Neb.Rev.St. §28-46(11), (12), (13).

Intoxicant Exclusion Law (UPPL):

Yes. Neb.Rev.St. §44-710.04(11).

STATE

General Reference:

NEVADA

Nevada Revised Statutes (N.R.S.)

Nevada Administrative Code (NAC)

Type of DUI-D Law:Basis for a DUI-D Charge:

Standard DUI-D Offense:

Under the Influence/Zero Tolerance

N.R.S. §484C.110.

Drive or operate a vehicle⁴⁴⁴ while:I. Under the influence⁴⁴⁵ of a controlled substance⁴⁴⁶, or the combined influence of intoxicating liquor and a controlled substance; or

II. Incapable of safely driving or exercising actual physical control of a vehicle, due to having inhaled, ingested, applied or otherwise used any chemical, poison or organic solvent, or any compound or combination of any of these. N.R.S. §484C.110(2).

Illegal Per Se Law:

Drive or be in actual physical control⁴⁴⁷ of a vehicle on a highway or on premises to which the public has access an amount of any of the following prohibited substances in the person in \geq any of the following quantities:Urine:

- **Amphetamine 500 ng/mL;**
- **Cocaine 150 ng/mL;**
- **Cocaine metabolite 150 ng/mL;**
- **Heroin 2,000 ng/mL;**
- **Heroin metabolite Morphine 2,000 ng/mL;**
- **Heroin metabolite 6-monoacetylmorphine 10 ng/mL;**
- **Lysergic acid diethylamide 25 ng/mL;**
- **Marijuana 10 ng/mL;**
- **Marijuana metabolite 15 ng/mL;**
- **Methamphetamine 500 ng/mL;**
- **Phencyclidine 25 ng/mL**

Blood:

- **Amphetamine 100 ng/mL;**
- **Cocaine 50 ng/mL;**

⁴⁴⁴ “Motor vehicle” means every vehicle which is self-propelled but not operated upon rails. N.R.S. §484A.130.

⁴⁴⁵ “Under the influence” means impaired to a degree that renders a person incapable of safely driving or exercising actual physical control of a vehicle. N.R.S. §§484C.105.

⁴⁴⁶ Controlled substances are found in N.R.S. §§453.166-453.206.

⁴⁴⁷ A person shall be deemed not to be in actual physical control of a vehicle if: (1) the person is asleep inside the vehicle; (2) the person is not in the driver's seat of the vehicle; (3) the engine of the vehicle is not running; (4) the vehicle is lawfully parked; and under the facts presented, it is evident that the person could not have driven the vehicle to the location while under the influence of intoxicating liquor, a controlled substance or a prohibited substance. N.R.S. 484C.109.

- Cocaine metabolite 50 ng/mL;
- Heroin 50 ng/mL;
- Heroin metabolite Morphine 50 ng/mL;
- Heroin metabolite 6-monoacetylmorphine 10 ng/mL;
- Lysergic acid diethylamide 10 ng/mL;
- Marijuana 2 ng/mL;
- Marijuana metabolite 5 ng/mL;
- Methamphetamine 100 ng/mL;
- Phencyclidine 10 ng/mL.

N.R.S. §§484C.110(3); 484C.080.

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

Yes. N.R.S. §484C.150(1).

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Yes. N.R.S. §484C.150.

Implied Consent Law:

Yes. N.R.S. §484C.160(1).

Arrest Required (Yes/No):

No. N.R.S. §484C.160(1).

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

Yes. N.R.S. § 484C.160(1).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal Cases and Admin Actions. N.R.S. §484C.240.

Other Information:

If a person fails to submit to a test, a blood sample may be obtained by warrant or court order without consent and by the use of reasonable force if there are “reasonable grounds to believe” that the driver has been driving under the influence of alcohol or a controlled substance. N.R.S. §484C.160(8).⁴⁴⁸

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

Blood:

Yes.⁴⁴⁹ N.R.S. §484C.160(1).

Urine:

Yes – Limited.⁴⁵⁰ N.R.S. §484C.160(1).

⁴⁴⁸ See also *Warren v. State*, 2015 WL 3669685 (2015) (relying on *Byars v. State*, 130 Nev., Adv. Op. 85, 336 P.3d 939, 942, 947 (2014) (held that the warrantless, nonconsensual search provided for in NRS 484C.160(7) is unconstitutional but that the good-faith exception to the exclusionary rule applies when an officer reasonably and in good faith relied on the statute.) Subsequently, the legislature amended N.R.S. §484C.160 to require an officer to seek a warrant or court order before the use of reasonable force would be permissible.

⁴⁴⁹ A person may be directed to submit to a blood test to determine the presence of controlled substances. N.R.S. §484C.160(5). Additionally, a law enforcement officer may direct a person to submit to a blood test if there are reasonable grounds to believe the person, while operating a vehicle caused death or serious injury while under the influence of intoxicating liquor or a controlled substance, or has been stopped for a subsequent DUI offense within 7 years. N.R.S. §484C.160(4).

Other: Other bodily substance (unspecified) N.R.S. §484C.160(1).

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. A physician, physician assistant, registered nurse, licensed practical nurse, advanced emergency medical technician, paramedic or a phlebotomist, technician, technologist or assistant employed in a medical laboratory; or by a person who has special knowledge, skill, experience, training and education in withdrawing blood in a medically acceptable manner, including, without limitation, a person qualified as an expert on that subject in a court of competent jurisdiction or a person who has completed a course of instruction that qualifies him or her to take an examination in phlebotomy that is administered by the American Medical Technologists or the American Society for Clinical Pathology. N.R.S. §484C.250.

Entity Establishing Testing Protocols:

Yes - Committee on Testing for Intoxication. N.R.S. §484C.600.

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:

Yes. N.R.S. §484C.250.

Other:

Independent Testing: A person who is arrested for driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance must be permitted, upon request and at the person's expense, reasonable opportunity to have a qualified person of his or her own choosing administer a chemical test or tests. N.R.S. §484C.180(1).

Non-Implied Consent Blood Draws: Any legislative exceptions to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court's decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No):

No

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

Yes. A DUI charge cannot be reduced for a lesser charge in exchange for a plea, or dismissed unless there is no evidence to support probable cause, or such charge cannot be proven at trial. N.R.S. §484C.420(1).

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

Yes.
I. An alcohol or drug evaluation must be administered to

⁴⁵⁰ A urine test can be requested only under two conditions: (1) a driver is afflicted with hemophilia or a heart condition requiring the use of anticoagulants, which would exempt him/her from any blood test; or (2) a driver has been stopped for driving under the influence of a controlled substance. N.R.S. §484C.160(4), (6).

third or subsequent offenders. N.R.S. §§176.135; 484C.300.

II. Any second offender (within 7 years) must be administered an evaluation to determine if that person is an abuser of alcohol or drugs. N.R.S. §484C.350(1).

III. A first offender who is < 21 must be administered an evaluation to determine if that person is an abuser of alcohol or drugs. N.R.S. §484C.350(2).

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription:

No. N.R.S. 484C.110 (2).

Therapeutic Concentration:

Yes.⁴⁵¹

Involuntary Intoxication:

Yes⁴⁵²

Other:

Sanctions for Refusal to Submit to a

Chemical Test:

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

None

Preliminary Breath Test – Other:

If a person refuses to submit to a preliminary breath test where there are “reasonable grounds to believe” that person has committed a DUI offense, the law enforcement officer requesting such a test must seize the person’s license, arrest that person, and take the person to a convenient place for the administration of a test pursuant to N.R.S. §§484C.160; 484C.150(2).

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

None

Implied Consent Chemical Test - Other:

N/A

Criminal Sanctions Following a DUI-D

Conviction:

Imprisonment/Fine:

First offense (within 7 years) (misdemeanor) – Not less than **2 days** or more than **6 months** and not less than **\$400** or more than **\$1,000**;

Second offense (within 7 years) (misdemeanor) – Not less than **10 days** or more than **6 months** and not less than **\$750** or more than **\$1,000**;

Third offense (within 7 years) (category B felony) – Not less

⁴⁵¹ It appears based upon the language of the statute that if a therapeutic concentration would not render a person “under the influence,” or “impair” the person’s ability to safely operate a vehicle, arguing that the level of the substance detected was merely therapeutic would be a valid defense. N.R.S. §484C.110.

⁴⁵² A defendant must show that it is more likely than not that (1) he was compelled to take the intoxicating substance against his will either through force, duress, fraud, or contrivance; (2) his intoxication was caused by the intoxicating substance in question and not by some other intoxicant or mixture thereof; and (3) he was made so mentally deficient by reason of involuntary intoxication, and that he could not know or understand the nature and capacity of his act, or that he could not appreciate the wrongfulness of his act. See *Grey v. State*, 178 P.3d 154 (Nev. 2008).

	than 1 year or more than 6 years and not less than \$2,000 or more than \$5,000 ; N.R.S. §484C.400(1)(a)-(c).
	<u>Subsequent offense</u> ⁴⁵³ (within 7 years) (category B felony) – Not less than 2 years or more than 15 years and not less than \$2,000 or more than \$5,000 . N.R.S. §484C.410(1).
	DUI-D with Substantial Bodily Harm (category B felony) – Not less than 2 years or more than 20 years and not less than \$2,000 or more than \$5,000 . N.R.S. §484C.430(1).
Mandatory Minimum Term/Fine:	<u>First offense</u> – 2 days/\$400 ; <u>Second offense</u> – 10 days (with at least 48 consecutive hours)/ \$750 ; <u>Third offense</u> – 1 year/\$2,000 (with at least 48 consecutive hours); N.R.S. §484C.400(1)(a)-(c). <u>Subsequent offense</u> – 2 years/\$2,000 . N.R.S. §484C.410(1).
Community Service:	Community service may be ordered as an alternative sanction, or as a condition of any suspended sentence. N.R.S. §§4.373; 5.055; 484C.320(1)(c); 484C.330(1)(c); 484C.400(1)(a)(2), (1)(b)(2).
Restitution:	Yes. A court may order a defendant to pay restitution to a victim as a condition for a suspended sentence. Additionally, a victim’s compensation fund is available. N.R.S. §§4.373; 5.055; 217.010, <i>et seq.</i>
Child Endangerment:	If a child < 15 was a passenger in the vehicle at the time of the offense, such fact shall be considered an aggravating factor when determining sentence. N.R.S. §§484C.410(5); 484C.430(5).
Other:	Offenders under N.R.S. §484C.320 Disposition: This allows offenders to undergo a substance abuse or alcohol treatment program, where the offender is diagnosed as an alcoholic or abuser of drugs, the offender must serve some jail time and/or perform community service, and pay a fine. The court shall sentence the defendant to an all-suspended sentence upon condition of successful or satisfactory completion. The following terms apply: <u>First offense</u> – At least 1 days in jail, or not less than 24 hours of community service, with a suspended sentence of not more than 3 years; <u>Second offense</u> – 5 days in jail and may be ordered to serve not less than ½ of the hours of community service and a suspended sentence of not more than 3 years; <u>Third offense</u> – Probation for not more than 5 years conditioned upon acceptance into a treatment facility for not less than 6 months. Under this disposition, sentence shall not be deferred and conviction shall not be set aside. N.R.S. §§484C.320; 484C.330; 484C.340.

⁴⁵³ This applies to a person who has been previously convicted of a felony DUI offense, DUI death/serious bodily injury, or vehicular homicide stemming from DUI or a DUI offense that was reduced from a felony. N.R.S. §484C.400.

Residential Confinement: The court may order that the defendant be confined to home for a conviction of a misdemeanor offense. This sentence may be supervised by means of electronic devices. N.R.S. §§4.3762; 5.076.

A Civil Fine of \$35 must be imposed. This fine is paid into a victims' compensation fund. N.R.S. §484C.500.

Chemical Test Fee: In addition to any fine, a defendant must pay a fee of **\$60** for any chemical analysis that was performed to determine alcohol concentration or the presence of a controlled substance in the blood, breath or urine. N.R.S. §484C.510.

Administrative Assessment: DUI misdemeanor offenders are subject to administrative assessments in addition to any fine that is imposed. These assessments may range from **\$30 - \$120** depending upon the size of the fine that is imposed. N.R.S. §176.059(1).

Evaluation Assessment Fee: An offender who has been ordered to submit to alcohol or drug evaluation must pay a fee of not more than **\$100**. N.R.S. §484C.350(7).

Impact Meeting: An offender shall be ordered to attend in person a live meeting (if available) with victims of DUI offenses in order to discuss the impact of the offense on such victims. N.R.S. §484C.530.

Taxicab Drivers: It is illegal to “drive a taxicab or go on duty while under the influence of, or impaired by, any controlled substance, dangerous drug, or intoxicating liquor or drinking liquor while on duty.” N.R.S. §706.8849(1)(g).

A person who violates this provision is subject to the following sanctions:

First offense – A fine of not more than **\$100** and/or driver's license suspension from **1 - 5 days**;

Second offense (within 12 months) – A fine of not more than **\$300** and/or driver's license suspension from **6 - 20 days**;

Third offense (within 12 months) – A fine of not more than **\$500**. In addition to these sanctions, a driver's license may be revoked and possible revocation of license. N.R.S.

§706.8849(2). **Note:** The law does not provide a revocation period.

Work Zone: In addition to the primary penalty attributed to a DUI offense, any person violating a DUI law within a work zone is subject to an additional penalty equal to the original, not to exceed **\$1,000, 6 months'** imprisonment, or **120 hours** of community service. N.R.S. §484B.130.

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:	Yes . N.R.S. §484C.400.
Substance Abuse Treatment:	Yes
Vehicle Impoundment/Confiscation:	N/A

Authorized by Specific Statutory Authority: **Vehicle Registration Suspension:** For a second or subsequent drunk-driving/drunken-driving related vehicle homicide offense (within 7 years), the registrations of all of the vehicles owned by the offender must be **suspended for 5 days**. There is an exception in the case of a non-offender family member who needs to use a vehicle for employment purposes, medical reasons, school or other necessities. N.R.S. §§482.451; 484C.520(1), (3)(a)-(b).

Terms Upon Which Vehicle Will Be Released:

N/A

Other Miscellaneous Sanctions:

Homicide by Vehicle:

State Has Such a Law:

Yes – Vehicular homicide (DUI-death with 3 prior like offenses) – **Category A felony**. N.R.S. §§484C.430(1); 484C.130(1).

Imprisonment/Fine:

DUI-death – Category B felony. N.R.S. §484C.440.

Vehicular Homicide – Imprisonment for **life** with parole eligibility after **10 years**, or a definite term of **25 years**; N.R.S. §484C.440;

DUI-death – Not less than **2 years** or more than **20 years** and not less than **\$2,000** or more than **\$5,000**. N.R.S. §484C.430.

Mandatory Minimum Term/Fine:

Vehicular Homicide – 10 years;⁴⁵⁴

DUI-death – 2 years/\$2,000.

Other:

N/A

DUI-D Offenses and Commercial Motor Vehicles (CMV):

The State's Public Service Commission and Department of Motor Vehicles and Public Safety have promulgated regulations that adopt by reference 49 CFR Parts 383 and 392. N.R.S. §483.908. Under 49 CFR §383.51, a person is “disqualified” from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, he/she is under the influence of a controlled substance. For a subsequent violation or a combination of two or more violations of any of the above-listed items, the “disqualification” is for life.

If there are “reasonable grounds to believe” that a CMV operator is under the influence of a controlled substance, or has violated any provision of the DUI or DUI vehicle homicide laws, a law enforcement officer must administer a blood, breath, or urine test to such driver in order to determine the presence of a controlled substance in the operator’s system.

It is a misdemeanor to violate a State regulation. The

⁴⁵⁴ This minimum sanction may not be suspended nor may probation be granted. N.R.S. §484C.430.

sanctions for this offense are a jail term of not more than **6 months** and/or a fine of at least **\$100** (mand) but not more than **\$1,000**. In addition, a person who violates a State regulation may also be liable for a civil penalty not to exceed \$10,000. N.R.S. §§483.904; 483.908; 706.173; 706.756; 706.771; NAC §706.247; 49 USCA 31301, *et seq.*

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

Misdemeanor. Not less than **30 days** or more than **6 months**⁴⁵⁵ and not less than **\$500** or more than **\$1,000**. N.R.S. §483.560(2).

Mandatory Minimum Fine/Imprisonment Term:

30 days/\$500.

Other:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Other State Laws Related to Drug Use:

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

Yes. N.R.S. §484C.170.

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes. N.R.S. §484C.170.

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

Yes. N.R.S. §484C.170.

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

Yes. N.R.S. §484C.170.

Drug Chemical Tests on Persons Involved in Traffic Crashes:

No

Marijuana – Possession and Use Laws:

Legal for Medical Use.^{456, 457}

Medical use of marijuana means: (1) the possession, delivery, production or use of marijuana; (2) the possession, delivery or use of paraphernalia used to administer marijuana; or (3) any combination of the acts described in subsections 1 and 2, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her chronic or debilitating

⁴⁵⁵ Or, in residential confinement for not less than 60 days or more than 6 months.

⁴⁵⁶ See N.R.S. §453A.310 for list of affirmative defenses to a criminal charge of possession, delivery or production of marijuana, or any other criminal offense in which possession, delivery or production of marijuana is an element where the person is covered by the medical marijuana exceptions.

⁴⁵⁷ “Marijuana” means (a) all parts of any plant of the genus *Cannabis*, whether growing or not; (b) the seeds thereof; (c) the resin extracted from any part of the plant, including concentrated cannabis; and (d) every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. N.R.S. §445.096.

medical condition. N.R.S. §453A.120.⁴⁵⁸

Criminal Penalties:⁴⁵⁹

First offense possession of \leq 1 oz. (misdemeanor) - punishable by a fine not more than **\$600** or mandatory assessment for addiction;

Second offense possession of \leq 1 oz. (misdemeanor) - punishable not more than **\$1,000** fine or mandatory treatment;

Third offense possession of \leq 1 oz. (misdemeanor) - punishable by not more than **365 days** imprisonment and/or a fine of not more than **\$2,000**;

Fourth or subsequent offense (Class E Felony) -punishable by not less than 1 year nor more than **4 years** imprisonment and a fine of not more than **\$5,000**. N.R.S. §453.336(4).

Intoxicant Exclusion Law (UPPL):

No. N.R.S. §689A.280 was repealed on 7/1/2006.

⁴⁵⁸ It is unlawful for a person exempt for medical purposes to do any of the following: (a) drive or operate vehicle or a vessel under power or sail while under the influence of marijuana; (b) engage in any other conduct prohibited by law; (c) possess a firearm; (d) possess marijuana or paraphernalia in any public or in any local detention facility, county jail, State prison, reformatory or other correctional facility, including, without limitation, any facility for the detention of juvenile offenders; or on school property; (e) deliver marijuana to another person who he or she knows does not lawfully hold a registry identification card or letter of approval; or (f) deliver marijuana for consideration to any person, regardless of whether the recipient lawfully holds a registry identification card or letter of approval. N.R.S. §453A.300.

⁴⁵⁹ In November 2016, Nevada voted to pass Question 2 which will allow persons 21 years and older to possess personal use quantities of marijuana and permits such persons to grow up to six marijuana plants, if they reside 25 miles away or more from an operating marijuana retailer. This law does not permit public use or display of marijuana which will remain subject to criminal penalties. This law will take effect January 1, 2017.

STATE

General Reference:

NEW HAMPSHIRE

New Hampshire Revised Statutes Annotated (N.H. Rev. Stat.)

Type of DUI-D Law:**Under the Influence**Basis for a DUI-D Charge:

N.H. Rev. Stat. §265-A:2.

Standard DUI-D Offense:

Operate a vehicle⁴⁶⁰ while under the influence of any controlled drug⁴⁶¹, prescription drug, over-the-counter drug, or any other chemical substance (natural/synthetic) which impairs a person's ability to drive. N.H. Rev. Stat. §265-A:2.

Illegal Per Se Law:

No

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

Yes. N.H. Rev. Stat. §265-A:15(I).

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Yes. N.H. Rev. Stat. §265-A:15(I).

Implied Consent Law:

Yes. N.H. Rev. Stat. §265-A:4.

Arrest Required (Yes/No):

Yes. N.H. Rev. Stat. §265-A:4.

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

Yes. N.H. Rev. Stat. §265-A:4.

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal and Civil Cases. N.H. Rev. Stat. §265-A:10.

Other Information:

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

Blood:

Yes. N.H. Rev. Stat. §265-A:5.

Urine:

Yes. N.H. Rev. Stat. §265-A:5.

Other:

NoneIndividuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. Only a **duly licensed physician, registered nurse, certified physician's assistant, phlebotomist, or qualified medical technician or medical technologist** acting at the request of a law enforcement officer, authorized agent, or peace officer may withdraw blood. N.H. Rev. Stat. §265-A:5.

⁴⁶⁰ "Motor vehicle" means any self-propelled vehicle not operated exclusively on stationary tracks, including ski area vehicles. N.H. Rev. Stat. §259:60.

⁴⁶¹ Or any prescription drug, over-the-counter drug, or any other chemical substance, natural or synthetic, which impairs a person's ability to drive. "Controlled drugs" means any drug or substance, or immediate precursor, which is scheduled pursuant to N.H. Rev. Stat. §§318-B:1-a; 265-A:2.

Entity Establishing Testing Protocols:	Yes. The Commissioner of the Department of Safety . N.H. Rev. Stat. §265-A:5(V).
Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:	No
Other:	Independent Testing: A person shall have the right at his or her own expense to have additional tests made by a person of his or her own choosing who is competent to conduct the tests and shall be so informed by the law enforcement officer. The failure or inability of an arrested person to obtain an additional test shall not preclude the admission of any test taken at the direction of a law enforcement officer, authorized agent, or peace officer. Nothing herein shall require the release from custody of the arrested person for the purpose of having such additional test made. N.H. Rev. Stat. §265-A:7.
<u>Adjudication of DUI-D Charges:</u>	
Mandatory Adjudication Law (Yes/No):	No
Anti-Plea-Bargaining Statute (Yes/No):	No. The law requires filing of reports of plea-bargaining agreements. These reports are public records, and are available for public inspection. N.H. Rev. Stat. §265-A:21(II).
Pre-Sentencing Investigation Law (PSI) (Yes/No):	The court may order a presentence investigation report for any person convicted of a felony or misdemeanor. However, the court shall order such report where the felony or misdemeanor was violent and the court has reason to believe that the defendant committed a similar act within the past year. N.H. Rev. Stat. §651:4.
<u>Affirmative Defenses to DUI-D Charge:</u>	
Legal Entitlement Valid/Prescription:	Yes ⁴⁶²
Therapeutic Concentration:	Yes ⁴⁶³
Involuntary Intoxication:	No
Other:	
<u>Sanctions for Refusal to Submit to a Chemical Test:</u>	
Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail):	None. Evidence of refusal is admissible only to show probable cause for the arrest. N.H. Rev. Stat. §265-A:15.
Preliminary Breath Test – Other:	N/A
Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	None

⁴⁶² It appears based upon the language of the statute that if a prescription drug would not render a person “under the influence,” or impair the person’s ability to safely operate a vehicle, arguing that the level of the substance detected was merely the prescribed amount would be a valid defense. N.H. Rev. Stat. §265-A:2.

⁴⁶³ It appears based upon the language of the statute that if a therapeutic concentration would not render a person “under the influence,” or impair the person’s ability to safely operate a vehicle, arguing that the level of the substance detected was merely therapeutic would be a valid defense. N.H. Rev. Stat. §265-A:2.

Implied Consent Chemical Test - Other:

N/A

Criminal Sanctions Following a DUI-D

Conviction:

Imprisonment/Fine:

First conviction (Class B misdemeanor) – Not less than **\$500** or more than **\$1,200**;

Second conviction (Class A misdemeanor) – Not less than **\$750** or more than **\$2,000** and not less than **60 days** (if within 2 years) or **17 days** (if > 2 years but < 10 years), or more than **1 year**;

Third conviction (Class A misdemeanor) – Not less than **\$750** or more than **\$2,000** and not less than **180 days** or more than **1 year**;

Fourth or subsequent conviction (felony) – Not less than **\$750** or more than **\$4,000** and not less than **180 days** or more than **1 year**.

Aggravated DUI (Class A misdemeanor) – Not less than **\$750** or more than **\$2,000** and not less than **17 days** or more than **1 year**. N.H. Rev. Stat. §§265-A:18(I), (IV); 651:2.

Aggravated DUI with Serious Bodily Injury (Class B felony) – Not less than **\$1,000** or more than **\$4,000** and not less than **35 consecutive days** or more than **7 years**. N.H. Rev. Stat. §§265-A:18(I)(c); 651:2.

Mandatory Minimum Term/Fine:

Second conviction (within 2 years) – **30 days**;

Second conviction – **5 days**;

Third conviction – **30 days**;

Aggravated DUI – **5 days**;

Aggravated DUI with Serious Bodily Injury – **14 days**.

Community Service:

A court may sentence a defendant to community service as a condition of a suspended sentence or probation. N.H. Rev. Stat. §651:68.

Restitution:

I. Payment by the defendant to the victim. N.H. Rev. Stat. §651:63.

II. A victim may receive compensation for damages from a State fund. N.H. Rev. Stat. §21-M:8-h, *et seq.*

Child Endangerment:

Any person convicted of DUI-D while transporting a person under age 16 shall have the driver's license or privilege to drive revoked for the maximum time period and not restored until the offender has completed an impaired driver care management program within 14 days of conviction.

Additionally, such driver shall undergo a substance abuse disorder evaluation if testing suggests a disorder. N.H. Rev. Stat. §265-A:18(VIII).

Other:

Penalty Assessment: An offender must pay an assessment of \$2 or 24% of the fine imposed, whichever is greater. N.H. Rev. Stat. §188-F:31.

Liability for Response: An offender may be liable to reimburse a public agency for up to \$10,000 of the cost

incurred in responding to an incident involving the negligent use of a vehicle while under the influence of a controlled substance. N.H. Rev. Stat. §153-A:24.

Multiple DUI-D Offender Intervention Detention Center Program: A court shall refer a person convicted of DUI-D to attend an impaired driver care management program. N.H. Rev. Stat. §§265-A:18; 265-A:40.

Administrative Sanctions – Post Conviction:

Substance Abuse Education:

Yes. N.H. Rev. Stat. §265-A:18.

Substance Abuse Treatment:

Yes. N.H. Rev. Stat. §265-A:18.

Vehicle Impoundment/Confiscation:

Vehicle Registration Revocation:⁴⁶⁴ For a second or subsequent DUI offense conviction or an aggravated DUI offense conviction, the driver's vehicle's registration must be revoked for the same period of time as the driver's license suspension/revocation.

Authorized by Specific Statutory Authority:

N.H. Rev. Stat. §261:180.

Terms Upon Which Vehicle Will Be Released:

Other Miscellaneous Sanctions:

At-Risk Driver (Probationary License): Any person who shall apply for re-issuance of the license following a DUI conviction is an “at-risk” driver and whose license shall be probationary for 5 years. N.H. Rev. Stat. §265-A:35.

Homicide by Vehicle:

Yes

State Has Such a Law:

Negligent Homicide – **Class A felony.** N.H. Rev. Stat. §630:3(II).

Imprisonment/Fine:

Not more than **15 years** and may be fined not more than **\$4,000.** N.H. Rev. Stat. §651:2(II)(a), (IV)(a).

Mandatory Minimum Term/Fine:

None

Other:

Vehicle Registration Revocation: The driver's vehicle's registration must be revoked for the same period of time as the driver's license suspension/revocation. N.H. Rev. Stat. §261:180(III).

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person's privilege to operate a CMV is suspended for at least 1 year (3 years if transporting hazardous materials) if, while driving a CMV that person is under the influence of a controlled substance. For a subsequent violation or a combination of two or more violations the suspension is for life (10 years mand).

If a person refuses to submit to a chemical test under the implied consent law while operating a CMV, the CDL is

⁴⁶⁴ Under N.H. Rev. Stat. §261:180(IV), hardship registrations for the vehicles involved are available for those convicted of negligent homicide, vehicular manslaughter, any DWI subsequent offense conviction, aggravated DWI, or those certified as a habitual offender. In order to obtain such registrations, it must be shown that either a spouse or another individual must operate the vehicle or vehicles in order to avoid a hardship to a family or an individual. N.H. Code Admin. R. Saf-C 3001.01; 3003.01; 3003.03.

revoked for a first refusal for not less than 1 mandatory year and for a second or subsequent refusal for life, with an opportunity to review after 10 years. N.H. Rev. Stat. §§265-A:23; 263:94; 265-A:25(III)(a), (b), 265-A:24.;

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

Misdemeanor. Not more than **1 year** and not more than **\$1,000**. N.H. Rev. Stat. §§263:64; 625:9(IV)(a); 651:2(II).

Mandatory Minimum Fine/Imprisonment Term:

7 consecutive 24-hour periods. N.H. Rev. Stat. §263:64(IV).

Other:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. N.H. Rev. Stat. §259:39.

Grounds for Being Declared Habitual Offender:

3 serious offenses (within 5 years); 12 moving violations (within 5 years); 1 serious offense and 8 moving violations (within 5 years), or a combination of 2 serious offenses plus 4 moving violations (within 5 years).

Term of License Revocations While on Habitual Offender Status:

Revocation at least **7 years**.⁴⁶⁵ N.H. Rev. Stat. §262.19(IV). A habitual offender may have to successfully complete a "Driver Attitude Program" before the license is reinstated. N.H. Rev. Stat. §263:56-e.

Vehicle Registration Revocation: The habitual offender's vehicle's registration must be revoked for the same period of time as the driver's license revocation. N.H. Rev. Stat. §261:180(III).

Felony. N.H. Rev. Stat. §262:23(I).

Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):

Not less than **1 year** or more than **5 years** and not more than **\$4,000**. N.H. Rev. Stat. §§262:23(I); 625:9(III). A person may also be sentenced to home confinement as a condition of probation. N.H. Rev. Stat. §651:2(V)(b).

Mandatory Minimum Term/Fine:

1 year. N.H. Rev. Stat. §262:23.

Other State Laws Related to Drug Use:

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

Yes – Required. N.H. Rev. Stat. §265-A:16.

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes. N.H. Rev. Stat. §265-A:16.

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

Yes. N.H. Rev. Stat. §265-A:16.

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

Yes. N.H. Rev. Stat. §265-A:16.

⁴⁶⁵ A person whose license was revoked prior to July 17, 1987, may petition the director after a minimum of 1 year for restoration of driving privileges. N.H. Rev. Stat. §262:19(VI).

Drug Chemical Tests on Persons Involved
in Traffic Crashes:

No

Marijuana – Possession and Use Laws:

Illegal and Legal.

Criminal Penalties:⁴⁶⁶

Possession (class A misdemeanor) - Not more than **1 year** and/or a fine of not more than **\$2,000**. N.H. Rev. Stat. §318-B:26(II)(d); 651:2(II)(c); (IV)(a).

Legal for Therapeutic Use - Exceptions for Qualifying Patients and Caregivers^{467, 468}

I. A qualifying patient if the patient possesses an amount of cannabis that does not exceed the following: (a) 2 ounces of usable cannabis; and (b) any amount of unusable cannabis.

II. A designated caregiver if the caregiver possesses an amount of cannabis that does not exceed the following: (a) 2 ounces of usable cannabis, or the total amount allowable for the number of qualifying patients for which he or she is a designated caregiver; and (b) any amount of unusable cannabis.

III. A qualifying patient or caregiver is presumed to be lawfully engaged in the therapeutic use of cannabis in accordance with this chapter if in possession of a valid registry identification card and possess an amount of cannabis that does not exceed the amount allowed under this chapter. N.H. Rev. Stat. §126-X:2.

Intoxicant Exclusion Law (UPPL):

Yes. *Croteau v. John Hancock Mut. Life Ins. Co.*, 461 A.2d 111 (1983).

⁴⁶⁶ See N.H. Rev. Stat. §318-B:2-b for list of persons who may raise an affirmative defense.

⁴⁶⁷ A “qualifying patient” means a resident of New Hampshire who has been diagnosed by a provider as having a qualifying medical condition and who possesses a valid registry identification card issued pursuant to N.H. Rev. Stat. §126-X:4. A “designated caregiver” means an individual who: (a) Is at least 21 years of age; (b) has agreed to assist with one or more (not to exceed 5) qualifying patient's therapeutic use of cannabis, except if the qualifying patient and designated caregiver each live greater than 50 miles from the nearest alternative treatment center, in which case the designated caregiver may assist with the therapeutic use of cannabis for up to 9 qualifying patients; (c) has never been convicted of a felony or any felony drug-related offense; and (d) possesses a valid registry identification card issued pursuant to N.H. Rev. Stat. §126-X:4. N.H. Rev. Stat. §126-X:1.

⁴⁶⁸ “Cannabis-type drug” means all parts of any plant of the Cannabis genus of plants, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plants, fiber produced from such stalks, oil or cake made from the seeds of such plants, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seeds of such plants which are incapable of germination. N.H. Rev. Stat. §318-B:1(IV).

STATE

General Reference:

NEW JERSEY

New Jersey Statutes Annotated (N.J.S.A.)

New Jersey Administrative Code

Type of DUI-D Law:**Under the Influence**Basis for a DUI-D Charge:

N.J.S.A. §39:4-50(a).

Standard DUI-D Offense:

Operate a motor vehicle⁴⁶⁹ while under the influence of a narcotic, a hallucinogenic drug or a habit producing drug. N.J.S.A. §39:4-50(a).⁴⁷⁰

Illegal Per Se Law:

No

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

No

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

N/A

Implied Consent Law:

Yes. N.J.S.A. §39:4-50.2(a).

Arrest Required (Yes/No):

Yes. N.J.S.A. §39:4-50.2(a).

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

No

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal Cases. *State v. Stever*, 527 A.2d 408 (N.J. 1987) (*cert. denied* 484 U.S. 954 (1987)).

Other Information:

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

Blood:

No

Urine:

No

Other:

NoneIndividuals Authorized to Perform Chemical Testing (Blood):

⁴⁶⁹ “Motor vehicle” includes all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles. N.J.S.A. §39:1-1.

⁴⁷⁰ As used in this section, the phrase “narcotic, hallucinogenic or habit-producing drug” includes an inhalant or other substance containing a chemical capable of releasing any toxic vapors or fumes for the purpose of inducing a condition of intoxication, such as any glue, cement or any other substance containing one or more of the following chemical compounds: acetone and acetate, amyl nitrite or amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite, butyl nitrate or their isomers, ethyl acetate, ethyl alcohol, ethyl nitrite or ethyl nitrate, ethylene dichloride, isobutyl alcohol or isopropyl alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, n-propyl alcohol, pentachlorophenol, petroleum ether, propyl nitrite or propyl nitrate or their isomers, toluene, toluol or xylene or any other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. N.J.S.A. §39:4-50(a).

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:	Yes. The Attorney General is authorized to approve the qualifications and competence of individuals to conduct analyses, and to make certifications of such individuals, which certifications shall be subject to termination or revocation at the discretion of the Attorney General. N.J.S.A. §39:4-50.3.
Entity Establishing Testing Protocols:	Yes. The Attorney General is authorized to approve satisfactory techniques or methods. N.J.S.A. §39:4-50.3.
Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:	No
Other:	Independent Testing: In addition to the samples taken and tests made at the direction of a police officer hereunder, the person tested shall be permitted to have such samples taken and chemical tests of his breath, urine or blood made by a person or physician of his own selection. N.J.S.A. §39:4-50.2(c). Forcible Testing: No chemical test or specimen may be made or taken forcibly and against physical resistance thereto by the defendant. N.J.S.A. §39:4-50.2(e).
<u>Adjudication of DUI-D Charges:</u>	
Mandatory Adjudication Law (Yes/No):	No
Anti-Plea-Bargaining Statute (Yes/No):	No. However, a victim who sustains bodily injury or serious bodily injury shall be provided with the opportunity to consult with the prosecutor prior to dismissal of the case or the filing of a proposed plea negotiation with the court. N.J.S.A. §39:4-50.12.
Pre-Sentencing Investigation Law (PSI) (Yes/No):	The court may order a pre-sentence investigation in any case. When the Rules of the Court so require, the court shall not impose sentencing without first ordering a presentence investigation of the defendant. N.J.S.A. §2C:44-6.
<u>Affirmative Defenses to DUI-D Charge:</u>	
Legal Entitlement Valid/Prescription:	No ⁴⁷¹
Therapeutic Concentration:	Yes ⁴⁷²
Involuntary Intoxication:	No ⁴⁷³
Other:	Insanity is not a defense. ⁴⁷⁴
<u>Sanctions for Refusal to Submit to a Chemical Test:</u>	
Refusal to Take a Preliminary Breath Test -	N/A

⁴⁷¹ See *State v. Corrado*, 184 N.J.Super. 561, 446 A.2d 1229 (1982).

⁴⁷² It appears based upon the language of the statute that if a therapeutic concentration would not render a person “under the influence” arguing that the level of the substance detected was merely therapeutic would be a valid defense.

⁴⁷³ See *State v. Federico*, 414 N.J.Super 321, 998 A.2d. 517 (2010).

⁴⁷⁴ See *State v. Inglis*, 304 N.J.Super. 207, 698 A.2d 1296 (1997).

Criminal Sanction (Fine/Jail):
 Preliminary Breath Test – Other: **N/A**
 Refusal to Take Implied Consent Chemical
 Test – Criminal Sanction (Fine/Jail): **No**
 Implied Consent Chemical Test - Other:

Criminal Sanctions Following a DUI-D

Conviction:

Imprisonment/Fine:

First offense: Not less than **12 hours** or more than **48 hours**⁴⁷⁵ and not less than **\$300** or more than **\$500** and may be sentenced to not more than **30 days**;

School property/crossing – Not less than **\$500** or more than **\$800** and not more than **60 days**.

Second offense – Not less than **48 consecutive hours** or more than **90 days** and not less than **\$500** or more than **\$1,000**;

School property/crossing – Not less than **\$1,000** or more than **\$2,000** and not less than **96 hours** or more than **180 days**.

Third or subsequent offense - Not less than **180 days** and **\$1,000**.

School property/crossing – **\$2,000** and **180 days**. N.J.S.A. §39:4-50(a), (g).

Bodily Injury (crime of the 4th degree) – Not more than **18 months** and/or not more than **\$10,000**.

Serious Bodily Injury (crime of the 3rd degree) – Between **3-5 years** and/or not more than **\$15,000**.

School Property/Crossing:

Bodily Injury (crime of the 3rd degree) – Between **3-5 years** and/or not more than **\$15,000**;

Serious Bodily Injury (crime of the 2nd degree) – Between **5-10 years** and/or not more than **\$150,000**. N.J.S.A. §§2C:12-1(c); 2C:43-3(a); 2C:43-6(a).

Mandatory Minimum Term/Fine:

First offense – **12 hours detention/\$250**;

Second offense – **48 consecutive hours/\$500**;

Third and subsequent offenses – **90 days**⁴⁷⁶/**\$1,000**.

Community Service:

A court may order a person to perform community service. However, the community service of **30 days** shall be ordered for a second offense. N.J.S.A. §39:4-50.

Restitution:

Yes. (1) Paid by the defendant to a victim. N.J.S.A. §§2C:43-2; 2C:43-3; 2C:44-2. (2) A victim is also eligible to receive payment from the State's Violent Crimes Compensation Board. N.J.S.A. §52:4B-11.

⁴⁷⁵ A defendant shall be required to serve this as prescribed by the program requirements of the Intoxicated Driver Resource Centers, which is a community-based treatment program. N.J.S.A. §39:4-50(f).

⁴⁷⁶ The law provides that the court may substitute no more than 90 days of the 180 days jail term to be served in a drug or alcohol inpatient rehabilitation program approved by the Intoxicated Driver Resource Center. N.J.S.A. §39:4-50(a)(3), (f).

Child Endangerment:	In <u>addition</u> to any other sanctions, a person who commits DUI-D while transporting a passenger under 17 is guilty of a “disorderly persons offense”. Additionally, such person shall be ordered to perform not more than 5 days of community service, and shall have his license suspended for not more than 6 months . N.J.S.A. §39:4-50.15.
Other:	Additional Fees and Surcharges: A \$100 fee is imposed for the Alcohol Education and Enforcement Fund. N.J.S.A. §39:4-50(b). A \$100 surcharge is imposed for the Drunk-Driving Enforcement Fund. N.J.S.A. §39:4-50.8. One dollar (\$1) is added to any fine for the Body Armor Replacement Fund and \$1 added for the N.J. Spinal Cord Research Fund. N.J.S.A. §39:5-41(d), (e).
<u>Administrative Sanctions – Post-Conviction:</u>	
Substance Abuse Education:	Yes. N.J.S.A. §39:4-50.
Substance Abuse Treatment:	Yes. The court shall order an offender to serve time in an Intoxicated Driver Resource Center. For a third or subsequent offender, the court may substitute up to 90 days of jail time to be served in an inpatient rehabilitation facility. N.J.S.A. §39:4-50.
Vehicle Impoundment/Confiscation:	Impoundment.
Authorized by Specific Statutory Authority:	The arresting law enforcement agency shall impound the vehicle that the person was operating, for violations of DUI law or refusal. Impoundment shall be for 12 hours after the time of arrest and when: (1) the offender presents valid operator’s license, proof of ownership and valid insurance; (2) the offender is able to operate the vehicle in a safe manner; and (3) the offender meets any other conditions for release established by the law enforcement agency. N.J.S.A. §39:4-50.23.
Terms Upon Which Vehicle Will Be Released:	A vehicle may be released prior to the impoundment period only if the vehicle is not owned or leased by the person under arrest and the person who owns/leases the vehicle claims it and presents valid registration, proof of ownership and valid insurance. N.J.S.A. §39:4-50.23(c).
Other Miscellaneous Sanctions:	Special Assessment: A defendant shall be assessed a penalty of \$50 that is to be paid into a fund administered by the Violent Crimes Compensation Board. N.J.S.A. §2C:43-3.1(c). Insurance Surcharges: An offender <u>must</u> pay the following insurance surcharges: <u>First and second offenses</u> – \$1,000 per year for 3 years for a total surcharge of \$3,000 for each conviction; and <u>Third offense</u> (within 3 years) – \$1,500 per year for 3 years for a total surcharge of \$4,500 . N.J.S.A. §17:29A-35(b)(2). Per Diem Fees: DUI-D offenders who are incarcerated in an

Intoxicated Driver Resource Center must pay the following *per diem* fees:

First offense – \$75;

Second offense – \$100. These fees may be increased via regulations promulgated by the Commissioner of Health after consulting with the Governor's Council on Alcoholism and Drug Abuse. N.J.S.A. §39:4-50(f).

Visitation Program: As part of probation or community service, offenders may be ordered by the court to participate in a visitation program to a medical facility that handles motor vehicle accident victims. N.J.S.A. §39:4-50(h).

Homicide by Vehicle:

State Has Such a Law:

Imprisonment/Fine:

Mandatory Minimum Term/Fine:

Other:

Yes. Crime of the second degree.⁴⁷⁷ N.J.S.A. §2C:11-5.

Not less than **5 years** or more than **10 years** and/or not more than **\$150,000**. N.J.S.A. §§2C:43-3(a)(2); 2C:43-6(a)(2).

3 years.⁴⁷⁸ N.J.S.A. §2C:11-5(b)(1).

School Property/Crossing: Crime in the first degree – Not less than **10 years** or more than **20 years** and/or not more than **\$200,000**. N.J.S.A. §§2C:11-5; 2C:43-3(a)(1); 2C:43-6(a)(1).

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person's privilege to operate a CMV is “suspended” for not less than 1 mandatory year nor more than 3 years if transporting hazardous materials if, while operating a CMV, that person is under the influence of a controlled substance; or violates the DUI law.

A CMV operator who refuses to submit to a chemical test shall have his license revoked for 6 months (first offense) or 2 years (subsequent offense), in addition to the sanctions listed in N.J.S.A. §39:4-50.4a

For a subsequent violation or a combination of two or more violations of any of the above listed items, the privilege to operate a CMV is revoked for life (10 years mand).

A CMV operator who refuses to submit to a chemical test is subject to a fine of not less than \$250 or more than \$500. N.J.S.A. §§39:3-10.13; 39:3-10.24(f); 39:3-10.27.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

First offense – \$500

Second offense –\$750/not less than **1 day** nor more than **5 days**;

⁴⁷⁷ This offense is not specifically classified as a “felony” or a “misdemeanor” because the Criminal Code (Title 2C) does not define these terms. To cope with the lack of definition, the N.J. Supreme Court has held that a crime can be considered equal to a “common law felony” if a defendant can be sentenced to the State prison for more than 1 year. *State v. Doyle*, 200 A.2d 606 (N.J. 1964).

⁴⁷⁸ The minimum sentence is either between one-third and one-half of the sentence imposed or 3 years whichever is greater.

	<u>Third or subsequent offense –\$1,000/10 days.</u> N.J.S.A. §39:3-40(a)-(c).
Mandatory Minimum Fine/Imprisonment Term:	<u>First offense – \$500</u> <u>Second offense –\$750/1 day;</u> <u>Third or subsequent offense –\$1,000/10 days.</u> N.J.S.A. §39:3-40(a)-(c).
Other:	
<u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No):	Yes. N.J.S.A. §39:5-30a.
Grounds for Being Declared Habitual Offender:	3 license suspensions for traffic offenses within 3 years. N.J.S.A. §39:5-30a.
Term of License Revocations While on Habitual Offender Status:	Suspension for not more than 3 years. N.J.S.A. §39:5-30b. This suspension is not to run concurrently with any other suspension. N.J.S.A. §39:5-30d.
Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status:	Not specified.
Imprisonment (Term):	A fine of \$1,000 and may be imprisoned for 30 days or not less than 45 days if the offense resulted in bodily injury. N.J.S.A. §39:5-30e.
Mandatory Minimum Term/Fine:	45 days if the offense resulted in bodily injury. N.J.S.A. §39:5-30e.
<u>Other State Laws Related to Drug Use:</u> Drug Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	No. N.J.S.A. §26:2B-24 applicable only to alcohol.
Drug Chemical Test Given to Deceased Driver Killed in Crash:	No
Drug Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	No
Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:	No
Drug Chemical Tests on Persons Involved in Traffic Crashes:	No
<u>Marijuana – Possession and Use Laws:</u>	Legal for Medical Use. ^{479, 480}

⁴⁷⁹ “Marijuana” is defined as all parts of the plant Genus Cannabis L., whether growing or not; the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant; but shall not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. N.J.S.A. §2C:35-2.

⁴⁸⁰ “Qualifying patient” means a resident of the State who has been provided with a certification by a physician pursuant to a bona fide physician-patient relationship. A “primary caregiver” means a resident of the State who: (a) is at least 18 years old; (b) has agreed to assist with a registered qualifying patient's medical use of marijuana, is not currently serving as primary caregiver for another qualifying patient, and is not the qualifying patient's physician; (c) has never been convicted of possession or sale of a controlled dangerous substance, unless such conviction occurred after the effective date of this act and was for a violation of

Qualifying patients and primary caregivers are exempted from criminal liability when acting in accordance with the provisions of N.J.S.A. §§24:6I-1 and 18A:40-12.22 et al. N.J.S.A. §2C:35-18.

Criminal Penalties:

Possession ≤ 50 grams - punishable by imprisonment of not more than **6 months** and a fine of not more than **\$1,000**;

Possession > 50 grams (4th degree) - punishable by a term of imprisonment of not more than **18 months** and a fine of not more than **\$25,000**;

Possession within 1,000 feet of a school - a sentence must include an additional **100 hours** of community service to the sentence, as well an additional fine dependent on the quantity in possession. N.J.S.A. §2C:35-10.

Intoxicant Exclusion Law (UPPL):

Yes. N.J.S.A. §17B:26-27.

Federal law related to possession or sale of marijuana that is authorized under this act; (d) has registered with the department and has satisfied the criminal history record background check requirement; and (e) has been designated as primary caregiver on the qualifying patient's application or renewal for a registry identification card or in other written notification to the department. N.J.S.A. §24:61-3.

STATE

General Reference:

NEW MEXICO

New Mexico Statutes Annotated (NMSA)

Type of DUI-D Law:**Under the Influence**Basis for a DUI-D Charge:

NMSA §66-8-102(B).

Standard DUI-D Offense:

Under the influence of any drug⁴⁸¹ to any degree that renders the person incapable of safely driving a vehicle⁴⁸². NMSA §66-8-102(B).

Illegal Per Se Law:

No

Presumption Based on Drugs - State Has (Yes/No):

None

Other:

Aggravated driving under the influence of drugs consists of driving a vehicle in this State and (a) causing bodily injury to a human being as a result of the unlawful operation of a motor vehicle while driving under the influence of intoxicating liquor or drugs; or (b) refusing to submit to chemical testing and the driver was under the influence of intoxicating liquor or drugs. NMSA §66-8-102(D).Chemical Testing for Drug Concentration:

Preliminary Breath Test Law –State Has Such a Law (Yes/No):

No

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

N/A

Implied Consent Law:

Yes. NMSA §66-8-107.

Arrest Required (Yes/No):

Yes. NMSA §66-8-107.

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

Yes. NMSA §66-8-107.

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes. Criminal and Civil Actions. NMSA §66-8-110(A).

Other Information:

A driver may be required to submit to a chemical test based on a search warrant issued by a court upon probable cause that the driver has killed or greatly injured another person while operating a motor vehicle or where there is probable cause to believe that the driver committed a felony while under the influence of alcohol or a controlled substance. NMSA §66-8-111(A).

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

⁴⁸¹ “Drug” or “substance” means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any respective supplement to those publications. It does not include devices or their components, parts or accessories. NMSA §30-31-2.

⁴⁸² “Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including any frame, chassis, body or unitized frame and body of any vehicle or motor vehicle, except devices moved exclusively by human power or used exclusively upon stationary rails or tracks. NMSA §66-1-4.19(B).

Blood: **Yes.** NMSA §66-8-107.
 Urine: **No**
 Other: **None**

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform: **Yes.** Only a **physician, licensed professional or practical nurse or laboratory technician or technologist employed by a hospital or physician** shall withdraw blood from any person in the performance of a blood-alcohol test. NMSA §§66-8-103; 66-8-109.

Entity Establishing Testing Protocols: **Yes.** A breath or blood test must be administered by procedures approved by the scientific laboratory division of the **Department of Health**. NMSA §§66-8-107; 24-1-22.

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform: **No**

Other: **Independent Testing:** The person tested shall be advised by the law enforcement officer of the person's right to be given an opportunity to arrange for a physician, licensed professional or practical nurse or laboratory technician or technologist who is employed by a hospital or physician of his own choosing to perform a chemical test in addition to any test performed at the direction of a law enforcement officer. NMSA §66-8-109.

Adjudication of DUI-D Charges:

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

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription: **No**
 Therapeutic Concentration: **Yes**⁴⁸³
 Involuntary Intoxication: **No**⁴⁸⁴
 Other: **Duress** is an available defense.⁴⁸⁵

Sanctions for Refusal to Submit to a Chemical Test:

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

⁴⁸³ It appears based upon the language of the statute that if a therapeutic concentration would not render a person “under the influence,” or “impair” the person’s ability to safely operate a vehicle, arguing that the level of the substance detected was merely therapeutic would be a valid defense. NMSA §66-8-102(B).

⁴⁸⁴ *State v. Gurule*, 149 N.M. 599, 252 P.3d 823 (2011).

⁴⁸⁵ *State v. Rios*, 127 N.M. 334, 980 P.2d 1068 (1999) (certiorari denied).

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

None
N/A

Criminal Sanctions Following a DUI-D
 Conviction:

Imprisonment/Fine:

First conviction – Not more than **90 days** and/or not more than **\$500**;
Second or third conviction – Not more than **364 days** and/or not more than **\$1,000**;
Fourth conviction (4th degree felony) – Not less than **1** or more than **2 years** and may be fined not more than **\$5,000**;
Fifth conviction (4th degree felony) – **2 years** and may be fined not more than **\$5,000**;
Sixth conviction (3rd degree felony) – **30 months** and may be fined not more than **\$5,000**;
Seventh or subsequent conviction (3rd degree felony) – **3 years** and may be fined not more than **\$5,000**. NMSA §§31-18-15; 66-8-102.

Mandatory Minimum Term/Fine:

DUI – Great Bodily Injury (3rd degree felony): **3 years** and may be fined not more than **\$5,000**. NMSA §§31-18-15; 66-8-101(C).

First conviction – **\$300**;
Second conviction – **96 hours/\$500**;
Third conviction – **30 days/\$750**;
Fourth conviction – **6 months**;
Fifth conviction – **1 year**;
Sixth conviction – **18 months**;
Seventh or subsequent conviction – **2 years**.

Aggravated DUI Offenses:

First offense – **48 consecutive hours**;
Second offense – **96 consecutive hours**;
Third offense – **60 consecutive days**;
Fourth and subsequent offense – **6 months** (the sentence may not be suspended or deferred). NMSA §§31-18-15; 66-8-102.

DUI – Great Bodily Injury: 2 years. NMSA §66-8-101.

Community Service:

First offense – Not less than **24 hours**;
Second offense – Not less than **48 hours**;
Third offense – Not less than **96 hours**. NMSA §66-8-102.

Restitution:

Yes. NMSA §31-17-1. Restitution is to be paid by the defendant.

Child Endangerment:

N/A

Other:

Chemical Test Fee: A fee of \$85 is assessed against each defendant to defray the costs of chemical tests for DUI.

NMSA §31-12-7(A).

DUI Program Fee: A fee of \$75 is assessed to fund comprehensive DUI community programs. NMSA §31-12-7(B).

Screening and Treatment Costs: In addition to all other fines and fees the court may order the defendant to pay the costs of any screening and treatment programs. NMSA §66-8-102(S).

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

Driver rehabilitation program for drugs. NMSA §66-8-102.

Substance Abuse Treatment:

An offender shall be required to participate in and complete drug abuse screening program approved by the department of finance and administration and, if necessary, a treatment program approved by the court. The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement. NMSA §66-8-102(L).

Vehicle Impoundment/Confiscation:

Special Note: Municipal ordinances may provide for civil vehicle forfeiture. See *City of Albuquerque v. One 1984 Chevy Ut., VIN 1G8CS18BXE8176575, New Mexico License No. 335-KRH*, 46 P.3d 94 (N.M. 2002).

Authorized by Specific Statutory Authority:

N/A

Terms Upon Which Vehicle Will Be Released:

N/A

Other Miscellaneous Sanctions:

Driving Safety Course: A DUI-D offender may be required to take a driving safety course. NMSA §66-10-11.

Homicide by Vehicle:

State Has Such a Law:

Yes. 3rd Degree Felony NMSA §66-8-101.

Imprisonment/Fine:

6 years and may be fined not more than **\$5,000**. NMSA §31-18-15.

Mandatory Minimum Term/Fine:

None

Other:

A person who commits DUI vehicular homicide and who has incurred a prior DUI conviction within 10 years shall have his basic sentence increased by **4 years** for each prior DUI conviction. NMSA §66-8-101(D).

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is disqualified from operating a CMV for not less than 1 mandatory year (not less than 3 years if transporting hazardous materials) if, while driving a CMV, that person is convicted of a DUI-D offense while operating a CMV; or refuses to submit to a chemical test for drug concentration. NMSA §66-5-68(B)(1)-(5), (C).

For a subsequent violation or a combination of two or more violations of any of the above-listed items, the disqualification is for life (10 years mand). NMSA §66-5-68(D).

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

Misdemeanor. A definite term of less than **4 days** or more than **364 days** and/or not more than **\$1,000**. NMSA §§31-19-1(A); 66-5-39(A).

Mandatory Minimum Fine/Imprisonment Term:

4 days. NMSA §66-5-39(A).

Other:

A person who drives on a revoked license shall have the vehicle immobilized for 30 days, unless immobilization poses an imminent danger to the health, safety or employment of the convicted person's immediate family or the family of the owner of the vehicle. NMSA §66-5-39(B).

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

NoOther State Laws Related to Drug Use:

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

Yes.⁴⁸⁶ NMSA §24-11-6(B).

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes

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

Yes

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

Yes

Drug Chemical Tests on Persons Involved in Traffic Crashes:

NoMarijuana – Possession and Use Laws:**Legal for Medical Use.**^{487, 488}

A qualified patient or primary caregiver shall not be subject to arrest, prosecution or penalty in any manner for the possession of or the medical use of cannabis if the quantity of

⁴⁸⁶ But the information obtained from these test results can only be used for statistical purposes; i.e., the information cannot contain any identification about deceased persons. NMSA §24-11-6(B).

⁴⁸⁷ "Marijuana" means all parts of the plant cannabis, including any and all varieties, species and subspecies of the genus Cannabis, whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination. NMSA §31-31-2.

⁴⁸⁸ A "primary caregiver" means a New Mexico resident who is at least 18 years old and who has been designated by the patient's practitioner as being necessary to take responsibility for managing the well-being of a qualified patient with respect to the medical use of cannabis pursuant to the provisions of the Lynn and Erin Compassionate Use Act. A "qualified patient" is a New Mexico resident who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card issued pursuant to the Lynn and Erin Compassionate Use Act. NMSA §26-2b-3.

cannabis does not exceed an adequate supply⁴⁸⁹. NMSA §26-2b-4.

Criminal Penalties:

First Offense possession < 1 oz. (petty misdemeanor) - **15 days** and/or a fine of not less than **\$50** nor more than **\$100**.

Second or subsequent offense possession ≤ 1 oz. (misdemeanor) - **1 year** and/or a fine of not less than **\$100** nor more than **\$1000**.

Possession > 1 but < 8 oz. (misdemeanor) - **1 year** and/or a fine of not less than **\$100** not more than **\$1000**.

Possession > 8 oz. (4th degree felony) - **1.5 years** and a fine of not more than **\$5,000**. NMSA §30-31-23(B).

Intoxicant Exclusion Law (UPPL):

Yes⁴⁹⁰

⁴⁸⁹ An “adequate supply” means an amount of cannabis, in any form approved by the department, possessed by a qualified patient or collectively possessed by a qualified patient and the qualified patient’s primary caregiver that is determined by rule of the department to be no more than reasonably necessary to ensure the uninterrupted availability of cannabis for a period of three months and that is derived solely from an intrastate source. NMSA §26-2b-3.

⁴⁹⁰ No explicit statutes are in place. But case law supports an insurer’s right to contract with the insured as to what risks it will or will not assume, as long as neither statute law nor public policy is violated. Courts will give force and effect to policy provisions that clearly express conditions precedent or exclusions to coverage. See *Rummel v. Lexington Ins. Co.*, 945 P.2d 970 (N.M. 1997).

STATE

General Reference:

NEW YORK

McKinney's Consolidated Laws of New York
New York Code Rules and Regulations (NYCRR)Type of DUI-D Law:**Driving While Ability Impaired**Basis for a DUI-D Charge:

Veh & Traf §1192(4), (4-a).

Standard DUI-D Offense:

Driving a vehicle⁴⁹¹ while impaired by drugs⁴⁹² or driving while impaired by the combined influence of drugs or of alcohol and any drug or drugs. Veh & Traf §1192(4), (4-a).

Illegal Per Se Law:

No

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such a Law (Yes/No):

Yes. Veh & Traf §1194(1)(b).

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Yes

Implied Consent Law:

Yes. Veh & Traf § 1194(2).

Arrest Required (Yes/No):

Yes.⁴⁹³ Veh & Traf §1194(2).

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

Yes. Veh & Traf §1194(2)(a).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal and Civil Cases.
Veh & Traf §1194(2)(f).

Other Information:

Under Veh & Traf §1194(3), a driver may be compelled by court order to submit to a chemical test of his blood for either alcoholic or drug content if he has been involved in an accident related to a DUI-D offense and there has been a fatality or a serious physical injury, or if a PBT indicates alcohol consumption and the person has been arrested and has refused to submit to a chemical test.

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

Blood:

Yes. Veh & Traf §1194(2)(a).

Urine:

Yes. Veh & Traf §1194(2)(a).

Other:

Saliva. Veh & Traf §1194(2)(a).

⁴⁹¹ Vehicle means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks. Veh & Traf §159.

⁴⁹² The term “drug” when used in this chapter, means and includes any substance listed in §3306 of the public health law. Veh & Traf §114-a.

⁴⁹³ Applies to persons 21 and older. A person under 21 who has been stopped for operating a motor vehicle “after having consumed alcohol” cannot be arrested. However, they can be “temporarily detained” by law enforcement officers for the purpose of requesting a chemical test. Veh & Traf §1194(2)(a)(4).

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. The following persons may withdraw blood for the purpose of determining the alcoholic or drug content therein: (i) a physician, a registered professional nurse, a registered physician assistant, a certified nurse practitioner, or an advanced emergency medical technician as certified by the department of health; or (ii) under the supervision and at the direction of a physician, registered physician assistant or certified nurse practitioner acting within his or her lawful scope of practice, or upon the express consent of the person eighteen years of age or older from whom such blood is to be withdrawn: a clinical laboratory technician or clinical laboratory technologist licensed pursuant to article one hundred sixty-five of the education law; a phlebotomist; or a medical laboratory technician or medical technologist employed by an approved clinical laboratory. Veh & Traf §1194(4).

Entity Establishing Testing Protocols:

Yes. The **Department of Health** shall issue and file rules and regulations approving satisfactory techniques or methods of conducting chemical analyses of a person's blood, urine, breath or saliva and to ascertain the qualifications and competence of individuals to conduct and supervise chemical analyses of a person's blood, urine, breath or saliva. If the analyses were made by an individual possessing a permit issued by the department of health, this shall be presumptive evidence that the examination was properly given. Veh & Traf §1194(6)(bc).

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:

Yes. Veh & Traf §1194(4).

Other:

Independent Testing: The person tested shall be permitted to choose a physician to administer a chemical test in addition to the one administered at the direction of the police officer. Veh & Traf §1194(6)(b).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No):

No, but unconditional discharge for a DUI violation is prohibited. Veh & Traf §1193(1)(e).

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

Yes. Unless available evidence determines otherwise, plea-bargaining is allowed only to another DUI offense. Veh & Traf §1192(10)(a).

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

A pre-sentencing investigation is mandatory in any felony case or any misdemeanor case where the sentence may be more than 180 days. Criminal Procedure Law (CPL) §390.20.

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription:

Yes. *People v. Koch*, 250 A.D.623, 294 N.Y.S. 987 (1937).

Therapeutic Concentration: **Yes.** *People v. Koch*, 250 A.D.623, 294 N.Y.S. 987 (1937).
 Involuntary Intoxication: **Yes.** *People v. Koch*, 250 A.D.623, 294 N.Y.S. 987 (1937).
 Other:

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **N/A**
 Preliminary Breath Test – Other: **N/A**
 Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**
 Implied Consent Chemical Test - Other: **Civil Penalty:**
First revocation – **\$500**;
Second or subsequent revocation (within 5 years) – **\$750**.
 Veh & Traf §1194(2)(d)(2).

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine: **Driving while intoxicated/ability impaired by drugs/combination:**
First conviction (misdemeanor) – Not more than **1 year** and/or not less than **\$500** or more than **\$1,000**;
Second conviction (Class E felony) (within 10 years) – Not more than **4 years** and/or not less than **\$1,000** or more than **\$5,000**;
Third conviction (Class D felony) (within 10 years) – Not more than **7 years** and/or not less than **\$2,000** or more than **\$10,000**;
Fourth conviction (Class D felony) (within 15 years) – Not more than **7 years** and/or not less than **\$2,000** or more than **\$10,000**. Veh & Traf §1193(1)(c); Penal Law §70.00(2)(d), (e).
DUI Felony.⁴⁹⁴
Class E Felony – Not more than **4 years** and/or not less than **\$1,000** or more than **\$5,000**;
Class D Felony – Not more than **7 years** and/or not less than **\$2,000** or more than **\$10,000**. Veh & Traf §1193(1)(c); Penal Law §70.00(2).
DUI School bus (with at least 1 passenger) (Class E felony) – Not more than **4 years** and/or not less than **\$1,000** or more than **\$5,000**. Veh & Traf §1193(1)(d)(4-a); Penal Law §70.00.

⁴⁹⁴ Class E Felony: It becomes a Class D felony offense when the offender operates a motor vehicle in violation of DWI (per se; alcohol; drugs; combination) and has been convicted previously of: (1) a DWI or of 1st/2nd degree vehicular assault and aggravated vehicular assault; or (2) 1st/2nd degree vehicular manslaughter and vehicular homicide, within 10 years. Class D Felony: It becomes a Class D felony offense under the conditions above if it is a subsequent offense within 10 years, or fourth offense within 15 years. Veh & Traf §1193(1)(c).

Mandatory Minimum Term/Fine:	<p>DUI/Per Se 2nd (within 5 years) – 5 days or 30 days community service;</p> <p>DUI/Per Se 3rd (within 5 years) – 10 days or 60 days community service. Veh & Traf §1193(1-a),(b). A fine is not mandatory when sentence of imprisonment is given.</p>
Community Service:	<p>DUI/Per Se 2nd – 30 days (if no jail time)</p> <p>DUI/Per Se 3rd – 60 days (if no jail time) Veh & Traf §1193(1-a)(a)&(b). Additionally, as a condition of probation, a court may order an offender to complete community service. Penal Law §65.10(2)(h).</p>
Restitution:	The court may require restitution by a defendant to a victim. Penal Law §§60.27; 65.10(2)(g).
Child Endangerment:	A person may also receive compensation from the State’s victims’ compensation fund. Executive Law §620, <i>et seq.</i> Considered an aggravated DUI, listed above.
Other:	<p>Surcharges and fees:</p> <p><u>Infraction</u> – \$5 fee and \$25 surcharge;</p> <p><u>Misdemeanor</u> – \$25 fee and \$175 surcharge;</p> <p><u>Felony</u> – \$25 fee and \$300 surcharge. Veh & Traf §1809. There are additional surcharges of \$25 and \$170. Veh & Traf §§1809-c; 1809-e(2).</p>
<u>Administrative Sanctions – Post-Conviction:</u>	
Substance Abuse Education:	Yes. Veh & Traf §1196.
Substance Abuse Treatment:	Yes. Veh & Traf §1196.
Vehicle Impoundment/Confiscation:	Forfeiture. Civil Practice Law & Rules (CPLR) §§1310(5); 1311(1)(a).
Authorized by Specific Statutory Authority:	A defendant’s vehicle may be subject to forfeiture if he/she has been convicted of a felony drunk-driving offense (e.g., a second or subsequent Per Se or Intoxicated offense within 10 years). This sanction is not mandatory.
Terms Upon Which Vehicle Will Be Released:	The court may grant relief if such relief is warranted by the existence of some compelling factor, consideration or circumstance demonstrating that forfeiture would not serve the ends of justice. CPLR §1311(4)(d).
Other Miscellaneous Sanctions:	<p>Victim Impact Program: A defendant may be required to attend a “victim impact program”. This program consists of a single session in which prior DUI offenders discuss the impact that such an offense has had on them. Veh & Traf §1193(1)(f).</p> <p>Probation: A defendant may be placed on probation with conditions related to the offender’s rehabilitation. Penal Law §65.10(2)(1).</p>

Conditional discharge or probation must be accompanied by

a sentence or a fine. Veh & Traf §1193(1)(e).

Homicide by Vehicle:

State Has Such a Law:

Vehicular manslaughter in the 2nd degree – Class D felony. Penal Law §125.12

Vehicular manslaughter in the 1st degree (BAC ≥ 0.18) – Class C felony. Penal Law §125.13.

Imprisonment/Fine:

2nd Degree – Not more than **7 years** and/or not more than **\$5,000**; **1st Degree** – Not more than **15 years** and/or not more than **\$5,000**. Penal Law §§70.00; 80.00.

Mandatory Minimum Term/Fine:

1 year. Penal Law §70.00.

Other:

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person will have his privilege to operate a CMV “revoked” for one mandatory year (three years mandatory if transporting hazardous materials) if, while operating a CMV he violated any provision of the DUI law or refused to submit to a chemical test for alcoholic/drug content. For a second violation or a combination of two violations of any of the above-listed items, there is a “disqualification” for at least 10 years, and a fine of \$750. For a third violation or a combination of three violations of any of the above listed items, there is a mandatory permanent “disqualification.” Veh & Traf §§510-a; 530(5); 1193(2); 1194(2)(d)(1)(c), (d); 1196(5).

Criminal Sanctions:

For a first Per Se Level II Offense, the sanctions are a fine of not less than **\$500** or more than **\$1,500** and/or a jail term of not more than **180 days**.

For a subsequent Per Se Level II Offense (within five years) or for a first offense where there has been a previous DUI offense conviction (within five years), the sanctions are a fine of not less than **\$500** or more than **\$1,500** and/or a jail term of not more than **1 year**.

A person commits a misdemeanor if he operates a CMV and violates the regular provisions of the DUI law. The sanctions for this offense are a fine of not less than **\$500** or more than **\$1,500** and/or a jail term or not more than **1 year**.

Felony: A person commits a Class E felony if he is convicted of a Per Se Level II offense and has been convicted 2 or 3 times within 5 years of a Per Se Level II offense or any DUI offense (one of these must be a misdemeanor.)

A person commits a Class D felony if he is convicted of a Per Se Level II offense and has been convicted 4 or more times within 5 years of a Per Se Level II offense or any DUI offense (One of these must be a misdemeanor.)

Class E felony sanctions: A fine of not less than **\$1,000** or

more than **\$5,000** and/or a term of imprisonment of not more than **4 years**.

Class D felony sanctions: A fine of not less than **\$2,000** or more than **\$10,000** and/or a term of imprisonment of not more than **7 years**.

Veh & Traf §1193(1)(d)(1), (2), (3), (4); Penal Law §§55.10(1), (2); 70.00; 70.15(1)(a).

DUI Offenses Involving Other Motor Vehicles Used In Commerce: The following sanctions apply to persons who operate taxicabs, liveries or a trunk weighing more than 18,000 lbs. but less than 26,000 lbs. while in violation of the regular provisions of the DUI law.

First offense (misdemeanor) – Not more than 1 year and/or not less than **\$500** or more than **\$1,500**; license revoked **1 year**;

Second offense (within 10 years) (class E felony) – Not more than **4 years** and/or not less than **\$1,000** or more than **\$5,000**; disqualification from operating a CMV;

Third offense (within 10 years) (class D felony) – Not more than **7 years** and/or not less than **\$2,000** or more than **\$10,000**; disqualification from operating a CMV. Veh & Traf §1193(1)(d).

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

Aggravated unlicensed operation of a motor vehicle in the 3rd degree (Misdemeanor) – punishable by not more than **30 days** and/or not less than **\$200** or more than **\$500**;

Aggravated unlicensed operation of a motor vehicle in the 2nd degree (Misdemeanor) – punishable by not more than **180 days** and/or not less than **\$500**;

Aggravated unlicensed operation of a motor vehicle in the 1st degree (Class E Felony) – punishable by not more than **4 years** or a term of probation, either or both, and not less than **\$500** or more than **\$5,000**. Veh & Traf §511; Penal §§70.00; 80.00

Mandatory Minimum Fine/Imprisonment Term:

3rd Degree – Less than 30 days/\$200
2nd Degree – 7 days or probation/condition/\$500;
1st Degree – 1 year or probation/condition/\$500.
 (Unclear from the statute)

Other:

Seizure: Any vehicle used in a 1st degree aggravated unlicensed operation of a motor vehicle may be seized. Veh & Traf §511-c(2).

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Other State Laws Related to Drug Use:

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

Yes. County Law §674(3)(b).⁴⁹⁵

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes

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

No

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

Yes – If 16 years or older.

Drug Chemical Tests on Persons Involved in Traffic Crashes:

No

Marijuana – Possession and Use Laws:**Legal for Medical Use.**^{496, 497}

The possession, acquisition, use, delivery, transfer, transportation, or administration of medical marihuana by a certified patient or designated caregiver possessing a valid registry identification card, for certified medical use, shall be lawful pursuant to conditions of New York Health Law §3362.⁴⁹⁸

Criminal Penalties:

Use or Display of Marijuana in Public (class B misdemeanor) - a fine of **\$250** and not more than **90 days**. New York Pen. Code §221.10.

Possession ≤ 25 grams:

First Offense - Fine of **\$100**;

Second offense (within 3 years) - Fine of **\$200**;

Third or subsequent offense (within 3 years) - Fine of **\$250** and/or not more than **15 days**. New York Pen. Code §221.05.

Possession of > 25 grams but < 2 oz. (class B misdemeanor) - Not more than **3 months** and not more than **\$500**.

Possession of >2 oz. but < 8 oz. (class A misdemeanor) - Not more than **1 year** and not more than **\$1,000**;

⁴⁹⁵ The test shall not be made if there is reason to believe that the decedent is of a religious faith that is opposed to such test on religious or moral grounds. County Law §674(3)(b).

⁴⁹⁶ “Marihuana” means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. New York Public Health Law §3302.

⁴⁹⁷ “Medical marihuana” means marihuana as defined in New York Health Law §3302, intended for a certified medical use, as determined by the commissioner in his or her sole discretion. Any form of medical marihuana not approved by the commissioner is expressly prohibited. New York Public Health Law §3360.

⁴⁹⁸ “Certified patient” means a patient who is a resident of New York State or receiving care and treatment in New York State as determined by the commissioner in regulation, and is certified under New York Health Law §3361. “Designated caregiver” means the individual designated by a certified patient in a registry application. A certified patient may designate up to two designated caregivers. New York Health Law §3362.

Possession of > 8 oz. but < 16 oz. (class E felony) - Not more than **4 years** and not more than **\$5,000**;

Possession of >16 ounces but < 10 lbs. (class D felony) - Not more than **7 years** and not more than **\$5,000**;

Possession of > 10 lbs. (class C felony) - Not more than **15 years** and not more than **\$15,000**.

New York Pen. Code §§221.10; 221.15; 221.20; 221.25; 221.30; 70.00; 70.15; 80.00; 80.05.

Intoxicant Exclusion Law (UPPL):

Yes. Insurance Law §3216(d)(2)(K)

STATE

NORTH CAROLINA

General Reference:

North Carolina General Statutes (N.C.G.S.)
North Carolina Administrative Code (NCAC)

Type of DUI-D Law:

Under the Influence/Zero Tolerance

Basis for a DUI-D Charge:

N.C.G.S. §20-138.1(a)(3).

Standard DUI-D Offense:

Operate a motor vehicle⁴⁹⁹

I. While under the influence of any impairing substance; or
II. With any amount of a Schedule I controlled substance⁵⁰⁰ or its metabolites. N.C.G.S. §§20-4.01(14a); 20-138.1(a)(3).

Illegal Per Se Law:

Yes - any amount of **Schedule I controlled substance or its metabolites**.

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has One (Yes/No):

Yes. N.C.G.S. §20-16.3(a).

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Yes

Implied Consent Law:

Yes. N.C.G.S. §20-16.2.

Arrest Required (Yes/No):

Yes, for a chemical test.⁵⁰¹ N.C.G.S. §20-16.2(a). A person need not be arrested for a preliminary breath test. N.C.G.S. §20-16.3(a).

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

Yes.⁵⁰² N.C.G.S. §§20-16.2(a), (a1).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes. N.C.G.S. §§20-16.2(a)(3); 20-16.3(d).

Other Information:

Non-Breath Chemical Tests for Drug Concentration Authorized Under the

Implied Consent Law:

Blood:

Yes. N.C.G.S. §20-16.2(b).

Urine:

Yes. N.C.G.S. §§20-139.1(c); 20-16.2(b).

Other:

Other bodily fluid or substance. N.C.G.S. §20-4.01(3a).

Individuals Authorized to Perform Chemical

⁴⁹⁹ Until July 1, 2016 a “motor vehicle” means every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This shall not include mopeds as defined in N.C.G.S. §20-4.01(27)d1. After July 1, 2016 the last sentence is amended to read “except as specifically provided otherwise, this term shall not include mopeds as defined in N.C.G.S. §20-4.01(27)d1.”

⁵⁰⁰ See N.C.G.S. §90-89 for a list of controlled substances categorized as Schedule I.

⁵⁰¹ A person is charged with an implied consent offense if he has been arrested or if criminal process for the offense has been issued. N.C.G.S. §20-16.2(a1).

⁵⁰² A law enforcement officer shall “designate the type of chemical analysis to be administered.” N.C.G.S. §20-16.2(b), (c).

Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. The **Department of Health and Human Services** may ascertain the qualifications and competence of individuals to conduct particular chemical analyses and the methods for conducting chemical analyses. The Department may issue permits to conduct chemical analyses to individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion. N.C.G.S. §20-139.1(b).

Entity Establishing Testing Protocols:

Yes. Department of Health and Human Services. N.C.G.S. §20-139.1(b).

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:

No

Other:

Independent Testing: A person may request an additional chemical analysis. If the person is not released from custody after the initial appearance, the agency having custody of the person shall make reasonable efforts in a timely manner to assist the person in obtaining access to a telephone to arrange for any additional test and allow access to the person. The failure or inability of the person who submitted to a chemical analysis to obtain any additional test or to withdraw blood does not preclude the admission of evidence relating to the chemical analysis. N.C.G.S. §20-139.1(d).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No):

No

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

No. However, the law does require the prosecutor to explain a reduction or dismissal of a DUI charge in writing and in open court. N.C.G.S. §20-138.4.

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

Yes. A judge may order a presentence investigation. N.C.G.S. §20-179.1.

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription:

No. The fact that a person is legally entitled to use a drug is not a defense. N.C.G.S. §20-138.1(b).

Therapeutic Concentration:

Yes.⁵⁰³

Involuntary Intoxication:

No, unless facts support force or coercion to ingest a substance.⁵⁰⁴

Other:

Sanctions for Refusal to Submit to a Chemical Test:

⁵⁰³ It appears based upon the language of the statute that if a therapeutic concentration would not render a person “under the influence”, arguing that the level of the substance detected was merely therapeutic would be a valid defense.

⁵⁰⁴ See *State v. Highsmith*, 173 N.C. App. 600, 607, 619 S.E.2d 586, 591 (2005) ([I]nvoluntary intoxication is a very rare thing, and can never exist where the person intoxicated knows what he is drinking, and drinks the intoxicant voluntarily, and without being made to do so by force or coercion...) (internal citations omitted).

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

N/A

Preliminary Breath Test – Other:

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

N/A

Implied Consent Chemical Test - Other:

If a driver charged with an implied consent offense appears before a judicial official⁵⁰⁵ the revocation period is 30 days (mand) if there are no pending offenses for which the person's license had been or is revoked. This period may be increased to 45 days if the person does not appear before the judicial official. N.C.G.S. §20-16.5(f).

Criminal Sanctions Following a DUI-D
Conviction:

Imprisonment/Fine:

Misdemeanor.⁵⁰⁶

Level 1 Aggravated Punishment- not less than **12 months** or more than **36 months** or **120 days** in prison and **120 days** of continuous alcohol monitoring and may be fined up to **\$10,000**;

Level 1 Punishment – Not less than **30 days** or more than **24 months** and may be fined up to **\$4,000**;

Level 2 Punishment – Not less than **7 days** or more than **12 months** and may be fined up to **\$2,000**;

Level 3 Punishment – Not less than **72 hours** or more than **6 months** and may be fined up to **\$1,000**;

Level 4 Punishment – Not less than **48 hours** or more than **120 days** and may be fined up to **\$500**;

Level 5 Punishment – Not less than **24 hours** or more than **60 days** and may be fined up to **\$200**. N.C.G.S. §20-179(f3), (g)(h),(i),(j),(k).

Serious injury by vehicle (Class F felony⁵⁰⁷): Sentence is **10-59 months** depending on the person's criminal history. N.C.G.S. §§15A-1340.17; 20-141.4(a3).

Aggravated⁵⁰⁸ **serious injury by vehicle** (Class E felony): Sentence is **15-98 months** depending on the person's criminal history. N.C.G.S. §§15A-1340.17; 20-141.4(a4).

Persons under 21 (Class 2 misdemeanor) (controlled substance) – Not less than **1 day** or more than **60 days** and/or not more than **\$1,000**. N.C.G.S. §§15A-1340.23; 20-138.3; 20-176.

⁵⁰⁵ A judicial official means a magistrate, clerk, judge or justice. N.C.G.S. §§15A-101(5); 20-16.5.

⁵⁰⁶ After hearing mitigating and aggravating factors, a court determines which level punishment to impose. Mitigating factors include slight impairment, driving record, medical condition, voluntary submission to a mental health facility, and completion of substance abuse treatment, to name a few. Aggravating factors include high BAC, negligent or reckless driving, prior driving record, driving while license revoked, etc. N.C.G.S. §20-179.

⁵⁰⁷ North Carolina follows a sentencing grid that provides presumptive, mitigated and aggravated sentencing ranges for each class offense and prior record level. See N.C.G.S. §15A-1340.17.

⁵⁰⁸ The crime becomes aggravated when the person has a previous impaired driving within 7 years of the instant offense. N.C.G.S. §20-141.4(a4).

Mandatory Minimum Term/Fine: Level 1 Punishment – **30 days** (or not less than **10 days** if placed in an abstinence program and monitored for not less than 120 days);
Level 2 Punishment – **7 days**;
Level 3 Punishment – **None**;
Level 4 Punishment – **None**;
Level 5 Punishment – **None**.
 N.C.G.S. §20-179(f3), (g)-(k).

Community Service: Level 2 Punishment – **240 hours** if the judge suspends all active terms of imprisonment and imposes abstention from alcohol and monitoring;
Level 3 Punishment – **72 hours** within 90 days (or 72 hours in jail, or both);
Level 4 Punishment – **48 hours** within 60 days (or 48 hours in jail, or both);
Level 5 Punishment – **24 hours** within 30 days (or 24 hours in jail, or both). N.C.G.S. §20-179(f3), (g)-(k).

Restitution: Direct compensation by the defendant to a victim. N.C.G.S. §15B-24.

Child Endangerment: Driving while a child under age 18 is in the vehicle is considered a grossly aggravating factor, and is to be considered during sentencing. N.C.G.S. §20-179(c).

Other:

Administrative Sanctions - Post-Conviction:

Substance Abuse Education: **Yes.** N.C.G.S. §20-179.

Substance Abuse Treatment: **Yes.** N.C.G.S. §20-179. Under N.C.G.S. §20-179.1, treatment may be ordered by the court as a condition of probation.
 Under N.C.G.S. §20-179(k1), the court may order that a term of imprisonment imposed as a condition of probation be served in an inpatient alcohol treatment facility.

Vehicle Impoundment/Confiscation: **Forfeiture.**
 Authorized by Specific Statutory Authority: Driving while impaired while revoked for a previous impaired driving revocation. N.C.G.S. §20-28.2.
 For a fourth or subsequent offense (within 10 years), the motor vehicle driven by the offender is subject to seizure and forfeiture. N.C.G.S. §20-138.5(e).

Terms Upon Which Vehicle Will Be Released: Certain innocent parties who have an ownership interest in the vehicle, or a lien holder, may have the vehicle released to them. N.C.G.S. §§ 20-28.2; 20-138.5(e).

Other Miscellaneous Sanctions:

Homicide by Vehicle:

State Has Such a Law: **Yes.**
Felony Death by Vehicle (Class E felony);

Imprisonment/Fine: **Aggravated Felony Death by Vehicle** (Class D felony);
Repeat Felony Death by Vehicle Offender (Class B2 felony). N.C.G.S. §§15A-1340.17; 20-141.4(a1), (a5), (a6), (b).
Felony Death by Vehicle (Class E felony) - Sentence is **15-98 months** depending on the person’s criminal history and aggravating/mitigating factors.
Aggravated Felony Death by Vehicle (Class D felony) – Sentence is **38 - 229 months** depending on the person’s criminal history and aggravating/mitigating factors.
Repeat Felony Death by Vehicle Offender (Class B2 felony) – Sentence is **94-480 months** depending on the person’s criminal history and aggravating/mitigating factors. Fine amounts are discretionary with the court. N.C.G.S. §§15A-1340.17; 20-141.4.

Mandatory Minimum Term/Fine: **None**

Other:

DUI-D Offenses and Commercial Motor Vehicles (CMV):

I. A person is disqualified from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person is under the influence of an impairing substance, or has any amount of a controlled substance or its metabolites in blood or urine; or refuses to submit to a chemical test for an alcohol concentration. For a subsequent violation or a combination of two or more violations of any of the above-listed items, the disqualification is for life (10 years mand. but for third violation/refusal, disqualification for life is mand.).

II. It is a misdemeanor to operate a CMV while under the influence of an impairing substance. The sanctions for this offense are the same as for a regular drunk-driving offense N.C.G.S. §§20-138.2(a)(1)-(3); 20-179.

First offense (Class 3 misdemeanor) – A **\$100** fine and disqualification for **10 days** (mand);

Second or subsequent offense (within 7 years) (misdemeanor) – Same criminal sanctions as for a DUI offense and CDL disqualification for **1 year** (mand). An offender must have alcohol education/treatment prior to re-licensing.

Fourth offense, disqualification is for **life** (mand).

Note: The preliminary breath test and implied consent laws also apply to this offense.

N.C.G.S. §§20-17.4(a), (a1), (b), (b1); 20-17.6; 20-19(f); 20-37.12; 20-138.2; 20-138.2A; 20-179.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment: **Class 1 misdemeanor**. N.C.G.S. §20-28(a1).

A sentence of **1-120 days** depending on the person’s criminal record. A fine is discretionary by the court. N.C.G.S. §§20-28(a1); 15A-1340.23.

Mandatory Minimum Fine/Imprisonment Term:
Other:

None.

I. Vehicle “subject to” impoundment and forfeiture if driving while impaired while revoked for an impaired driving revocation. N.C.G.S. §20-28.2.

II. If a person is convicted of a DUI offense while driving with a license revoked for a previous DUI offense conviction (within 7 years), the Court must impose Level 1 punishment. N.C.G.S. §20-179(c)(2).

III. The court may order as a condition of probation that the offender abstain from alcohol consumption and verify compliance by use of a monitor for a minimum period of 90 days. N.C.G.S. §20-28(a1).

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. N.C.G.S. §20-138.5.

Grounds for Being Declared Habitual Offender:

3 or more impaired driving offenses within 10 years. N.C.G.S. §20-138.5.

Term of License Revocations While on Habitual Offender Status:

Permanent Revocation. N.C.G.S. §20-138.5(d).

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

Class F felony. N.C.G.S. §20-138.5.

Imprisonment (Term):

10-59 months; fine is discretionary. N.C.G.S. §15A-1340.17.

Mandatory Minimum Term/Fine:

12 months. N.C.G.S. §20-138.5.

Other State Laws Related to Drug Use:

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

No

Drug Chemical Test Given to Deceased Driver Killed in Crash:

N/A

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

N/A

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

N/A

Drug Chemical Tests on Persons Involved in Traffic Crashes:

Yes. N.C.G.S. §§20-16.2(a1); 20-16.3(a); 20-141.4(a2).

Marijuana – Possession and Use Laws:

Legal for Medical Use.⁵⁰⁹

⁵⁰⁹ “Marijuana” means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil, or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. N.C.G.S. §90-87(16).

Possession < 0.5 oz. (class 3 misdemeanor) - Not more than **\$200** nor more than **20 days**. Any sentence of imprisonment imposed for this offense must be suspended.

Possession > 0.5 < 1.5 oz. (class 1 misdemeanor) - Not less than **1** nor more than **45 days** and a fine not more than **\$1000**;

Possession > 1.5 oz. but <= 10 lbs. (class I felony) - Not less than **3** nor more than **8 months** and a discretionary fine for a first offense.

N.C.G.S. §§15A-1340.17; 15A-1340.23; 90-95(d)(4).

Other:

Legal Possessions of Hemp Extract⁵¹⁰ for medical purposes: An individual may possess or use hemp extract, and is not subject to criminal penalties if the individual: (a) possesses or uses the hemp extract only to treat intractable epilepsy as defined in N.C.G.S. §90-113.101; (b) possess a certificate of analysis as to the ingredients, including its % of THC and cannabidiol by weight; and (c) is a caregiver as defined in N.C.G.S. §90-113-101⁵¹¹. N.C.G.S. §90-94.1

Intoxicant Exclusion Law (UPPL):

No. N.C.G.S. §58-51-16(b).

⁵¹⁰ “Hemp extract” means an extract from a cannabis plant, or a mixture or preparation containing cannabis plant material, that has all of the following characteristics: (1) is composed of less than nine-tenths of one percent (0.9%) tetrahydrocannabinol by weight; (2) is composed of at least five percent (5%) cannabidiol by weight; and (3) contains no other psychoactive substance. N.C.G.S. § 90-113.101(5).

⁵¹¹ “Caregiver” means an individual that is at least 18 years of age and a resident of North Carolina who is a parent, legal guardian, or custodian of a patient and is registered with the Department of Health and Human Services who possesses a written statement dated and signed by a neurologist that states all of the following: (a) the patient has been examined and is under the care of the neurologist; (b) the patient suffers from intractable epilepsy; and (c) the patient may benefit from treatment with hemp extract. N.C.G.S. § 90-113.101(1).

STATE

General Reference:

NORTH DAKOTA

North Dakota Century Code Annotated (NDCC)

North Dakota Administrative Code (NDAC)

Type of DUI-D Law:

Under the Influence

Basis for a DUI-D Charge:

NDCC §39-08-01(1)(c), (d).

Standard DUI-D Offense:

Under the influence of any drug⁵¹² or substance, any combination of drugs or substances or the combined influence of alcohol and any drug or substance.

Illegal Per Se Law:

No

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law– State Has Such Law (Yes/No):

Yes. NDCC §39-20-14.

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

No

Implied Consent Law:

Yes. NDCC § 39-20-01.

Arrest Required (Yes/No):

Yes. NDCC § 39-20-01.

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

Yes. NDCC § 39-20-01.

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal and Civil Cases. NDCC §39-20-08.

Other Information:

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

Blood:

Yes. NDCC §39-20-01.

Urine:

Yes. NDCC §39-20-01.

Other:

None

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. Only **an individual medically qualified to draw blood**, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood. **The Director of the State Crime Laboratory or the Director's designee** shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of

⁵¹² “Drug” means any drug or substance or combination of drugs or substances that renders an individual incapable of safely driving. NDCC §39-20-01.

Entity Establishing Testing Protocols:	approved designations including medical doctor and registered nurse. This limitation does not apply to the taking of a breath or urine specimen. NDCC §39-20-02. Yes. Chemical analysis testing must be approved by the Director of the State Crime Laboratory or the Director's designee under this chapter. NDCC §39-20-01.1.
Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:	No
Other:	Independent Testing: The individual tested may have an individual of the individual's choosing, who is medically qualified to draw blood, administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer with all costs of an additional test or tests to be the sole responsibility of the individual charged. The failure or inability to obtain an additional test by an individual does not preclude the admission of the test or tests taken at the direction of a law enforcement officer. NDCC §39-20-02.
<u>Adjudication of DUI-D Charges:</u>	
Mandatory Adjudication Law (Yes/No):	No. However the court may not defer the imposition of sentence. NDCC §39-08-01(5)(e).
Anti-Plea-Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes. Addiction evaluation is mandatory for all offenders. NDCC §39-08-01(5).
<u>Affirmative Defenses to DUI-D Charge:</u>	
Legal Entitlement/Valid Prescription:	Yes. NDCC §39-08-01. ⁵¹³
Therapeutic Concentration:	Yes. NDCC §39-08-01.
Involuntary Intoxication:	No. ⁵¹⁴
Other:	
<u>Sanctions for Refusal to Submit to a Chemical Test:</u>	
Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail):	N/A
Preliminary Breath Test – Other:	N/A
Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	Refusal is punishable in the same manner as driving under the influence. NDCC §39-20-01(3)(a). ⁵¹⁵
Implied Consent Chemical Test - Other:	A person's driving privileges are not subject to revocation for the refusal if an administrative hearing is not held, the person mails in an affidavit of intent to plead guilty and the person actually pleads guilty. NDCC §39-20-04(2)(a)(e). However,

⁵¹³ The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section, unless a drug which predominately caused impairment was used only as directed by a practitioner who legally prescribed or dispensed the drug to that person. NDCC §39-08-01.

⁵¹⁴ See *State v. Myers*, WL 980695 (1999) (holding R.C. §4511.19 is a strict liability offense.)

⁵¹⁵ It should be noted Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

if such person has been convicted of DUI, his/her driving privileges shall be suspended until such person furnishes a written statement of the counselor/instructor that no education or treatment program is necessary, or the offender has attended and complied with the program's rules. NDCC §39-06.1-10(4)(a).

Criminal Sanctions Following a DUI-D

Conviction:

Imprisonment/Fine:

Note.⁵¹⁶

First offense (Class B Misdemeanor) – A maximum of **30 days** and/or a fine of **\$1,500**;

Second offense (within 7 years) (Class B Misdemeanor) – A maximum of **30 days** and/or a fine of **\$1,500**;

Third offense (within 7 years) (Class A Misdemeanor) – A maximum of **1 year** and/or a fine of **\$3,000**;

Fourth offense (within 15 years) (Class C Felony) – A maximum of **5 years** and/or a fine of **\$10,000**. NDCC §§12.1-32-01; 39-08-01.

DUI Serious Injury (Class C felony): At least **1 year** for a first offense, and at least **2 years** for a subsequent offense. A maximum fine of **\$10,000** may be imposed as well. NDCC §§12.1-32-01; 39-08-01.2.

Mandatory Minimum Term/Fine:

Note.⁵¹⁷

First offense – **\$500**;

Second offense – **10 days (48 hours consecutive)/\$1,500**;

Third offense – **120 days / \$2,000/360 days supervised probation and a sobriety program**;

Fourth or subsequent offense – **1 year, 1 day /\$2,000/2 years supervised probation and a sobriety program**. NDCC §39-08-01(5).

DUI Serious Injury – At least **1 year** (first offense); **2 years** (subsequent offense).⁵¹⁸ NDCC §§12.1-32-01; 39-08-01.2.

Special Note: If an offender has been ordered to participate in an addiction treatment program and is also subject to mandatory imprisonment, the time spent in the treatment program must be credited as a portion of the sentence of imprisonment.” NDCC §39-08-01(5)(h).

Community Service:

For a first or second offense, the court may convert each day of mandatory time to 10 hours of community service. NDCC

⁵¹⁶ “Imprisonment” includes house arrest with electronic home detention where the offender is prohibited from consuming alcoholic beverages. However, this requirement does not apply to persons under the control of the Department of Corrections and Rehabilitation. NDCC §39-08-01(6).

⁵¹⁷ Alternative Mandatory Sentence: Ten days of mandatory imprisonment on the condition that the offender undergoes and completes a drug/alcohol evaluation. Based on this evaluation, the court may place the offender on probation and require treatment and rehabilitation. NDCC §39-08-01(5)(h).

⁵¹⁸ The sentence may not be suspended unless the court finds that manifest injustice would result from the imposition of the sentence. NDCC §39-08-01.2.

§39-08-01(5)(f).
 Restitution: **Yes** – by the defendant and through a victims’ compensation fund. NDCC §§12.1-32-02; 12.1-32-08; 54-23.4-01, *et seq.*
 Child Endangerment: It is a Class A misdemeanor for any person an individual at least 21 to drive under the influence with a minor in the vehicle. The penalty is not more than **1 year** and/or a fine of at least \$500 but not more than **\$3,000**. A subsequent offense is a Class C felony, punishable by at least 10 days (48 hours consecutive) but not more than **5 years** and/or a fine of at least \$500 but not more than **\$10,000**. NDCC §§12.1-32-01; 39-08-01.4; 39-08-01(5).
 Other: A court shall order a defendant to pay **\$50** to the department of corrections and rehabilitation at the time a presence investigation is initiated. NDCC §12.1-32-02(10).

Administrative Sanctions – Post-Conviction:

Substance Abuse Education: **Yes**
 Substance Abuse Treatment: **Yes.** A defendant must be referred to a rehabilitation facility for addiction evaluation. Following the evaluation, the court may require the defendant to complete an education or treatment program. NDCC §39-08-01(5).
 A defendant's license cannot be restored until the defendant furnishes a written statement from an approved treatment program that he/she does not need alcohol education/treatment or that he/she has complied with the attendance rules of such program. NDCC §39-06.1-10(4)(a).
 For a fourth or subsequent offense (within 7 years), a defendant must complete an addiction treatment program and have no alcohol or drug-related offense convictions within 2 consecutive years before his/her driving privileges can be restored. NDCC §39-06.1-10 (4)(b).
 Vehicle Impoundment/Confiscation: **Forfeiture.** NDCC §39-08-01.3.
 Authorized by Specific Statutory Authority: For a second or subsequent offense conviction (within 7 years), a defendant's vehicle may be subject to forfeiture. NDCC§ 39-08-01.3.
 Terms Upon Which Vehicle Will Be Released: **N/A**
 Other Miscellaneous Sanctions: Upon conviction of a second or subsequent offense within 7 years, the court may order the motor vehicle number plates of all vehicles owned and operated by the offender at the time, to be destroyed. NDCC §39-08-01(4).

Homicide by Vehicle:

State Has Such a Law: **Yes.** NDCC §39-08-01.2

Imprisonment/Fine: **Class A Felony** – maximum of **20 years imprisonment** and **a fine of \$20,000**. NDCC §12.1-32-01(2).

Mandatory Minimum Term/Fine: First offense – **3 years**;

First offense with a subsequent DUI offense – 10 years.
NDCC §39-08-01.2(1).

Other:

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is disqualified from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person is convicted of driving under the influence of drugs; or refuses to submit to a chemical test. NDCC §39-06.2-10.2(1)(a), (d), (e).⁵¹⁹
For a subsequent violation or a combination of two or more violations of any of the above-listed items, the disqualification is for life (10 years mand). NDCC §39-06.2-10.2(3).

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

First – Third offenses (within a 5-year period) (Class B misdemeanor) – Not more than **30 days** and/or **\$1,500**;
Subsequent offense (Class A misdemeanor) – Not more than **1 year** and/or **\$3,000**.

The court may dismiss a charge under this section if the person reinstates their license within 60 days of the offense. NDCC §39-06-42(3). NDCC §§12.1-32-01; 39-06-42(1).

Mandatory Minimum Fine/Imprisonment Term:

4 consecutive days. NDCC §39-06-42(2).

Other:

The court may order the number plates of the motor vehicle owned and operated by the offender at the time to be destroyed. NDCC §39-06-42(4).

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No⁵²⁰

Other State Laws Related to Drug Use:

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

Yes. NDCC §39-20-13.

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes. NDCC §39-20-13.

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

Yes. NDCC §39-20-13.

Drug Chemical Test Given to Deceased

Yes. NDCC §39-20-13.

⁵¹⁹ The disqualification section, NDCC §39-06.2-10, appears to only apply to a refusal to submit to a chemical test for an alcohol concentration; however, the CMV implied consent section, NDCC §39-06.2-10.2, applies to tests for either an alcohol concentration or for the presence of other drugs.

⁵²⁰ However, an individual who is a habitual drunkard (3 or more convictions of DWI, or 3 or more administrative suspensions within a 5-year period), shall not be issued a license, unless such person can provide adequate proof of removal of the habit, which may include satisfactory completion of a licensed drug or alcohol treatment program. NDCC §39-06-03.

Pedestrian Killed in Crash:

Drug Chemical Tests on Persons Involved
in Traffic Crashes:

Yes. NDCC §39-20-01.1.

Marijuana – Possession and Use Laws:

Illegal.^{521,522}

Possession ≤ 1 oz. (Class B misdemeanor) - punishable by a term of imprisonment of not more than **30 days** and a fine of **\$1,000**, either or both;⁵²³

Possession of > 1 ounce but < 500 grams (Class C felony) - punishable by a term of imprisonment of not more than **5 years** and a fine of not more than **\$10,000**;

Possession of ≥ 500 grams (Class B Felony) - punishable by a term of imprisonment of not more than **10 years** imprisonment and a fine of not more than **\$20,000**;

Possession on, or within 1,000 feet of a school (Class B felony) - punishable by a term of imprisonment of not more than **10 years** and a fine of not more than **\$20,000**.

NDCC §§19-03.1-23; 19.03.1-23.1.

Intoxicant Exclusion Law (UPPL):

No⁵²⁴

⁵²¹ “Marijuana” means all parts of the plant cannabis whether growing or not; the seeds thereof; the resinous product of the combustion of the plant cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. NDCC §19.03.1-01.

⁵²² Voters in North Dakota passed Measure 5 in 2016. This law will provide exceptions to illegal possession for medical marijuana uses. This law, cited as the North Dakota Compassionate Care Act, will take effect in February 2017.

⁵²³ If an offender is not subsequently convicted of another criminal offense within the following 2 years, the court will permanently seal convictions for first offenders possessing 1 ounce or less. NDCC §19-03.1-23(9).

⁵²⁴ In 2009, the North Dakota legislature struck the alcohol exclusion provision from NDCC §26.1-36-04.

STATE

General Reference:

OHIO

Ohio Revised Code Annotated (R.C.)

Ohio Administrative Code (OAC)

Type of DUI-D Law:**Under the Influence/Zero Tolerance**Basis for a DUI-D Charge:

R.C. §4511.19(A)(1).

Standard DUI-D Offense:

Operate a vehicle⁵²⁵, streetcar or trackless trolley while under the influence of alcohol, a drug of abuse⁵²⁶ or a combination of alcohol and a drug of abuse.

Illegal Per Se Law:

Yes. The person has a concentration of a controlled substance⁵²⁷ that is greater than or equal to the limits proscribed in R.C. §§4506.01(L); 4511.19(A)(1).

Presumption Based on Drugs - State Has (Yes/No):

Yes

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such Law (Yes/No):

No⁵²⁸

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

N/A

Implied Consent Law:

Yes. R.C. §4511.191.

Arrest Required (Yes/No):

No. R.C. §4511.191(A)(3), (5).⁵²⁹

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

Yes. R.C. §4511.191(A).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal Cases. *State v. Hoover*, 916 N.E.2d 1056 (Ohio 2009); *City of Westerville v. Cunningham*. 239 N.E.2d 40 (Ohio 1968).

Other Information:

A law enforcement officer shall advise the person at the time of the refusal that the officer may employ whatever reasonable means are necessary to ensure that the person submits to a chemical test of the person's whole blood or

⁵²⁵ "Vehicle" means every device, including a motorized bicycle, in, upon, or by which any person or property may be transported or drawn upon a highway, except that "vehicle" does not include any motorized wheelchair, any electric personal assistive mobility device, any device that is moved by power collected from overhead electric trolley wires or that is used exclusively upon stationary rails or tracks, or any device, other than a bicycle, that is moved by human power. R.C. §4511.01(A).

⁵²⁶ "Drug of abuse" includes the following controlled substances, or metabolites of a controlled substance: amphetamines, cocaine, heroin, L.S.D., marijuana, phencyclidine, and salvia divinorum

⁵²⁷ "Controlled substance" means: (1) any substance classified as a controlled substance under the "Controlled Substances Act," 80 Stat. 1242 (1970), 21 U.S.C.A. 802(6), as amended; (2) any substance included in schedules I through V of 21 C.F.R. part 1308, as amended; or (3) any drug of abuse.

⁵²⁸ However, a field sobriety test may be given. Evidence of such test may be presented in a criminal case so long as it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with testing standards. R.C. §4511.194(C). Further, the result of a portable breath test is a factor, in addition to field sobriety tests, upon which a law enforcement officer may base probable cause for arrest.

⁵²⁹ The code states that a chemical test shall be administered at the request of an officer having reasonable grounds to believe a person was operating a vehicle in violation of the DWI (OVI) statute. It also states that if an officer arrests a person for a violation, the officer shall request such person to submit to a chemical test. R.C. §4511.191(A)(3), (5). Based on this language, it appears that arrest is not required for an officer to request someone to submit to a test. However, if there is an arrest, then the officer is mandated to give such test.

blood serum or plasma. R.C. §4511.191(A)(5)(b).⁵³⁰

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

Blood: **Yes.** R.C. §4511.191(A)(2).
 Urine: **Yes.** R.C. §4511.191(A)(2).
 Other: **N/A**

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform: **Yes.** Only a **physician, a registered nurse, an emergency medical technician-intermediate, an emergency medical technician-paramedic, or a qualified technician, chemist, or phlebotomist** shall withdraw a blood sample for the purpose of determining the alcohol, drug, controlled substance, metabolite of a controlled substance, or combination content of the whole blood, blood serum, or blood plasma. This limitation does not apply to the taking of breath or urine specimens. A person authorized to withdraw blood under this division may refuse to withdraw blood under this division, if in that person's opinion, the physical welfare of the person would be endangered by the withdrawing of blood. O.R.C. §4511.19(D)(1)(b).

Entity Establishing Testing Protocols: **Yes. Director of Health.** O.R.C. § 3701.143.

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform: **Yes.** O.R.C. §4511.19(D)(1)(b).

Other: **Independent Testing:** the person tested may have a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist of the person's own choosing administer a chemical test or tests, at the person's expense, in addition to any administered at the request of a law enforcement officer. O.R.C. §4511.19(D)(3)

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No): **No**

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

Pre-Sentencing Investigation Law (PSI) (Yes/No): **No**, but courts will generally order a PSI prior to sentencing.

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription: **Yes.** R.C. §4511.19(K).⁵³¹

⁵³⁰ However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court's decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

⁵³¹ It is an affirmative defense if a person who operates a vehicle, streetcar, or trackless trolley while the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in that division, if both of the following apply: (1) The

Therapeutic Concentration: **Yes** ⁵³²
 Involuntary Intoxication: **No.** *See State v. Myers*, WL 980695 (1999) (holding R.C. §4511.19 is a strict liability offense).

Other:

Sanctions for Refusal to Submit to a Chemical Test:

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

N/A

Preliminary Breath Test – Other:

N/A

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

N/A

Implied Consent Chemical Test - Other:

A suspension for a refusal will not terminate if the driver is found “not guilty” of the related DUI (OVI) offense. However, such suspension will terminate if the person is found guilty of or pleads guilty to a related DUI (OVI) offense. Additionally, such suspension shall be credited against any judicial suspension for a DUI (OVI) conviction any time during which the person serves a related suspension imposed for a refusal. R.C. §4511.191(B)(2).

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:

First conviction (misdemeanor 1st degree) – Not more than **6 months** and not less than **\$375** or more than **\$1,075**;
Second conviction (within 6 years) (misdemeanor 1st degree) – Not more than **6 months** and not less than **\$525** or more than **\$1,675**;
Third conviction (within 6 years) (unclassified misdemeanor)⁵³³ – Not more than **1 year** and not less than **\$850** or more than **\$2,750**;
Fourth conviction (within 6 years, or 5 or more OVI convictions within 20 years) (fourth degree felony) – If the offender has 5 or more convictions within 20 years of the present offense, then the court shall impose a mandatory additional prison term of **1-5 years**. Cumulative jail time shall not exceed 1 year. If the sentence is served in prison, the court may impose an additional and definite prison term of **6 to 30 months** and not less than **\$1,350** or more than **\$10,500**;
Prior felony DUI conviction within any time period – (third degree felony) – Cumulative prison time shall not exceed 5

person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs and (2) the person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions. R.C. §4511.19(K).

⁵³² It appears based upon the language of the statute that if a therapeutic concentration would not render a person “under the influence,” arguing that the level of the substance detected was merely therapeutic would be a valid defense. R.C. §4511.19(A)(1).

⁵³³ A crime is classified as a misdemeanor if the imprisonment sanction is not more than 1 year. R.C. § 2901.02(F).

years. If the offender has 5 or more convictions within 20 years of the present offense, in addition to the OVI offense, such offender shall be sentenced an additional prison term of **1 to 5 years**. If the offender does not have the prior convictions, then such offender shall be sentenced to a mandatory **60 days** or mandatory **120 days** (for high concentration), and not less than **\$1,350** or more than **\$10,500**. R.C. §§2929.14; 2929.16; 2929.18; 2929.19(C); 2929.21; 4511.19(G).

Aggravated Vehicular Assault (serious physical harm):

First offense (third degree felony) – 1 to 5 years and not more than \$10,000;

First offense (where: (1) the offender has been convicted previously of a vehicular homicide offense; (2) at the time of offense the offender was driving under suspension; (3) the offender has a prior conviction for any traffic-related homicide, manslaughter or assault offense) (second degree felony) – 2 to 18 years and not more than \$15,000;

Subsequent offense (within 6 years) (second degree felony) – 2 to 8 years and not more than \$15,000. R.C. §§2903.08; 2929.11; 2929.18; 4510.02.

Mandatory Minimum Term/Fine:

First conviction – **3 consecutive days**;⁵³⁴

Second conviction – **10 consecutive days** (Alternative: 5 consecutive days in jail and not less than 18 consecutive days “house arrest” with electronic monitoring⁵³⁵);

Third conviction (within 6 years) – **30 consecutive days** (Alternative: 15 consecutive days in jail and not less than 55 consecutive days “house arrest” with electronic monitoring);

Fourth conviction (within 6 years) – **60 consecutive days**.⁵³⁶ R.C. §4511.19(G)(a)(i), (b)(i), (c)(i), (d)(i), (e)(ii).

Community Service:

Aggravated DUI: any sentence is mandatory. R.C. §4510.02; 2903.08(D)(1).

A court may order an offender to perform supervised community service. R.C. §2951.02(B).

Restitution:

I. An offender may be ordered to pay restitution to a victim in an amount based on the victim’s financial loss. R.C. §2929.18.

⁵³⁴ Three consecutive days is defined as 72 consecutive hours. In lieu of this 3-day jail sanction, the court may place a defendant on probation and order attendance at a driver’s intervention program for 3 consecutive days. R.C. §4511.19.

⁵³⁵ This alternative is imposed only when there are overcrowded jail conditions that prohibit the offender from commencing his/her term of imprisonment within 60 days of sentencing. R.C. §4511.19(G)(3).

⁵³⁶ Special Conditions for Felony Offenses: I. For a first DUI felony offense, the 60 consecutive days must be served in a local incarceration facility (e.g., jail, a community-based correctional facility, a halfway house or other alternative residential facility). In addition, after the mandatory incarceration period is served the offender may be placed on community control probation or in the electronic monitoring program. II. For a subsequent DUI felony offense, the 60 consecutive days must be served in State prison and such person is not eligible to participate in the electronic monitoring program. R.C. §§2929.13(G); 2929.15(A); 2929.17.

Child Endangerment:	<p>II. A victim is eligible for reparations from the State. R.C. §2743.51, <i>et seq.</i></p> <p>It is a separate offense to operate a motor vehicle in violation of the DUI-D laws when one or more children under age 18 are in the vehicle. R.C. §§2919.22(C)(1).</p> <p><u>First offense</u> (first degree misdemeanor) – Not more than 6 months and/or not more than \$1,000;</p> <p><u>First offense where there has been serious physical harm to the child or subsequent offense</u> (fifth degree felony) – 6 to 12 months and/or a fine of not more than \$2,500;</p> <p><u>Subsequent child endangerment offense</u> (serious physical harm to the child, or where there has been serious physical harm to the child, and the driver has a prior vehicular homicide (prior to March 23, 2000) conviction = fourth degree felony) – 6 to 18 months and a fine of not more than \$5,000.</p> <p>In addition to the above, offenders are subject to not more than 200 hours of community service, which is not in lieu of community service that may be imposed via probation. R.C. §§2919.22(E)(5), (F)(1); 2929.14; 2929.18; 2929.21.</p>
Other:	N/A
<u>Administrative Sanctions – Post-Conviction:</u>	
Substance Abuse Education:	Yes
Substance Abuse Treatment:	<p>Yes. A person charged with a misdemeanor offense, who would benefit from a drug treatment program may, in lieu of imprisonment, be placed in such a program under close supervision. However, an offender must be confined in a treatment facility for at least 3 days. R.C. §2935.33(B).</p> <p>For subsequent offenses, the court may require a defendant to attend a treatment program. For third and subsequent offenses, the court shall require the defendant to attend a treatment program. R.C. §4511.19(G).</p>
Vehicle Impoundment/Confiscation:	Seizure, Immobilization, Impoundment
Authorized by Specific Statutory Authority:	<p>Upon a second offense, the vehicle may be seized. R.C. §4511.195(B);</p> <p><u>Second conviction</u> (within 6 years) – Immobilization of and impoundment of the license plates of the vehicle used in the offense for 90 days if registered to the offender;</p> <p><u>Third conviction</u> (within 6 years) – Criminal forfeiture of the vehicle used in the offense if registered to the offender;</p> <p><u>Subsequent convictions</u> (within 6 years) – Criminal forfeiture of the vehicle used in the offense if registered to the offender. R.C. §§4507.164; 4511.19(G)(v).</p>
Terms Upon Which Vehicle Will Be Released:	<p>A non-driver owner of the vehicle may avoid the forfeiture sanction by proving by a preponderance of the evidence that the non-driver neither knew nor should have known that an offense was or would be committed. R.C. §4503.234(B)(2).</p>

If the vehicle is subject to forfeiture pursuant to a statute other than R.C. §4503.234 and the vehicle's registration has been assigned or transferred, the defendant may be required to pay a fine that is equal to the value of the vehicle. R.C. §4503.234(E).

Other Miscellaneous Sanctions:

Confinement Costs: In some counties, offenders may have to pay the costs of confinement (workhouses). R.C. §2947.19.

Homicide by Vehicle:

State Has Such a Law:

Yes.

Aggravated Vehicular Homicide (felony).

R.C. §2903.06(A)(1)(a).

Involuntary Manslaughter (felony). R.C. §2903.04.

Aggravated Vehicular Homicide Specification (mandatory prison time). R.C. §2929.142.

Imprisonment/Fine:

Aggravated Vehicular Homicide:

First offense (2nd degree felony) – **2 to 8 years** and may be fined not more than **\$15,000**;

Subsequent offense (1st degree felony) – **3 to 11 years** and may be fined not more than **\$20,000**. R.C. §§2929.14; 2929.142; 2929.18.

Involuntary Manslaughter:

(3rd degree felony) – **9 months to 36 months**;

(1st degree felony) – **3 to 11 years (mand)**. R.C. §§2903.04; 2929.14.

Aggravated Vehicular Homicide Specification (offender has 3 or more DUI convictions within 6 years, or 2 more felony DUI convictions) – **10 to 15 years**. R.C. §2929.142.

Mandatory Minimum Term/Fine:

An offender who commits a subsequent offense, or who commits aggravated vehicular homicide while his license is suspended must serve mandatory time.

Other:

License Plate Impoundment: A vehicle's license plates may be impounded if the owner thereof has had his/her driver's license either suspended or revoked. R.C. §4507.164(A).

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person is under the influence of a controlled substance or refuses to submit to a chemical test for the presence of controlled substances. R.C. §4506.17(E)(1).

For a subsequent violation or a combination of two or more violations of any of the above-listed items, the "disqualification" is for life (or for any other period as specified by Federal regulations). R.C. §4506.17(E)(2).

A person is “disqualified” for a period of 180 days for a violation of an “out-of-service” order. For a second or subsequent violation within 10 years the disqualification period is 2 years. For a third or subsequent within 10 years, a 3 years suspension. R.C. §4506.16(A)(1)-(3).

A violation of any of these items appears to be a first degree misdemeanor; the sanctions for such a misdemeanor are an imprisonment for not more than 6 months and/or a fine of not more than \$1,000. In addition, a CMV operator who has any “measurable” or “detectable” amount of a controlled substance in the system must be placed “out-of-service” for 24 hours. R.C. §4506.16(C).

Under separate provisions of law, no person shall operate a CMV while alertness is impaired; such impairment includes the use of any drug that would adversely affect such alertness or ability to operate a CMV. The sanctions for violating this prohibition are for a first offense (minor misdemeanor) a fine of not more than \$100 and for a second offense (fourth degree misdemeanor) jail for not more than 30 days and/or a fine of not more than \$250. R.C. §§2929.21; 4506.01; 4506.15; 4506.16(A), (B); 4506.17(A); 4511.79; 4511.99(C).

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

First offense (first degree misdemeanor) – Not more than **6 months** and not less than **\$250** or more than **\$1,000**;

Second offense (within 6 years – first degree misdemeanor) – Not less than **10 consecutive days** or more than **1 year** and not less than **\$500** or more than **\$2,500**;

Third or subsequent offense (within 6 years – unclassified misdemeanor) – Not less than **30 consecutive days** or more than **1 year** and not less than **\$500** or more than **\$2,500**. R.C. §4510.14.

Mandatory Minimum Fine/Imprisonment Term:

First offense – **3 consecutive days/\$250** (Alternative: 30 consecutive days of electronically monitored house arrest);

Second offense (within 5 years) – **10 consecutive days** (Alternative: 90 consecutive days of “house arrest” with electronic monitoring.)/**\$500**;

Third and subsequent offense (within 5 years) – **30 consecutive days/\$500** (electronically monitored house arrest not available).

Other:

First offense – Immobilization of vehicle for 30 days and impoundment of license plates for 30 days;

Second offense – Immobilization of vehicle for 60 days and impoundment of license plates for 60 days;

Third or subsequent offense – Criminal forfeiture or a fine of

up to the value of the vehicle. R.C. §4510.14.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No – However, there is a State registry of habitual offenders for those who have been convicted of a 5th or subsequent OVI/OWI within 20 years. R.C. §5502.10.

Other State Laws Related to Drug Use:

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

Yes. R.C. §313.13.

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes. R.C. §313.13.

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

No

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

No

Drug Chemical Tests on Persons Involved in Traffic Crashes:

No

Marijuana – Possession and Use Laws:

Illegal.

Possession of < 100 grams (minor misdemeanor⁵³⁷) - **\$150 fine**;

Possession of 100 - 200 grams (misdemeanor) - not more than **30 days** imprisonment and not more than **\$250**;

Possession of 200 - 1,000 grams (felony) - not more than **1 year** and not more than **\$2,500**;

Possession of 1,000 - 5,000 grams (3rd degree felony) - not less than **1 year** nor more than **5 years** and/or not less than **\$5,000** nor more than **\$10,000**;

Possession of 1,000 - 20,000 grams (3rd degree felony) - not less than **1 year** nor more than **5 years** and/or a fine of not less than **\$5,000** nor more than **\$10,000**, with a presumption that a prison term shall be imposed.

Possession of 20,000 - 40,000 grams (2nd degree felony) - not less than **5 years** nor more than **8 years**, and/or not more than **\$15,000**.

Possession of > 40,000 grams (2nd degree felony) - not less than **8 years** imprisonment and/or not more than **\$20,000**. R.C. §2925.11(3)(a)-(g).

Intoxicant Exclusion Law (UPPL):

No⁵³⁸

⁵³⁷ R.C. §2925.11(D): Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

⁵³⁸ In 2008, the Ohio legislature struck the alcohol exclusion provision from R.C. §3923.05.

STATE

General Reference:

OKLAHOMA

Oklahoma Statutes Annotated (Okl.St. Ann.)

Type of DUI-D Law:**Under the Influence/Zero Tolerance**Basis for a DUI-D Charge:

47 Okl.St. Ann. §11-902.

Standard DUI-D Offense:

I. Drive, operate or be in actual physical control of a motor vehicle⁵³⁹ while under the influence of an intoxicating substance⁵⁴⁰ other than alcohol which may render such person incapable of driving safely, or under the influence of intoxicating substances or a combination of these and alcohol. 47 Okl.St. Ann. §11-902(A)(3)-(5).

II. Drive or operate a motor vehicle while his ability to operate such motor vehicle is impaired by the consumption of any substance, other than alcohol, which is capable of being ingested, inhaled, injected or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions. 47 Okl.St. Ann. §761.

Illegal Per Se Law:

Yes. Having **any amount of a Schedule I chemical or controlled substance⁵⁴¹ or one of its metabolites or analogs** in the person's blood, saliva, urine or any other bodily fluid. 47 Okl.St. Ann. §11-902(A)(3)-(5).

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such Law (Yes/No):

No

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

N/A

Implied Consent Law:

Yes. 47 Okl.St. Ann. §751.⁵⁴²

Arrest Required (Yes/No):

Yes. 47 Okl.St. Ann. §751(A).

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

Yes. 47 Okl.St. Ann. §751(A).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal Cases. 47 Okl.St. Ann. §756(A).

⁵³⁹ “Motor Vehicle” means: any vehicle which is self-propelled or propelled by electric power obtained from overhead trolley wires, but not operated upon rails. 47 Okl.St. Ann. §1-134.

⁵⁴⁰ As used in this title, the term “other intoxicating substance” shall mean any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act and any other substance, other than alcohol, which is capable of being ingested, inhaled, injected or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions. 47 Okl.St. Ann. §751(A)(2).

⁵⁴¹ See 63 Okl.St. Ann. §2-204 for a complete list of Schedule I controlled substances.

⁵⁴² 47 Okl.St. Ann. §751 allows for a law enforcement officer, without a warrant, to take a blood sample from an individual who is unconscious or otherwise incapable of consenting to a test. However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court's decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

Other Information:

I. A mandatory chemical test may be ordered in situations (1) where there is probable cause that a person while intoxicated has operated a motor vehicle and that such operation has caused either death or serious physical injury to another person or (2) upon issuance of a search warrant. 47 Okl.St. Ann. §753(A).

II. A mandatory chemical test for alcohol/drugs may be ordered in traffic accident situations where the driver (person to be tested) has been cited for a traffic offense. 47 Okl.St. Ann. §10-104(B).

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

Blood: **Yes.** 47 Okl.St. Ann. §751(A).
 Urine: **Yes.** 47 Okl.St. Ann. §751(A).
 Other: **Saliva.** 47 Okl.St. Ann. §751(A).

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform: **Yes.** Only a **licensed medical doctor, licensed osteopathic physician, licensed chiropractic physician, registered nurse, licensed practical nurse, physician’s assistant, certified by the State Board of Medical Licensure and Supervision, an employee of a hospital or other health care facility authorized by the hospital or health care facility to withdraw blood, or other qualified person authorized by the Board of Tests for Alcohol and Drug Influence** acting at the request of a law enforcement officer may withdraw blood for purpose of having a determination made of its concentration of alcohol or the presence or concentration of other intoxicating substance. Only qualified persons authorized by the Board may collect breath, saliva or urine, or administer tests of breath under the provisions of this title. 47 Okl.St. Ann. §752(A).

Entity Establishing Testing Protocols: **Yes. Board of Tests for Alcohol and Drug Influence.** 47 Okl.St. Ann. §759.

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform: **Yes.** 47 Okl.St. Ann. §§751(F); 752(A).

Other: **Independent Testing:** when blood is withdrawn or saliva or urine is collected for testing of its alcohol concentration or other intoxicating substance presence or concentration, at the request of a law enforcement officer, a sufficient quantity of the same specimen shall be obtained to enable the tested person, at his or her own option and expense, to have an independent analysis made of such specimen. 47 Okl.St. Ann. §752(E).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No): **No**
 Anti-Plea-Bargaining Statute (Yes/No): **No**
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes.** 47 Okl.St. Ann. §§761(D); 11-902(G).

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription: **No.** 47 Okl.St. Ann. §11-902(B).⁵⁴³
 Therapeutic Concentration: **Yes**⁵⁴⁴
 Involuntary Intoxication: **No**
 Other:

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **N/A**
 Preliminary Breath Test – Other: **N/A**
 Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**
 Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine: **Driving While Impaired:** Not more than **6 months** and/or not less than **\$100** or more than **\$500.** 47 Okl.St. Ann. §761.

Driving Under the Influence/Illegal Per Se:

First conviction (misdemeanor) – Not less than **10 days** or more than **1 year** and not more than **\$1,000**;
Second conviction (within 10 years) (felony) – Not less than **1 year** or more than **5 years** and not more than **\$2,500**;
Third conviction (within 10 years) (felony) – Not less than **1 year** or more than **10 years** and not more than **\$5,000**;
Fourth and subsequent conviction (within 10 years) (felony) – Not less than **1 year** or more than **20 years** and not more than **\$5,000.** 47 Okl.St. Ann. §11-902(C).

DUI – Personal Injury:

First conviction (misdemeanor) – Not less than **90 days** or

⁵⁴³ 47 Okl.St. Ann. §11-902(B): The fact that any person charged with a violation of this section is or has been lawfully entitled to use alcohol or a controlled dangerous substance or any other intoxicating substance shall not constitute a defense against any charge of violating this section.

⁵⁴⁴ It appears based upon the language of the statute that if a therapeutic concentration would not render a person “under the influence,” or impair the person’s ability to safely operate a vehicle, arguing that the level of the substance detected was merely therapeutic would be a valid defense. 47 Okl.St. Ann. §11-902.

more than **1 year** and not more than **\$2,500**;
Second or subsequent conviction (felony) – Not less than **1 year** or more than **5 years** and not more than **\$5,000**. 47
Okl.St. Ann. §11-904(A).

DUI – Great Bodily Injury(felony): Not less than **1 year** or more than **10 years** and not more than **\$5,000**. 47
Okl.St. Ann. §11-904(B).

Mandatory Minimum Term/Fine:

Driving While Impaired: None

Driving Under the Influence/Illegal Per Se:
Second conviction – **5 days** in jail (or 5 days inpatient treatment);
Third conviction – **10 days** in jail (or 10 days inpatient treatment);
Fourth or subsequent conviction – **10 days** in jail. 47
Okl.St. Ann. §11-902.

DUI – Personal Injury:
First conviction – **90 days**;
Second conviction – **1 year**. 47 Okl.St. Ann. §11-904.

Community Service:

DUI – Great Bodily Injury:
First conviction – **1 year**. 47 Okl.St. Ann. §11-904
Community service may be ordered under 22 Okl.St. Ann. §991a(A)(1)(c).

Driving Under the Influence/Illegal Per Se:
Third conviction – **240 hours**;
Fourth or subsequent conviction – **480 hours**. A fine cannot be imposed in lieu of community service. 47 Okl.St. Ann. §11-902(C), (K).

Restitution:

Yes. The court may order a defendant to pay restitution to a victim. 22 Okl.St. Ann. §§991a(A)(1)(a); 991f.

Child Endangerment:

Any person age 18 or older who violates a DUI law while transporting or having any child less than 18 shall be subject to an enhanced penalty in the form of a doubled fine and may also be prosecuted for Felony Child Endangerment. 47 Okl.St. Ann. §11-902(L); 21 Okl.St. Ann. § 852.1.

Other:

Assessment Fee: In addition to any other penalty, the court shall order a \$100 assessment to be deposited into the Drug Abuse Education and Treatment Revolving Fund. 47 Okl.St. Ann. §11-902(K).

Victims Impact Panel: Any person may be required to attend a victims’ impact panel program, and to pay a fee of not less than \$15 or more than \$60. 47 Okl.St. Ann. §11-902(H).

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

Yes. A first offender must successfully complete this course before license can be reinstated. 22 Okl.St. Ann. §991a(A)(1)(p), (A)(7); 47 Okl.St. Ann. §6-212.2.

Substance Abuse Treatment:

Yes. The court may order first offenders and shall order subsequent offenders (all types of DUI offenses within 10 years) to participate in alcohol or drug rehabilitation treatment programs. 22 Okl.St. Ann. §991a(A)(7); 47 Okl.St. Ann. §11-902(G).

Vehicle Impoundment/Confiscation:

Forfeiture

Authorized by Specific Statutory Authority:

A subsequent DUI offender's vehicle may be subject to forfeiture.⁵⁴⁵ 47 Okl.St. Ann. §11-902b.

Terms Upon Which Vehicle Will Be Released:

Any person having ownership or a security interest in the vehicle may file a written objection.

Other Miscellaneous Sanctions:

Electronic Home Monitoring: A person who has been convicted of a felony offense shall be subject to court-ordered electronic home monitoring. 22 Okl.St. Ann. §991a(A)(1)(o), (A)(7)(e); 47 Okl.St. Ann. §11-902(I).

Other Costs: A defendant may be required to pay other costs such as reimbursing the State for the cost of a victim's medical expenses and for the cost of court appointed attorneys for the defendant. 22 Okl.St. Ann. §991a(A).

Investigation Costs: The defendant may be required by the court to reimburse the OK State Bureau of Investigation for any services that were associated with the defendant's criminal offense. There is an exception based on "manifest hardship" to the defendant. 22 Okl.St. Ann. §991a(A)(4).

Homicide by Vehicle:

State Has Such a Law:

Negligent Homicide (misdemeanor). 47 Okl.St. Ann. §11-903.

Imprisonment/Fine:

Not more than **1 year** in the county jail and/or not less than **\$100** or more than **\$1,000**. 47 Okl.St. Ann. §11-903(B).

Mandatory Minimum Term/Fine:

\$100

Other:

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is disqualified from operating a CMV for 1 mand year (3 years if transporting hazardous materials) if convicted of driving a CMV while under the influence of a controlled substance or refusing to submit to a chemical test. For a subsequent conviction or a combination of two or more convictions of any above-listed items, disqualification is for life (10 years mand.). 47 Okl.St. Ann. §6-205.2(B), (C), (D).

⁵⁴⁵ If a person's vehicle is involved in one of the offenses noted, it may be subject to forfeiture if: (1) the person has been convicted of driving while under the influence/illegal per se, vehicle negligent homicide, or a DUI injury-related offense and has a prior conviction for one of these offenses (within 10 years); and one of the offenses, present or prior, must have involved death or serious injury to another person; or (2) the person has been convicted of a third or subsequent DUI felony offense. 47 Okl.St. Ann. §11-902b.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

Misdemeanor.

First conviction – Not more than **1 year** and/or not less than **\$500** or more than **\$1,000**;

Second conviction – Not more than **1 year** and/or not less than **\$1,000** or more than **\$2,000**;

Third or subsequent conviction – Not more than **1 year** and/or not less than **\$2,000** or more than **\$5,000**. 47 Okl.St. Ann. §6-303(C).

Mandatory Minimum Fine/Imprisonment Term:

The fines listed above appear to be mandatory.

Other:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Other State Laws Related to Drug Use:

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

No

Drug Chemical Test Given to Deceased Driver Killed in Crash:

N/A

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

N/A

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

N/A

Drug Chemical Tests on Persons Involved in Traffic Crashes:

Yes. 47 Okl.St. Ann. §751(A).

Marijuana – Possession and Use Laws:

Illegal.⁵⁴⁶

Possession of any amount:

First offense (misdemeanor) - not more than **1 year** of incarceration and not more than **\$1,000**;

Second offense within 10 years (felony) - not less than **2 years** nor more than **5 years**, and not more than **\$5,000**;

Second or subsequent > 10 years since first offense (felony) - not less than **1 year** nor more than **5 years**, and not more than **\$5,000**. 63 Okl.St. Ann. §2-4021

Intoxicant Exclusion Law (UPPL):

Yes. 36 Okl.St. Ann. §4405(B)(10).

⁵⁴⁶ Marijuana means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin. 63 Okl.St. Ann. §2-101(23).

STATE

OREGON

General Reference:

Oregon Revised Statutes (O.R.S.)

Type of DUI-D Law:

Under the Influence

Basis for a DUI-D Charge:

O.R.S. §813.010(1)(b), (c).

Standard DUI-D Offense:

Drive a motor vehicle⁵⁴⁷ while under the influence of a controlled substance⁵⁴⁸, an inhalant⁵⁴⁹ or any combination of intoxicating liquor, an inhalant and a controlled substance.

Illegal Per Se Law:

No

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such Law (Yes/No):

No

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

N/A

Implied Consent Law:

Yes. O.R.S. §§813.131; 813.100.

Arrest Required (Yes/No):

Yes.

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

Yes. O.R.S. §813.131.

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal and Civil Cases. O.R.S. §813.310.

Other Information:

There is also an implied consent law on field sobriety testing. Evidence of refusal to submit to a field sobriety test is admissible in any criminal or civil proceeding arising out of the allegations. O.R.S. §§813.135; 813.136.

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

Blood:

Yes – Limited to: (1) when a driver expressly consents to the taking of the sample; (2) when a driver is receiving medical care in a health facility immediately after a motor vehicle accident; or (3) when a driver is unconscious, or otherwise in a condition rendering him incapable of expressly consenting. O.R.S. §§813.100; 813.140.

Urine:

Yes – Limited to when a breath test discloses a BAC of less than .08 or when such person has been in a crash. Additionally, prior to asking for urine, an officer must have

⁵⁴⁷ “Motor vehicle” means a vehicle that is self-propelled or designed for self-propulsion. O.R.S. §801-360.

⁵⁴⁸ A “controlled substance” means a drug or its immediate precursor classified in Schedules I through V under the Federal Controlled Substances Act, as modified under O.R.S. §475.035. This does not include industrial hemp or industrial hemp commodities or products. O.R.S. §475.005.

⁵⁴⁹ An inhalant means any glue, paint, cement or other substance that is capable of causing intoxication and that contains one or more of the chemical compounds listed in O.R.S. §801.317.

Other: reasonable suspicion to believe the person is under the influence of a controlled substance. O.R.S. §813.131(1), (2).
None.

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform: **Yes.** Only a **duly licensed physician or a person acting under the direction or control of a duly licensed physician** may withdraw blood or pierce human tissue for the purpose of a chemical blood test. O.R.S. §813.160.

Entity Establishing Testing Protocols: **Yes.** Department of State Police. O.R.S. §§813.160; 181A.150.

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform: **No**

Other: **Independent Testing:** a person shall be permitted upon request, at the person's own expense, reasonable opportunity to have any licensed physician and surgeon, licensed professional nurse or qualified technician, chemist or other qualified person of the person's own choosing administer a chemical test or tests of the person's breath or blood for the purpose of determining the alcoholic content of the person's blood or a chemical test or tests of the person's blood or urine, or both, for the purpose of determining the presence of a controlled substance or an inhalant in the person. The failure or inability to obtain such a test or tests by a person shall not preclude the admission of evidence relating to a test or tests taken upon the request of a police officer. O.R.S. §813.150.

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No): **No**

Anti-Plea-Bargaining Statute (Yes/No): **Yes.** A person charged with DUI shall not be allowed to plead guilty or no contest to any other offense in exchange for a dismissal of the offense charged. O.R.S. §813.170.

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

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription: **No**

Therapeutic Concentration: **Yes**⁵⁵⁰

Involuntary Intoxication: **No**⁵⁵¹

Other: A person may not assert the medical marijuana affirmative defense established in O.R.S. §475B.480, if the person, in connection with conduct constituting an element of the

⁵⁵⁰ It appears based upon the language of the statute that if a therapeutic concentration would not render a person “under the influence,” arguing that the level of the substance detected was merely therapeutic would be a valid defense. O.R.S. §813.010.

⁵⁵¹ See O.R.S. §161.105; *State v. Miller*, 309 Or. 302 (1990).

offense drives under the influence of marijuana. O.R.S. §475B.478.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail):	N/A
Preliminary Breath Test – Other:	N/A
Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	A fine of at least \$500 and not more than \$1,000 , with the “presumptive” fine being \$650 . O.R.S. §§813.095(2); 813.130(2)(f). ⁵⁵²
Implied Consent Chemical Test - Other:	Consecutive license suspensions for refusals to submit to both breath and urine tests. O.R.S. §813.132.

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:	<p><u>First offense</u> (Class A misdemeanor) – Not more than 1 year and not less than \$1,000;</p> <p><u>Second offense</u> (Class A misdemeanor) – Not more than 1 year and not less than \$1,500;</p> <p><u>Third or subsequent offense</u> (Class A misdemeanor) – Not more than 1 year or not less than \$2,000 (if no imprisonment);</p> <p><u>Fourth offense</u> (within 10 years) (Class C felony) – Not more than 5 years or not less than \$2,000 (if no imprisonment). O.R.S. §§161.605; 813.010(4), (5), (6)(a)-(c).</p> <p><u>Assault in the 4th Degree</u> (physical injury⁵⁵³) (Class A misdemeanor) – Not more than 1 year and/or not more than \$6,250. O.R.S. §§161.615; 161.635; 163.160.</p> <p><u>Assault in the 3rd Degree</u> (serious physical injury⁵⁵⁴) (Class B felony) – Not more than 10 years and/or not more than \$250,000. O.R.S. §§161.605; 161.625; 163.165(2).</p>
Mandatory Minimum Term/Fine:	All offenses – 48 consecutive hours ⁵⁵⁵ and a fine, as listed above. O.R.S. §813.020(2).
Community Service:	All offenses – Not less than 80 hours or more than 250 hours (as an alternative to imprisonment). O.R.S. §§813.020(2); 137.129(4).
Restitution:	Yes . Direct compensation to victims by the defendant. O.R.S. § 137.106. Also a victims' compensation fund is

⁵⁵² It should be noted Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

⁵⁵³ Physical injury means impairment of physical condition or substantial pain. O.R.S. §161.015(7).

⁵⁵⁴ Serious physical injury means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ. O.R.S. §161.015(8).

⁵⁵⁵ This term must be served unless justice requires otherwise. The court must state the reasons why the mandatory imprisonment term cannot be served consecutively. O.R.S. §813.020. For the purpose of the minimum period of incarceration, imprisonment includes a jail, minimum security facility or inpatient rehabilitation or treatment center. O.R.S. §813.020(2).

available. O.R.S. §147.005, *et seq.*

Child Endangerment: If the driver has a passenger who is under age 18 *and* at least three years younger than the driver, the court may impose a maximum fine of \$10,000 in addition to the penalties, above. O.R.S. §813.010(7).

Other: A **\$255 fee** is charged in addition to any fine imposed. The court may waive this fee in whole or in part for indigent defendants. O.R.S. §§813.020(1)(a); 813.030.

Diagnostic Assessment Fee: There is a diagnostic assessment fee of **\$150**. O.R.S. §§813.020(1)(b); 813.021(1)(b); 813.240(3).

Victim Impact Program: A DUI offender may be required to attend a victim impact treatment session. The offender may be required to pay a fee of not less than \$5 or more than \$50 to offset the cost of this program. O.R.S. §813.020(3).

Incarceration and Medical Costs: A city or county may seek reimbursement from an offender for the costs of medical care and incarceration. O.R.S. §§169.150; 169.151.

No Deferred Proceedings: A person who has been found guilty of or who pleads guilty to a DUI offense cannot be placed on probation and have the judgment of guilt not entered on the record via a deferred proceeding. O.R.S. §137.533.

School and Work Zone: If the offense occurred in a school or work zone, there is a **minimum mandatory** fine which is equal to: (1) **20 percent** of the maximum fine for a misdemeanor offense; and (2) **2 percent** of the maximum fine for a felony offense. O.R.S. §§811.230; 811.235.

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:
 Substance Abuse Treatment:

Yes
Yes.

I. An intoxicated offender must complete an appropriate treatment program for alcoholism or drug dependency. This requirement impacts an offender’s eligibility for a hardship permit. This could include an alcohol/drug education program. O.R.S. §§813.020(1)(b); 813.021; 813.500.

II. Second or subsequent offenders may be issued a restricted hardship license only on the condition that they complete an alcohol/drug assessment, and, if required, enroll in an alcohol/drug rehabilitation program. However, if an assessment indicates that they are not required to participate in a rehabilitation program, they must enter an alcohol/drug information program as a condition for obtaining restricted hardship driving privileges. O.R.S. §813.500.

Vehicle Impoundment/Confiscation:
 Authorized by Specific Statutory Authority:

Impoundment / Immobilization
 I. A court may order a motor vehicle impounded or immobilized upon conviction for a second or subsequent DUI

Terms Upon Which Vehicle Will Be Released:	<p>offense. This shall last not more than 1 year. O.R.S. §809.700(1)(b), (2).</p> <p>II. A police officer may impound a motor vehicle if he has probable cause of a DUI offense or driving on a suspended/revoked license. O.R.S. §809.720(1)(b).</p> <p>I. A vehicle shall be released upon payment of the costs of removing, storing or immobilizing the vehicle. O.R.S. §809.700(6).</p> <p>II. A vehicle shall be released only upon proof of valid driving privileges, proof of financial responsibility and payment of any fees associated with the impoundment. O.R.S. §809.720(3)(a)-(c).</p>
Other Miscellaneous Sanctions:	N/A
<u>Homicide by Vehicle:</u> State Has Such a Law:	<p>First Degree Manslaughter. O.R.S. §163.118. Second Degree Manslaughter. O.R.S. §163.125. Criminally Negligent Homicide. O.R.S. §163.145. Aggravated Vehicular Homicide (subsequent offense). O.R.S. §163.149.</p>
Imprisonment/Fine:	<p>First Degree Manslaughter: 10 years. Second Degree Manslaughter: 10 years. Criminally Negligent Homicide: <u>First offense</u> (Class B felony) – Not more than 10 years and/or not more than \$250,000. O.R.S. §§161.605; 161.645. Aggravated Vehicular Homicide: <u>Subsequent offense</u> (Class A felony) – Not more than 20 years and/or not more than \$375,000. O.R.S. § §61.605; 161.649.</p>
Mandatory Minimum Term/Fine:	<p>First and second degree manslaughter and aggravated vehicular homicide are Measure 11 mandatory sentence crimes which carry mandatory sentences as listed above. O.R.S. §163.147 classifies second degree manslaughter and criminally negligent homicide when the result was from operating a motor vehicle under the influence of alcohol/intoxicants, as “crime category 9” of the sentencing guidelines grid. The sentence received will depend on the offender’s criminal history.</p>
Other:	N/A
<u>DUI-D Offenses and Commercial Motor Vehicles (CMV):</u>	<p>A person is disqualified from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person is under the influence of a controlled substance; refuses to submit to a chemical test for the presence of controlled substances; or violates an out-of-service order.</p> <p>For a subsequent violation or a combination of two or more</p>

violations of any of the above-listed items, the disqualification is for life (10 years mand). O.R.S. §§; 809.510; 813.050; 813.055.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

Class A Misdemeanor – Not more than **1 year** and at least **\$1,000** (first offense); at least **\$2,000** (second or subsequent offense) but not more than **\$6,250**.

O.R.S. §§161.615; 161.635; 811.182(4).

Mandatory Minimum Fine/Imprisonment Term:

First offense – **\$1,000**;

Second offense – **\$2,000**

Other:

N/A

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. O.R.S. §809.600, *et seq.*

Grounds for Being Declared Habitual Offender:

(1) Three serious traffic offenses (within 5 years); or (2) A combination of 20 minor and serious traffic offenses (within 5 years).⁵⁵⁶ O.R.S. §809.600.

Term of License Revocations While on Habitual Offender Status:

5 years. Note: A one-year probationary and renewable permit is available if certain conditions are met. O.R.S. §§807.270; 809.650.

Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):

Class A misdemeanor. O.R.S. §811.182(4)(g).

Not more than **1 year** and at least **\$1,000** (first offense); at least **\$2,000** (second or subsequent offense) but not more than **\$6,250**. O.R.S. §§161.615; 811.182(4). First offense - **\$1,000**; Second offense - **\$2,000**.

Mandatory Minimum Term/Fine:

First offense - **\$1,000**;

Second offense - **\$2,000**.

Other State Laws Related to Drug Use:

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

Yes. O.R.S. §146.113.

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes. If over 13 and within 5 hours of accident.

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

Yes. If over 13 and within 5 hours of accident.

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

Yes. If over 13 and within 5 hours of accident.

Drug Chemical Tests on Persons Involved in Traffic Crashes:

Yes. O.R.S. §813.131.

Marijuana – Possession and Use Laws:

Legal for Medical Use.⁵⁵⁷

⁵⁵⁶ Serious traffic offenses include manslaughter, DWI, driving on a suspended/revoked license, aggravated vehicular homicide. O.R.S. §809.600.

⁵⁵⁷ Marijuana means the leaves, stems and flowers of the plant Cannabis family Moraceae. O.R.S. §475.864.

Medical Marijuana Exception: except as provided in O.R.S. §475B.478, a person engaged in or assisting in the medical use of marijuana is exempt from the criminal laws of this State if the conditions of O.R.S. §475B.475⁵⁵⁸ are met.

Criminal Penalties:

Use in Public: a class B violation, not more than **\$1,000**.
O.R.S. §§475B.280;153.018.

Unlawful Possession of a Person > 21 years of age:

- (a) an amount of marijuana plants in excess of the amount of marijuana plants allowed under O.R.S. §475B.245(1);
- (b) > 1 ounce of usable marijuana in a public place;
- (c) > 8 ounces of usable marijuana;
- (d) > 16 ounces of cannabinoid products in solid form or cannabinoid concentrates;
- (e) > 72 ounces of cannabinoid products in liquid form;
- (f) > 1 ounce of cannabinoid extracts. O.R.S. §§475.864.

Penalties for Possession Offenses:

- (a) Class A misdemeanor, not more than **1 year** and not more than **\$6,250**, if the amount possessed is > 4 times the applicable maximum amount specified above;
- (b) Class B misdemeanor, not more than **6 months** and not more than **\$2,500**, if the amount possessed is > 2 times and ≤ 4 times, the applicable maximum amount specified above;
- (c) Class B violation, not more than **\$1,000**, if the amount possessed is ≤ 2 times the applicable maximum amount specified above. O.R.S. §§475.864.

Intoxicant Exclusion Law (UPPL):

No. O.R.S. §743A.164.

⁵⁵⁸ A person is exempt from criminal liability if: (1) the person holds a registry identification card; (2) the person has applied for a registry identification card under O.R.S. §475B.415 and the person has proof of written documentation described in and proof of the date on which the person submitted the application to the Oregon Health Authority. An exemption under this subsection applies only until the authority approves or denies the application; (3) the person is designated as a primary caregiver under O.R.S. §475B.418; (4) the person is responsible for or is employed by a marijuana grow site registered under O.R.S. §475B.420; (5) the person owns, is responsible for, or is employed by, a marijuana processing site; or (6) the person owns, is responsible for, or is employed by, a medical marijuana dispensary. O.R.S. §475B.475.

STATE

General Reference:

PENNSYLVANIA

Pennsylvania Statutes Annotated (Pa.C.S.A.)

Pennsylvania Administrative Code (Pa. Code)

Type of DUI-D Law:Basis for a DUI-D Charge:

Standard DUI-D Offense:

Under the Influence/Zero Tolerance

75 Pa.C.S.A. §3802(d).

A person may not drive, operate or be in physical control of a vehicle⁵⁵⁹ with:I. Under the influence of a drug⁵⁶⁰ or combination of drugs to a degree which impairs the ability to safely drive;

II. Under the influence of alcohol and a drug or drugs to a degree which impairs the ability to safely drive;

III. Under the influence of a solvent or noxious substance⁵⁶¹.
75 Pa.C.S.A. §3802(d).

Illegal Per Se Law:

Yes. Any amount of a **Schedule I controlled substance⁵⁶² or a Schedule II or III controlled substance** not prescribed for the individual, or the **metabolite of either of the above** in the blood. 75 Pa.C.S.A. §3802(d).

Presumption Based on Drugs - State Has (Yes/No):

No, but does provide for a permissive inference.⁵⁶³

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such Law (Yes/No):

Yes. 75 Pa.C.S.A. §1547(k).

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Yes

Implied Consent Law:

Yes. 75 Pa.C.S.A. §1547(a).

Arrest Required (Yes/No):

No. However an officer must have reasonable grounds to believe the person was driving in violation of DUI laws.

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

Yes. 75 Pa.C.S.A. §1547(a).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal Cases. 75 Pa.C.S.A. §1547(e).

Other Information:

⁵⁵⁹ A vehicle means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon rails or tracks. The term does not include a self-propelled wheel chair or an electrical mobility device operated by and designed for the exclusive use of a person with a mobility-related disability. 75 Pa.C.S.A. §102.

⁵⁶⁰ Drug means: (i) substances recognized in the official United States Pharmacopeia, or official National Formulary, or any supplement to either of them; and (ii) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (iii) substances (other than food) intended to affect the structure or any function of the human body or other animal body; and (iv) substances intended for use as a component of any article specified in clause (i), (ii) or (iii), but not including devices or their components, parts or accessories. 35 Pa.C.S.A. §780-102.

⁵⁶¹ A noxious substance shall mean any substance containing one or more of the following chemical compounds: acetone, acetate, benzene, butyl alcohol, cyclohexyl nitrite, ethyl alcohol, ethylene dichloride, gaseous or liquid fluorocarbons, isopropyl alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, pentachlorophenol, petroleum ether, or toluene. 18 Pa.C.S.A. §7303.

⁵⁶² See 35 Pa.C.S.A. §780-104.

⁵⁶³ See *Commonwealth v. Roser*, 914 A.2d 447, (2006) (it was not error to allow the jury to infer consumption of substances could result in changes to sufficient to sustain a conviction).

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

Blood: **Yes.** 75 Pa.C.S.A. §1547.
 Urine: **Yes.** 75 Pa.C.S.A. §1547.
 Other: **None**

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform: **Yes.** Chemical tests of blood, if conducted by a facility located in the Commonwealth, shall be performed by a clinical laboratory licensed and approved by the **Department of Health** for this purpose using procedures and equipment prescribed by the Department of Health or by a Pennsylvania State Police criminal laboratory. For purposes of blood testing, qualified person means an individual who is authorized to perform those chemical tests under the act of September 26, 1951 (P.L. 1539, No. 389),⁵⁶⁴ known as The Clinical Laboratory Act. 75 Pa.C.S.A. §1547(2)(i).⁵⁶⁴

Entity Establishing Testing Protocols: **Yes. The Department of Health.** 75 Pa.C.S.A. §1547.

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform: **No**

Other: **Independent Testing:** The person tested shall be permitted to have a physician of his own choosing administer an additional breath or blood chemical test and the results of the test shall also be admissible in evidence. The chemical testing given at the direction of the police officer shall not be delayed by a person's attempt to obtain an additional test. 75 Pa.C.S.A. §1547(h).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No): **No**

Anti-Plea-Bargaining Statute (Yes/No): **No.** However the presiding judicial officer at preliminary hearing or arraignment shall not reduce or modify an original DUI-D charge without the consent of the attorney for the Commonwealth. 75 Pa.C.S.A. §3812.

Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes.** Alcohol or drug evaluation is required prior to sentencing. A full assessment for alcohol and drug addiction shall be completed: (1) for a second or subsequent DUI violation; (2) if the evaluation indicates a need for counseling or treatment; or (3) if the defendant's BAC was \geq .16. 75 Pa.C.S.A. §3814.

Affirmative Defenses to DUI-D Charge:

⁵⁶⁴ An individual in a clinical laboratory is considered competent to work in such an area if (s)he "is qualified by education or experience." *Commonwealth v. O'Hayer*, 345 Pa.Super 73, 78, 497 A.2d 649, 652 (1985). See also 28 Pa.A.C. §5.24.

Legal Entitlement Valid/Prescription:	No. 75 Pa.C.S.A. §3810. ⁵⁶⁵
Therapeutic Concentration:	Yes ⁵⁶⁶
Involuntary Intoxication:	Possibly ⁵⁶⁷
Other:	

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail):	None
Preliminary Breath Test – Other:	N/A
Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	<u>First offense</u> – Not less than 72 hours and not less than \$1,000 or more than \$5,000 ; <u>Second offense</u> – Not less than 90 days and not less than \$1,500 ; <u>Third or subsequent offense</u> – Not less than 1 year and not less than \$2,500 . 75 Pa.C.S.A. §3804(c). ⁵⁶⁸
Implied Consent Chemical Test - Other:	N/A

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:	<u>First offense</u> (misdemeanor) – Not less than 72 consecutive hours or more than 6 months and not less than \$1,000 or more than \$5,000 ; <u>Second offense</u> (1st degree misdemeanor) – Not less than 90 days or more than 5 years and not less than \$1,500 or more than \$10,000 ; <u>Third or subsequent offense</u> (1st degree misdemeanor) – Not less than 1 year or more than 5 years and not less than \$2,500 or more than \$10,000 . 18 Pa.C.S.A. §§1101; 1104; 75 Pa.C.S.A. §§3803; 3804(c). Aggravated Assault DUI-D (serious bodily injury) (2nd Degree Felony): Not more than 10 years and/or not more than \$25,000 . 18 Pa.C.S.A. §§1101; 1103; 75 Pa.C.S.A. §3735.1.
Mandatory Minimum Term/Fine:	The base terms listed above reflect mandatory minimum sentences. A criminal sentence in Pennsylvania must have a minimum and a maximum; the maximum must be at least two times the duration of the minimum.
Community Service:	In addition to other penalties, the sentencing judge may

⁵⁶⁵ The fact that a person charged with violating this chapter is or has been legally entitled to use alcohol or controlled substances is not a defense to a charge of violating this chapter. 75 Pa.C.S.A. §3810.

⁵⁶⁶ It appears based upon the language of the statute that if a therapeutic concentration would not render a person “under the influence,” or “impair” the person’s ability to safely operate a vehicle, arguing that the level of the substance detected was merely therapeutic would be a valid defense. 75 Pa.C.S.A. §3802.

⁵⁶⁷ 18 Pa.C.S.A. §308 specifically instructs that voluntary intoxication is not a defense. The fact the legislature did not include involuntary intoxication suggests that involuntary intoxication may be available as a defense.

⁵⁶⁸ It should be noted Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

- impose up to 150 hours of community service, and order attendance by the defendant at a victim impact panel. 75 Pa.C.S.A. §3804(f).
- Restitution: Restitution under Accelerated Rehabilitative Disposition. 75 Pa.C.S.A. §3807.
Restitution as part of probation. 42 Pa.C.S.A. §9754(c)(8).
Crime Victim's Compensation Fund. 18 Pa.C.S.A. §11.101, *et. seq.*
- Child Endangerment: An individual who violates the impaired driving statute with a minor (under age 18) in the vehicle shall be convicted of a 1st degree misdemeanor and sentenced to:
First offense – Not less than **\$1,000** and **100 hours** community service;
Second offense – Not less than **\$2,500** and not less than **1 month** or more than **6 months**;
Third or subsequent offense – Not less than **6 months** or more than **2 years**. 75 Pa.C.S.A. §3804(c.1).
- Other: **Extended supervision of court:** If after the initial drug and alcohol assessment, a defendant is determined to be in need of additional treatment, the judge shall impose a minimum sentence as provided by law and a maximum sentence equal to the statutorily available maximum. A sentence to the statutorily available maximum imposed pursuant to this subsection may, in the discretion of the sentencing court, be ordered to be served in a county prison. 75 Pa.C.S.A. §3804(d).
Accelerated Rehabilitative Disposition (ARD): A first-time offender may be placed in ARD. Acceptance into and satisfactory completion of the program may lead to dismissal and expungement of the charge.
ARD applies to a first offense within ten years and is not available if a crash caused death or serious bodily injury to others, or if a passenger under 14 was in the vehicle at the time of the offense.
Acceptance of ARD is considered a first conviction for purposes of computing any subsequent violations. License suspension is a 60-day suspension for refusals, crashes with bodily injury and/or vehicle or property damage, and drug DUI. A driver under 21 placed on ARD undergoes a 90-day license suspension. **75 Pa.C.S.A. §3807.**
Laboratory Costs: A defendant may be required to pay a laboratory user fee that includes the costs associated with laboratory services for testing and any court appearances by laboratory technicians. 42 Pa.C.S.A. §1725.3.
- Victim Impact Panel:** The court may order a defendant to attend a victim impact panel. 75 Pa.C.S.A. §3804(f.1).

Administrative Sanctions – Post-Conviction:

Substance Abuse Education: **Yes.** 75 Pa.C.S.A. §§3804; 3815.
 Substance Abuse Treatment: **Yes.** 75 Pa.C.S.A. §§3804; 3815.
 Vehicle Impoundment/Confiscation: **Forfeiture.**
 Authorized by Specific Statutory Authority: **No**, however under common law, a court may order forfeiture of the motor vehicle used in a DUI-D offense. See *Commonwealth v. Crosby*, 568 A.2d 233 (Pa.Super. 1990).⁵⁶⁹
 Terms Upon Which Vehicle Will Be Released: **No statutory forfeiture**, however under common law, a court will consider whether forfeiture will present a hardship to family members. See *Commonwealth v. Crosby*, 568 A.2d 233 (Pa.Super. 1990).
 Other Miscellaneous Sanctions:

Homicide by Vehicle:

State Has Such a Law: **Yes** – 2nd Degree Felony.
Homicide by Vehicle While Driving Under the Influence.
 75 Pa.C.S.A. §3735.
 Imprisonment/Fine: Not more than **10 years** and/or not more than **\$25,000**.
 18 Pa.C.S.A. §§1101; 1103.
 Mandatory Minimum Term/Fine: **3 years.** 75 Pa.C.S.A. §3735(a).
 Other:

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is disqualified from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if that person is convicted of driving a CMV while under the influence of a controlled substance.

For a subsequent conviction or a combination of two or more convictions, the disqualification is for life (10 years mand). A person who violates this provision is subject to the same criminal sanctions as for any other DUI-D offense.

A person is disqualified from operating a CMV for 1 year if, while operating a CMV, that person refuses to submit a chemical test for the presence of controlled substances.

Even a DUI violation in a personal vehicle subjects the holder of a CDL to a one-year CDL disqualification. 75 Pa.C.S.A. §§1603; 1611; 1612; 1613; 3802(f).

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment: **Summary Offense:**
 Not less than **60 days** or more than **90 days** and **\$500**. 75

⁵⁶⁹ The Commonwealth may not proceed with common law civil forfeiture of derivative contraband without evidence of a conviction. *Commonwealth v. 2010 Buick Enclave*, 99 A.3d 163 (Pa. Cmwlth 2014).

Pa.C.S.A. §1543(b)(1).

Driving after DUI Suspension with any amount of a controlled substance or its metabolite or who refuses testing:

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

Second offense (3rd degree misdemeanor) – Not less than **6 months** or more than **1 year** and **\$2,500**;

Third or subsequent offense (1st degree misdemeanor) – Not less than **2 years** or more than **5 years** and **\$5,000**. 18 Pa.C.S.A. §§1101; 1104; 75 Pa.C.S.A. §1543(b)(1.1).

Other:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Grounds for Being Declared Habitual Offender:

Term of License Revocations While on Habitual Offender Status:

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

Imprisonment (Term):

Mandatory Minimum Term/Fine:

Yes. 75 Pa.C.S.A. §1542.

Three convictions of any one or more serious traffic offenses⁵⁷⁰ within a 5-year period.

5 years. Each additional offense committed within 5 years shall result in a revocation period of 2 years. 75 Pa.C.S.A. §1542(e).

Second Degree Misdemeanor. 75 Pa.C.S.A. §6503.1.

Not more than **2 years** and/or not more than **\$5,000**. 18 Pa.C.S.A. §1104(2).

None.

Other State Laws Related to Drug Use:

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

Drug Chemical Test Given to Deceased Driver Killed in Crash:

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

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

Drug Chemical Tests on Persons Involved in Traffic Crashes:

Yes. 75 Pa.C.S.A. §3749. Blood or urine samples shall be taken.

Yes. If > 15 years old and died within 4 hours of accident.

Yes. If driver cannot be determined, then all vehicle occupants over 15.

Yes. If > 15 and died within 4 hours of accident.

No

Marijuana – Possession and Use Laws:

Illegal.^{571 572}

⁵⁷⁰ Serious traffic offenses include DUI, driving on suspended/revoked license, racing, accidents involving death or personal injury, accidents involving death or personal injury while not licensed, accidents involving damage to attended vehicle or property. 75 Pa.C.S.A. §1542.

⁵⁷¹ On May 17, 2016 the Pennsylvania Medical Marijuana Act became effective. See 35 Pa.C.S.A. §10231.303. This act provides for lawful possession of marijuana under certain conditions for medical purposes.

⁵⁷² “**Marihuana**” consists of all forms, species and/or varieties of the genus *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin; but shall not include tetrahydrocannabinols, the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative,

Possession < 30 grams (misdemeanor) not more than **30 days** in jail and/or not more than **\$500**. 35 Pa.C.S.A. §780-113(a)(31), (g).

Intoxicant Exclusion Law (UPPL):

Yes. 31 Pa. Code §90g.4.

mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, cake, or the sterilized seed of such plant which is incapable of germination. 35 Pa.C.S.A. §780-102.

TERRITORY

PUERTO RICO

General Reference:

Laws of Puerto Rico Annotated (L.P.R.A.)⁵⁷³

Type of DUI-D Law:

Under the Influence

Basis for a DUI-D Charge:

9 L.P.R.A. §5203.

Standard DUI-D Offense:

Under the influence of any narcotic drug, marijuana, stimulant or depressant substance, or of any chemical or controlled substance. 9 L.P.R.A. §5203.

Illegal Per Se Law:

No

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such Law (Yes/No):

Yes. 9 L.P.R.A. §5209.

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Yes

Implied Consent Law:

Yes. 9 L.P.R.A. §5209.

Arrest Required (Yes/No):

No. 9 L.P.R.A. §5209.

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

Yes. 9 L.P.R.A. §5209(a).

Refusal to Submit to Chemical Test Admitted into Evidence:

N/A

Other Information:

If after performing the alcohol tests they show that the driver was not under the effect of alcoholic beverages, yet appeared to be intoxicated, the police officer may have grounds to believe that the driver is under the influence of drugs or controlled substances. In such case, the police officer shall then perform the field tests he deems necessary before submitting the person detained or arrested to a chemical analysis of the urine. 9 L.P.R.A. §5209(F).

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

Blood:

Yes. 9 L.P.R.A. §5209.

Urine:

Yes. 9 L.P.R.A. §5209.

Other:

Any bodily fluid. 9 L.P.R.A. §5209(K).

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. Only **personnel duly certified by the Department of Health**, acting at the request of a police officer, a prosecuting

⁵⁷³ Updated through December 2013.

attorney, or a judge of the Court of First Instance may require and extract a blood sample to determine its content of alcohol, drugs or controlled substances, subject to what is established in subsection (g) of this section. The Secretary of Health is hereby directed to certify the government personnel duly qualified to perform the analyses for alcohol, drugs or controlled substances in the blood, urine or breath. 9 L.P.R.A. §5209(j).

Entity Establishing Testing Protocols:

Yes. The Secretary of the Department of Health. 9 L.P.R.A. §5209(g).

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:

Yes. 9 L.P.R.A. §5209.

Other:

Non-Implied Consent Blood Draws: Any legislative exceptions to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No):

No

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

No

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

Yes. 9 L.P.R.A. §5207(A).

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription:

No. 9 L.P.R.A. §5203.

Therapeutic Concentration:

Yes. ⁵⁷⁴

Involuntary Intoxication:

No

Other:

Sanctions for Refusal to Submit to a Chemical Test:

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

N/A

Preliminary Breath Test – Other:

N/A

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

N/A

Implied Consent Chemical Test - Other:

There are no provisions for criminal or administrative sanctions. However, anyone who refuses to submit to a chemical test will be arrested and transported to a medical facility where a person certified by the Department of Health

⁵⁷⁴ It appears based upon the language of the statute that if a therapeutic concentration would not render a person “under the influence,” arguing that the level of the substance detected was merely therapeutic would be a valid defense.

will perform the test. 9 L.P.R.A. §5209(A).

Criminal Sanctions Following a DUI-D

Conviction:

Imprisonment/Fine:

Misdemeanor.

DUI: First conviction – Not less than **\$300** or more than **\$500**;⁵⁷⁵

Second conviction (within 3 years) – **15 to 30 days** and not less than **\$500** or more than **\$750**;

Third and subsequent convictions (within 3 years) – Not less than **60 days** or more than **6 months** and not less than **\$2,000** or more than **\$2,500**. 9 L.P.R.A. §5204(B).

DUI – Bodily Harm: In addition to any other penalty for DUI, any person causing bodily harm shall be punished by a fine of not less than **\$1,000** or more than **\$5,000**. 9 L.P.R.A. §5205.

DUI – Serious Bodily Injury: In addition to any other penalty for DUI, any person causing serious bodily injury shall be punished by imprisonment of **18 months**.⁵⁷⁶ 9 L.P.R.A. §5206.

Mandatory Minimum Term/Fine:

First conviction - **\$300**;

Second conviction – **15 days/\$500**;

Third conviction – **60 days/\$2,000**.

DUI – Bodily Harm: \$1,000.

DUI – Serious Bodily Injury: 18 months.

Community Service:

Community service may be ordered in any case. However, a defendant, whose sentence is suspended, shall perform community service of 30 days. 9 L.P.R.A. §5208(C).

Second conviction – not less than 30 days community service;

Third or subsequent conviction – not less than 60 days community service. 9 L.P.R.A. §5204(B)(2)(C).

Restitution:

Included in the penalties. 9 L.P.R.A. §5204(B).

Child Endangerment:

DUI – With Minor ≤ 15 : 48 hours and \$500 (mand). 9 L.P.R.A. §5204(C).

Other:

I. A person who has been convicted of DUI and subsequent commits the same or similar offense is deemed to be a repeat offender 9 L.P.R.A. §5206.

II. A sentence may be suspended for any DUI, except serious bodily injury or when a person is deemed a repeat offender and his/her BAC was $\geq .08$ but $\leq .10$. 9 L.P.R.A. §5208.

⁵⁷⁵ If a defendant does not comply with the conditions of judgment and rehabilitation, he is subject to 5 to 15 days of imprisonment. 9 L.P.R.A. §5204(B)(1).

⁵⁷⁶ The term of imprisonment may be increased to a maximum of 3 years if there are aggravating circumstances, or decreased to minimum of 6 months, 1 day if there are mitigating circumstances. The law does not provide examples of either aggravating or mitigating circumstances. 9 L.P.R.A. §5206.

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:	Yes. 9 L.P.R.A. §5204(B).
Substance Abuse Treatment:	Yes. 9 L.P.R.A. §5204(B).
Vehicle Impoundment/Confiscation:	Seizure.
Authorized by Specific Statutory Authority:	The court shall order seizure of the motor vehicle for second or subsequent convictions (within 5 years). 9 L.P.R.A. §5204(B)(4).
Terms Upon Which Vehicle Will Be Released:	The court may make an exception for an individual who completely depends on the motor vehicle for his/her needs, including any member of the family unit of the defendant, or any co-owner (provided such person is not the defendant). 9 L.P.R.A. §5204(C).
Other Miscellaneous Sanctions:	N/A

Homicide by Vehicle:

State Has Such a Law:	No ⁵⁷⁷
Imprisonment/Fine:	N/A
Mandatory Minimum Term/Fine:	N/A
Other:	

DUI-D Offenses and Commercial Motor Vehicles (CMV):

An operator is subject to disqualification for 1 year (3 years if driving with hazardous material) if he drives under the influence or refuses to consent to a chemical test. A second or subsequent offense results in disqualification for life (10 year mand). 49 C.F.R. §383.51.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:	Misdemeanor. 9 L.P.R.A. §5073(M). Not less than \$500 or more than \$3,000 .
Mandatory Minimum Fine/Imprisonment Term:	\$500
Other:	N/A

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):	No
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Other State Laws Related to Drug Use:

Drug Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Yes. 9 L.P.R.A. §5209(B).
Drug Chemical Test Given to Deceased Driver Killed in Crash:	Yes, within 4 hours after the accident.
Drug Chemical Test Given to Deceased	No

⁵⁷⁷ The laws surrounding homicide by vehicle in Puerto Rico were repealed effective September 2012.

Vehicle Passengers Killed in Crash:

Drug Chemical Test Given to Deceased
Pedestrian Killed in Crash:

Yes, within 4 hours after the accident.

Drug Chemical Tests on Persons Involved
in Traffic Crashes:

Yes. 9 L.P.R.A. §5209(E).

Marijuana – Possession and Use Laws:

Illegal.⁵⁷⁸

First offense (felony) - not more than **3 years** and not more than **\$5,000**.

Second offense(felony) - not more than **6 years**.

If no prior convictions the court may defer a finding of guilty on terms and conditions. L.P.R.A. §2404.

Intoxicant Exclusion Law (UPPL):

Yes. 26 L.P.R.A. §1628.

⁵⁷⁸ Marihuana means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, product, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, product, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. L.P.R.A. §2102.

STATE

RHODE ISLAND

General Reference:

General Laws of Rhode Island (Gen.Laws 1956)

Type of DUI-D Law:

Under the Influence/Zero Tolerance

Basis for a DUI-D Charge:

Gen.Laws 1956 §31-27-2.

Standard DUI-D Offense:

Drive or operate a motor vehicle⁵⁷⁹ while under the influence of any drug, toluene, any controlled substance⁵⁸⁰ or any combination of these substances and intoxicating liquor. Gen.Laws 1956 §31-27-2.

Illegal Per Se Law:

Yes. A blood presence of **any scheduled controlled substance.** Gen.Laws 1956 §31-27-2.

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such Law (Yes/No):

Yes. Gen.Laws 1956 §31-27-2.3.

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Yes

Implied Consent Law:

Yes. Gen.Laws 1956 §31-27-2.1.

Arrest Required (Yes/No):

No. Gen.Laws 1956 §31-27-2.1.

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

Yes. Gen.Laws 1956 §31-27-2.1.

Refusal to Submit to Chemical Test Admitted into Evidence:

Only if the defendant chooses to testify. Gen.Laws 1956 §31-27-2(c)(1).

Other Information:

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

Blood:

Yes. However, there is an exception based for medical or religious reasons. Gen.Laws 1956 §31-27-2.1(b).

Urine:

Yes. Gen.Laws 1956 §31-27-2.1.

Other:

Body fluids. Gen.Laws 1956 §31-27-2.1.

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. When a person is requested to submit to blood tests, only a **physician or registered nurse, or a medical**

⁵⁷⁹ A motor vehicle means every vehicle that is self-propelled or propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except vehicles moved exclusively by human power, an EPAMD and electric motorized bicycles as defined in subsection (g) of this section, and motorized wheelchairs. Gen.Laws 1956 §31-1-3(s).

⁵⁸⁰ A controlled substance means a drug, substance, immediate precursor, or synthetic drug in schedules I -- V of this chapter. The term shall not include distilled spirits, wine, or malt beverages, as those terms are defined or used in chapter 1 of title 3, nor tobacco. Gen.Laws 1956 §21-28-1.02(7).

technician certified under regulations promulgated by the Department of Health, may withdraw blood. This limitation shall not apply to the taking of breath or urine specimens. Gen.Laws 1956 §§31-27-2.1(b); 31-27-2.9.

Entity Establishing Testing Protocols:

Yes. Director of Department of Health. Gen.Laws 1956 §31-27-2.1.

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:

Yes. Gen.Laws 1956 §31-27-2.9.

Other:

Independent Testing: A person arrested and charged with operating a motor vehicle while under the influence of narcotic drugs or intoxicating liquor, whatever its alcoholic content, shall have the right to be examined at his or her own expense immediately after the person's arrest by a physician selected by the person, and the officer so arresting or so charging the person shall immediately inform the person of this right and afford the person a reasonable opportunity to exercise the right, and at the trial of the person the prosecution must prove that he or she was so informed and was afforded that opportunity. Gen.Laws 1956 §31-27-3.

Adjudication of DUI-D Charges:

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

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription: **No.** Gen.Laws 1956 §31-27-2(b)(1).⁵⁸¹
 Therapeutic Concentration **Yes**⁵⁸²
 Involuntary Intoxication: **No**
 Other:

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **None**
 Preliminary Breath Test – Other: **Infraction:** An administrative fine of **\$85** shall be imposed. Gen.Laws 1956 §§31-27-2.3(b); 31-41.1-4(a).
 Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **First refusal: \$200-500;**
Second refusal (within 5 years): Not more than **6 months** and **\$600-1,000;**

⁵⁸¹ The fact that any person charged with violating this section is, or has been, legally entitled to use alcohol or a drug shall not constitute a defense against any charge of violating this section. Gen.Laws 1956 §31-27-2(b)(1).

⁵⁸² It appears based upon the language of the statute that if a therapeutic concentration would not render a person “under the influence,” arguing that the level of the substance detected was merely therapeutic would be a valid defense. Gen.Laws 1956 §31-27-2.

Implied Consent Chemical Test - Other:

Third or subsequent refusal (within 5 years): Not more than **1 year** and **\$800-1,000**. Gen.Laws 1956 §31-27-2.1(b).⁵⁸³

First refusal – Attendance at a DUI class or alcohol/drug treatment program and 10-60 hours community service;

Second refusal – Attendance at an alcohol/drug treatment program and 60-100 hours community service;

Third or subsequent refusal – Attendance at an alcohol/drug treatment program and not less than **100 hours** community service. Gen.Laws 1956 §31-27-2.1(b).

Highway safety assessments of \$500 and \$200 and shall be paid by any person found in violation. Gen.Laws 1956 §31-27-2.1(b)(5), (6).

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:

DUI:

First offense (any amount of controlled substance in blood): Imprisonment up to **1 year** and/or not less than **\$100** or more than **\$300**;

First offense (under the influence of drugs/toluene or controlled substances): Imprisonment up to **1 year** and/or a fine of **\$500**;

Second offense (within 5 years) (any amount of controlled substance in blood): Not less than **10 days** or more than **1 year** and **\$400** fine;

Second offense (within 5 years) (under the influence of drugs/toluene or controlled substances): Not less than **6 months** or more than **1 year** and **\$1,000**

Third or subsequent offense (any amount of controlled substance in blood) (felony) – Not less than **1 year** or more than **3 years** and **\$400**;

Third or subsequent offense (under the influence of drugs/toluene or controlled substances): Not less than **3 years** or more than **5 years** and not less than **\$1,000** or more than **\$5,000**. Gen.Laws 1956 §31-27-2(d)(1)-(3).

DUI – Serious Bodily Injury (felony):

First offense: Not less than **1 year** or more than **10 years** and not less than **\$1,000** or more than **\$5,000**;

Second or subsequent offense (within 5 years): Not less than 2 years or more than 15 years and not less than **\$3,000** or more than **\$10,000**. Gen.Laws 1956 §31-27-2.6(c), (d).

Mandatory Minimum Term/Fine:

The base terms listed above are mandatory. Gen.Laws 1956 §31-27-2(i).⁵⁸⁴

⁵⁸³ It should be noted Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

^{584c}“No fines, suspensions, assessments, alcohol or drug treatment programs, course on driving while intoxicated or under the influence of a controlled substance, public community restitution, or jail provided for under this section can be suspended.” Gen.Laws 1956 §31-27-2(i).

Community Service:	<u>First offense</u> (any amount of controlled substance in blood): 10 - 60 hours (mandatory); <u>First offense</u> (under the influence of drugs/toluene or controlled substances): 20 - 60 hours (mand). Gen.Laws 1956 §31-27-2(d)(1).
Restitution:	Victims compensation fund Gen.Laws 1956 §12-25-16, <i>et seq.</i>
Child Endangerment:	DUI-D with a minor under the age of 13 in the vehicle is punishable by a term of not more than 1 year , which cannot be suspended. Gen.Laws 1956 §31-27-2(d)(5)(ii).
Other:	Highway Assessment Fee: In addition to the above fines, a defendant must pay a highway assessment fee of \$500 and an additional fee of \$86. Gen.Laws 1956 §31-27-2(d)(6)(i), (ii). EMS Special Assessment: In addition to any fine, an offender must be assessed \$1. Gen.Laws 1956 §31-27-18. Driving while in possession of controlled substances: In addition to any other penalty prescribed by law, whoever operates any motor vehicle while knowingly having in the motor vehicle or in his or her possession, a controlled substance, except for possession of up 1 oz. of marijuana, shall have his license suspended for a period of 6 months.
 <u>Administrative Sanctions – Post-Conviction:</u>	
Substance Abuse Education:	Yes. A course on driving while intoxicated or under the influence of controlled substances may be required. Gen.Laws 1956 §31-27-2(d).
Substance Abuse Treatment:	Yes. A court shall order a person to successfully complete an alcohol or drug treatment program except for first offense without an elevated BAC. Gen.Laws 1956 §31-27-2; 31-27-2.6.
Vehicle Impoundment/Confiscation: Authorized by Specific Statutory Authority:	Forfeiture For a third or subsequent offense – A person's vehicle shall be subject, in the discretion of the sentencing judge, to forfeiture. Gen.Laws 1956 §31-27-2(d)(3)(iii).
Terms Upon Which Vehicle Will Be Released:	A person petitioning for release of a seized vehicle must (1) assert by a preponderance of the evidence a right, title, or interest in the vehicle vested in the petitioner rather than the defendant or a superior right, title, or interest of the defendant at the time of the commission of the act(s) which gave rise to the forfeiture of the vehicle; or (2) the petitioner is a bona fide purchaser for value of any right, title or interest in the vehicle and was at the time of purchase reasonably without cause to believe that the vehicle was subject to forfeiture. Gen.Laws 1956 §31-27-4.4(f)(6).
Other Miscellaneous Sanctions:	DUI Course Fees: A first offender must pay fees that are associated with attending an alcohol/drug education course: a reasonable tuition of not less than \$25 and a fee of \$175. Gen.Laws 1956 §31-27-2(j).

Shock Incarceration: 18 to 28-year-old non-violent offenders who have never been incarcerated following a conviction are eligible to participate in a shock incarceration program, which shall include extensive physical regimentation, drug and alcohol abuse counseling, behavioral counseling and mandatory education courses and community services. Gen.Laws 1956 §12-19-2.2.

Homicide by Vehicle:

State Has Such a Law:

Imprisonment/Fine:

Driving under the influence of liquor or drugs, resulting in death. Gen.Laws 1956 §31-27-2.2.

Felony

First offense – Not less than **5 years** or more than **15 years** and not less than **\$5,000** or more than **\$10,000**;

Second or subsequent offense (within 5 years) – Not less than **10 years** or more than **20 years** and not less than **\$10,000** or more than **\$20,000**. Gen.Laws 1956 §31-27-2.2.

Mandatory Minimum Term/Fine:

Other:

The terms above appear to be mandatory.

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person's privilege to operate a CMV is suspended for at least 1 mandatory year (3 years if transporting hazardous materials) if that person is convicted of driving a CMV while under the influence of a controlled substances; or of a refusal to submit to a chemical test. For a second violation of any of the above-listed items, a person's privilege to operate a CMV is revoked for life (10 years mand). Gen.Laws 1956 §§31-10.3-3; 31-10.3-31.

Driving While License Suspended for DUI-D Offense:

First offense (misdemeanor) – Not less than **10 days** or more than **1 year** and **\$500**;

Second offense (within 5 years - misdemeanor) – Not less than **6 months** or more than **1 year** and **\$500**;

Third or subsequent offense (within 5 years - felony) – Not less than 1 year or more than 5 years and a \$1,000 fine.

Gen.Laws 1956 §§31-11-18.1; 31-27-13; 31-27-14.

Criminal - Fine/Imprisonment:

Other:

The terms above are mandatory. Gen.Laws 1956 §31-11-18.1.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Grounds for Being Declared Habitual Offender:

Yes. Gen.Laws 1956 §31-40-1, *et seq.*

Three or more convictions within 3 years for any of the following: 1) Motor vehicle manslaughter; 2) DUI (alcohol or drugs); 3) Driving while license suspended or revoked; 4) Willfully operating a motor vehicle without a license; 5) Any felony offense using a motor vehicle; 6) Failure to stop and report death/injury after accident driver was involved in; 7)

Term of License Revocations While on Habitual Offender Status: Failure of driver to stop and report accident where damages equaled \$150 or more; or 8) A combination of six traffic offenses where any one conviction could result in license suspension or revocation for 30 days or more. Gen.Laws 1956 §31-40-2.

Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Not less than **1 year** or more than **5 years**. Gen.Laws 1956 §31-40-7.

Imprisonment (Term): **Felony**. Gen.Laws 1956 §11-1-2.

Mandatory Minimum Term/Fine: Not more than **5 years**. Gen.Laws 1956 §31-40-8.

The 5-year sentence may not be suspended except in cases where the defendant operated a vehicle in order to save life or limb. Gen.Laws 1956 §31-40-8.

Other State Laws Related to Drug Use:

Drug Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No): **No specific provisions.** But by reference, testing of a driver, passenger or pedestrian may be permitted. Gen.Laws 1956 §31-27-3.1(c).

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

Drug Chemical Test Given to Deceased Vehicle Passengers Killed in Crash: **Yes**

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

Drug Chemical Tests on Persons Involved in Traffic Crashes: **No**

Marijuana – Possession and Use Laws:

Legal for Medical Use.

Medical exception applies to patients with qualifying medical conditions⁵⁸⁵ and their primary caregivers when they possess a registry identification card. The qualifying patient may possess an amount of marijuana that does not exceed 12 mature marijuana plants, 2.5 ounces of usable marijuana, or its equivalent amount, and an amount of wet marijuana to be set by regulations promulgated by the departments of health and business regulation. Gen.Laws 1956 §21-28.6-4.

Decriminalized ≤ 1 oz.

Possession of marijuana ≤ 1 oz. (civil violation) - punishable by a **\$150 fine**, no jail time, and no criminal record.

Illegal.⁵⁸⁶

⁵⁸⁵ “Qualifying patient” means a person who has been diagnosed by a practitioner as having a debilitating medical condition and is a resident of Rhode Island. “Debilitating medical condition” means: (i) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, Hepatitis C, post-traumatic stress disorder, or the treatment of these conditions; (ii) A chronic or debilitating disease or medical condition, or its treatment, that produces one or more of the following: cachexia or wasting syndrome; severe, debilitating, chronic pain; severe nausea; seizures, including but not limited to, those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to, those characteristic of multiple sclerosis or Crohn's disease; or agitation of Alzheimer's Disease; or (iii) Any other medical condition or its treatment approved by the department of health, as provided for in [§ 21-28.6-5](#). Gen.Laws 1956 §21-28.6-3(5), (18).

⁵⁸⁶ “Marijuana” means all parts of the plant cannabis sativa L., whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or

Criminal Penalties:

Possession > 1 oz. (misdemeanor) - punishable by not more than **1-year** imprisonment and a fine of not less than **\$200** nor more than **\$500 fine**. Gen.Laws 1956 §21-28-4.01.

Intoxicant Exclusion Law (UPPL):

No. Gen.Laws 1956 §27-18-4(11).

resin, but shall not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, (except the resin extracted from it), fiber, oil or cake, or the sterilized seed from the plant which is incapable of germination. Gen.Laws 1956 §21-28-1.02(26).

STATE

General Reference:

SOUTH CAROLINA

Code of Laws of South Carolina Annotated (Code 1976)

Type of DUI-D Law:**Under the Influence**Basis for a DUI-D Charge:

Code 1976 §56-5-2930(A).

Standard DUI-D Offense:

Unlawful to drive a motor vehicle⁵⁸⁷ while under the influence of any drug⁵⁸⁸, any combination of drugs or substances, or a combination of alcohol and other drugs or substances to the extent the person's faculties are materially and appreciably impaired. Code 1976 §56-5-2930(A).

Illegal Per Se Law:

No

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such Law (Yes/No):

No

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

N/A

Implied Consent Law:

Yes. Code 1976 §56-5-2950.

Arrest Required (Yes/No):

Yes. Code 1976 §§56-5-2950(A); 56-1-286(C).

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

Yes. Code 1976 §56-5-2950(A).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal Cases. *State v. Miller*, 185 S.E.2d 359 (S.C. 1971).

Other Information:

A person who is unconscious or otherwise in a condition rendering the person incapable of refusal is considered to be informed and not to have withdrawn the consent provided by subsection (A) of this section. Code 1976 §56-5-2950(H).

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

Blood:

Yes. Code 1976 §56-5-2950(A).

Urine:

Yes. Code 1976 §56-5-2950(A).⁵⁸⁹

⁵⁸⁷ A motor vehicle is every vehicle which is self-propelled, except mopeds, and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. Code 1976 §56-5-130.

⁵⁸⁸ “Drug” means a substance: (a) recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man and animals; (c) other than food intended to affect the structure or any function of the body of man and animals; and (d) intended for use as a component of any substance specified in sub-item (a), (b), or (c) of this paragraph but does not include devices or their components, parts, or accessories. Code 1976 §44-53-110

⁵⁸⁹ If the officer has reasonable suspicion that the person is under the influence of drugs other than alcohol, or is under the influence of a combination of alcohol and drugs, the officer may order that a urine sample be taken for testing. Code 1976 §56-5-2950(A).

Other: Tests to collect samples, other than breath, must be collected within 3 hours of arrest. Code 1976 §56-5-2950(A).

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform: **Yes.** Blood and urine samples must be obtained by **physicians licensed by the State Board of Medical Examiners, registered nurses licensed by the State Board of Nursing, and other medical personnel trained to obtain the samples in a licensed medical facility.** Blood and urine samples must be obtained and handled in accordance with procedures approved by SLED. Code 1976 §56-5-2950(A).

Entity Establishing Testing Protocols: **Yes. South Carolina Law Enforcement Division.** Code 1976 §56-5-2950.

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:

No

Other:

Independent Testing: the person has the right to have a qualified person of the person's own choosing conduct additional independent tests at the person's expense. Code 1976 §56-5-2950(B)(3).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No): **No**

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

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

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription: **No**

Therapeutic Concentration: **Yes**⁵⁹⁰

Involuntary Intoxication: **No**

Other:

Sanctions for Refusal to Submit to a Chemical Test:

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

Preliminary Breath Test – Other: **N/A**

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

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

Criminal Sanctions Following a DUI-D

⁵⁹⁰ It appears based upon the language of the statute that if a therapeutic concentration would not render a person “under the influence,” or “impair” the person’s ability to safely operate a vehicle, arguing that the level of the substance detected was merely therapeutic would be a valid defense. Code 1976 §56-5-2930(A).

Conviction:

Imprisonment/Fine:

First offense – Not less than **48 hours** or more than **30 days** or **\$400**;

Second offense (class C misdemeanor) – Not less than **5 days** or more than **1 year** and not less than **\$2,100** or more than **\$5,100**;

Third offense (class A misdemeanor) – Not less than **60 days** or more than **3 years** and not less than **\$3,800** or more than **\$6,300**;

Fourth or subsequent offense (class F felony) – Not less than **1 year** or more than **5 years**;

Code 1976 §§16-1-10; 16-1-20; 16-1-90(F); 16-1-100; 56-5-2930(B)(1)-(4); 56-5-2933.

DUI – Great bodily injury (felony) – Not less than **30 days** or more than **15 years** and not less than **\$5,100** or more than **\$10,100**. Code 1976 §§16-1-90(B); 56-5-2945.

Mandatory Minimum Term/Fine:

First offense – **\$400**;

Second offense – **5 days/\$1,100**;

Third offense – **60 days/\$3,800**;

Fourth or subsequent offense – **1 year**; Code 1976 §56-5-2930(B)(1)-(4), (C).

DUI – Great bodily injury (felony) – **30 days/ \$5,100**. Code 1976 §56-2-2945(A).

Community Service:

First offense – 48 hours; Code 1976 §56-5-2930(B)(1)-(4).

Restitution:

Victims' Compensation Fund. Code 1976 §16-3-1110, *et seq.*

Child Endangerment:

A person ≥ 18 who commits a DUI, a driving with an unlawful alcohol concentration or DUI-great bodily injury offense while transporting a child < 16 is subject to additional jail and fine sanctions which are equal to not more than one-half the maximum jail and fine sanctions for these offenses. These sanctions are mandatory if the jail or fine sanctions have been imposed for the original offense. Also, there is mandatory license suspension for 60 days. Code 1976 §56-5-2947(A)-(D).

Other:

Motor vehicle immobilization: For second or subsequent DUI violations, the violator's motor vehicles must be immobilized for a period of thirty days,⁵⁹¹ unless the person is a holder of a valid ignition interlock restricted license. Code 1976 §56-5-2942.

Mandatory Assessments:

I. In general sessions court, magistrates court and municipal court, a defendant must pay respectively an assessment which is equal to 107.5 percent of the fine imposed. Code 1976 §§14-1-206(A); 14-1-207; 14-1-208(A).

II. For any DUI-D offense, there is a mandatory \$100 surcharge obtained in general sessions court and a \$25

⁵⁹¹ Immobilization means suspension and surrender of the registration and motor vehicle license plate. Code 1976 §56-5-2942(B).

mandatory surcharge obtained in magistrate’s and municipal courts, along with an additional mandatory \$100 surcharge. Code 1976 §14-1-211(A)(1), (2).
 III. Every defendant must pay a \$12 assessment in addition to any other sanction. Code 1976 §56-5-2995.

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

An offender whose license was suspended must successfully complete an Alcohol and Drug Safety Action Program prior to license reinstatement. However, upon the recommendation by the Medical Advisory Board, an offender’s license may be restored notwithstanding the fact that person has not successfully completed this program. Code 1976 §56-5-2990(B), (D).

Persons who have had the driving privileges permanently revoked must successfully complete an alcohol or drug treatment program before their licenses can be reinstated. Code 1976 §56-1-385(A)(3).

Substance Abuse Treatment:

All offenders convicted of DUI must enroll in and successfully complete an Alcohol and Drug Safety Action Program. Code 1976 §56-5-2930(H).

Vehicle Impoundment/Confiscation:

Forfeiture

Authorized by Specific Statutory Authority:

For a third or subsequent DUI offense (within 10 years), the vehicle owned and operated by the offender or operated by an offender who is a resident of the household of the registered owner must be forfeited. Code 1976 §56-5-6240(A).

Terms Upon Which Vehicle Will Be Released:

The court shall order a vehicle returned to the registered owner if it is shown by a preponderance of the evidence that the use of the vehicle on the occasion of arrest was not expressly or impliedly authorized, or the registered owner did not know that the driver did not possess a valid driver's license. Code 1976 §56-5-6240(B).

Other Miscellaneous Sanctions:

N/A

Homicide by Vehicle:

State Has Such a Law:

Yes. Code 1976 §56-5-2945.

Imprisonment/Fine:

Not less than **1 year** or more than **25 years** and not less than **\$10,100** or more than **\$ 25,100**.
 Code 1976 §56-5-2945(A)(2).

Mandatory Minimum Term/Fine:

1 year/\$10,100

Other:

N/A

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is disqualified from operating a CMV for not less than 1 year (not less than 3 years if transporting hazardous materials) if, while driving a CMV, that person is under the influence of a controlled substance or a drug which impairs

driving ability or refuses to submit to a chemical test for an alcohol concentration.

Note: The disqualification section (Code 1976 §56-1-2110(A)(5)) appears to apply only to a refusal to submit to a chemical test for an alcohol concentration; however, the CMV implied consent section (Code 1976 §56-1-2130) applies to tests for both an alcohol concentration and the presence of other drugs.

For a subsequent violation or a combination of two or more violations of any of the above-listed items, the disqualification is for life (10 years mandatory). Code 1976 §§ 56-1-2030; 56-1-2110; 56-1-2120; 56-1-2130.

If the offender was operating a CMV while transporting hazardous materials operating a vehicle designed to transport more than 15 persons, that person is subject to the following sanctions:

First violation – disqualification for not less than 180 days (mand) or more than 2 years;

Second or subsequent violation (within 10 years) – disqualification for not less than 3 years (mand) or more than 5 years. In addition, first or subsequent offenders are subject to a civil penalty of \$1,000 to \$2,500.

Code 1976 §56-1-2070(E).

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

First offense (misdemeanor) – Not less than **10 days** or more than **30 days** or **\$300**;

Second offense (within five years) (misdemeanor) – Not less than **60 days** or more than **6 months** or **\$600**;

Third or subsequent offense (within five years) (Class A Misdemeanor) – Not less than **6 months** or more than **3 years** and **\$1,000**. Code 1976 §§16-1-10(C); 16-1-20; 16-1-100(A); 56-1-460(A)(2), (B).

Mandatory Minimum Fine/Imprisonment Term:

First offense – **10 days or \$300**;

Second offense – **60 days or \$600**;

Third or subsequent offense – **6 months/\$1,000**. Code 1976 §56-1-460(A)(2).

Other:

Forfeiture: For a fourth or subsequent offense (within 5 years), the vehicle owned and operated by the offender or operated by an offender who is a resident of the household of the registered owner must be forfeited. Code 1976 §56-5-6240(A).

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. Code 1976 §56-1-1010, *et seq.*

Grounds for Being Declared Habitual Offender:

3 or more serious convictions or 10 or more moving violations rated at 4 points or more under the point system

Term of License Revocations While on Habitual Offender Status: within a period of 3 years Code 1976 §56-1-1020(a), (b). 5 years and until the court thereafter restores the driving privilege. After 1 year, this period may be reduced to 2 years upon a showing of “good cause.” Code 1976 §56-1-1090.

Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: **Felony.** Code 1976 §56-1-1100.

Imprisonment (Term): Not more than **5 years.** Code 1976 §56-1-1100.

Mandatory Minimum Term/Fine: **None.**

Other State Laws Related to Drug Use:

Drug Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No): **Yes.** Code 1976 §17-7-80.

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

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

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash: **Yes – 16 or older.**

Drug Chemical Tests on Persons Involved in Traffic Crashes: **No.** However, when a person is suspected of causing a motor vehicle accident resulting in the death of another, the driver must submit to field sobriety tests if he/she is physically able to do so. Code 1976 §56-5-2948.

Marijuana – Possession and Use Laws:

Illegal.⁵⁹²

Criminal Penalties:

First offense possession of ≤ 1 oz. (misdemeanor) - not more than **30 days** and a fine of not less than **\$100 nor more than \$200**;

Second or subsequent offense ≤ 1 oz. (misdemeanor) - not more than **1 year** and not more than **\$2,000.** Code 1976 §§44-53-110; 44-53-190(d); 44-53-370(a).

Intoxicant Exclusion Law (UPPL): **Yes.** Code 1976 §38-71-370(9).

⁵⁹² Marijuana means: (i) all species or variety of the marijuana plant and all parts thereof whether growing or not; (ii) the seeds of the marijuana plant; (iii) the resin extracted from any part of the marijuana plant; or (iv) every compound, manufacture, salt, derivative, mixture, or preparation of the marijuana plant, marijuana seeds, or marijuana resin. Code 1976 §44-53-110 (27)(a).

STATE

General Reference:

SOUTH DAKOTA

South Dakota Codified Laws (SDCL)

Type of DUI-D Law:**Under the Influence**Basis for a DUI-D Charge:

SDCL §32-23-1.

Standard DUI-D Offense:

No person may drive or be in physical control of a vehicle⁵⁹³ when under the influence of:

I. marijuana⁵⁹⁴, or any substance or controlled drug⁵⁹⁵ not obtained pursuant to a valid prescription;

II. a combination of these substances and an alcoholic beverage;

III. any substance ingested, inhaled, or otherwise taken into the body for the purpose of becoming intoxicated;

IV. any controlled drug or substance obtained pursuant to a valid prescription;

V. any other substance, to a degree which renders the person incapable of safely driving. SDCL §32-23-1(2), (3), (4), (5).

Under 21 years of age: it is illegal to operate a motor vehicle after having consumed marijuana or any controlled drug or substance for *as long as physical evidence of the consumption remains present in the person's body*. SDCL §32-23-21(2).

Illegal Per Se Law:

Only as applied to those under 21.

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such Law (Yes/No):

Yes. SDCL §32-23-1.2.

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

No

Implied Consent Law:

Yes. SDCL §32-23-10⁵⁹⁶.

Arrest Required (Yes/No):

Yes. SDCL §32-23-10.

⁵⁹³ “Motor vehicle,” means automobiles, motor trucks, motorcycles, house trailers, trailers, and all vehicles propelled by power other than muscular power, except traction engines, road rollers, farm wagons, freight trailers, vehicles that run only on rails or tracks, and off-road vehicles as defined in SDCL §32-20-1. SDCL §32-3-1.

⁵⁹⁴ Marijuana means all parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. SDCL §22-42-1.

⁵⁹⁵ “Controlled drug or substance” means a drug, substance, or immediate precursor in Schedules I through IV of SDCL §§34-20B-11 to 34-20B-26. SDCL §34-20B-3.

⁵⁹⁶ SDCL §32-23-10 provides that the arresting law enforcement officer may, subsequent to the arrest of any operator for a violation of §32-23-1, require the operator to submit to the withdrawal of blood or other bodily substances as evidence. However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

Implied Consent Law Applies to Drugs (Yes/No): **Yes** SDCL §32-23-10.
 Refusal to Submit to Chemical Test Admitted into Evidence: **Yes** – Criminal cases. SDCL §32-23-10; 19-19-513.

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

Blood: **Yes.** SDCL §32-23-10.
 Urine: **No.** SDCL §32-23-10.
 Other: Other bodily substances. SDCL §32-23-10.

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform: **Yes**, but specifically for alcohol testing. The statute is silent as to drugs/controlled substances. SDCL §32-23-14.
 Entity Establishing Testing Protocols: **Yes. The Director of Laboratories.** SDCL §32-23-14.1.
 Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform: **No**
 Other: **Independent Testing:** shall be permitted to have a physician, laboratory technician, registered nurse, physician's assistant, or medical technologist of the person's own choosing administer the chemical analysis in addition to the one administered at the direction of the law enforcement officer. SDCL §32-23-15.

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No): **No**
 Anti-Plea-Bargaining Statute (Yes/No): **No.** But an illegal per se charge may be reduced or dismissed only when written reasons for such have been filed with the court. SDCL §32-23-1.3.
 Pre-Sentencing Investigation Law (PSI) (Yes/No): The courts have general authority to order discretionary pre-sentence investigation reports. SDCL §23A-27-5.

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription: **No.** SDCL §32-23-6.⁵⁹⁷
 Therapeutic Concentration: **No**
 Involuntary Intoxication: **No**⁵⁹⁸
 Other:

Sanctions for Refusal to Submit to a Chemical Test:

⁵⁹⁷ The fact that any person charged with a violation of SDCL §32-23-1 is or has been prescribed a drug under the laws of this State is not a defense against any charge of violating SDCL §32-23-1. SDCL §32-23-6.

⁵⁹⁸ No act committed by a person while in a state of voluntary intoxication may be deemed less criminal by reason of such condition. SDCL §22-5-5.

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail):	N/A
Preliminary Breath Test – Other:	N/A
Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	None
Implied Consent Chemical Test - Other:	N/A

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:	<p><u>First offense</u> (Class 1 misdemeanor) – Not more than 1 year (county jail) and/or not more than \$2,000;</p> <p><u>Second offense</u> (within 10 years) (Class 1 misdemeanor) – Not more than 1 year (county jail) and/or not more than \$2,000;</p> <p><u>Third offense</u> (within 10 years) (Class 6 felony) – Not more than 2 years (State penitentiary) and/or not more than \$4,000;</p> <p><u>Fourth offense</u> (within 10 years) (Class 5 felony) – Not more than 5 years (State penitentiary) and a fine of \$10,000 may be imposed;⁵⁹⁹</p> <p><u>Fifth or subsequent offense</u> (within 10 years) (Class 4 felony) – Not more than 10 years and a fine of \$20,000 may be imposed;</p> <p><u>Sixth or subsequent offense</u> (within 25 years with 2 or more within 10 years) (Class 4 felony) – Not more than 10 years and a fine of \$20,000 may be imposed;</p> <p>SDCL §§22-6-1; 22-6-1.1; 22-6-2; 32-23-2; 32-23-3; 32-23-4; 32-23-4.1; 32-23-4.6; 32-23-4.7; 32-23-4.9.</p> <p><u>Vehicular Battery</u> (Class 4 felony) – Not more than 10 years (State penitentiary) and a fine of not more than \$20,000 may be imposed. SDCL §§22-6-1; 22-18-36.</p>
Mandatory Minimum Term/Fine:	None
Community Service:	Community service may be condition of probation. SDCL §23A-27-18.3.
Restitution:	Restitution is to be paid by the defendants to the victims. SDCL §§22-6-1; 22-6-2; 23A-27-18.3; 23A-28-3.
Child Endangerment:	No
Other:	Costs of Confinement: If they are financially able, offenders may be required to pay for the costs of their confinement in a county jail. SDCL §24-11-45.

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:	A defendant may only be granted a restricted license upon successful completion of an alcohol or drug treatment
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⁵⁹⁹ A person convicted of a Class 5 or 6 felony may be sentenced to serve not more than 1 year in the county jail in lieu of the indicated incarceration period in the State penitentiary. SDCL §22-6-1.1.

program, and the court may order treatment for chemical dependency as part of probation. SDCL §§23A-27-18.3; 32-23-23.

Substance Abuse Treatment:

Vehicle Impoundment/Confiscation: **N/A**

Authorized by Specific Statutory Authority: **None**

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

Other Miscellaneous Sanctions: **N/A**

Homicide by Vehicle:

State Has Such a Law: **Vehicular Homicide.** SDCL §22-16-41.

Imprisonment/Fine: **Class 3 felony** – Not more than **15 years** (State penitentiary) and a fine of **\$30,000** may be imposed. SDCL §§22-6-1; 22-16-41.

Mandatory Minimum Term/Fine: **None**

Other:

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is disqualified from operating a CMV for not less than 1 mandatory year (not less than 3 years if transporting hazardous materials) if, while driving a CMV, that person is under the influence of a controlled drug or substance or refuses to submit to a chemical test.

Note: The disqualification provision only applies to a refusal to submit to a chemical test for alcohol concentration; however, the CMV implied consent provision applies to the testing for both alcohol concentrations and drugs.

For a second violation or a combination of two violations of any of the above-listed items, the disqualification is for life (10 years mand). For a subsequent violation or a combination of three or more violations of any of the above-listed items, the disqualification is permanent for life.

Note: Persons who have had their non-CMV driving privileges suspended or revoked may obtain a court order granting them CMV driving privileges for employment purposes. SDCL §§22-6-2; 32-12A-1(5), (9); 32-12A-36; 32-12A-37; 32-12A-39; 32-12A-43; 32-12A-44; 32-12A-46. The State has also adopted by reference 49 CFR Parts 383 and 384. SDCL §32-12A-58.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

For driving while revoked (Class 1 misdemeanor) – Not more than **1 year** and/or not more than **\$2,000**;

For driving while suspended (Class 2 Misdemeanor) – Not more than **30 days** and/or not more than **\$500**. SDCL §§22-6-2; 32-12-65.⁶⁰⁰

Mandatory Minimum Fine/Imprisonment Term:
Other:

None

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. SDCL §32-12-49(2).

Other State Laws Related to Drug Use:

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

Yes. SDCL §34-25-22.1.

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes

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

Yes

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

Yes

Drug Chemical Tests on Persons Involved in Traffic Crashes:

Yes. SDCL §§32-23-1.1; 32-23-1.2; 32-23-1.3.

Marijuana – Possession and Use Laws:

Illegal.⁶⁰¹

Criminal Penalties:

Possession of < 2 oz. (class 1 misdemeanor) - Not more than **1 year** and not more than **\$2,000**;

Possession of > 2 oz. but < 0.5 lb. (class 6 felony) - Not more than **2 years** and not more than **\$4,000**;

Possession of ≥ 0.5 pound but < 1 lb. (class 5 felony) - Not more than **5 years** and not more than **\$10,000**;

Possession of ≥ 1 lb. but ≤ 10 lbs. (class 4 felony)- Not more than **10 years** and not more than **\$20,000**;

Possession of > 10 lbs. (class 3 felony) - Not more than **15 years** and not more than **\$30,000**.

A civil penalty may also be imposed following a conviction. This penalty cannot exceed **\$10,000**. SDCL 22-42-6; 22-6-1; 22-6-2.

Intoxicant Exclusion Law (UPPL):

No. SDCL §58-17-30.8.⁶⁰²

⁶⁰⁰ These provisions do not provide for additional sanctions if the license was suspended/revoked due to DWI or DUID offense.

⁶⁰¹ Marijuana means all parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. SDCL §22-42-1.

⁶⁰² But a health insurer may exclude coverage for an insured for any sickness or injury caused in the commission of a felony.

STATE

TENNESSEE

General Reference:

Tennessee Code Annotated (T.C.A.)

Type of DUI-D Law:**Under the Influence**Basis for a DUI-D Charge:

T.C.A. §55-10-401(1).

Standard DUI-D Offense:

Drive or be in physical control of an automobile or motor driven vehicle⁶⁰³ while under the influence of any intoxicant, marijuana⁶⁰⁴, controlled substance⁶⁰⁵, controlled substance analogue, drug⁶⁰⁶, substances affecting the central nervous, or combination thereof that impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of oneself that the driver would otherwise possess. T.C.A. §55-10-401(1).

Illegal Per Se Law:

No

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such Law (Yes/No):

No

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

N/A

Implied Consent Law:

Yes. T.C.A. §55-10-406⁶⁰⁷

Arrest Required (Yes/No):

No. T.C.A. §55-10-406(a)(1).

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

Yes. T.C.A. §55-10-406(a)(1).

Refusal to Submit to Chemical Test

Admitted into Evidence:

Yes – Criminal Cases. T.C.A. §55-10-406(d).

Other Information:

⁶⁰³ A motor vehicle means every vehicle that is self-propelled, excluding motorized bicycles and every vehicle that is propelled by electric power obtained from overhead trolley wires, any low speed vehicle, or medium speed vehicle as defined in this chapter, any mobile home or house trailer as defined in T.C.A. §55-1-105. T.C.A. §55-1-103.

⁶⁰⁴ Marijuana means all parts of the plant cannabis, whether growing or not; the seeds; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, including concentrates and oils, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances. T.C.A. §39-17-402(16).

⁶⁰⁵ “Controlled substance” means a drug, substance, or immediate precursor in Schedules I through VII of T.C.A. §§39-17-403 -- 39-17-416. T.C.A. §39-17-402.

⁶⁰⁶ “Drug” means: (A) Substances recognized as drugs in the United States Pharmacopoeia, official Homeopaths Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (B) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animal; (C) Substances, other than food, intended to affect the structure or any function of the body of man or animal; and (D) Substances intended for use as a component of any article specified in subdivision (11)(A), (B) or (C). “Drug” does not include devices or their components, parts, or accessories. T.C.A. §39-17-402(11).

⁶⁰⁷ T.C.A. §55-10-406(5) allows for a law enforcement to compel production of a blood sample regardless of consent in certain circumstances. However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

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

Blood: Yes. T.C.A. §55-10-406.
 Urine: Yes – at person’s own expense. T.C.A. §55-10-408(e).
 Other:

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform: **Yes. Any physician, registered nurse, licensed practical nurse, clinical laboratory technician, licensed paramedic, licensed emergency medical technician approved to establish intravenous catheters, technologist, or a trained phlebotomist who is operating under a hospital protocol, has completed phlebotomy training through an educational entity providing such training, or has been properly trained by a current or former employer to draw blood.** T.C.A. §55-10-406(b1).

Entity Establishing Testing Protocols: **Yes. Department of Health** T.C.A. §55-10-408.

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform: **No**

Other: **Independent Testing:** The person tested shall be entitled to have an additional sample of blood or urine procured and the resulting test performed by any medical laboratory of that person’s own choosing and expense; provided that the medical laboratory is licensed. T.C.A. §55-10-408(e).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No): **No**

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

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

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription: **No**⁶⁰⁸

Therapeutic Concentration: **Yes**⁶⁰⁹

Involuntary Intoxication: **No**⁶¹⁰

Other:

Sanctions for Refusal to Submit to a Chemical Test:

⁶⁰⁸ The fact that a person is or has been entitled to use one or more intoxicants, alcohol, marijuana, controlled substances or analogues, drugs, or other substances that causes impairment shall not constitute a defense. T.C.A. §55-10-411(e).

⁶⁰⁹ It appears based upon the language of the statute that if a therapeutic concentration would not render a person “under the influence,” or “impair” the person’s ability to safely operate a vehicle, arguing that the level of the substance detected was merely therapeutic would be a valid defense. T.C.A. §55-10-401.

⁶¹⁰ See *State v. Kain*, 24 S.W.3d. 816 (2000).

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail):	N/A
Preliminary Breath Test – Other:	N/A
Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	None
Implied Consent Chemical Test - Other:	N/A

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:	<p><u>First conviction</u> (Class A misdemeanor) – Not less than 48 hours or more than 11 months, 29 days and not less than \$350 or more than \$1,500;</p> <p><u>Second conviction</u> (Class A misdemeanor) – Not less than 45 days or more than 11 months, 29 days and not less than \$600 or more than \$3,500;</p> <p><u>Third conviction</u> (Class A misdemeanor) – Not less than 120 days or more than 11 months, 29 days and not less than \$1,100 or more than \$10,000;</p> <p><u>Fourth or subsequent conviction</u> (within 10 years) (Class E felony) – Not less than 150 days or more than 6 years and not less than \$3,000 or more than \$15,000. T.C.A. §§40-35-111; 55-10-402(a).</p> <p><u>Vehicular Assault</u> (Class D felony) – Not less than 2 years or more than 12 years and a fine of not more than \$5,000 may be imposed. T.C.A. §§39-13-106; 40-35-111.</p> <p><u>Persons 16-18</u> (Misdemeanor) – A fine of \$250. T.C.A. §55-10-415(2).</p>
Mandatory Minimum Term/Fine:	<p>Note.⁶¹¹</p> <p><u>First offense</u> – 48 hours/\$350;</p> <p><u>Second offense</u> (within 10 years) – 45 days/\$600;</p> <p><u>Third offense</u> (within 10 years) – 120 days/\$1,100;</p> <p><u>Fourth or subsequent offense</u> (within 10 years) – 150 days/\$3,000.</p> <p><u>Vehicle Assault</u> – 2 years.</p>
Community Service:	<p>I. The court shall order first offenders to perform 24 hours of community service as part of probation. The court may also require an offender to remove litter from State highways, public playgrounds, public parks or other appropriate locations for any prescribed period in addition to any other penalties, and may sentence an offender to 200 hours of community service. T.C.A. §55-10-402.</p> <p>II. Persons 16-18: The court may impose public service work. T.C.A. §55-10-415(2).</p>
Restitution:	<p>Yes. A defendant may be sentenced to pay compensation directly to a victim. T.C.A. §§39-11-118; 40-35-104; 40-35-304. A victim's compensation fund is available. T.C.A.</p>

⁶¹¹ All fines shall be mandatory unless the judge determines that a person is indigent. T.C.A. §55-10-403(b).

	§29-13-101, <i>et seq.</i>
Child Endangerment:	If a person is convicted of DUI with a passenger under age 18, the person's sentence shall be enhanced by a mandatory minimum period of 30 days , which shall be in addition to any punishment imposed. T.C.A. §55-10-402(b)(1). If such passenger under age 18 suffers serious bodily injury, it is a Class D felony, punishable by not less than 2 years or more than 12 years , and possibly a fine of not more than \$5,000 . T.C.A. §55-10-402(b)(2).
Other:	Addiction Treatment Fee: Offenders will be assessed \$100 for each conviction. T.C.A. §55-10-413(c)(1). Interlock Fee: Offenders will be assessed a fee of \$40 for each conviction. T.C.A. §55-10-413(a). Other Fees: A person convicted of DUID shall be assessed a fee of \$5. T.C.A. §55-10-413(b).
<u>Administrative Sanctions – Post-Conviction:</u>	
Substance Abuse Education:	Yes – Every person convicted of a DUI offense must undergo drug and alcohol assessment, to be paid by the convicted party (unless indigent). T.C.A. §55-10-402.
Substance Abuse Treatment:	Yes – Participation in DUI program is required as part of probation. This may consist of a court-ordered outpatient alcohol or drug treatment program. T.C.A. §55-10-402. Probation can begin only after serving the minimum imprisonment term. T.C.A. §55-10-402. For second and subsequent convictions, a condition of probation may be participation in a substance abuse treatment program (which includes any aftercare and drug or DUI court) after a clinical substance abuse assessment is completed and the offender serves at least 25 days of the incarceration period. T.C.A. §55-10-402(a)(2).
Vehicle Impoundment/Confiscation:	Forfeiture. T.C.A. §55-10-414.
Authorized by Specific Statutory Authority:	The vehicle used in the commission of a second or subsequent DUI violation is subject to seizure and forfeiture. ⁶¹²
Terms Upon Which Vehicle Will Be Released:	N/A
Other Miscellaneous Sanctions:	N/A
<u>Homicide by Vehicle:</u>	
State Has Such a Law:	Vehicular Homicide (Class B felony). T.C.A. §39-13-213(a)(2). Aggravated Vehicle Homicide ⁶¹³ (Class A felony). T.C.A. §39-13-218.

⁶¹² The violation must have occurred in Tennessee and at least one prior offense must have occurred within 5 years of the current offense. T.C.A. §55-10-414(b).

Imprisonment/Fine:	Vehicular Homicide – Not less than 8 years or more than 30 years and a fine of not more than \$25,000 may be imposed; Aggravated Vehicular Homicide – Not less than 15 years or more than 60 years and a fine of not more than \$50,000 may be imposed. T.C.A. §40-35-111(b).
Mandatory Minimum Term/Fine:	No prior convictions: 48 hours consecutive incarceration; Prior conviction: 45 days; Two or more prior convictions: 120 days; Three or more prior convictions: 150 days. T.C.A. §39-13-213(2)(B)-(E). ⁶¹⁴
<u>DUI-D Offenses and Commercial Motor Vehicles (CMV):</u>	A person's CDL is suspended for 1 mandatory year (3 years mandatory if transporting hazardous materials) if, while driving a CMV is under the influence of a controlled substance. For a subsequent violation or a combination of two or more violations of any of the above-listed items, the suspension is for life (10 years mandatory). A commercial motor vehicle operator who drives a CMV with a BAC \geq .04 violates the regular DUI laws. T.C.A. §§55-50-102(12); 55-50-405(a); 55-50-408.
<u>Driving While License Suspended for DUI-D Offense:</u>	
Criminal - Fine/Imprisonment:	<u>First offense</u> (Class B misdemeanor) – Not less than 2 days or more than 6 months and a fine of not more than \$1,000 ; <u>Second or subsequent offense</u> (within 10 years) (Class A misdemeanor) – Not less than 45 days or more than 11 months, 29 days and/or not more than \$3,000 . T.C.A. §§40-35-111; 55-50-504(a)(1), (a)(2).
Mandatory Minimum Fine/Imprisonment Term:	<u>First offense</u> – 2 days ; <u>Second or subsequent offense</u> – 45 days . T.C.A. §50-55-504(a), (f).
Other:	N/A
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	Yes . T.C.A. §55-10-601, <i>et seq.</i>
Grounds for Being Declared Habitual Offender:	I. Three or more serious traffic offenses ⁶¹⁵ within 3 years. II. Three or more serious traffic offenses within 5 years. III. Five or more serious traffic offenses within 10 years.

⁶¹³ Aggravated Vehicular Homicide is vehicular homicide where the defendant had: (1) two or more prior DUID/vehicle assault convictions (or any combination of them); (2) one or more prior vehicular homicide convictions; (3) or at the time of the vehicular homicide offense, a BAC \geq 0.20 and a previous DUID or vehicular assault conviction. T.C.A. §39-13-218.

⁶¹⁴ A prior alcohol conviction under this section is a conviction for §55-10-401, §39-13-106 or §39-13-318. T.C.A. §39-13-213(F).

⁶¹⁵ The following are serious traffic offenses: (1) voluntary or involuntary motor vehicle homicide or manslaughter; (2) Adult DWI; (3) failure to stop at the scene of an accident; (4) overtaking a school bus; (5) driving on a revoked, canceled or suspended license; (6) aggravated vehicle homicide; (7) reckless driving; (8) drag racing; (9) reckless endangerment; (10) evading arrest in a motor vehicle; (11) vehicular assault. T.C.A. §55-10-603(2)(A).

Term of License Revocations While on Habitual Offender Status:	T.C.A. §55-10-603. 3 years. ⁶¹⁶ T.C.A. §55-10-615.
Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):	Class E Felony T.C.A. §55-10-615. Not less than 1 year or more than 6 years and a fine of not more than \$3,000 may be imposed. T.C.A. §§40-35-111(b); 55-10-616.
Mandatory Minimum Term/Fine:	1 year. ⁶¹⁷
<u>Other State Laws Related to Drug Use:</u>	
Drug Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No):	Discretionary. T.C.A. §38-7-109.
Drug Chemical Test Given to Deceased Driver Killed in Crash:	Discretionary
Drug Chemical Test Given to Deceased Vehicle Passengers Killed in Crash:	Discretionary
Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:	Discretionary
Drug Chemical Tests on Persons Involved in Traffic Crashes:	Yes. T.C.A. §55-10-406(d)(5)(A).
<u>Marijuana – Possession and Use Laws:</u>	
	Illegal. ⁶¹⁸ Criminal Penalties: <u>Possession of ≤ 0.5 oz.:</u> Not more than 1 year and not more than \$2,500 . A \$250 fine is required for all first-time convictions. A subsequent offense requires a \$500 mandatory minimum fine. T.C.A. §39-17-418; 39-17-428.
<u>Intoxicant Exclusion Law (UPPL):</u>	Yes. T.C.A. §56-26-109(11)

⁶¹⁶ Exception: The court may immediately restore an offender's license on any conditions it sees fit if habitual offender status was the result of driving while suspended/revoked but where the underlying suspension/revocation was not one of the serious offenses listed in T.C.A. §55-10-603(c).

⁶¹⁷ One year of imprisonment is mandatory unless the habitual offender operated a motor vehicle in order to save life or limb. T.C.A. §55-10-616.

⁶¹⁸ Marijuana means all parts of the plant cannabis, whether growing or not; the seeds; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, including concentrates and oils, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances. T.C.A. §39-17-402(16).

STATE

General Reference:

TEXAS

Texas Revised Statutes Annotated (V.T.C.A.)

Type of DUI-D Law:Basis for a DUI-D Charge:

Standard DUI-D Offense:

Illegal Per Se Law:

Presumption Based on Drugs - State Has (Yes/No):

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such Law (Yes/No):

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Implied Consent Law:

Arrest Required (Yes/No):

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

Refusal to Submit to Chemical Test Admitted into Evidence:

Other Information:

Driving While Intoxicated

V.T.C.A., Penal Code §49-04.

It is illegal to a motor vehicle in a public place while intoxicated⁶¹⁹. V.T.C.A., Penal Code §49.04.**No****No****No****N/A****Yes.** V.T.C.A., Transportation Code §724.011.**Yes.** V.T.C.A., Transportation Code §724.011(a).**Yes.** V.T.C.A., Transportation Code §724.011(a).**Yes** – Criminal Cases.

V.T.C.A., Transportation Code §§724.061; 724.064.

Note⁶²⁰Non-Breath Chemical Tests for Drug Concentration Authorized Under the Implied Consent Law:

Blood:

Urine:

Other:

Yes. V.T.C.A., Transportation Code §724.011(a).**Yes – only if person consents.** V.T.C.A., Transportation Code §724.011(b).**None**Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. Only the following may take a blood specimen at the request or order of a peace officer under this chapter: **(1) a**

⁶¹⁹ “Intoxicated” means not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body. V.T.C.A., Penal Code § 49.01.

(3) “Motor vehicle” means a device by which a person or property is or may be transported or drawn on a highway, except a device used exclusively on stationary rails or tracks. V.T.C.A., Penal Code §§49.01; 32.34(a)(2).

⁶²⁰ V.T.C.A. Transportation Code §724.014 allows for a law enforcement officer to take a blood sample from a person who is dead, unconscious, or otherwise incapable of refusal. However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

physician; (2) a qualified technician; (3) a registered professional nurse; (4) a licensed vocational nurse; or (5) a licensed or certified emergency medical technician-intermediate or emergency medical technician-paramedic authorized to take a blood specimen under Subsection (c).
V.T.C.A. Transportation Code §724.017(a).

Entity Establishing Testing Protocols:
Blood Drawn Pursuant to Search Warrant –
State Has Limited Who May Perform:
Other:

No

No

Independent Testing: A person who submits to the taking of a specimen of breath, blood, urine, or another bodily substance at the request or order of a peace officer may, on request and within a reasonable time not to exceed two hours after the arrest, have a physician, qualified technician, chemist, or registered professional nurse selected by the person take for analysis an additional specimen of the person's blood. V.T.C.A. Transportation Code §724.019.

Adjudication of DUI-D Charges:

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

No

No

Yes. Second or subsequent offense – An evaluation is conducted to determine the appropriateness of an alcohol or drug rehabilitation program. Vernon's Ann.Texas.C.C.P. Art. 42.12 §9(h).

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription:
Therapeutic Concentration:
Involuntary Intoxication:
Other:

No⁶²¹

Yes⁶²²

No⁶²³

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test -
Criminal Sanction (Fine/Jail):
Preliminary Breath Test – Other:
Refusal to Take Implied Consent Chemical
Test – Criminal Sanction (Fine/Jail):
Other:

N/A

N/A

None

Occupational License: If a person has not had a prior “alcohol-related or drug-related enforcement contact,” within 5 years of the arrest, an occupational license may be issued at

⁶²¹ V.T.C.A., Penal Code §49.10.

⁶²² It appears based upon the language of the statute that if a therapeutic concentration would not render a person “under the influence,” or “impair” the person’s ability to safely operate a vehicle, arguing that the level of the substance detected was merely therapeutic would be a valid defense. V.T.C.A., Penal Code §49-04.

⁶²³ See *Brown v. State*, 290 S.W.3d 247 (2009).

any time based on essential need. If a person had a prior “alcohol-related or drug-related enforcement contact,” within 5 years such a license is not available until the person’s license has been suspended for at least 90 days. If a person had a prior conviction within 5 years such a license is not available until at least 180 days. If a person had at least 2 prior convictions, then such a license is not available until the passage of 1 year. A court may also issue an occupational license to an offender who equips his motor vehicle(s) with ignition interlock. An occupational license is only available once in a 10-year period. V.T.C.A., Transportation Code §§521.242; 521.245; 521.251(a)-(d-1).

Implied Consent Chemical Test - Other:

N/A

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:

DUI-D:

First offense (Class B misdemeanor) – Not less than **72 hours** or more than **180 days** and/or not more than **\$2,000**;

Second offense (Class A misdemeanor) – Not less than **30 days** or more than **1 year** and/or not more than **\$4,000**.

Second offense (with a prior Intoxication Manslaughter within 5 years) (3rd degree felony) – Not less than **2 years** or more than **10 years** and a fine of not more than **\$10,000** may be imposed;

Third offense (3rd degree felony) – Not less than **2 years** or more than **10 years** and a fine of not more than **\$10,000** may be imposed. V.T.C.A., Penal Code §§12.21; 12.22; 12.34; 49.04; 49.09.

Intoxication Assault:

Causing serious bodily injury (3rd degree felony): Not less than **2 years** or more than **10 years** and may be fined up to **\$10,000**;

Causing serious bodily injury to an officer while on duty⁶²⁴ (2nd degree felony): Not less than **2 years** or more than **20 years** and may be fined up to **\$10,000**;

Causing serious bodily injury resulting in brain injury⁶²⁵ (2nd degree felony): Not less than **2 years** or more than **20 years** and may be fined up to **\$10,000**. V.T.C.A., Penal Code §§12.33; 12.34; 49.07; Vernon’s Ann.Texas.C.C.P. Art. 42.12 §13(a).

Mandatory Minimum Term/Fine:

DUI-D:

⁶²⁴ It is a 2nd degree felony if, at trial, it is shown that the person caused serious bodily injury to a peace officer, a firefighter, or emergency medical services personnel while in the actual discharge of an official duty. V.T.C.A., Penal Code §49.09(b-1).

⁶²⁵ It is a 2nd degree felony if, at trial, it is shown that the person caused serious bodily injury to another in the nature of a traumatic brain injury that results in a persistent vegetative state. V.T.C.A., Penal Code §49.09(b-4).

First offense – 72 hours;⁶²⁶

Second offense – 30 days (if community supervision is granted and the person is subject to use of ignition interlock = 5 days);

Second offense (within a prior Intoxication Manslaughter within 5 years) **2 years** (if community supervision is granted = **10 days**);

Third offense – 2 years (if community supervision is granted = **10 days**). V.T.C.A., Penal Code §§49.04; 49.09; Vernon's Ann.Texas.C.C.P. Art. 42.12 §13(i).

Note: Under V.T.C.A., Penal Code §12.44, a third degree felony offender may receive the imprisonment sanction of a Class A Misdemeanor.

Intoxication Assault – 2 years (if community supervision is granted = **30 days**). V.T.C.A., Penal Code §49.07; Vernon's Ann.Texas.C.C.P. Art. 42.12 §13(i).

Community Service:

A person convicted of a criminal offense may be required to perform community service according to the schedule listed below. This sanction is in addition to and not in lieu of other sanctions.

3rd degree felony – Not more than **600 hours**;

Class A misdemeanor – Not more than **200 hours**;

Class B misdemeanor – Not more than **100 hours**. Vernon's Ann.Texas.C.C.P. Art. 42.036; 42.12 §16(b).

Restitution:

As a condition of community supervision. Vernon's Ann.Texas.C.C.P. Art. 42.12 §11.

A victim of a DUID offense may receive payments from a State victims' compensation fund via the State attorney general. Vernon's Ann.Texas.C.C.P. Art. 42.037; 56.31, *et seq.*

Child Endangerment:

A person driving while intoxicated with a passenger under 15 shall be sentenced to not less than **180 days** or more than **2 years** and possibly a fine of not more than **\$10,000**. V.T.C.A., Penal Code §§12.35; 49.045.

Other:

Costs Attendant to Intoxication Convictions: DUID offenders shall pay the following costs: (1) \$15 if a video camera was used in the arrest; (2) costs of evaluation; and (3) the cost of any emergency accident response necessitated by the offense not to exceed \$1,000. Vernon's Ann.Texas.C.C.P. Art. 102.018(a).

Treatment Alternative to Incarceration: An alcohol/ drug treatment program may be established as an alternative to jail. Screening and assessment must be a part of this program when a person has been arrested for an offense in which use or possession of alcohol/drugs is an element. V.T.C.A. Government Code, §76.017.

⁶²⁶ If a first offender had in immediate possession an open container of an alcoholic beverage, the minimum term of confinement is 6 days. V.T.C.A., Penal Code §49.04(c).

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:	For any DUI-D offense, including Intoxication Assault and Intoxication Manslaughter as a condition of community supervision, an offender is required to complete an alcohol education program. This requirement may be waived upon a showing of good cause by the offender. Vernon's Ann.Texas.C.C.P. Art. 42.12 §13(h), (j).
Substance Abuse Treatment:	Felony offenders (third or subsequent offenses, Intoxication Assault and Intoxication Manslaughter) may be confined in a substance abuse treatment facility in lieu of imprisonment from 90 days to 1 year. Vernon's Ann.Texas.C.C.P. Art. 42.12 §14(a).
Vehicle Impoundment/Confiscation:	N/A
Authorized by Specific Statutory Authority:	N/A
Terms Upon Which Vehicle Will Be Released:	N/A
Other Miscellaneous Sanctions:	<p>Work Release: For misdemeanor and felony offenses (where imprisonment is in a county jail), the court may allow an offender to participate in a work release program. Vernon's Ann.Texas.C.C.P. Art. 42.034.</p> <p>Intermittent Sentence: A sentence may be served intermittently including confinement as a condition of community supervision. Vernon's Ann.Texas.C.C.P. Art. 42.033.</p> <p>Electronic Monitoring: An offender may serve a county jail sentence via electronic monitored house arrest. Vernon's Ann.Texas.C.C.P. Art. 42.035</p> <p>Incarceration Costs: Persons who are convicted of a misdemeanor offense may be required to pay the cost, at a rate of \$25 per day, for any incarceration time that they serve in a county jail. Indigent defendants may not be required to pay this cost. Vernon's Ann.Texas.C.C.P. Art. 42.038.</p>
<u>Homicide by Vehicle:</u>	
State Has Such a Law:	<p>Yes. Intoxication Manslaughter (2nd degree felony). V.T.C.A., Penal Code §49.08.</p> <p>Intoxication Manslaughter of officer (1st degree felony). V.T.C.A., Penal Code §49.09(b-2).</p>
Imprisonment/Fine:	<p>2nd degree felony: Not less than 2 years or more than 20 years and may be fined not more than \$10,000. V.T.C.A., Penal Code §12.33.</p> <p>1st degree felony: Not less than 5 years or more than 99 years, or life, and may be fined not more than \$10,000. V.T.C.A., Penal Code §12.32.</p>
Mandatory Minimum Term/Fine:	120 days if community supervision is granted. Vernon's Ann.Texas.C.C.P. Art. 42.12 §13(b).
Other:	

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is disqualified from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person: is under the influence of a controlled substance; or refuses to submit to a chemical test for the presence of a controlled substance or drugs. For a subsequent violation or a combination of two or more violations of any of the above-listed items, the disqualification is for life (10 years mand). V.T.C.A., Transportation Code §§522.003(1), (2), (5), (9), (23); 522.081; 522.082; 522.085; 522.086; 522.101; 522.102.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

Class B misdemeanor. V.T.C.A., Transportation Code §521.457(f-1).

Not more than **180 days** and/or not more than **\$2,000**.

V.T.C.A., Transportation Code §§521.457; V.T.C.A., Penal Code §12.22.

Mandatory Minimum Fine/Imprisonment Term:

None

Other:

An occupational license may be issued based on essential need. V.T.C.A., Transportation Code §521.241.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No

Other State Laws Related to Drug Use:

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

Yes. V.T.C.A., Transportation Code §724.014.

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Discretionary

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

No

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

No

Drug Chemical Tests on Persons Involved in Traffic Crashes:

Yes. V.T.C.A., Transportation Code §724.012(b).

Marijuana – Possession and Use Laws:

Illegal.

A person commits an offense if the person knowingly or intentionally possesses a usable quantity of marihuana.⁶²⁷

Criminal Penalties:

Possession ≤ 2 oz. (class B misdemeanor) - Not more than

⁶²⁷ “Marihuana” means the plant Cannabis sativa L., whether growing or not, the seeds of that plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant or its seeds. V.T.C.A., Health and Safety Code §481.002.

180 days and/or not more than **\$2,000**;

Possession < 4 oz. (class A misdemeanor) - Not less than **30 days** or more than **1 year** and/or not more than **\$4,000**;

Possession < 5 lbs. (State jail felony) - Not more than **2 years** or less than **180 days** and not more than **\$10,000**;

Possession > 5 lbs. but < 50 lbs. (3rd degree felony) - not less than **2 years** or more than **10 years** and not more than **\$10,000**;

Possession > 50 lbs. but < 2,000 lbs. (2nd degree felony) - not less than **2 years** or more than **20 years** and not more than **\$10,000**;

Possession > 2,000 lbs. (unspecified felony) -not less than **5 years** or more than **life**, and not more than **\$50,000**.

V.T.C.A., Health & Safety Code §481.121; Penal Code §§12.21; 12.22; 12.33-35.

Intoxicant Exclusion Law (UPPL):

No. (V.T.C.A., Insurance Code §1201.227 was repealed on September 1, 2013).

STATE

General Reference:

UTAH

Utah Code Annotated (U.C.A. 1953)

Utah Administrative Code (U.A.C.)

Type of DUI-D Law:Basis for a DUI-D Charge:

Standard DUI-D Offense:

Under the Influence/Zero Tolerance

U.C.A. 1953 §§41-6a-502(1)(b); 41-6a-517(2).

Operate or be in actual physical control of a vehicle⁶²⁸ if under the influence of any drug⁶²⁹ or a combination of any drug and alcohol to a degree that renders the person incapable of safely operating a vehicle.

U.C.A. 1953 §41-6a-502(1)(b).

Illegal Per Se Law:

Yes. Any measurable controlled substance or metabolite of a controlled substance in the person's body.⁶³⁰ U.C.A. 1953 §41-6a-517(2).

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such Law (Yes/No):

No

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

N/A

Implied Consent Law:

Yes. U.C.A. 1953 §41-6a-520.

Arrest Required (Yes/No):

Yes. U.C.A. 1953 §41-6a-520(2).

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

Yes. U.C.A. 1953 §41-6a-520(1)(a).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal and Civil Cases. U.C.A. 1953 §41-6a-524.

Other Information:

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

Blood:

Yes. U.C.A. 1953 §41-6a-520(1)(a).

Urine:

Yes. U.C.A. 1953 §41-6a-520(1)(a).

Other:

Oral fluids. U.C.A. 1953 §41-6a-520(1)(a).

⁶²⁸ “Vehicle” or “motor vehicle” means a vehicle or motor vehicle as defined in Section 41-6a-102; and (ii) “Vehicle” or “motor vehicle” includes: (A) an off-highway vehicle as defined under U.C.A. 1953 §41-22-2; and (B) a motorboat as defined in U.C.A. 1953 §73-18-2. U.C.A. 1953 §41-6a-501(j).

⁶²⁹ “Drug” or “drugs” means: (i) a controlled substance as defined in Section 58-37-2; (ii) a drug as defined in U.C.A. 1953 §58-17b-102; or (iii) any substance that, when knowingly, intentionally, or recklessly taken into the human body, can impair the ability of a person to safely operate a motor vehicle. U.C.A. 1953 §41-6a-501(c).

⁶³⁰ A controlled substance means a drug or substance: (A) included in Schedules I, II, III, IV, or V of U.C.A. 1953 §58-37-4; (B) included in Schedules I, II, III, IV, or V of the Federal Controlled Substances Act, Title II, P.L. 91-513; (C) that is a controlled substance analog; or (D) listed in U.C.A. 1953 §58-37-4.2. U.C.A. 1953 §58-37-2.

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. Only the following, acting at the request of a peace officer, may draw blood to determine its alcohol or drug content: **(i) a physician; (ii) a registered nurse; (iii) a licensed practical nurse; (iv) a paramedic; (v) as provided in Subsection (1)(b), emergency medical service personnel other than paramedics; or (vi) a person with a valid permit issued by the Department of Health** under U.C.A. 1953 §26-1-30. U.C.A. 1953 §41-6a-523(1)(a).

Entity Establishing Testing Protocols:

Yes. The Commissioner of the Department. U.C.A. 1953 §41-6a-515.

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:

No

Other:

Independent Testing: the person to be tested may, at the person's own expense, have a physician of the person's own choice administer a chemical test in addition to the test or tests administered at the direction of a peace officer. U.C.A. 1953 §41-6a-520(4)(a).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No):

No

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

A court may not accept a plea of guilty or no contest to a DUI charge unless: (1) the prosecutor agrees to the plea in open court, in writing or by any other means of adequate communication to record the prosecutor's agreement; (2) the charge is filed by information; or (3) the court receives verification from law enforcement that the defendant's driver's license records shows no conviction of more than 1 prior violation within 10 years, a felony DUI conviction or automobile homicide. A prosecutor must examine a defendant's criminal and driver's records before entering into a plea. U.C.A. 1953 §41-6a-513.

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

No

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription:

Yes. U.C.A. 1953 §41-6a-521(3).⁶³¹

Therapeutic Concentration:

Yes. U.C.A. 1953 §41-6a-521(3).

Involuntary Intoxication:

Yes. U.C.A. 1953 §41-6a-521(3).

Other:

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test -

N/A

⁶³¹ It is an affirmative defense to prosecution under this section that the controlled substance was: (a) involuntarily ingested by the accused; (b) prescribed by a practitioner for use by the accused; or (c) otherwise legally ingested. U.C.A. 1953 §41-6a-521(3).

Criminal Sanction (Fine/Jail):

Preliminary Breath Test – Other:	N/A
Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail):	None
Implied Consent Chemical Test - Other:	

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:

DUI-D:

First and second offense (Class B misdemeanor) – Not more than **6 months** and/or not more than **\$1,000**;

Subsequent offense (where prior offense is felony DUI or automobile homicide) (Third degree felony) – Not more than **5 years** and/or not more than **\$5,000**;

Third offense (within 10 years) (Third degree felony) – Not more than **5 years** and/or not more than **\$5,000**.

DUI – Serious Bodily Injury (Third degree felony) – Not more than **5 years** and/or not more than **\$5,000**.

Impaired Driving⁶³² (Class B misdemeanor) – Not more than **6 months** and/or not more than **\$1,000**. U.C.A. 1953 §§41-6a-503; 76-3-203; 76-3-204; 76-3-301.

Mandatory Minimum Term/Fine:

First offense – **48 consecutive hours/\$700**;

Second offense (within 10 years) – **240 consecutive hours/\$800**;

Subsequent offense (where prior offense is felony DUI or automobile homicide) – **1500 hours/\$1,500**;

Third offense (within 10 years) – **1500 hours/\$1,500**.

DUI – Serious Bodily Injury (Third degree felony) – **1500/\$1,500**.

Impaired Driving (Class B misdemeanor) – **None**. U.C.A. 1953 §41-6a-505.

Community Service:

First offense – Not less than **48 hours** in lieu of imprisonment;

Second offense – Not less than **240 hours** in lieu of imprisonment. U.C.A. 1953 §41-6a-505(1)(a)(i)(B), (2)(a)(i)(B).

Restitution:

Victims Compensation Fund or direct payment by the defendant to the victim. U.C.A. 1953 §§63M-7-501, *et seq.*; 76-3-201; 77-38a-301.

Child Endangerment:

A person who drives under the influence with a passenger under age 16 is guilty of a Class A misdemeanor, punishable

⁶³² Impaired driving is a lesser offense and a defendant may plead guilty to this for an offense committed on or after July 1, 2008, and if the defendant completes court ordered probation requirements or the prosecutor agrees as part of a negotiated plea, and the plea is in the interests of justice except if a defendant has a prior conviction. U.C.A. 1953 §§41-6a-502.5(8); 76-3-402.

by not more than **1 year** and/or not more than **\$2,500**.

U.C.A. 1953 §§41-6a-503(1)(b)(ii); 76-3-204(A)(1); 76-3-301(1)(c).

Other:

Electronic Home Monitoring: As an alternative to imprisonment or community service for a first or subsequent offense, a person may be allowed to participate in a home confinement electronic monitoring program. U.C.A. 1953 §§41-6a-505(1)(a)(C), (2)(a)(C), (3)(b); 41-6a-506(4)(b).

Surcharge: A DUI-related fine is subject to an additional 90% surcharge. U.C.A. 1953 §51-9-401(1)(b)(i)(B).

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

Yes – Substance abuse assessment, including screening, assessment, education series and subsequent substance abuse treatment, is required for (1) a second or subsequent conviction; (2) an offender under 21; or (3) upon a conviction for impaired driving.⁶³³ U.C.A. 1953 §§17-43-201(4)(m); 41-6a-502.5; 41-6a-505(4); 53-3-231(12)(a).

Substance Abuse Treatment:

Yes – see above.

Vehicle Impoundment/Confiscation:

Impoundment

Authorized by Specific Statutory Authority:

If a peace officer arrests, cites or refers for administrative action the operator of a motor vehicle for violating a DUI law, the officer shall seize and impound the vehicle. U.C.A. 1953 §§41-6a-527; 41-6a-1406.

Terms Upon Which Vehicle Will Be Released:

If a registered owner of the vehicle, other than the operator is present at the time of arrest, the peace officer may release the vehicle to that registered owner only if: (1) the registered owner requests to remove the vehicle and presents sufficient identification to prove ownership; and (2) the vehicle is legally operable. U.C.A. 1953 §41-6a-527(2).

Other Miscellaneous Sanctions:

Assessments for Treatment: Following a DUID conviction, the court may assess a defendant an amount sufficient to fully compensate agencies for the cost of any treatment provided to such offender. U.C.A. 1953 §§62A-15-502; 62A-15-503.

Homicide by Vehicle:

State Has Such a Law:

Automobile Homicide.⁶³⁴ U.C.A. 1953 §76-5-207.

Imprisonment/Fine:

Third Degree Felony – Not more than **5 years** and/or not more than **\$5,000**;

Second Degree Felony (with a prior conviction)– Not less

⁶³³ An offender's driving privileges cannot be restored until that person has (1) satisfactorily completed alcohol or drug assessment, education, treatment or rehabilitation program that has been ordered and (2) paid any fines or fees, including restitution fees, and rehabilitation costs. U.C.A. 1953 §41-6a-517.

⁶³⁴ Automobile Homicide is a third degree felony, where a person operates a vehicle in a negligent manner and causes the death of another while driving under the influence. However, it becomes a second degree felony if it is subsequent to a DUI conviction. The second degree felony is where a person operates a motor vehicle in a criminally negligent manner and causes the death of another while driving under the influence. By virtue of the prior DUI conviction, the standard of criminal negligence is met because it is presumed the person should have known the consequences of such behavior. U.C.A. 1953 §§76-2-103; 76-5-207.

Mandatory Minimum Term/Fine: **than 1 year or more than 15 years and/or not more than \$10,000. U.C.A. 1953 §§76-3-203; 76-3-301; 76-5-207.**
 Other: **None**
N/A

DUI-D Offenses and Commercial Motor Vehicles (CMV):

Persons are disqualified from operating a CMV for 1 mandatory year (3 mandatory years if transporting hazardous materials) if, while driving a CMV, they are under the influence of drugs or a controlled substance or refuse to submit to a chemical test. For a subsequent violation or a combination of two or more violations of any of the above-listed items, the disqualification is for life (10 years mand.). U.C.A. 1953 §§53-3-102(4)(a), (8); 53-3-414; 53-3-417; 53-3-418.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment: **Not more than 6 months and/or not more than \$1,000. U.C.A. 1953 §§53-3-227(3)(a); 76-3-204; 76-3-301.**
 Mandatory Minimum Fine/Imprisonment Term: **\$750. U.C.A. 1953 §§53-3-227(3)(c).**
 Other:

Habitual Traffic Offender Law:

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

Other State Laws Related to Drug Use:

Drug Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No): **Yes. U.C.A. 1953 §26-1-30(19).**

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

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

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash: **Yes – Adults only.**

Drug Chemical Tests on Persons Involved in Traffic Crashes: **No**

Marijuana – Possession and Use Laws: **Illegal.** ^{635 636}

⁶³⁵ Marijuana means all species of the genus cannabis and all parts of the genus, whether growing or not; the seeds of it; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from them, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. Any synthetic equivalents of the substances contained in the plant cannabis sativa or any other species of the genus cannabis which are chemically indistinguishable and pharmacologically active are also included. U.C.A. 1953 §58-37-2(aa).

Criminal Penalties:

Possession < 1 oz. (class B misdemeanor) - Not more than **6 months** and not more than **\$1,000**;

Second offense (class A misdemeanor) -Not more than **1 year** and not more than **\$2,500**;

Third or subsequent (third degree felony)- Not more than **5 years** and not more than **\$5,000**;

Possession 1 oz. but ≤ 1 lb. (class A misdemeanor) - Not more than **1 year** and not more than **\$2,500**;

Possession 1 lb. but ≤ 100 lbs. (third degree felony) -Not more than **5 years** and not more than **\$5,000**;

Possession ≥ 100 lbs. (second degree felony)- Not less than **1 year** or more than **15 years** and not more than **\$10,000**.

U.C.A. 1953 §§58-37-8; 76-3-203; 76-3-204; 76-3-301.

Intoxicant Exclusion Law (UPPL):

Yes⁶³⁷

⁶³⁶ This does not apply to possession of hemp extract, as defined in U.C.A. 1953 §58-37-4.3, when used to treat intractable epilepsy under the conditions proscribed in U.C.A. 1953 §58-37-4.3.

⁶³⁷ There are no statutes in place, however, case law indicates that insurance policies may contain alcohol and/or intoxicant exclusion provisions. See e.g. *Hardy v. Beneficial Life Ins. Co.*, 787 P.2d 1 (Utah App., 1990).

STATE

General Reference:

VERMONT

Vermont Statutes Annotated (VSA)

Type of DUI-D Law:**Under the Influence**Basis for a DUI-D Charge:

23 VSA §1201(a)(3).

Standard DUI-D Offense:

Operate, attempt to operate or be in actual physical control of a vehicle⁶³⁸ when under the influence of any drug⁶³⁹ or a combination of any drug and alcohol. 23 VSA §1201(a)(3).

Illegal Per Se Law:

NoPresumption Based on Drugs - State Has
(Yes/No):**No**

Other:

Chemical Testing for Drug Concentration:Preliminary Breath Test Law – State Has
Such Law (Yes/No):**Yes.** 23 VSA §1203(f).Preliminary Breath Test Law – Applies to
Drugs (Yes/No):**Yes**

Implied Consent Law:

Yes. 23 VSA §1202.

Arrest Required (Yes/No):

No. 23 VSA §1202(a).Implied Consent Law Applies to Drugs
(Yes/No):**Yes.** 23 VSA §1202(a).Refusal to Submit to Chemical Test
Admitted into Evidence:**Yes** – in Criminal Cases. 23 VSA §1202(b).

Other Information:

I. A driver who has been convicted previously of DUI offense, where there are reasonable grounds to believe the driver is under the influence, is required to submit to a chemical test of breath or blood and, if the test is refused, the driver's license is suspended or revoked. 23 VSA §1201(b).

II. A driver involved in an accident that resulted in a bodily injury or death to another who refuses to submit to a blood or breath chemical test under the implied consent law may be compelled to submit to a blood test via a search warrant. 23 VSA §1202(f).

III. Results of a preliminary breath test are admissible in a DUI proceeding against persons under 21. 23 VSA §1216(d).

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

Blood:

Yes. 23 VSA §1202(a)(2).

⁶³⁸ “Vehicle” means a motor vehicle as defined in 23 VSA §4, and when on a public highway: (A) a snowmobile as defined in 23 VSA §3201; and (B) an all-terrain vehicle as defined in 23 VSA §3501. 23 VSA §1200.

⁶³⁹ “Drug” means: (A) a regulated drug as defined in 18 VSA §4201; or (B) any substance or combination of substances, other than alcohol, which affects the nervous system, brain, or muscles of a person so as to impair, noticeably and appreciably, a person's ability to drive a vehicle safely. 23 VSA §1200.

Urine: **No**
 Other: **N/A**

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform: **Yes. Only a physician, licensed nurse, medical technician, physician assistant, medical technologist, or laboratory assistant** acting at the request of a law enforcement officer may withdraw blood for the purpose of determining the presence of drugs. This limitation does not apply to the taking of a breath sample. 23 VSA §1203.

Entity Establishing Testing Protocols: **Yes. The Department of Public Safety.** 23 VSA §1203.

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform: **No**
 Other:

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No): **No**

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

Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes.** Before sentencing, the court may order a defendant to submit to an alcohol assessment screening. 23 VSA §1210(a).

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription: **No**⁶⁴⁰

Therapeutic Concentration: **Yes.**⁶⁴¹

Involuntary Intoxication: **No**

Other: If a defendant is found operating a vehicle while intoxicated, the defendant has an affirmative defense if she can establish that she neither placed the car in motion nor intended to do so. *State v. Leopold*, 889 A.2d 707, 179 Vt. 558, (2005).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **None**

Preliminary Breath Test – Other:

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

Implied Consent Chemical Test - Other: I. No person shall have his license reinstated until he has met all conditions of reinstatement, which includes successful completion of alcohol education, treatment and/or therapy

⁶⁴⁰ The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this State shall not constitute a defense against any charge of violating this section. 23 VSA §1201(e).

⁶⁴¹ It appears based upon the language of the statute that if a therapeutic concentration would not render a person “under the influence,” or “impair” the person’s ability to safely operate a vehicle, arguing that the level of the substance detected was merely therapeutic would be a valid defense. 23 VSA §1201.

programs. 23 VSA §1209a.

II. Prior to reinstatement, a **\$50** surcharge shall be assessed to a person whose license is suspended for a refusal. 23 VSA §1205(r).

III. Suspensions shall run concurrently. 23 VSA §1205(p).

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:

First conviction (misdemeanor) – Not more than **2 years** and/or not more than **\$750**;

Second conviction (misdemeanor) – Not more than **2 years** and/or not more than **\$1,500**;

Third conviction (felony) – Not more than **5 years** and/or not more than **\$2,500**;

Fourth or subsequent conviction (felony) – Not more than **10 years** and/or not more than **\$5,000**.

DUI – Serious Injury: Not more than **15 years** and/or not more than **\$5,000**. 13 VSA §1; 23 VSA §1210(a)-(f), (g)(1).

Mandatory Minimum Term/Fine:

Second conviction – **60 consecutive hours**;

Third conviction – **96 consecutive hours**;

Fourth or subsequent conviction – **192 consecutive hours**.⁶⁴²

DUI – Serious Injury (third or subsequent offense): **5 years** (unless written findings made). 23 VSA §1210(c), (d), (f).

Community Service:

First conviction – Community service may be ordered;

Second conviction – At least **200 hours** mandatory in lieu of imprisonment; 13 VSA §7030; 23 VSA §1210(c).

Restitution:

Yes. The court may order a defendant to pay restitution to a victim. 13 VSA §7043.

Child Endangerment:

No

Other:

Surcharge: In addition to any fine, an offender must pay the following surcharges: **\$60**, used to fund blood and breath alcohol testing special fund; **\$50**, used to fund public defenders special fund; and **\$50**, used to fund DUI law enforcement. 23 VSA §1210(i), (j), (k).

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

Yes.

First license suspension, a defendant must complete an alcohol and driver education program. After this program, the person must submit to an assessment to determine if additional therapy is needed. The defendant must complete any required education or therapy prior to license

⁶⁴² For a third conviction, the court may impose a sentence that does not include a term of imprisonment or that does not require that the 96 hours of imprisonment be served consecutively only if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety. For a fourth or subsequent conviction, the sentence may not be suspended or deferred, unless the court makes written findings on the record that there are compelling, reasons why such a sentence will serve the interests of justice and public safety. 23 VSA §1210(d), (e).

	reinstatement.
	<u>Second suspension</u> , a defendant has to successfully complete an alcohol and driving rehabilitation program and show substantial progress in completing a therapy program prior to license reinstatement.
	<u>Third or subsequent suspension</u> , a defendant has to complete or show substantial progress in completing a therapy program prior to license reinstatement. 23 VSA §§1205; 1206; 1208; 1209a(a).
Substance Abuse Treatment:	Yes
Vehicle Impoundment/Confiscation:	Immobilization and Forfeiture
Authorized by Specific Statutory Authority:	Immobilization: <u>Second or subsequent offense</u> – the vehicle operated by the offender may be immobilized for 18 months or when that person obtains a valid license, whichever comes first. 23 VSA §1213a(a), (d).
	Forfeiture: <u>Third or subsequent offense</u> – the vehicle operated by the offender may be forfeited. 23 VSA §1213b.
Terms Upon Which Vehicle Will Be Released:	The court may consider any undue hardship which immobilization or forfeiture would cause to a person, other than the defendant, who is dependent on the motor vehicle for essential transportation needs. 23 VSA §1213c(e).
Other Miscellaneous Sanctions:	Special Assessment: A defendant is assessed a mandatory \$47.00 fee, of which \$39.75 is deposited into an account that is used to assist/compensate victims of crimes. 13 VSA §7282(8)(C).
<u>Homicide by Vehicle:</u>	
State Has Such a Law:	Yes. 23 VSA §1210(f).
Imprisonment/Fine:	Not less than 1 year or more than 15 years and/or not more than \$10,000 .
Mandatory Minimum Term/Fine:	<u>Third or subsequent offense</u> – 5 years (unless there are written findings by the court that a suspended sentence or term of imprisonment of less than 5 years serves the interests of justice and public safety).
Other:	
<u>DUI-D Offenses and Commercial Motor Vehicles (CMV):</u>	A person is disqualified from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person is under the influence of either intoxicating liquor or drugs (or under the combined influence of alcohol and any drug) or refuses to submit to a chemical test. For a subsequent violation or a combination of two or more violations of any of the above-listed items, the disqualification is for life (may be reduced to 10 years).
	If a CMV out-of-State operator holds a CDL from a State that does not have a reciprocal disqualification agreement with Vermont, the CDL privileges in VT are suspended as above

for operating a CMV while under the influence of alcohol or drugs. 23 VSA §§4(59); 1218; 1219; 4103; 4116; 4116a.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

Not more than **2 years**⁶⁴³ and/or not more than **\$5,000**.
13 VSA §1; 23 VSA §674(b).

Mandatory Minimum Fine/Imprisonment Term:

First offense – **\$300** or **40 hours** community service;⁶⁴⁴
Second offense (within 5 years) – **\$750** or **80 hours** community service;

Third offense (within 5 years) – **12 days** of preapproved furlough with community restitution (suspended sentence);

Fourth offense (within 5 years) – **18 days** of preapproved furlough with community restitution (suspended sentence);

Fifth and subsequent offenses (within 5 years) – **16 days**. 23 VSA §674(b).

Other:

Immobilization: Second or subsequent offense – the vehicle operated by the offender may be immobilized for 18 months or when the person obtains a valid license, whichever comes first. 23 VSA §674(h).

Forfeiture: Third or subsequent offense – the vehicle operated by the offender may be forfeited. 23 VSA § 674(h).

Surcharge: A \$50 surcharge shall be assessed, which is added to any fine or other surcharge imposed by the court. 2 VSA §674(i).

Reinstatement fee: A \$71 fee shall be paid before any license is reinstated. 23 VSA §675.

Removal of license plates: A law enforcement officer shall have the authority to remove any number plates from a motor vehicle that is being operated in violation of the statute. 23 VSA §674(c).

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. 23 VSA §673a.

Grounds for Being Declared Habitual Offender:

8 or more convictions based on moving violations (with 6 points or more assessed for DWI offenses within 5 years).

Term of License Revocations While on Habitual Offender Status:

2 years. 23 VSA §673a.

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

None.

Imprisonment (Term):

N/A

Mandatory Minimum Term/Fine:

N/A

⁶⁴³ If a person is convicted of both driving on a suspended and DUI, any penalty or suspension/revocation for these offenses shall be consecutive (not concurrent). 23 VSA §674(d).

⁶⁴⁴ If there is no term of imprisonment, community service shall be performed within 120 days. 23 VSA §674(b)(1).

Other State Laws Related to Drug Use:

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

None

Drug Chemical Test Given to Deceased Driver Killed in Crash:

N/A

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

N/A

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

N/A

Drug Chemical Tests on Persons Involved in Traffic Crashes:

NoMarijuana – Possession and Use Laws:**Legal for Medical Use.**⁶⁴⁵

Exemption from civil and criminal penalties for qualifying persons who have in his or her possession a valid registration card and who is in compliance with the requirements of this subchapter, including the possession limits in 18 VSA §4472, and exemption from seizure of marijuana, marijuana-infused products, and marijuana-related supplies. 18 VSA §4474b.

Decriminalized ≤ 1 oz.

Possession of ≤ 1 oz. (Civil violation) - first offense not more than \$200, second offense not more than \$300, third offense not more than \$500

Illegal.⁶⁴⁶**Criminal Penalties:**

First offense possession > 1 oz.- Not more than **6 months** and/or not more than **\$500**;

Second or subsequent possession > 1 oz.- Not more than **2 years** and/or not more than **\$2,000**;

Possession ≥ 2 oz. -Not more than **3 years** and/or not more than **\$10,000**;

Possession ≥ 1 lb. - Not more than **5 years** and/or not more than **\$100,000**;

Possession of ≥ 10 lbs. - Not more than **15 years** and/or not more than **\$500,000**. 18 VSA §4230.

Intoxicant Exclusion Law (UPPL):**Yes**⁶⁴⁷

⁶⁴⁵ “Debilitating medical condition,” provided that, in the context of the specific disease or condition described in subdivision (A) or (B) of this subdivision (4), reasonable medical efforts have been made over a reasonable amount of time to relieve the symptoms, means: (A) cancer, multiple sclerosis, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, glaucoma, or the treatment of these conditions, if the disease or the treatment results in severe, persistent, and intractable symptoms; or (B) a disease, medical condition, or its treatment that is chronic, debilitating, and produces one or more of the following intractable symptoms: cachexia or wasting syndrome; chronic pain; severe nausea; or seizures. 18 VSA §4472(4).

⁶⁴⁶ Marijuana means any plant material of the genus cannabis or any preparation, compound, or mixture thereof except: (A) sterilized seeds of the plant; (B) fiber produced from the stalks; or (C) hemp or hemp products, as defined in 6 VSA §562. 18 VSA §4201.

⁶⁴⁷ See e.g., *Furry’s Adm’r v. General Acc. Ins. Co.*, 68 A. 655 (Vt. 1908).

STATE

General Reference:

VIRGINIA

Code of Virginia Annotated (Va. Code Ann.)

Virginia Administrative Code (VAC)

Type of DUI-D Law:Basis for a DUI-D Charge:

Standard DUI-D Offense:

Illegal Per Se Law:

Presumption Based on Drugs - State Has
(Yes/No):

Other:

Under the Influence

Va. Code Ann. §18.2-266.

Under the influence of any drug⁶⁴⁸, any narcotic drug⁶⁴⁹, any self-administered intoxicant or drug of whatsoever nature, or a combined influence of alcohol and any drug or drugs. Va. Code Ann. §18.2-266.

Yes. A blood concentration equal to or greater than (mg/liter of blood):

- **Cocaine .02**
- **Methamphetamine 0.1**
- **Phencyclidine .01**
- **3, 4-methylene-dioxymethamphetamine 0.1**

Va. Code Ann. §18.2-266.

Yes, but is a permissive inference. A blood concentration equal to or greater than (mg/liter of blood):

- **Cocaine .02**
- **Methamphetamine 0.1**
- **Phencyclidine .01**
- **3, 4-methylene-dioxymethamphetamine 0.1**

Va. Code. Ann. §18.2-269(A)(4).

⁶⁴⁸ “Drug” means (i) articles or substances recognized in the official United States Pharmacopoeia National Formulary or official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them; (ii) articles or substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (iii) articles or substances, other than food, intended to affect the structure or any function of the body of man or animals; (iv) articles or substances intended for use as a component of any article specified in clause (i), (ii), or (iii); or (v) a biological product. “Drug” does not include devices or their components, parts, or accessories. Va. Code Ann. §54.1-3401.

⁶⁴⁹ “Narcotic drug” means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (i) opium, opiates, and any salt, compound, derivative, or preparation of opium or opiates; (ii) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (i), but not including the isoquinoline alkaloids of opium; (iii) opium poppy and poppy straw; (iv) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extraction of coca leaves which do not contain cocaine or ecgonine. Va. Code Ann. §54.1-3401.

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such Law (Yes/No):

Yes. Va. Code Ann. §18.2-267(a).

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Yes

Implied Consent Law:

Yes. Va. Code Ann. §18.2-268.2.⁶⁵⁰

Arrest Required (Yes/No):

Yes. Va. Code Ann. §18.2-268.2.

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

Yes. Va. Code Ann. §18.2-268.2.

Refusal to Submit to Chemical Test Admitted into Evidence:

Evidence of an unreasonable refusal may be admitted *only* to explain the absence of a chemical test result but not as evidence of guilt.⁶⁵¹ Va. Code Ann. §18.2-268.10(C).

Other Information:

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

Blood:

Yes. Va. Code Ann. §18.2-268.2(A).

Urine:

No

Other:

No

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. For purposes of this article, only a physician, registered nurse, licensed practical nurse, phlebotomist, graduate laboratory technician or a technician or nurse designated by order of a circuit court acting upon the recommendation of a licensed physician, using soap and water, polyvinylpyrrolidone iodine, pvp iodine, povidone iodine or benzalkonium chloride to cleanse the part of the body from which the blood is taken and using instruments sterilized by the accepted steam sterilizer or some other sterilizer which will not affect the accuracy of the test, or using chemically clean sterile disposable syringes, shall withdraw blood for the purpose of determining its alcohol or drug or both alcohol and drug content. Va. Code Ann. §18.2-268.5.

Entity Establishing Testing Protocols:

Yes. **Virginia Department of Forensic Science.** Va. Code Ann. §18.2-268.6.

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:

No

Other:

⁶⁵⁰ However, any legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court's decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

⁶⁵¹ The Virginia Court of Appeals has held, in an *en banc* decision that it is constitutional under both the Federal and State constitutions to admit evidence of a person's refusal to submit to "field sobriety tests." *Farmer v. Commonwealth*, 404 S.E.2d 371 (Va. App. 1991).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No): **No**
 Anti-Plea-Bargaining Statute (Yes/No): **No**
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes.** An alcohol/drug screening/assessment mandatory via the Alcohol Safety Action Program prior to any treatment. Va. Code Ann. §§18.2-271.1(A); 19.2-299; 19.2-299.2(A).

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription: **No**
 Therapeutic Concentration: **Yes,** for under the influence, but not an available defense to a per se offense.
 Involuntary Intoxication: **No**
 Other:

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **N/A**
 Preliminary Breath Test – Other: **N/A**
 Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **Second refusal** (within 10 years) (Class 2 misdemeanor) – Not more than **6 months** and/or not more than **\$1,000**;
Third refusal (within 10 years) (Class 1 misdemeanor) – Not more than **12 months** and/or not more than **\$2,500**. Va. Code Ann. §§18.2-11; 18.2-268.3(B).⁶⁵²
 Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine: **First offense** (Class 1 Misdemeanor) – Not more than **12 months** and/or not more than **\$2,500**;
Second offense (Class 1 Misdemeanor) – Not more than **1 year** and/or not more than **\$2,500**;
Third offense (within 10 years) (Class 6 Felony) – Not less than **1 year** or more than **5 years**, or not more than **12 months** and/or not more than **\$2,500**;
Fourth or subsequent offense (within 10 years) (Class 6 Felony) – Not less than **1 year** or more than **5 years**, or not more than **12 months** and/or not more than **\$2,500**. Va. Code Ann. §§18.2-10; 18.2-11; 18.2-270.
DUI – Maiming (Class 6 Felony) – Not less than **1 year** or more than **5 years**, or not more than **12 months** and/or not more than **\$2,500**. Va. Code Ann. §18.2-51.4.

⁶⁵² It should be noted Criminal penalties for refusal to submit to a blood test were abrogated by the Supreme Court on June 23, 2016. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).

Mandatory Minimum Term/Fine:	<p><u>First offense</u> – \$250;</p> <p><u>Second offense</u> (within less than 5 years) – 20 days/\$500;</p> <p><u>Second offense</u> (within 5-10 years) – 10 days/\$500;</p> <p><u>Third offense</u> (within 10 years) – 90 days/\$1,000;</p> <p><u>Third offense</u> (within 5 years) – 6 months/\$1,000;</p> <p><u>Fourth or subsequent offense</u> (within 10 years) – 1 year/\$1,000;</p> <p><u>Subsequent offense DUI where prior convictions are felony DUI/DUI maiming/involuntary manslaughter</u> – 6 months/\$1,000.</p>
Community Service:	The court may order community service as a condition of probation. Va. Code Ann. §§19.2-303.
Restitution:	The court may order a defendant to pay restitution to a victim. In addition, a crime victims compensation fund is available. Va. Code Ann. §§19.2-305; 19.2-368.1, <i>et seq.</i>
Child Endangerment:	A person convicted of a DUI offense while transporting a minor age 17 years or younger shall be fined an <i>additional</i> minimum \$500 and not more than \$1,000 and sentenced to a mandatory minimum of 5 days . ⁶⁵³ Va. Code Ann. §18.2-270(D).
Other:	<p>Trauma Fund: The court shall order any defendant convicted of a DUI offense to pay \$50 to the Trauma Center Fund. Va. Code Ann. §18.2-270.01.</p> <p>EMS/Enforcement Costs: Counties, cities and towns may enact ordinances that make an offender liable in a civil action for the expenses of responding to any DUID offense that was the proximate cause of an accident. Liability is limited to \$1,000. Va. Code Ann. §15.2-1716.</p> <p>Dismissal of dual charges: Whenever any person is charged with a violation of section 18.2-266 and with reckless driving growing out of the same act or acts, and is convicted of one of these charges, the court shall dismiss the remaining charge. Va. Code Ann. §19.2-294.1.</p>
<u>Administrative Sanctions – Post-Conviction:</u>	
Substance Abuse Education:	<p><u>First offense</u> – Yes;</p> <p><u>Second offense</u> (within 10 years) – Yes;</p> <p><u>Third and subsequent offense</u> – Not eligible to participate in the Virginia Alcohol Safety Action Program (VASAP). Va. Code Ann. §§18.2-271(C); 18.2-271.1(A).</p>
Substance Abuse Treatment:	<p><u>First offense</u> – Yes;</p> <p><u>Second offense</u> (within 10 years) – Yes;</p> <p><u>Third and subsequent offense</u> – Not eligible to participate in VASAP. Va. Code Ann. §§18.2-271(C); 18.2-271.1(A).</p>
Vehicle Impoundment/Confiscation:	Impoundment/Immobilization; Seizure and Forfeiture

⁶⁵³ A DUI offender who operates a motor vehicle while transporting a child < 18 may be subject to prosecution for felony child abuse and neglect under §18.2-371.1. *Wolfe v. Commonwealth*, 595 S.E.2d 27 (Va. App. 2004).

Authorized by Specific Statutory Authority:	<p>Impoundment: The motor vehicle driven by a defendant who commits a DUI/D offense shall be impounded or immobilized by law enforcement at the time the defendant is arrested. Impoundment shall be for a period of 30 days. Va. Code Ann. §46.2-301.1.</p> <p>Seizure/Forfeiture: The vehicle solely owned by a defendant convicted of felony DUI/D shall be subject to seizure and forfeiture. Va. Code Ann. §18.2-270(C)(3).</p>
Terms Upon Which Vehicle Will Be Released:	<p>Impoundment/Immobilization:</p> <p>I. Any driver who is the owner of the vehicle may petition the General District Court in the jurisdiction in which the arrest was made for release of the impounded/immobilized motor vehicle.</p> <p>II. Any owner (not the driver) of the impounded/immobilized motor vehicle may petition the General District Court for release of the vehicle if he/she proves he/she had no knowledge that the defendant’s license was suspended/revoked or did not consent to the vehicle being driven. If the owner proves that his immediately family has only 1 vehicle and will suffer a substantial hardship, the court may release the vehicle after some period of less than 30 days. Va. Code Ann. §46.2-301.1(B), (C).</p> <p>Seizure/Forfeiture:</p> <p>An immediate family member may petition the court for release of the vehicle if that person proves his family has only one vehicle and seizure/forfeiture would create a substantial hardship. Va. Code Ann. §18.2-270(C)(3).</p>
Other Miscellaneous Sanctions:	
<u>Homicide by Vehicle:</u> State Has Such a Law:	<p>Involuntary Manslaughter (Class 5 Felony); Aggravated Involuntary Manslaughter⁶⁵⁴ (Unclassified Felony). Va. Code Ann. §§18.2-36; 18.2-36.1.</p>
Imprisonment/Fine:	<p>Involuntary Manslaughter – Not less than 1 year or more than 10 years, or not more than 12 months and/or not more than \$2,500;</p> <p>Aggravated Involuntary Manslaughter – Not less than 1 year or more than 20 years. Va. Code Ann. §§18.2-10; 18.2-36.1.</p>
Mandatory Minimum Term/Fine:	<p>Involuntary Manslaughter – None;</p> <p>Aggravated Involuntary Manslaughter – 1 year.</p>
Other:	N/A

⁶⁵⁴ Aggravated involuntary manslaughter contains the additional element of conduct that is so gross, wanton and culpable as to show a reckless disregard for human life. Certain additional facts, like driving behavior or criminal history may meet that element. Va. Code Ann. §18.2-36.1(B).

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is disqualified from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person: is under the influence of any narcotic drug, self-administered intoxicant or other drug or refuses to submit to a chemical test for drugs. For a subsequent violation or a combination of two or more violations of any of the above-listed items, the disqualification is for life (10 years mandatory).

It is a Class 1 Misdemeanor to operate a CMV while under the influence of drugs. The sanctions for this offense are as follows:

First offense – Jail for not more than 12 months and/or a fine sanction of not more than \$2,500;

Second offense (within 10 years) – Jail for not less than 1 month or more than 1 year and/or a fine of not less than \$200 or more than \$2,500. If the second offense was within 5 years of a previous offense, there is a mandatory jail sanction of 5 days;

Third offense (within 10 years) – Jail for not less than 2 months or more than 1 year and/or a fine of not less than \$500 or more than \$2,500. A 30-day jail sentence is mandatory if the third or subsequent offense occurred within 5 years, and a 10-day jail sentence is mandatory if the third or subsequent offense occurred within 10 but more than 5 years. Va. Code Ann. §§18.2-11; 18.2-271.1(J); 46.2-113; 46.2-341.4; 46.2-341.17; 46.2-341.18; 46.2-341.24; 46.2-341.25; 46.2-341.26:1 to 46.2-341.26:11; 46.2-341.27 to 46.2-341.31.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

Suspension for a first offense:

First offense - **Class 1 Misdemeanor**. Not more than **12 months** and/or not more than **\$2,500**;

Third or subsequent (within 10 years) – **Class 6 Felony** - Not less than **1 year** or more than **5 years**, or not more than **12 months** and/or not more than **\$2,500**. Va. Code Ann. §18.2-272.

Revocation for second or subsequent:

Driving did not endanger life, limb, or property - **Class 1 misdemeanor**. Not more than **12 months** and/or not more than **\$2,500**;

Driving endangered life, limb property – **Class 6 Felony**. Not less than **1 year** or more than **5 years**, or not more than **12 months**. Va. Code Ann. §46.2-391(D)(2).

Mandatory Minimum Fine/Imprisonment Term:

Did not endanger life, limb or property: 10 days;

Did endanger life, limb, or property: 12 months. Va. Code Ann. §46.2-391(D)(2).

Other:

Habitual Traffic Offender Law:State Has Such a Law (Yes/No): **No**⁶⁵⁵Other State Laws Related to Drug Use:Drug Chemical Tests on Persons Killed in Traffic Crashes - State Has Such a Law (Yes/No): **No**Drug Chemical Test Given to Deceased Driver Killed in Crash: **No**Drug Chemical Test Given to Deceased Vehicle Passengers Killed in Crash: **No**Drug Chemical Test Given to Deceased Pedestrian Killed in Crash: **No**Drug Chemical Tests on Persons Involved in Traffic Crashes: **No**Marijuana – Possession and Use Laws:**Illegal.**⁶⁵⁶**Criminal Penalties:**First offense possession: Not more than **30 days** and/or not more than **\$500**;Second or subsequent: Not more than **12 months** and/or a fine of not more than **\$2,500**.

It is an affirmative defense in any prosecution under this section involving marijuana in the form of cannabidiol oil or THC-A oil if the individual possessed such oil pursuant to a valid written certification issued by a practitioner in the course of his professional practice for treatment or to alleviate the symptoms of (i) the individual's intractable epilepsy or (ii) if such individual is the parent or legal guardian of a minor, such minor's intractable epilepsy. If the individual files the valid written certification with the court at least 10 days prior to trial and a copy of the certification is delivered to the attorney for the Commonwealth, such written certification shall be prima facie evidence that such oil was possessed pursuant to a valid written certification. Va. Code Ann. §§18.2-250.1; 54.1-3408.3.

Intoxicant Exclusion Law (UPPL):**Yes.** Va. Code Ann. §38.2-3504(11).

⁶⁵⁵ The habitual offender law was repealed in 1999. However, those persons who were declared to be habitual offenders prior to the repeal may still be prosecuted for violation of their habitual offender status.

⁶⁵⁶ The term "marijuana" when used in this article means any part of a plant of the genus Cannabis, whether growing or not, its seeds or resin; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or its resin. Marijuana shall not include any oily extract containing one or more cannabinoids unless such extract contains less than 12 percent of tetrahydrocannabinol by weight, or the mature stalks of such plant, fiber produced from such stalk, oil or cake made from the seed of such plant, unless such stalks, fiber, oil or cake is combined with other parts of plants of the genus Cannabis. Va. Code Ann. §18.2-247.

STATE

General Reference:

WASHINGTON

Revised Code of Washington Annotated (RCWA)

Type of DUI-D Law:**Under the Influence/Zero Tolerance**Basis for a DUI-D Charge:

RCWA §§46.61.502(1); 46.61.504(1).

Standard DUI-D Offense:

Drive a vehicle⁶⁵⁷ while under the influence of or affected by marijuana⁶⁵⁸, any drug⁶⁵⁹ or a combination of intoxicating liquor and any drug. RCWA §§46.61.502(1).

Illegal Per Se Law:

Yes. Tetrahydrocannabinol \geq 5.00 Ng/mL in the blood within 2 hours after driving. RCWA §46.61.504(1).

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such Law (Yes/No):

Yes. WAC 448-15-010; 020. (admissible for probable cause).

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Yes.

Implied Consent Law:

Yes. RCWA §46.20.308.

Arrest Required (Yes/No):

Yes. RCWA §46.20.308.

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

Yes. RCWA §46.20.308(1).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal Cases involving breath test. RCWA §§46.20.308(2)(b); 46.61.517.

Other Information:

A law enforcement officer may obtain a person's blood to test for alcohol, marijuana, or any drug, pursuant to a search warrant, a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law. RCWA §46.20.308(4).

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

⁶⁵⁷ Vehicle means every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, including bicycles. RCWA §46.04.670.

⁶⁵⁸ “Marijuana” or “marihuana” means all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. RCWA §69.50.101.

⁶⁵⁹ “Drug” means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories. RCWA §69.50.101.

Blood: **No**
 Urine: **No**
 Other: **None**

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform: **No**
 Entity Establishing Testing Protocols: **Yes. The State Toxicologist.** RCWA §46.61.506.
 Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform: **Yes.**⁶⁶⁰ The withdrawal of blood for the purpose of determining its alcoholic or drug content may be performed only by a licensed: physician; osteopathic physician; a registered nurse, practical nurse, or advanced registered nurse practitioner; a physician assistant; an osteopathic physician assistant; an advanced emergency medical technician or paramedic; until July 1, 2016, a health care assistant; or a medical assistant-certified or medical assistant-phlebotomist. RCWA §§46.61.506; 46.20.308.
 Other:

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No): **No**⁶⁶¹
 Anti-Plea-Bargaining Statute (Yes/No): **No**
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes.** RCWA §46.61.5056(2).

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription: **No.** RCWA §46.61.502(2).
 Therapeutic Concentration: **Yes**⁶⁶²
 Involuntary Intoxication: **No**
 Other: It is an affirmative defense if the defendant proves by a preponderance of the evidence he consumed a sufficient quantity of marijuana after the time of driving and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or more within two hours after driving. The court shall not admit evidence of

⁶⁶⁰ Washington's Implied Consent statute does not apply to blood testing in a DUI-D case. Therefore, a search warrant would be not only permitted, but required to obtain a blood sample absent a valid waiver of the warrant requirement or exigent circumstances. RCWA §46.20.308(4).

⁶⁶¹ Deferred Prosecution: Washington has a deferred prosecution program for DWI/D offenses. A person is eligible for this program only once. The program provides for alcohol treatment for a two-year period. Upon successful completion of the program, the court shall dismiss the charges pending against the defendant. RCWA §10.05.010, *et seq.* The offender's license is placed on probationary status for 5 years. RCWA §10.05.060. In addition, as a condition for granting deferred prosecution, the court shall order an offender to only operate vehicles that are equipped with ignition interlock devices. RCWA §10.05.140. A deferred prosecution is treated as a prior offense for purposes of sanction enhancement for subsequent offenses. RCWA §10.05.120.

⁶⁶² It appears based upon the language of the statute that if a therapeutic concentration would not render a person "under the influence," or "affect" the person's ability to safely operate a vehicle, arguing that the level of the substance detected was merely therapeutic would be a valid defense. RCWA §§46.61.502(1); 46.61.504(1).

this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense. RCWA §§46.61.502(3)(b).

Sanctions for Refusal to Submit to a Chemical Test:

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

None

Preliminary Breath Test – Other:

None

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

Yes. For breath test refusal, increased sanctions both fines, jail, and ignition interlock. RCWA §46.61.5055

Implied Consent Chemical Test - Other:

N/A

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:

First conviction (within 7 years) – Not less than **1 day (24 consecutive hours)** or more than **364 days** and not less than **\$350** or more than **\$5,000**;

First conviction (refusal) – Not less than **2 days** (48 consecutive hours) or more than **364 days** and not less than **\$500** or more than **\$5,000**;

Second conviction (within 7 years) – Not less than **30 days** or more than **364 days and 60 days** electronic home monitoring or at least **4 days** in jail or a six-month period of 24/7 sobriety monitoring, and not less than **\$500** or more than **\$5,000**;

Third and fourth convictions (within 7 years) – Not less than **90 days** or more than **364 days and 120 days** electronic home monitoring or at least **8 days** in jail; enrollment in a 24/7 sobriety monitoring is mandatory, and not less than **\$1,000** or more than **\$5,000**;

Fifth or subsequent conviction or any prior conviction for vehicular homicide/assault (under DUI prong) within 10 years (Felony DUI- Class C felony) – Not more than **5 years** and/or not more than **\$10,000**.

RCWA §§9.94A.550; 9A.20.021; 46.61.502(5);46.61.504(5); 46.61.5055.

Vehicular Assault (causing substantial bodily harm) (Class B felony) – Not more than **10 years** and/or not more than **\$20,000**. RCWA §§9A.20.021; 46.61.522.

Mandatory Minimum Term/Fine:

Vehicular Assault is a Class B felony, subject to the Sentencing Reform Act. An offender may serve from 1 month to 84 months of actual incarceration depending on his offender score, and the specific prong of Vehicular Assault. There are two prongs: (1) operation of a vehicle with disregard for the safety of others; or (2) being under the

	influence, or by the operation or driving of a vehicle in a reckless manner.
Community Service:	Possible for any misdemeanor. RCWA §9.94A.680.
Restitution:	Direct compensation to a victim, and payment via a crime victims' compensation fund. RCWA §§7.68.020, <i>et seq.</i> ; 9.94A.505; 9.94A.750.
Child Endangerment:	<u>First offense</u> – an additional 24 hours and not less than \$1,000 or more than \$5,000 ; <u>Second offense</u> (within 7 years) – an additional 5 days and not less than \$2,000 or more than \$5,000 ; <u>Third or fourth offense</u> (within 7 years) – an additional 10 days and not less than \$3,000 or more than \$10,000 . RCWA §46.61.5055(6).
Other:	Laboratory Assessment Fee: An offender is assessed a \$200 fee which is used to fund the State's toxicology laboratory. The court may suspend this fee if the defendant does not have the ability to pay it. RCWA §46.61.5054(1)(a). Safety and Education Assessment: A defendant must pay an assessment equal to 70 % of the fine imposed for the purpose of funding safety and education programs. Additionally, an assessment equal to 50 % of the assessment for public safety and education programs shall be assessed. RCWA §3.62.090. Emergency Costs Recovery: A defendant may be ordered to pay for the costs of emergency services, up to \$2,500. RCWA §§38.52.430; 9.94A.030
<u>Administrative Sanctions – Post-Conviction:</u>	
Substance Abuse Education:	Yes – for all offenses. RCWA §46.61.5056.
Substance Abuse Treatment:	Yes – for all offenses. RCWA §46.61.5056. A court-ordered assessment will determine whether an offender will be required to attend an alcohol education course or treatment. RCWA §46.61.5056.
Vehicle Impoundment/Confiscation:	Summary Impoundment Seizure/Forfeiture
Authorized by Specific Statutory Authority:	Summary Impoundment: If arrested for DUI/D, vehicular homicide or vehicular assault or while found to be a habitual offender ordered not to drive, the vehicle is subject to summary impoundment pursuant to the terms and conditions of an applicable local ordinance or State agency rule. RCWA §46.55.113(1). Seizure/Forfeiture: The vehicle used in the offense in which a second or subsequent DUI offender (within 7 years) has a financial interest is subject to forfeiture. RCWA §46.61.5058.
Terms Upon Which Vehicle Will Be Released:	With regard to seizure/forfeiture, if a person has a claim of ownership within 45 days of the seizure, such person shall have a reasonable opportunity to be heard as to the claim or right. RCWA §46.61.5058(6).

Other Miscellaneous Sanctions:

Mandatory Probation: For any DUI/D offense, if the court imposes < 1 year in jail, it shall suspend but not defer a period of confinement not exceeding 5 years and place offenders on probation with the following minimum conditions: (1) they cannot operate a vehicle unless they have valid licenses; (2) maintain proof of financial responsibility; (3) they cannot operate a motor vehicle with BAC/BrAC ≥ **.08**; (4) they must submit to implied consent tests; and (5) must have ignition interlock. If an offender violates any of these conditions, the offender is subject to a mandatory 30-day jail term and a license suspension for 30 days. RCWA §46.61.5055(11)(a), (b).

Probationary License: After the suspension or revocation period, DUI/D offenders' driving privileges or must be placed on probationary status for 5 years. RCWA §46.20.355(2).

Special Education Program: A person convicted of a DUI/D offense may be required to attend an educational program that focuses on the emotional, physical and financial suffering of DUI victims. RCWA §46.61.5152.

Homicide by Vehicle:

State Has Such a Law:

Imprisonment/Fine:

Vehicular Homicide.⁶⁶³ RCWA §46.61.520.

Class A felony:

Life Imprisonment⁶⁶⁴ and/or not more than **\$50,000**.

RCWA §9A.20.021(1)(a).

Mandatory Minimum Term/Fine:

The sentencing guidelines require a period of incarceration.

Other:

EMS Cost: A defendant is liable for up to \$2,500 of the cost of an emergency response related to a DUI vehicle homicide offense. RCWA §38.52.430.

DUI-D Offenses and Commercial Motor Vehicles (CMV):

Persons are disqualified from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, they are under the influence of any drug. For a subsequent violation or a combination of two or more violations of any of the above-listed items, the disqualification is for life (10 years mand).

The implied consent provisions for CMV operators allow testing for either alcohol or drugs; however, the disqualification sanctions only apply to a refusal to submit to a test for an alcohol concentration. RCWA §§9.92.020; 46.25.010(2), (6), (8), (15); 46.25.090; 46.25.110; 46.25.120; 46.25.170.

Driving While License Suspended for DUI-

⁶⁶³ The State does not have to prove that a defendant's intoxication caused the victim's death. However, the State must still prove that the defendant's driving was related to the accident that caused the fatality. See *State v. Rivas*, 896 P.2d 57 (Wash. 1995).

⁶⁶⁴ Courts use sentencing guidelines. While the statutory sentence is up to life imprisonment, an offender may serve 31-177 months of actual incarceration, depending on his criminal history. RCWA §§9.94A.510; 9.94A.515; 9.94A.520.

D Offense:

Criminal - Fine/Imprisonment:

Gross Misdemeanor. Not more than **364 days** and/or not more than **\$5,000**. RCWA §§9.92.020; 9A.20.021; 46.20.342(1).

Mandatory Minimum Fine/Imprisonment Term:

None

Other:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. RCWA §46.65.020.

Grounds for Being Declared Habitual Offender:

Three serious offenses within 5 years or a combination of 20 minor and/or serious offenses within 5 years provided that 3 minor offenses must have been committed within 365 days immediately preceding the last conviction. RCWA §46.65.020(2).

Term of License Revocations While on Habitual Offender Status:

7 years.⁶⁶⁵ But there is a special stay of revocation if based on DUI offenses and the offender is attending an alcohol treatment program. In addition, after 4 years a license may be issued upon good and sufficient showing. RCWA §§46.65.060; 46.65.070; 46.65.080.

Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):

Gross Misdemeanor. RCWA §46.20.342(1)(a).First offense – Not less than **10 days** or more than **364 days** and/or not more than **\$5,000**;Second offense – Not less than **90 days** or more than **364 days** and/or not more than **\$5,000**;Third or subsequent offense – Not less than **180 days** or more than **364 days** and/or not more than **\$5,000**. RCWA §§9.92.020; 9A.20.021; 46.20.342(1)(a).

The terms above are mandatory.

Mandatory Minimum Term/Fine:

Other State Laws Related to Drug Use:

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

Yes. RCWA §46.52.065.

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes

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

No

Drug Chemical Test Given to Deceased Crash:

Yes

Drug Chemical Tests on Persons Involved in Traffic Crashes:

Yes. RCWA §46.20.308(4).Marijuana – Possession and Use Laws:**Legal for Medical Use.**

⁶⁶⁵ After this 7-year period, the revocation remains in effect until the offender petitions and receives a new license from the State licensing agency. RCWA §46.65.100.

The medical use of marijuana pursuant to RCWA §69.501A.040 does not constitute a crime and a qualifying patient⁶⁶⁶ or designated provider may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, marijuana under State law, or have real or personal property seized or forfeited for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, marijuana under State law. RCWA §69.501A.040.

Possession < 1 oz. Legalized. ⁶⁶⁷

Possession of < 1 oz.: by a person over the age of 21, is not a violation of criminal law and not subject to criminal or civil sanctions.

Criminal Penalties:

Possession of ≤ 40 grams: Not less than **24 hours** or more than **90 days** and **\$250**;

Second or subsequent possession ≤ 40 grams: Not less than **24 hours** or more than **90 days** and **\$500**;

Possession > 40 grams: Class C felony, Not more than **5 years** and not less than **\$1000** or more than **\$10,000**;

Second or subsequent possession > 40 grams: Class C felony, Not more than **5 years** and not less than **\$2000** or more than **\$10,000**.

RCWA §§69.50.4013; 69.40.4014; 69.50.360; 9A.20.021.

Intoxicant Exclusion Law (UPPL):

No. RCWA §48.20.272 was repealed in 2004.

⁶⁶⁶ “Qualifying patient” means a person who: (a)(i) Is a patient of a health care professional; (ii) Has been diagnosed by that health care professional as having a terminal or debilitating medical condition; (iii) Is a resident of the State of Washington at the time of such diagnosis; (iv) Has been advised by that health care professional about the risks and benefits of the medical use of marijuana; (v) Has been advised by that health care professional that they may benefit from the medical use of marijuana; (vi)(A) Has an authorization from his or her health care professional; or (B) Beginning July 1, 2016, has been entered into the medical marijuana authorization database and has been provided a recognition card; and (vii) Is otherwise in compliance with the terms and conditions established in this chapter. RCWA §69.51A.010(19).

⁶⁶⁷ “Marijuana” or “marihuana” means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. RCWA §69.50.101.

STATE

General Reference:

WEST VIRGINIA

West Virginia Code (W. Va. Code)

West Virginia Rules of Criminal Procedure (W. Va. R.Crim.P.)

Type of DUI-D Law:Basis for a DUI-D Charge:

Standard DUI-D Offense:

Under the Influence

W. Va. Code §17C-5-2(a)(B)-(D), (g).

Drive a vehicle⁶⁶⁸ while in an impaired state:I. Under the influence of any drug or controlled substance⁶⁶⁹;

II. Under the influence of a combination of alcohol and any other controlled substance or any other drug; or

III. While being a habitual user of narcotic drugs or amphetamine or any derivative thereof. W. Va. Code §17C-5-2(a)(B)-(D), (g).

Illegal Per Se Law:

No

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such Law (Yes/No):

Yes. W. Va. Code §§17C-5-4(b); 17C-5-5.

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Yes

Implied Consent Law:

Yes. W. Va. Code §17C-5-4.

Arrest Required (Yes/No):

Yes. W. Va. Code §17C-5-4.

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

Yes. W. Va. Code §17C-5-4(a).

Refusal to Submit to Chemical Test Admitted into Evidence:

Yes – Criminal Cases. *State v. Cozart*, 352 S.E.2d 152 (W.Va. 1986) (abrogated on other grounds).

Other Information:

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

Blood:

Yes. W. Va. Code §17C-5-4.

Urine:

No

Other:

None

⁶⁶⁸ “Vehicle” means every device by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks or wheelchairs. W. Va. Code §17C-1-2.

⁶⁶⁹ “Controlled substance” means any substance classified under the provisions of chapter 66A of this code, the Uniform Controlled Substances Act, and includes all substances listed on Schedules I through V. “Drug” has the same meaning as set forth in W. Va. Code §66A-1-101, the Uniform Controlled Substances Act, that when taken into the human body can impair the ability of a person to operate a vehicle safely and in compliance with traffic regulations and the laws of the road. W. Va. Code §17C-1-67; 68.

Individuals Authorized to Perform Chemical Testing (Blood):

Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:

Yes. Only a doctor of medicine or osteopathy, or registered nurse, or trained medical technician at the place of his or her employment, acting at the request and direction of the law-enforcement officer, may withdraw blood to determine the alcohol concentration in the blood, or the concentration in the blood of a controlled substance, drug, or any combination thereof. W. Va. Code §17C-5-6.

Entity Establishing Testing Protocols:

Yes. Governor's Committee on Crime, Delinquency and Correction W. Va. Code §17C-5-4.

Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:

No

Other:

Independent Testing: the person tested may, at his or her own expense, have a doctor of medicine or osteopathy, or registered nurse, or trained medical technician at the place of his or her employment, of his or her own choosing, administer a chemical test in addition to the test administered at the direction of the law-enforcement officer. W. Va. Code §17C-5-6.

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No):

No

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

No

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

Yes – Generally a pre-sentence investigation report will be completed unless a defendant waives or the court finds information from within the court record that enables it to meaningfully exercise its sentencing authority. W. Va. R.Crim.P., Rule 32; see *State v. Bruffey*, 531 S.E.2d 332 (W.Va. 2000).

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription:

No. W. Va. Code §17C-5-2(p).

Therapeutic Concentration:

Yes⁶⁷⁰

Involuntary Intoxication:

No

Other:

Sanctions for Refusal to Submit to a Chemical Test:

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

None

Preliminary Breath Test – Other:

Refusal to Take Implied Consent Chemical

None

⁶⁷⁰ It appears based upon the language of the statute that if a therapeutic concentration would not render a person “under the influence,” or “impair” the person’s ability to safely operate a vehicle, arguing that the level of the substance detected was merely therapeutic would be a valid defense. W. Va. Code §17C-5-2.

Test – Criminal Sanction (Fine/Jail):

Implied Consent Chemical Test - Other:

Revocation shall run concurrently with the period of suspension / revocation imposed under other provisions of law and growing out of the same incident that gave rise for the arrest. W. Va. Code §17C-5-7(a).

Criminal Sanctions Following a DUI-D

Conviction:

Imprisonment/Fine:

DUI:

First offense (misdemeanor) – Up to **6 months** and not less than **\$100** or more than **\$500**;

Second offense (within 10 years) (misdemeanor) – Not less than **6 months** or more than **1 year** and a fine of not less than **\$1,000** or more than **\$3,000** may be imposed;

Third or subsequent offense (within 10 years) (felony)– Not less than **2 years** or more than **5 years** and a fine of not less than **\$3,000** or more than **\$5,000** may be imposed. W. Va. Code §17C-5-2(e), (f), (l), (m), (n)(1).

DUI – Bodily injury (misdemeanor) – Not less than **1 day** or more than **1 year** and not less than **\$200** or more than **\$1,000**.

DUI – Serious Bodily Injury (felony) – not less than **2 years** nor more than **10 years** and a fine not less than **\$1,000** or more than **\$3,000**. W. Va. Code §17C-5-2(c), (d).

DUI with Child < 16 – 48 hours/\$200:

Mandatory Minimum Term/Fine:

The sentences provided are mandatory and may not be suspended. However, an offender may apply for an alternative program (i.e., weekends, work release, day reporting), or electronic home monitoring. W. Va. Code §§62-11A-1a; 62-11B-1, *et seq.*

Community Service:

In lieu of a fine or incarceration sanction (except mandatory incarceration via statute), a court may impose community service with government entities, or charitable or other nonprofit organizations that have been approved by the court. W. Va. Code §62-11A-1a(a), (c)(1).

Restitution:

Victims' Compensation Fund. W. Va. Code §14-2A-1, *et seq.* Direct compensation by the defendant to the victim via court order is also possible. W. Va. Code §14-2A-3(b)(1).

Child Endangerment:

A person who commits DUI with a passenger under age 16 shall be punished by a sentence of not less than **2 days** or more than **12 months** and not less than **\$200** or more than **\$1,000**. W. Va. Code §17C-5-2(k).

Other:

Assessments: A fee of 20 percent of the fine imposed is assessed against each DUI offender. Additionally, sum of \$10 and \$8 are to be paid as costs in the case in addition to any other costs. Felony offenders are also assessed a fee of \$75. These assessments are deposited into the Crime Victims Compensation Fund. W. Va. Code §§14-2A-4; 62-5-10.

Deferred Proceedings: Any person who has not been

previously convicted of any DUI/D-related offense may request a deferral upon pleading guilty. Such person must successfully complete the Motor Vehicle Alcohol Test and Lock Program for at least 165 days after serving the 15-day license suspension. After a period of not less than one year after successful completion, such person may apply for expungement of records (except if the charge was a felony). W. Va. Code §17C-5-2b.

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

Yes.⁶⁷¹ After the period of mandatory revocation has elapsed and the driver has successfully completed an approved program of either alcohol/drug education or alcohol/drug treatment, a defendant's license may be reissued with or without conditions. W. Va. Code §17C-5A-3.

Substance Abuse Treatment:

Yes

Vehicle Impoundment/Confiscation:

No

Authorized by Specific Statutory Authority:

N/A

Terms Upon Which Vehicle Will Be Released:

N/A

Other Miscellaneous Sanctions:

N/A

Homicide by Vehicle:

State Has Such a Law:

DUI Death – Reckless Disregard⁶⁷² (felony).

DUI Death (felony). W. Va. Code §17C-5-2(b).

Imprisonment/Fine:

Felony – Not less than **3 years** or more than **15 years** and not less than **\$1,000** or more than **\$3,000**. W. Va. Code §17C-5-2(b).

Mandatory Minimum Term/Fine:

The base terms are mandatory. W. Va. Code §17C-5-2(r).

Other:

DUI-D Offenses and Commercial Motor Vehicles (CMV):

Persons are disqualified from operating a CMV for not less than 1 mandatory year (not less than 3 years if transporting hazardous materials) if, while driving a CMV, they are under the influence of either alcohol or a controlled substance; or refuse to submit to a chemical test for an alcohol concentration.

For a subsequent violation or a combination of two or more violations of any of the above-listed items, the disqualification is for life (10 years mand.). In addition, a CMV operator who refuses to take a PBT or has any measurable (or detectable) amount of alcohol in the system must be placed out-of-service for 24 hours. W. Va. Code

⁶⁷¹ A person who has refused to submit to a chemical test must successfully complete an education or treatment program before the license can be reinstated. W. Va. Code §17C-5A-3.

⁶⁷² Any person whose driving under the influence is the proximate cause of death within 1 year, and commits the act in reckless disregard of the safety of others, commits a felony. It must be shown that the alcohol consumption contributed to the cause of death. W. Va. Code §17C-5-2(a). The misdemeanor does not contain the added element of reckless disregard.

§§17E-1-3; 17E-1-13; 17E-1-14; 17E-1-15; 17E-1-25.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

First conviction (misdemeanor) – Not less than **30 days** or more than **6 months** and not less than **\$100** or more than **\$500**;

Second conviction (misdemeanor) – Not less than **6 months** or more than **1 year** and not less than **\$1,000** or more than **\$3,000**;

Third or subsequent conviction (felony) – Not less than **1 year** or more than **3 years** and not less than **\$3,000** or more than **\$5,000**. W. Va. Code § 17B-4-3(b).

Mandatory Minimum Fine/Imprisonment Term:

The base terms are mandatory. However, home detention may be ordered. W. Va. Code §17B-4-3(e).

Other:

N/A

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

No⁶⁷³

Other State Laws Related to Drug Use:

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

Yes. W. Va. Code §17C-5B-1.

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes

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

No

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

Yes – Adult pedestrians.

Drug Chemical Tests on Persons Involved in Traffic Crashes:

No

Marijuana – Possession and Use Laws:

Illegal.⁶⁷⁴

Criminal Penalties

Possession (any amount) (misdemeanor) - not less than **90 days** nor more than **6 months** and not more than **\$1,000**.

Conditional discharge for first offense of possession of less than 15 grams of marijuana: For a first drug related possession charge, the court may defer the proceedings and

⁶⁷³ However, a habitual user of narcotic drugs or amphetamine and who drives is guilty of a misdemeanor, punishable by not less than 1 day or more than 6 months (24 hours mand) and not less than \$100 or more than \$500. W. Va. Code §17C-5-2(f).

⁶⁷⁴ “Marijuana” means all parts of the plant “Cannabis sativa L.”, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, immediate derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, immediate derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. W. Va. Code §60A-1-101(q). Marijuana is a Schedule I drug. W. Va. Code §60A-2-204.

place the offender on probation with drug testing and supervision. If an offender successfully completes his court order probation, the offense will be discharged and not considered a criminal conviction. W. Va. Code §§60A-4-401; 60A-4-407.

Intoxicant Exclusion Law (UPPL):

Yes. W. Va. Code §33-15-5(j).

STATE

General Reference:

WISCONSIN

Wisconsin Statutes Annotated (W.S.A.)

Type of DUI-D Law:**Under the Influence/Zero Tolerance**Basis for a DUI-D Charge:

W.S.A. §346.63(1)(a), (am).

Standard DUI-D Offense:

Drive or operate a motor vehicle⁶⁷⁵ when:

I. Under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog⁶⁷⁶;

II. Under the influence of any drug to a degree which renders him or her incapable of safely driving, or

III. Under the combined influence of an intoxicant and any other drug which renders him/her incapable of safely driving.

W.S.A. §346.63(1)(a).

Illegal Per Se Law:

Yes. A detectable amount of a restricted controlled substance in his or her blood. W.S.A. §346.63(1)(am).

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such Law (Yes/No):

Yes. W.S.A. §343.303.

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

Yes

Implied Consent Law:

Yes.⁶⁷⁷ W.S.A. §343.305.

Arrest Required (Yes/No):

Yes. W.S.A. §343.305(3). Except in fatal crashes. W.S.A. §343.305(3)(ar).

⁶⁷⁵ “Motor vehicle” means a vehicle, including a combination of 2 or more vehicles or an articulated vehicle, which is self-propelled, except a vehicle operated exclusively on a rail. “Motor vehicle” includes, without limitation, a commercial motor vehicle or a vehicle which is propelled by electric power obtained from overhead trolley wires but not operated on rails. A snowmobile, an all-terrain vehicle, a utility terrain vehicle, and an electric personal assistive mobility device shall be considered motor vehicles only for purposes made specifically applicable by statute. W.S.A. §340.01.

⁶⁷⁶ “Controlled substance” means a drug, substance or immediate precursor included in schedules I to V of subch. II. “Controlled substance analog” means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance included in schedule I or II and: 1. Which has a stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II; or 2. With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II. (11)(a) “Drug” means any of the following: 1. A substance recognized as a drug in the official U.S. Pharmacopoeia, official Homeopathic Pharmacopoeia of the U.S. or official National Formulary or any supplement to any of them; 2. A substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals; 3. A substance, other than food, intended to affect the structure or any function of the body of humans or animals; 4. A substance intended for use as a component of any article specified in subd. 1., 2. or 3. W.S.A. §961.01(4), (4m), (11)(a).

⁶⁷⁷ Under W.S.A. §343.305 a law enforcement officer may obtain a sample under “any other lawful means.” However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

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

Yes. W.S.A. §343.305(2).

Refusal to Submit to Chemical Test
Admitted into Evidence:

Yes – Criminal cases. *State v. Albright*, 298 N.W.2d 196
(Wis. App. 1980).

Other Information:

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

Blood:

Yes. W.S.A. §343.305(2).

Urine:

Yes. W.S.A. §343.305(2).

Other:

None.

Individuals Authorized to Perform Chemical
Testing (Blood):

Blood Drawn Pursuant to Implied Consent –
State Has Limited Who May Perform:

Yes. Blood may be withdrawn only by a **physician, registered nurse, medical technologist, physician assistant, phlebotomist, or other medical professional** who is authorized to draw blood, or person acting under the direction of a physician. W.S.A. §343.305(b).

Entity Establishing Testing Protocols:

Yes. Laboratory of Hygiene. W.S.A. §343.305(6).

Blood Drawn Pursuant to Search Warrant –
State Has Limited Who May Perform:

No

Other:

Independent Testing: The person who submits to the test is permitted, upon request, the alternative test provided by the agency or, at his or her own expense, reasonable opportunity to have any qualified person of his or her own choosing administer a chemical test. W.S.A. §343.305(5).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No):

No

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

No. However, the court must approve dismissals of or amendments to DUI charges. Additionally, a prosecutor may not place a person charged with DUI in a deferred disposition program. W.S.A. §967.055(2), (3).

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

Yes. In felony cases, the court may order a pre-sentence investigation. W.S.A. §972.15.

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription:

Yes, in certain circumstances.⁶⁷⁸

⁶⁷⁸ The defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol. W.S.A. §346.63(d).

Therapeutic Concentration: **Yes.**⁶⁷⁹
 Involuntary Intoxication: **No**
 Other:

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test - Criminal Sanction (Fine/Jail): **None**
 Preliminary Breath Test – Other: **N/A**
 Refusal to Take Implied Consent Chemical Test – Criminal Sanction (Fine/Jail): **None**
 Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine: **First conviction** – Not less than **\$150** or more than **\$300**;
Second conviction (within 10 years) – Not less than **5 days** or more than **6 months** and not less than **\$350** or more than **\$1,100**;
Third conviction – Not less than **45 days** or more than **1 year** and not less than **\$600** or more than **\$2,000**;
Fourth conviction – Not less than **60 days** or more than **1 year** and not less than **\$600** or more than **\$2,000**;
Fourth conviction (within 5 years) (Class H felony) – Not less than **6 months** or more than **6 years** and not less than **\$600** or more than **\$10,000**.
Fifth and sixth convictions (Class H felony) – Not less than **6 months** or more than **6 years** and not less than **\$600** or more than **\$10,000**;
Seventh through ninth convictions (Class G felony) – Not less than **3 years** or more than **10 years** and/or not more than **\$25,000**;
Tenth or subsequent conviction (Class F felony) – Not less than **4 years** or more than **12 years, 6 months** and/or not more than **\$25,000**.
DUI – Great bodily harm (Class F felony): Not more than **12 years, 6 months** and/or not more than **\$25,000**.
DUI – Bodily harm – Not less than **\$300** or more than **\$2,000** and may be imprisoned for not less than **30 days** or more than **1 year**. If the offender has a prior conviction, then it is a Class H felony and punishable up to **6 years** or a fine not exceeding **\$10,000**. W.S.A. §346.65(3m), (3p). W.S.A.

⁶⁷⁹ It appears based upon the language of the statute that if a therapeutic concentration would not render a person “under the influence,” or affect the person’s ability to safely operate a vehicle, arguing that the level of the substance detected was merely therapeutic would be a valid defense to an under the influence charge, but not applicable to a per se offense. W.S.A. §346.63(1)(a), (am).

Mandatory Minimum Term/Fine:	<p>§§346.63(1), (2); 346.65(2), (3), (3m), (7); 939.50; 940.25. <u>First conviction</u>– None, or 5 days if minor < 16 present; <u>Second conviction</u> – 5 days (48 consecutive hours mand) or not less than 30 days community service/\$350; <u>Third conviction</u> – 45 days (48 consecutive hours mand)/\$600; <u>Fourth conviction</u> – 60 days (48 consecutive hours mand); <u>Fourth conviction</u> (within 5 years) – 6 months and \$600; <u>Fifth and sixth convictions</u> (Class H felony) – 6 months (48 consecutive hours mand)/\$600; <u>Seventh through ninth convictions</u> (Class G felony) – 3 years; <u>Tenth or subsequent conviction</u> (Class F felony) – 4 years. DUI – Great bodily harm (Class F felony) – None</p>
Community Service:	DUI– Bodily harm – \$300. W.S.A. §346.65(3m).
Restitution:	Yes. W.S.A. § 346.65(2g).
Child Endangerment:	Yes. Direct compensation by the defendant to a victim for some types of pecuniary losses. W.S.A. §346.65(2r)(a). In addition, the State has a victims' compensation fund. W.S.A. §§949.001, <i>et seq.</i> ; 973.20.
Other:	<p>DUI with Minor < 16 (felony) – A person who drives under the influence with a minor under age 16 in the vehicle commits a felony. The applicable minimum and maximum fines, forfeitures and imprisonment are doubled. W.S.A. §346.65(2)(f), (3).</p> <p>Surcharges: Persons convicted must pay a driver improvement surcharge of \$435, in addition to any other fine, forfeiture or assessment that may be imposed. W.S.A. §346.655(1).</p> <p>In addition, under W.S.A. §814.60, a defendant must pay \$163 to the clerk of court for all necessary recording. Also under W.S.A. §973.045, a defendant must pay a crime victim and witness assistance surcharge of \$67 for a misdemeanor conviction and \$92 for a felony conviction.</p> <p>Traffic Safety School: A defendant may be required to attend a "traffic safety school". W.S.A. §345.60(3).</p> <p>Visitation Program: Offenders who have been convicted of an injury-related DUI/D offense under W.S.A. §346.63(2) may be required to visit places that are concerned with the care and treatment of persons who have a substance abuse problem or who are being treated for DUI-related injuries. This requirement may be in lieu of all or part of a forfeiture or in addition to any other sanction. W.S.A. §346.65(2i).</p> <p>Costs: An offender may be required to pay the costs associated with arrest and trial. Such “costs” may also include payments to non-profit crime prevention and law enforcement organizations. W.S.A. §973.06(1).</p>

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

Yes. Persons convicted of an injury-related offense (without great bodily harm) or who refuse to submit to a chemical test under the implied consent law must submit to an alcohol assessment and comply with a driver safety plan. This may include the effect that offenses have had on either victim or a victim's family. There is a license suspension if a person does not comply with an alcohol/drug assessment, education or treatment program. W.S.A. §§343.30(1q)(c), (d); 343.305(10)(d).

Substance Abuse Treatment:

Yes

Vehicle Impoundment/Confiscation:

None

Authorized by Specific Statutory Authority:

N/A

Terms Upon Which Vehicle Will Be Released:

N/A

Other Miscellaneous Sanctions:

For any revocation period, the court shall extend the revocation by the number of days to which the court sentences the person to imprisonment or jail for an offense related to refusal. W.S.A. §343.30(1r).

Homicide by Vehicle:

State Has Such a Law:

Homicide by Intoxicated Use of Vehicle. W.S.A. §940.09.

Imprisonment/Fine:

First conviction: **Class D felony** – Not more than **25 years** and/or not more than **\$100,000**;

Subsequent conviction: **Class C felony** – Not more than **40 years** and/or not more than **\$100,000**. W.S.A. §939.50.

Mandatory Minimum Term/Fine:

None

Other:

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is disqualified from operating a CMV for 1 mand year (3 years if transporting hazardous materials) if, while driving a CMV, that person: (1) is under the influence of an intoxicant; (2) is under the influence of any drug which renders the person incapable of driving safely; or (3) refuses to submit to a chemical test for drug concentrations.

For a subsequent violation or a combination of two or more violations of any of the above, the disqualification is for life (10 years mand). W.S.A. §§343.305(2), (3)(a), (4), (7)(b); 343.31; 343.315; 346.63(5)(a), (6)(a), (7)(a); 346.65(2j), (2u)(a), (3m); 885.235(1); 940.25.

Driving While License Suspended for DUI-D Offense:

Criminal - Fine/Imprisonment:

Not more than **\$2,500** and/or not more than **1 year**. W.S.A. §343.44(2)(ar)(2).

Mandatory Minimum Fine/Imprisonment Term:
Other:

None.

Impoundment: An offender's vehicle may be impounded. The length of such impoundment is determined by the court. W.S.A. §343.44(4).

If the underlying offense is a violation of the habitual offender law, the penalties may be enhanced by imprisonment of up to 180 days and an additional fine not to exceed \$5,000. W.S.A. §§343.44(2)(c); 351.08.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes. W.S.A. §351.01, *et seq.*

Grounds for Being Declared Habitual Offender:

Four or more serious offenses⁶⁸⁰ or 12 or more minor moving violations within 5 years. W.S.A. §351.02.

Term of License Revocations While on Habitual Offender Status:

5 years. W.S.A. §351.025(1). A hardship license may be issued after 2 years. W.S.A. §351.07.

Type of Criminal Offense if Convicted of Driving While on Habitual Offender Status: Imprisonment (Term):

Misdemeanor.

Not more than **180 days** and not more than **\$5,000.** W.S.A. §351.08.

Mandatory Minimum Term/Fine:

The terms are mandatory.

Other State Laws Related to Drug Use:

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

Yes. W.S.A. §346.71(2).

Drug Chemical Test Given to Deceased Driver Killed in Crash:

Yes

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

No

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash:

Yes (14 or older).

Drug Chemical Tests on Persons Involved in Traffic Crashes:

No. However, an officer may request testing of such person. W.S.A. §343.305(3)(ar).

Marijuana – Possession and Use Laws:

Illegal.⁶⁸¹

Criminal Penalties:

First offense possession - Not more than **6 months** and/or not more than **\$1,000**;

Second offense possession (class I felony) - not more than

⁶⁸⁰ These include homicide involving the use of a vehicle, reckless driving, DWI, and refusal. W.S.A. §351.02(1)(a).

⁶⁸¹ "Marijuana" means all parts of the plants of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, including tetrahydrocannabinols. "Marijuana" does include the mature stalks if mixed with other parts of the plant, but does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination. W.S.A. §961.01(14).

\$10,000 and/or imprisonment for not more than **3.5 years**.

The court shall order 100 hours of community service, in addition to the standard penalty for possession within 1,000 ft. of a school, youth center, public park, pool, housing project, jail or drug treatment facility. W.S.A. §§ 961.41(3g); 961.495.

Intoxicant Exclusion Law (UPPL):

Yes. *See e.g., Dipasquale v. American Family Ins. Co.*, 483 N.W.2d 231 (Wis.App. 1992).

STATE

General Reference:

WYOMING

Wyoming Statutes Annotated (W.S. 1977)

Type of DUI-D Law:**Under the Influence**Basis for a DUI-D Charge:

W.S. 1977 §31-5-233(b)(iii)(B), (C).

Standard DUI-D Offense:

Drive or have actual physical control of a vehicle⁶⁸² while under the influence of a controlled substance or a combination of alcohol and any controlled substance.⁶⁸³ W.S. 1977 §31-5-233(b)(iii)(B), (C).

Illegal Per Se Law:

No

Presumption Based on Drugs - State Has (Yes/No):

No

Other:

Chemical Testing for Drug Concentration:

Preliminary Breath Test Law – State Has Such Law (Yes/No):

No

Preliminary Breath Test Law – Applies to Drugs (Yes/No):

N/A

Implied Consent Law:

Yes. W.S. 1977 §§31-6-102; 31-6-108.

Arrest Required (Yes/No):

Yes. W.S. 1977 §§31-6-102(a)(i); 31-6-108(a).

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

Yes. W.S. 1977 §31-6-102(a)(i).

Refusal to Submit to Chemical Test Admitted into Evidence:

No

Other Information:

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

Blood:

Yes. W.S. 1977 §31-6-102.

Urine:

Yes. W.S. 1977 §31-6-102.

Other:

Note⁶⁸⁴Individuals Authorized to Perform Chemical Testing (Blood):Blood Drawn Pursuant to Implied Consent – **Yes.** When a person undergoes a blood test required by a

⁶⁸² “Vehicle” means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks. W.S. 1977 §31-5-102(lviii).

⁶⁸³ “Controlled substance” includes any drug, glue or other toxic vapor intentionally inhaled or sniffed which results in impairment of an individual’s ability to drive safely, or psychoactive substance, or any combination of these substances, capable of impairing a person’s physical or mental faculties. W.S. 1977 §§31-5-233(a)(ii); 31-6-101(a)(ii).

⁶⁸⁴ Technically, W.S. 1977 §§31-6-102 provides an officer an ability to take blood without consent of the arrested individual. However, this legislative exception to the search warrant requirement should be relied upon cautiously in light of the United States Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013) (holding that an evidentiary blood draw constitutes a search which either requires a warrant or an exception to the warrant requirement, and the natural dissipation of alcohol in the bloodstream does not create a *per se* exigent circumstance).

State Has Limited Who May Perform: peace officer under this act, only a **physician, registered nurse, qualified clinical or laboratory technician or other person who routinely does venipunctures at the direction of a physician** may withdraw blood for the purpose of determining the alcohol concentration or controlled substance content therein. This limitation does not apply to the taking of other specimens. W.S. 1977 §31-6-105(b).

Entity Establishing Testing Protocols: **Yes. The Department of Health.** W.S. 1977 §31-6-105(a).
 Blood Drawn Pursuant to Search Warrant –
 State Has Limited Who May Perform: **No**

Other: **Independent Testing:** The person tested may, at his own expense, have any qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a peace officer. The failure or inability to obtain an additional test by a person does not preclude the admissibility in evidence of the test or tests taken at the direction of a peace officer. W.S. 1977 §31-6-105(d).

Adjudication of DUI-D Charges:

Mandatory Adjudication Law (Yes/No):

No

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

Yes. A DUI-D charge may not be reduced or dismissed, unless the prosecutor in open court moves or files a statement containing supporting facts to indicate that there is insufficient evidence to support the original charge. W.S. 1977 §31-5-233(j).

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

Yes. No person charged with a felony and no person charged with a misdemeanor (unless the court directs otherwise) shall be placed on probation or released under suspension of sentence until a pre-sentence investigation report is completed, presented to and considered by the court. W.S. 1977 §7-13-303.

Affirmative Defenses to DUI-D Charge:

Legal Entitlement Valid/Prescription:

No⁶⁸⁵

Therapeutic Concentration:

No

Involuntary Intoxication:

No

Other:

Sanctions for Refusal to Submit to a Chemical Test:

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

N/A

⁶⁸⁵ The fact that any person charged with a violation of subsection (b) of this section is or has been entitled to use the controlled substance under the laws of this State shall not constitute a defense against any charge under subsection (b) of this section. W.S. 1977 §31-5-233(d).

Preliminary Breath Test – Other:
 Refusal to Take Implied Consent Chemical
 Test – Criminal Sanction (Fine/Jail): **None**
 Implied Consent Chemical Test - Other: **N/A**

Criminal Sanctions Following a DUI-D
 Conviction:

Imprisonment/Fine: First conviction (misdemeanor)– Not more than **6 months** and/or not more than **\$750**;
Second conviction (within 10 years) (misdemeanor) – Not less than **7 days** or more than **6 months** and may be fined not less than **\$200** or more than **\$750**;
Third conviction (within 10 years) (misdemeanor) – Not less than **30 days** or more than **6 months** and may be fined not less than **\$750** or more than **\$3,000**;
Fourth or subsequent conviction (within 10 years) (felony) – Not more than **7 years** and/or not more than **\$10,000**. W.S. 1977 §31-5-233(e).
DUI– Serious Bodily Injury:
First conviction (felony) – Not more than **10 years** and/or not less than **\$2,000** or more than **\$5,000**;
Subsequent conviction (felony) – Not more than **20 years**. W.S. 1977 §31-5-233(h).

Mandatory Minimum Term/Fine: First conviction – **None**;
Second conviction (within 5 years) – **7 days**;
Third or subsequent conviction (within 5 years) – **30 days** or **15 days** if the offender completes an impatient treatment program. W.S. 1977 §31-5-233(e).

Community Service: Community service may be required as a condition of probation. W.S. 1977 §7-13-304.

Restitution: The defendant shall be ordered to pay restitution to a victim. W.S. 1977 §7-9-102. The State has a Victims' Compensation Act. W.S. 1977 §1-40-101, *et seq.*

Child Endangerment: Any person age 18 or older who commits a violation with a child passenger shall be punished as follows:
First conviction (misdemeanor) – Not more than **1 year** and/or not more than **\$750**;
Subsequent conviction (felony) – Not more than **5 years**. W.S. 1977 §31-5-233(m).

Other: **Cost of Incarceration:** An offender sentenced to confinement may be required to pay the local government for the cost of their incarceration. This requirement does not apply if the offender does not have the ability to pay for such cost. W.S. 1977 §7-13-109.
Surcharge: A surcharge of not less than \$150 or more than \$350 (first offense) or not less than \$200 or more than \$400 (subsequent offense) is assessed against convicted offenders.

This surcharge is used to help finance the Victims' Compensation Fund. W.S. 1977 §1-40-119(a).

Administrative Sanctions – Post-Conviction:

Substance Abuse Education:

Yes.

I. The court may suspend part or all of the discretionary portion of an imprisonment sentence under if the defendant agrees to pursue and completes an alcohol education or treatment program as prescribed by the court.

II. The mandatory incarceration sanction for a third or subsequent DUI offender may be reduced from 30 days to 15 days if the defendant completes an impatient treatment program.

III. In order to obtain hardship driving privileges, the defendant must agree to pursue and complete an alcohol education and treatment program prescribed by the driver licensing agency. W.S. 1977 §§31-5-233; 31-7-105(f)(iii).

Substance Abuse Treatment:

Yes

Vehicle Impoundment/Confiscation:

No

Authorized by Specific Statutory Authority:

No

Terms Upon Which Vehicle Will Be Released:

N/A

Other Miscellaneous Sanctions:

No

Homicide by Vehicle:

State Has Such a Law:

Aggravated homicide by vehicle (felony). W.S. 1977 §6-2-106.

Imprisonment/Fine:

Not more than **20 years.** W.S. 1977 §6-2-106(b).

Mandatory Minimum Term/Fine:

None.

Other:

DUI-D Offenses and Commercial Motor Vehicles (CMV):

A person is disqualified from operating a CMV for not less than 1 mandatory year (not less than 3 years if transporting hazardous materials) if, while driving a CMV, that person is under the influence of alcohol or a controlled substance or refuses to submit to a chemical test for alcohol concentration. The disqualification provision applies only to a refusal to submit to a chemical test for an alcohol concentration; however, the CMV implied consent provision applies to refusals to submit to chemical tests for both an alcohol concentration and the presence of controlled drugs.

For a subsequent violation or a combination of two or more violations of any of the above- listed items, the disqualification is for life (10 years mand). W.S. 1977 §§31-7-136; 31-7-305; 31-7-307.

Driving While License Suspended for DUI-

D Offense:

Criminal - Fine/Imprisonment: **Misdemeanor.** Not less than **7 days** nor more than **6 months** and a fine not less than **\$200** nor more than **\$750**. W.S. 1977 §31-7-134(c).

Mandatory Minimum Fine/Imprisonment Term: **7 days/ \$200.** W.S. 1977 §31-7-134(c).

Other:

Habitual Traffic Offender Law:

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

Other State Laws Related to Drug Use:

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

Drug Chemical Test Given to Deceased Driver Killed in Crash: **N/A**

Drug Chemical Test Given to Deceased Vehicle Passengers Killed in Crash: **N/A**

Drug Chemical Test Given to Deceased Pedestrian Killed in Crash: **N/A**

Drug Chemical Tests on Persons Involved in Traffic Crashes: **No**

Marijuana – Possession and Use Laws:

Illegal. ⁶⁸⁶

Criminal Penalties:

Use or under the influences marijuana: misdemeanor, not more than **6 months** and not more than **\$750**;

Possession ≤ 3 oz.: misdemeanor, not more than **12 months** and not more than **\$1,000**, or both;

Possession > 3 oz.: felony, not more than **5 years** and not more than **\$10,000**, or both. W.S. 1977 §§35-7-1031; 35-7-1039.

Intoxicant Exclusion Law (UPPL): **Yes.** W.S. 1977 §26-18-126.

⁶⁸⁶ “Marihuana” means all parts of the plant of the genus Cannabis, whether growing or not; the seed thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. W.S. 1977 §35-7-1002(xiv).

General Reference:	FEDERAL LAND United States Code (U.S.C.A.) ⁶⁸⁷ Code of Federal Regulations (CFR)
<u>Type of DUI-D Law:</u>	Under the Influence
<u>Basis for a DUI-D Charge:</u>	36 CFR §4.23(a)(1).
Standard DUI-D Offense:	Operate or be in actual physical control of a motor vehicle while under the influence of a drug, or drugs, or any combination of alcohol or drugs. 36 CFR §4.23(a)(1).
Illegal Per Se Law:	No
Presumption Based on Drugs - State Has (Yes/No):	No
Other:	
<u>Chemical Testing for Drug Concentration:</u>	
Preliminary Breath Test Law – State Has Such Law (Yes/No):	No
Preliminary Breath Test Law – Applies to Drugs (Yes/No):	N/A
Implied Consent Law:	Yes. 36 CFR §4.23(c).
Arrest Required (Yes/No):	No
Implied Consent Law Applies to Drugs (Yes/No):	Yes. 36 CFR §4.23(c).
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes. 36 CFR §4.23(c)(2).
Other Information:	
<u>Non-Breath Chemical Tests for Drug Concentration Authorized Under the Implied Consent Law:</u>	
Blood:	Yes. 36 CFR §4.23(c).
Urine:	Yes
Other:	Saliva
<u>Individuals Authorized to Perform Chemical Testing (Blood):</u>	
Blood Drawn Pursuant to Implied Consent – State Has Limited Who May Perform:	No
Entity Establishing Testing Protocols:	No
Blood Drawn Pursuant to Search Warrant – State Has Limited Who May Perform:	No
Other:	

⁶⁸⁷ Title 36 of the Code of Federal Regulations (CFR) addresses national parks, forests and property, including all roadways and parking areas within a park area that are open to public traffic. 36 CFR §4.1. Section 13 of Title 18 of the U.S. Code Annotated (18 U.S.C.A. §13) addresses areas within Federal jurisdiction, but allows for the use State laws if Federal law does not exist.

Criminal Sanctions Following a DUI-D Conviction:

Imprisonment/Fine:

A fine and/or not more than **6 months**. 36 CFR §1.3(a).

A fine and/or not more than **3 months**.⁶⁸⁸ 36 CFR §1.3(b).

Outside of national parks, forests and property, anyone convicted of driving under the influence shall be sentenced to an additional term of imprisonment of not more than **1 year** and an additional fine. 18 U.S.C.A. §13(b)(2).

Serious bodily injury of a minor: An additional term of imprisonment of not more than **5 years** and an additional fine.

Death of a minor: An additional term of imprisonment of not more than **10 years** and an additional fine. 18 U.S.C.A. §13(b)(2)(A).

DUI-D Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):

No driver shall be on duty and possess, be under the influence of, or use any of the following drugs or other substances: (1) Any 21 CFR §1308.11 Schedule I substance; (2) An amphetamine or any formulation thereof (including, but not limited, to “pep pills,” and “bennies”); (3) A narcotic drug or any derivative thereof; or (4) Any other substance, to a degree which renders the driver incapable of safely operating a motor vehicle. 49 CFR §392.4.

Marijuana – Possession and Use Laws:

Illegal.⁶⁸⁹

Criminal Penalties:

First offense possession: not more than **1 year** in jail and a minimum fine of **\$1,000** for a first conviction;

Second offense possession: punishable by **15-day** mandatory and not more than **2 years** in prison and not more than **\$2,500**;

Subsequent convictions: **90-day** mandatory minimum sentence and not more than **3 years** in prison and not more than **\$5,000**. 21 U.S.C.A. §844.

⁶⁸⁸ In a national military park, battlefield site, national monument or miscellaneous memorial, listed in a note in 5 U.S.C.A. §901.

⁶⁸⁹ The term “marihuana” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. 21 U.S.C.A. §802(16).

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