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Minnesota's DWI Laws and Practices

This publication details the laws governing DWI in Minnesota. It provides definitions of the laws, descriptions of the associated penalties and sanctions, and describes other practices.

This publication was prepared by **Jim Cleary**, legislative analyst and research methodologist in the House Research Department, and **Emily Shapiro**, former legislative analyst in the House Research Department and legal counsel to the House Crime Prevention Committee.

Questions about DWI law and/or practice may be addressed to **Jim Cleary** (651-296-5053) or **Joe Cox** (651-296-5044).

Julie Frantum provided secretarial support.

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Introduction

This guidebook describes the major aspects of current DWI law and practice in Minnesota. It is intended primarily for legislators and other participants in the policymaking process; but hopefully, it also will be of use to others working in the area of DWI control.

This guidebook should be regarded as a work in progress, which will be updated as Minnesota's DWI laws and practice change. In particular, the January 2001 edition contains significant changes from the previous version, because it incorporates new statutory references to Chapter 169A, the recodified the DWI law enacted by the Minnesota Legislature in 2000, effective January 1, 2001.

Unless otherwise noted, all citations are to **Minnesota Statutes 2000**.

Defining the DWI Crime

Prohibited Behaviors under the DWI Law

Under Minnesota's DWI law—Minnesota Statutes, section 169A.20—it is a crime to drive, operate, or be in physical control[1] of any motor vehicle[2] within this state,[3] or upon the ice of any boundary water of this state under any of the following conditions:

- when the person's alcohol concentration is 0.10 percent (one-tenth of 1 percent) or more—i.e., the "per se" limit[4]—or when it is 0.10 percent or more within two hours of the time of driving, operating, or being in physical control of the motor vehicle;[5]

- when the person's alcohol concentration is 0.04 percent or more at the time (or within two hours of the time) of driving, operating, or being in physical control of a commercial

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[1] Courts have generally interpreted "physical control" to include the act of sitting in the driver's seat with the key in the ignition.

[2] For purposes of DWI law (Minn. Stat. § 169A.20) and implied consent law (Minn. Stat. §§ 169A.50 to 169A.53), the term "motor vehicle" includes any "motorboat in operation," as well as any "off-road recreational vehicle"—terms which are defined in Minnesota Statutes, section 169A.03.

[3] Minnesota's DWI laws make no distinction between public roads and property, and private property; thus, commission of any of the prohibited behaviors anywhere in the state constitutes a violation.

[4] The Latin term "per se" translates as "in or by itself." Currently, 48 states, plus the District of Columbia, have per se DWI laws. Since 1982, 18 states with per se laws and the District of Columbia have lowered their legal limit for alcohol concentration from 0.10 percent to 0.08 percent, as advocated by the National Highway Traffic Safety Administration (NHTSA) and Mothers Against Drunk Driving (MADD). Massachusetts (also at 0.08 percent) and South Carolina (at 0.10 percent) are the only two states that continue to have a "presumptive" type of DWI law, in which impairment is presumed to exist when a driver's alcohol concentration exceeds a prescribed level, but which is rebuttable. In contrast, under per se laws, driving impairment need not be proven to obtain conviction.

[5] A lower per se limit—0.04 percent alcohol concentration—also applies to flying airplanes (Minn. Stat. § 360.0752). A violation of this statute constitutes a crime and triggers disqualification of the respective operating privileges. It also is counted as a prior DWI offense for purposes of enhancing penalties for any subsequent regular DWI violations. However, a violation of this law alone does not trigger certain other administrative sanctions normally linked to a violation of DWI law (Minn. Stat. § 169A.20) including revocation of the person's (regular) driver's license, and for certain repeat offenses, license plate impoundment (Minn. Stat. § 169A.60), and vehicle forfeiture (Minn. Stat. § 169A.63). (See the chapter titled, "Flying Airplanes.")

A zero-tolerance standard for alcohol concentration is used to trigger certain licensing sanctions for school bus driving (Minn. Stat. § 169A.31) and for all driving by youth under the age of 21 (Minn. Stat. § 169A.33); however, as with violations of the flying DWI law, a violation of the zero-tolerance standard for school bus driving or for youth under age 21 does not itself constitute a regular DWI violation under Minnesota Statutes, section 169A.20. These topics are discussed in separate sections of this guidebook. (See the chapters titled, "School Bus Drivers" and "Special Laws for Youth.")

motor vehicle;

- when the person is under the influence[6] of alcohol, a controlled substance,[7] or a combination of these elements;

- when the person is knowingly under the influence of a hazardous substance 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;[8] or

- when the person's body contains any amount—a "zero tolerance" standard—of a controlled substance listed in schedule I or II, other than marijuana. For marijuana, driving impairment must be proved; mere presence in the body while driving is not in itself a crime.

Chemical Test Refusal—Also a DWI Crime

It is also a crime under DWI law for a driver to refuse to submit to a chemical test of the person's breath, urine, or blood as required under the implied consent law (Minn. Stat. §§ 169A.50 to 169A.53).

The test-refusal crime (Minn. Stat. § 169A.20, subd. 2) carries the same criminal penalties as test failure (Minn. Stat. § 169A.20, subd. 1); however, the driver's license sanctions are generally longer for test refusal. Moreover, for purposes of enhancing penalties and sanctions for a subsequent DWI offense, the test refusal crime is counted equally to a test failure. Thus, in practice, test refusal (i.e., a means of withholding evidence regarding one's alcohol concentration) rarely enables a DWI suspect to escape conviction.

The Level of the Offense

Impaired driving generally constitutes a misdemeanor or a gross misdemeanor. However, it constitutes a felony when the impaired driver causes an accident that kills or seriously injures another person. (The maximum fines and periods of incarceration for DWI crimes are discussed

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[6] The term "under the influence" refers to a behavioral standard involving judgment about whether a person's driving behavior is sufficiently "impaired." Methods of determining such impairment include administration of the Standardized Field Sobriety Test (SFST) by an officer at the roadside, as well as administration of a systematic drug recognition protocol by a certified drug recognition expert (DRE). Though relatively rare, it is possible under Minnesota Statutes, section 169A.20, for a person to be convicted of driving "while under the influence" of alcohol without having an alcohol concentration in excess of the 0.10 percent per se limit.

[7] Minnesota Statutes, section 152.02, lists five categories or schedules of controlled substances—schedules I and II contain the most serious of those substances. Under current DWI laws, it is generally not illegal to drive while under the influence of a "noncontrolled" substance, such as a prescription drug.

[8] The term "hazardous substance" is defined in Minnesota Statutes, section 169A.03, subdivision 9, and includes, for example, certain glue fumes.

in the "Criminal Penalties" chapter of this guidebook.)

DWI Itself

DWI offenses are categorized in three degrees, with third-degree DWI being the least severe and first-degree DWI being the most severe.

- **Third-degree DWI** includes impaired driving under any of the circumstances described in the DWI law when no aggravating factors[9] are present. This crime is punishable as a misdemeanor.

- **Second-degree DWI** includes impaired driving under any of the circumstances described in the DWI law when one aggravating factor is present. This crime is punishable as a gross misdemeanor and also carries more severe administrative sanctions than the third-degree crime.

- **First-degree DWI** includes impaired driving under any of the circumstances described in the DWI law when two or more aggravating factors are present. This crime also is punishable as a gross misdemeanor and carries more severe minimum criminal penalties and administrative sanctions than either the second- or third-degree crime.

Criminal Vehicular Operation (CVO)

Criminal vehicular operation (CVO) consists of causing the death of, or injury to, another person or an unborn child while driving a motor vehicle:

- in a grossly negligent manner;

- in a negligent manner while:

    a) under the influence of alcohol or a controlled substance;

    b) knowingly under the influence of a hazardous substance;

    c) having any amount of a controlled substance listed in schedules I or II, other than marijuana, present in the person's body;

- while having an alcohol concentration in excess of 0.10 percent, the per se limit, as measured at the time of or within two hours of the time of driving; or

- where the driver who causes the accident leaves the scene of the accident in violation of the "hit and run" law (Minn. Stat. § 169.09, subd. 1 or 6).

[9] The definition of "aggravating factor" includes any of the following: a prior impaired driving record, an alcohol concentration level of 0.20 percent or more, or the fact that a child under the age of 16 was present in the vehicle at the time of the violation, if the driver was more than three years older than the child (child endangerment) (Minn. Stat. § 169A.03, subd. 3).

Minnesota Statutes, section 609.21, defines six categories of CVO crime, with five constituting felony offenses and one a gross misdemeanor offense.[10]

Applicability to Other Kinds of Vehicles

Before 1998, Minnesota had separate DWI laws applicable to the driving or operation of: (a) regular motor vehicles; (b) snowmobiles and all-terrain vehicles (ATVs), now labeled "off-road recreational vehicles;" (c) motorboats; (d) school buses; and (e) airplanes.

However, effective January 1998, impaired driving involving off-road recreational vehicles and motorboats[11] is also governed by the regular DWI law, although first-time violations involving motorboats or recreational vehicles are not subject to the full range of sanctions under the DWI law. Only repeat impaired driving violations involving motorboats or off-road recreational vehicles trigger the full range of sanctions applicable to DWI violations involving a regular motor vehicle, including driver's license revocation, vehicle license plate impoundment, vehicle forfeiture, and enhanced criminal penalties.

Minnesota law continues to contain separate statutory provisions tailored to the driving of school buses, airplanes, and military vehicles.

Other sections of this guidebook discuss the separate impaired driving/operating laws applicable to motorboats and off-road recreational vehicles (i.e., laws involving the use of these vehicles in first-time DWI offenses), as well as those additional impaired driving/operating laws applying to school buses, airplanes, and military vehicles.

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[10] Unlike some states, Minnesota does not have a felony-level DWI crime (other than criminal vehicular homicide and injury) in which a DWI incident would constitute a felony offense if committed by a person with a certain number of prior DWI offenses.

Minnesota Statutes, section 609.02, defines "felony" as a crime for which a sentence of imprisonment for more than one year may be imposed. Such a sentence would be served in a state correctional facility, whereas incarceration sentences for lower level crimes are served in local jails or workhouses. Minnesota counties with first-class cities—Hennepin County (Minneapolis), Ramsey County (St. Paul), and St. Louis County (Duluth)—have both jail facilities and workhouses; the jail is used primarily for pretrial detention, and the workhouse for post-conviction incarceration. Other counties have or share jails, but do not have workhouses.

[11] DWI laws apply to motorboats only if they are "in operation;" this term excludes any motorboat that is anchored, beached, or securely fastened to a dock or other permanent mooring, as well as a motorboat that is being rowed or propelled by other than mechanical means (Minn. Stat. § 169A.03, subd. 14).

Alcohol Testing

Minnesota's Implied Consent Law

Minnesota's implied consent law (Minn. Stat. §§ 169A50 to 169A.53) states, in essence, that any person who drives, operates, or is in physical control of a motor vehicle anywhere within the state, even if off-road or on private property, consents to a chemical test of that person's breath, urine, or blood for the purposes of determining the presence of alcohol, controlled substances, or hazardous substances. The test must be administered at the direction of a peace officer and may be required when the officer has probable cause to believe the person was operating in violation of the DWI law and one of the following conditions exist:

- the person has been arrested for a DWI violation;
- the person has been involved in a motor vehicle crash resulting in property damage, injury, or death;
- the person has refused to take the screening test provided for by the DWI law (Minn. Stat. § 169A.41); or
- the screening test was administered and indicated an alcohol concentration of 0.10 percent or more.

The test may also be required of a person when an officer has probable cause to believe the person was driving, operating, or in physical control of a commercial motor vehicle with the presence of any alcohol in the person's body.

In establishing probable cause, the officer typically:

- observes the person's driving behavior and forms a reasonable suspicion to stop the vehicle;
- interviews the driver, being particularly alert for any signs of slurred speech, confused thinking, impaired movement, and/or odors of alcohol;
- asks the driver to perform the Standardized Field Sobriety Test (SFST), a series of physical exercises designed to detect physical impairment; and
- asks the person to blow into a preliminary breath testing device (PBT) that measures the person's alcohol concentration.

Based on the results of these screening tests, the officer may decide that there is probable cause to arrest the person and demand a more rigorous evidentiary test of the person's breath, urine, or blood. At that time, the officer takes the person into custody and calls a tow truck to transport the person's vehicle to the designated impound lot.

The Implied Consent Advisory

At the time that the evidentiary test is required, the person must be read an advisory statement, informing the person that:

- Minnesota law requires the person to take a test:
  - to determine whether the person is under the influence of alcohol, a controlled substance, or a hazardous substance;
  - to determine the presence of a controlled substance listed in schedules I or II (Minn. Stat. § 152.02), other than marijuana; and
  - if the vehicle is a commercial motor vehicle, to determine the presence of alcohol;
- refusal to take the test is a crime;
- if there is probable cause to believe that the person has violated the state's criminal vehicular homicide and injury laws, a test will be taken with or without the person's consent; and
- the person has a right to consult with an attorney, but only to the extent that it does not unreasonably delay administration of the test.

Apparently, the general practice among law enforcement in Minnesota is to allow for a minimum of 20 to 30 minutes for an arrested driver to exercise his or her right under the implied consent law to consult an attorney. Anecdotal evidence suggests that some officers will allow an additional five to 20 minutes time if the person appears to be making a good faith effort to make the contact or is actively engaged in such consultation.

In a small percentage of DWI arrests, the arresting officer decides not to provide the implied consent advisory. In such cases, the evidentiary test may still be administered and, upon test failure, prosecution may be pursued; however, administrative license revocation is not permitted. DWI violators who are arrested in this manner generally may legally continue to drive until found guilty of the charge, at which time the conviction-based license revocation commences.

As a further consequence of the officer's choosing not to invoke implied consent, the additional administrative sanctions for repeat offenses that are normally triggered by the administrative license revocation ordered pursuant to the implied consent law—including license plate impoundment and vehicle forfeiture—also must await conviction for the violation. Furthermore, if the defendant for whom implied consent was not invoked subsequently negotiates dismissal of the DWI charge (even if in exchange for a guilty plea to a different charge), there would be no record of the impaired driving violation on the person's driver's license record, nor could the violation serve to enhance penalties and sanctions for any subsequent impaired driving violation that the person might happen to commit.

Measuring Alcohol Concentration

Minnesota Statutes, section 169A.03, subdivision 2, defines "alcohol concentration" to mean the number of grams of alcohol per:

- 100 milliliters of blood,
- 210 liters of breath, or
- 67 milliliters of urine.

Prior to 1978, the legal standard for alcohol concentration was defined only in terms of "blood alcohol," necessitating a conversion of all breath and urine test results to the equivalent blood alcohol concentration amount. While such conversion was a relatively simple mathematical process, the underlying science was difficult to explain. The conversion formulas also involved some assumptions based on the "average person's" physiology. This complexity resulted in numerous challenges by DWI defendants regarding the accuracy of their alcohol concentration test results, and the resulting technical discussions reportedly became a major source of confusion for many judges and juries. Hence, following the lead of other states, Minnesota's law was amended to express the prohibited physiological state in terms of "alcohol concentration," defined specifically as the grams of alcohol in the above stated amount of a person's blood, breath, or urine, thus obviating the need for any conversion of test results and eliminating most of the associated challenges.

The Evidentiary Test

The arresting officer may choose whether the evidentiary alcohol concentration test will be of the person's breath, urine, or blood. Under DWI law, it is a crime for a DWI suspect to refuse to take an alcohol concentration test.[12] However, action may be taken against a person who refuses either a blood test or a urine test only if an alternative type of test is also offered. Furthermore, a blood or urine test may be required even after a breath test has been administered if there is probable cause to believe that the person has consumed or is impaired by a controlled or hazardous substance not detectable by a breath test.

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[12] The U.S. Supreme Court has determined that the U.S. Constitution does not prohibit the taking of a suspect's blood by force (*Schmerber v. California*, 384 U.S. 757, 86 S.Ct. 1826 (1966)). Such procedures are unpopular and rarely used. Instead of relying on force in the usual situation of test refusal, states generally provide DWI suspects with an incentive to take the alcohol concentration test by meting out longer periods of driver's license revocation to a person who refuses to take the test. Minnesota has taken the additional pioneering step of criminalizing test refusal, treating that crime as one type of DWI violation. In addition, Minnesota's implied consent law explicitly permits a test to be taken, despite a person's refusal, if the officer has probable cause to believe that the person has violated Minnesota Statutes, section 609.21, the criminal vehicular homicide and injury law.

In practice, of the roughly 33,000 evidentiary tests being administered each year, the great majority (roughly 25,000) are breath tests, with blood and urine tests composing the remainder (roughly 5,000 blood tests[13] and 3,000 urine tests).[14]

The evidentiary breath tests are made in the controlled environment of the local police station or sheriff's office using the Intoxilyzer, a sophisticated measurement instrument that is periodically calibrated and maintained by a technical expert from the state crime lab at the Bureau of Criminal Apprehension (BCA).[15] The principal advantages of administering a breath test versus a urine or blood test are that the results are immediately available and the cost is less.

Nevertheless, in the following situations blood and urine tests are generally preferable, and may even be necessary:

- when the arresting officer suspects that the driver may have consumed a controlled substance (i.e., illegal drugs) or may be under the influence of any substance other than alcohol;

- when the driver is, or claims to be, unable to blow an adequate breath test due to an injury or pre-existing medical condition;

- when the Intoxilyzer device is not working or there is no trained operator available to administer a breath test;[16]

- when the officer decides that it is more convenient to obtain a urine or blood test; or

- when the legal stakes are high, as in the event of serious injury or death resulting from a suspected impaired driving incident.[17]

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[13] This number does not include the approximately 1,600 additional blood tests analyzed each year by the state crime lab in regard to various crimes other than impaired driving or for certain types of death cases (including tests for all killed drivers, many suspicious nondriving deaths, certain apparent suicides, etc.). Apart from those blood tests, the great majority of the several thousand nondriving and noncrime-related blood tests being requested throughout the state each year by medical examiners and pathologists are performed by private toxicology labs.

[14] These estimates were provided by toxicologists and other specialists at the state crime lab and apply to calendar year 1998, following the statewide upgrading of breath testing devices to Series 68 of the Intoxilyzer 5000 device, a state-of-the-art testing device now being used by about half of the states. During 1997 and years immediately prior, the proportion of evidentiary tests that were breath tests was lower (by about 3,000), due to the somewhat limited availability of workable Intoxilyzers in some parts of the state. Currently, there are approximately 190 Intoxilyzers in operation throughout the state.

[15] The BCA is a division within the Minnesota Department of Public Safety.

[16] The BCA toxicologist estimates that only somewhat over half of law enforcement officers in Minnesota have received the required training for certification as an Intoxilyzer operator.

[17] A BCA toxicologist noted that virtually all (99 percent) of arrested drivers suspected of committing a crime involving criminal vehicular homicide or injury (Minn. Stat. § 609.21) are subjected to a blood test. (The implied

Likewise, blood and urine tests each have their own particular advantages. For example, some controlled substances tend to linger in the body and may be detectable in the urine well past the point that they are detectable in blood. Thus, a blood test may be preferable to a urine test when the test can be administered shortly after a suspected violation and the aim is to document the substance's presence at the approximate time of the violation. On the other hand, a blood test is generally more expensive and may be more demanding of the arresting officer, since it may be administered only by a medically trained person and typically requires transporting the suspect to a hospital. No such restrictions apply to the drawing of a urine sample, which is typically obtained from the defendant by the arresting officer at the police station.

The results of a breath test, of course, are available immediately. Blood and urine test samples, on the other hand, must be sent to the BCA's toxicology lab for analysis; turnaround time generally ranges from a minimum of two weeks for an alcohol analysis to six to ten weeks for a complicated controlled substance analysis.[18] In the typical event that the defendant's first court hearing is scheduled prior to receiving the lab results, a continuance is routinely requested and granted by the court. Administrative license revocation, as well, cannot be initiated until the test results are known.

Permitted Uses of the Preliminary Screening Test

As noted above, the preliminary screening test generally is not regarded as an evidentiary test for purposes of prosecuting DWI violations. Minnesota Statutes, section 169A.41, subdivision 2, directs that the results of the preliminary screening test may be used for the purpose of deciding whether an arrest should be made and whether to require the evidentiary tests authorized under the implied consent law, but that they shall not be used in any court action except the following:

- to prove that a test was properly required of a person pursuant to the implied consent law;
- in a civil action arising out of the operation of the motor vehicle;
- in an action involving a court petition for license reinstatement (Minn. Stat. § 171.19);
- in a prosecution or juvenile court proceeding concerning a violation of the underage consumption law (Minn. Stat. § 340A.503) or the underage drinking and driving law (Minn. Stat. § 169A.33);
- in a prosecution for a violation of the zero-tolerance standard for school bus driving (Minn. Stat. § 169A.31);

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consent advisory is not required for such violations and the suspect does not have the option of refusing the test.) The stated rationale for this practice is that there are fewer legal challenges to a blood test.

[18] The BCA's usual controlled substance testing process screens for ten classes of controlled substances. If the screening test is positive for any class, then a confirmatory test must be performed for the specific controlled substance identified.

- in a prosecution for a violation of the conditions for a limited license (i.e., a "work permit" under Minnesota Statutes, section 171.30); and

- in a prosecution for a violation of a restriction on a driver's license under Minnesota Statutes, section 171.09, which provides that the license holder may not use or consume any amount of alcohol or a controlled substance at any time, whether while driving or not (often referred to as a "B-card violation").

Charging the DWI Violation

Except for the relatively infrequent situation in which a person who has been arrested for a DWI violation passes the evidentiary test and is not charged with a violation,[19] the arresting officer must decide how to charge and whether to detain or release the person from custody. There are three alternative methods for charging DWI violations:

- by citation;
- by tab charge by the arresting officer at the time of booking into jail; and
- by complaint prepared by the prosecutor subsequent to arrest.[20]

Additional charges for other crimes committed as part of the same behavioral incident[21] may also be charged by citation, tab charge, or complaint, depending on the type and severity of the offense.[22] Each of these three charging methods is described in the following paragraphs, along with some general information about how it is used in practice. It is important to note, however, that there is no centralized statewide data base containing DWI charging information; thus, the description of DWI charging practices in this section relies exclusively on anecdotal information from law enforcement officials, prosecutors, and other knowledgeable professionals.

[19] Though it is relatively rare, a driver who takes and passes the evidentiary test may still be prosecuted for and convicted of a DWI violation, if it can be proved that the person had been "driving while impaired," even though the person's alcohol concentration did not equal or exceed the per se limit at the time of testing. One such successful prosecution, for example, involved a driver who at the scene of a minor one-car traffic crash admitted to the attending highway patrol officer that he had "only a few drinks at an office party this afternoon," but that he both "seldom drinks alcohol" and "was exhausted after a long work week" and, thus, "the alcohol had really affected" him as he was driving home from work. The person's breath test revealed an alcohol concentration of 0.08 percent, well below the per se limit of 0.10 percent; nevertheless, he was charged with and convicted of "driving while under the influence of alcohol," a DWI offense.

[20] DWI charging is governed by Minnesota Rules of Criminal Procedure, rules 1.04(b) and 4.02.

[21] Other crimes frequently committed at the same time as a repeat impaired driving offense include: violation of the "no-alcohol" condition of a restricted license (i.e., a "B-card" violation, under Minnesota Statutes, section 171.09); driving after the revocation or cancellation of one's driver's license (Minn. Stat. § 171.24); failure to provide or show proof of auto insurance (Minn. Stat. §§ 169.791 and 169.797); leaving the scene of an accident (Minn. Stat. § 169.09); and fleeing a police officer (Minn. Stat. § 609.487). These crimes can range from misdemeanors to felonies, depending upon the circumstances.

[22] Citations can be used only for misdemeanors. Tab charges can be used only for misdemeanors and certain specified gross misdemeanors: DWI, aggravated DWI, and driving without a valid license (Minn. Stat. § 171.24). Other gross misdemeanors and all felonies must be charged by complaint.

Charging by Citation

A citation is essentially a ticket on a form that is filled out by the officer at the time of apprehension or arrest. A copy is given to the defendant and the original is filed by the police officer (or police department) with the court. As a practical matter, citations are seldom used for DWI violations; when used at all, a citation may be used only to charge misdemeanor-level violations.

Defendants receiving a DWI citation are nearly always immediately released on recognizance (i.e., without bail or other conditions) to a responsible and unimpaired person.[23] Then, it is the cited person's responsibility to contact the court to set up a court appearance for the charge. If several weeks pass without the violator doing so, a complaint and warrant may be issued for the person's arrest; however, if the person has moved or is otherwise absent, it may be difficult to make the arrest. Because of this diminished control over violators, most law enforcement agencies no longer use citations for charging most DWI violations. One situation in which citations are used is when the DWI violator has been injured and transported to a hospital and, thus, cannot be taken to the jail where tab charging is typically done.

Tab Charging

In most jurisdictions, police prefer to "tab charge" DWI violators—especially repeat offenders, but also most first-time violators—since a tab charge provides the criminal justice system with greater control over the violator in two ways:

1) the officer and jail, rather than the offender, get to specify the court date for the first hearing; and

2) the suspect can be detained until the charges are reviewed and the conditions of release are set by a judge.

Tab charging consists of the arresting officer informing the custody facility (i.e., holding facility or jail) of the arrested person's identity and the crime(s) with which the person is to be charged. The tab charge is then communicated to the court, with the officer having specified the person's first hearing date. A notice of the tab charges and court date are given to the violator.

Typically, upon being tab charged, the violator is booked into jail. Nevertheless, tab charging does not preclude immediately releasing on recognizance a defendant whose offense does not qualify the person for mandatory bail or conditions of release. In practice, following administration of the implied consent warning and evidentiary test, the officer acquires (by computer or radio) and reviews the person's driver's license record to determine his or her

[23] Technically, a person being cited for DWI may be held in the local holding unit or jail until the person is no longer impaired, as sometimes happens when a responsible person is unavailable to facilitate the cited person's leaving. However, as a practical matter, if a DWI violator is being held in jail for any amount of time, the person would likely be tab charged rather than given a citation.

licensing status and alcohol-related driving history. If the implied consent advisory has been administered and the person has refused testing or has failed the evidentiary test, the officer serves notice of the impending revocation of the person's driver's license, even if it has already been revoked for a prior violation. Depending on the person's driving history, the officer decides whether to initiate license plate impoundment and vehicle forfeiture, as well as whether to release or hold the person pending a judge's review of the charges. In the case of certain chronic offenders (described in detail in a later section of this report), the violator is not eligible for release without either posting maximum bail ($12,000) or appearing before a judge who is required to order certain strict conditions of pretrial release in lieu of maximum bail.

Charging by Complaint

As an alternative—or in addition—to a citation or a tab charge, the prosecutor may charge any DWI violator by complaint, irrespective of whether the violation is a misdemeanor or a gross misdemeanor crime. In practice, however, complaints are prepared for few misdemeanor DWI violations (usually only when requested by the defendant). Complaints must be prepared, on the other hand, for gross misdemeanor DWI violations (unless the case is settled early).

Under the Minnesota Rules of Criminal Procedure, rules 1.04(b) and 4.02, subdivision 5, an arrested person who is not released from custody must be brought before the nearest available district court judge within 36 hours after the arrest (excluding Sundays and holidays) or, if a misdemeanant, must be released. At that time, the judge decides upon bail (unless, given the driving history, maximum bail is required) and other conditions of pretrial release and schedules the person's court appearance. If no complaint is filed by the time of the first court appearance, the court clerk must file a "tab charge" as a substitute for the complaint.[24] Nevertheless, in the case of a misdemeanor DWI violation, if the court requires or the defendant requests it, a complaint must be prepared and filed within 48 hours if the person is in custody, or within 30 days if the person has been released. In the case of a gross misdemeanor DWI violation, unless the person pleads guilty to the violation at the first court appearance, a complaint must be prepared and filed within 48 hours if the person is being held in custody, and within ten days if the person has been released.

Continuation of Charges

Finally, in the case of a person who is given a urine or blood test, the officer typically tab charges the violator at the time of arrest as "driving while under the influence," which is one category of DWI crime. Then, at the person's first court appearance, the prosecutor requests continuation of the charges pending return of the test results from the state crime lab. Under the Rules of Criminal Procedure, if the test results indicate an alcohol concentration of 0.10 percent or more, then the prosecutor is allowed to add additional charges orally at the person's next hearing. Any

[24] Minnesota Rules of Criminal Procedure, rule 1.04, paragraph (c), defines "tab charge" as "a brief statement of the offense charged, including a citation of the statute...which the defendant is alleged to have violated..."

complaint that is subsequently prepared would, include all relevant charges.[25]

Charging Practices

As noted above, there are no statewide statistics available to determine how often the three different types of charging methods are used for DWI violators or how charging varies by offense level (i.e., misdemeanor vs. gross misdemeanor, and first-time vs. repeat offense). However, anecdotal information suggests that:

- first-time DWI offenders (except the minority who face gross misdemeanor charges) are typically tab charged and immediately released upon recognizance to a responsible person;

- repeat DWI offenders are typically tab charged, booked into jail, and held for probable cause review and arraignment by the court within the 36-hour time frame; and

- prosecutors prepare complaints for the vast majority of gross misdemeanant DWI defendants, since relatively few such defendants plead guilty to the violation within ten days.[26]

[25] It is not unusual for a DWI violator to be charged with more than one DWI violation for a single impaired driving incident; for example, when the person is under the influence of alcohol (Minn. Stat. § 169A.20, subd. 1, clause (1)); when the person's alcohol concentration is 0.10 percent or more (Minn. Stat. § 169A.20, subd. 1, clause (5)); and/or refusal to take the evidentiary test (Minn. Stat. § 169A.20, subd. 2). Nevertheless, Minnesota Statutes, section 609.035, subdivision 1, limits punishment for a DWI conviction to no more than one of the DWI offenses listed under Minnesota Statutes, section 169A.20, subdivision 1, though it permits consecutive sentencing for DWI and certain other related crimes.

[26] Since 1992, repeat DWI offenders statewide have numbered between 14,000 and 15,000 annually, with the overwhelming majority of such violations meeting the time frame for enhancement to the gross misdemeanor level.

History of the Alcohol Concentration Standard

Invention of Chemical Tests for Alcohol

Drinking and driving laws were difficult to enforce prior to the advent of chemical tests for alcohol, since a driver's impairment had to be determined through interpretation of the person's behavioral cues or other physical evidence.[27] The ability to test bodily substances for alcohol came about in the 1940s, prompting legislation in most states authorizing police to request these tests for suspected impaired drivers, thereby facilitating arrest and charging. Prosecution of impaired drivers also was facilitated by enactment of laws permitting the use of the results of alcohol concentration tests as evidence of impairment in court proceedings.[28]

"Presumptive Limits" for Alcohol Concentration—0.15 Percent and 0.05 Percent

The early absence of research into the effects of alcohol impairment on driving ability led initially to the setting of relatively high alcohol concentration standards of impairment, above which virtually all drivers were expected to be visibly impaired. In most states, legislatures followed the recommendations of the American Medical Association and established a "presumptive" alcohol concentration limit of 0.15 percent.[29] A presumptive alcohol concentration limit establishes a point above which a driver is presumed to be impaired, but this presumption can be rebutted in court if contrary evidence exists. Many states also set a presumptive limit of 0.05 percent alcohol concentration as the limit below which a driver was presumed not to be under the influence of alcohol.

In Minnesota, the first presumptive limits were established in 1955.[30] Similar to the early laws of most states, Minnesota law stipulated that drivers with alcohol concentration levels at or above 0.15 percent were presumed to be impaired while those with alcohol concentration levels at or below 0.05 percent were presumed to be unimpaired. Evidence of alcohol concentration levels between these two points was regarded as "relevant" evidence of a driver's impairment.

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[27] Ross, H. Laurence. *Confronting Drunk Driving: Social Policy for Saving Lives.* New Haven: Yale University Press, 1992.

[28] The topic of alcohol testing is covered more extensively in a prior chapter of this guidebook.

[29] Ross, *ibid*.

[30] Laws 1955, ch. 487.

A "Per Se Limit" for Alcohol Concentration—0.10 Percent

During the 1960s and 1970s, the results of pharmacological (i.e., laboratory) and epidemiological (i.e., crash analysis) studies increasingly showed a positive relationship between driver alcohol concentration level and driver impairment and crash risk. The results of this research, coupled with improvements in alcohol concentration testing technology, induced most states to lower their alcohol concentration limits to 0.10 percent.[31] Nearly all states also changed the nature of their alcohol concentration laws from presumptive to "per se," making it a crime in itself for a driver to have an alcohol concentration in excess of the legal limit. In Minnesota, the alcohol concentration limit was reduced to 0.10 percent in 1967,[32] and changed from presumptive to per se in 1971.[33]

The Movement to Lower the Per Se Limit to 0.08 Percent

As noted above, the movement to reduce the alcohol concentration limit to 0.10 percent was based on mounting scientific evidence of the effect of alcohol on driving-related skills. Nevertheless, the 0.10 percent per se standard was still a somewhat arbitrary cutoff. Little was known at that time about the effect of lower doses of alcohol on driving ability since few studies had yet examined alcohol concentration levels below 0.10 percent.

More recent studies, however, have concluded that the ability to drive generally becomes impaired when drivers attain alcohol concentration levels as low as 0.05 percent.[34] This finding, combined with continued public support for tougher laws against drinking and driving, helped persuade a number of state legislatures to further lower their alcohol concentration limits. Between 1983 and 2000, 18 states and the District of Columbia lowered their per se limit to 0.08 percent. In addition, Massachusetts—one of the two remaining states with a presumptive limit—also reduced its limit to 0.08 percent (Table 1).

In addition, more restrictive alcohol concentration standards have been adopted in several foreign countries. For example, nearly all European Union member nations have adopted per se standards of 0.08 percent or lower, with Sweden lowering its per se limit to 0.02 percent (Table 2).

Table 3 presents a condensed history of Minnesota's alcohol concentration standard and key related events.

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[31] Snyder, M.B. "Lower Alcohol Levels, Driver Impairment and Crash Risk." *Auto and Traffic Safety*, 1(1): 11-19, 1991.

[32] Laws 1967, ch. 283, § 1.

[33] Laws 1971, ch. 893, §§ 1-3.

[34] Snyder, *ibid*; and NHTSA, *Effects of Low Doses of Alcohol on Driving-related Skills: A Review of the Evidence*. Washington, D.C., 1988.

Table 1

States with a 0.08 Percent Per Se Standard By Year of Enactment

Order of Enactment	State	Year Effective
1	Utah	1983
2	Oregon	1983
3	Maine	1988
4	California	1990
5	Vermont	1991
6	Kansas	1993
7	North Carolina	1993
8	New Mexico	1994
9	New Hampshire	1994
10	Florida	1994
11	Virginia	1994
	*Massachusetts**	*1994*
12	Hawaii	1995
13	Alabama	1995
14	Idaho	1997
15	Illinois	1997
16	Washington	1999
	Washington, D.C.	*1999*
17	Texas	1999
18	Kentucky	2000

* Massachusetts, as well as South Carolina and Puerto Rico, have "presumptive" rather than "per se" DWI laws. Thus, Massachusetts, which has a 0.08 percent alcohol concentration standard, is not counted in the listing of states with a 0.08 percent per se DWI law, nor is the District of Columbia.

Source: National Highway Traffic Safety Administration (NRTSA)

House Research Department

Table 2

Alcohol Concentration Limits in European Union Member States and Selected Other Nations

European Union Member States				
0.09 AC	**0.08 AC**	**0.05 AC**	**0.03 AC**	**0.02 AC**
	Austria Denmark France ♦ Germany Great Britain Ireland Italy Luxemburg Spain	Belgium Finland France ♦ Greece Netherlands Portugal		Sweden
Other Selected Nations with Per Se Levels under 0.10 Percent				
0.09 AC	**0.08 AC**	**0.05 AC**	**0.03 AC**	**0.02 AC**
India	Australia Canada New Zealand Sri Lanka Switzerland	Australia Iceland Japan Norway	Czechoslovakia	

♦ France has a two-tiered per se law, with a 0.05 percent violation triggering a fine, and a 0.08 percent violation triggering license suspension, jail sentences, and other penalties.

Most Australian states have set their per se standard at 0.08 percent; the remainder have set it at 0.05 percent.

Source: National Highway Traffic Safety Administration, 1996; and *The Reporter*, Newsletter of the International Council on Alcohol, Drugs, and Traffic Safety; Vol. 8, No. 3 (Summer 1997)

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Table 3

Condensed History of the Alcohol Concentration Standard

Year	Event
1940s	Scientists invent technology to test bodily substances for alcohol, with technology improvements continuing to the present.
1955	**Minnesota enacts a "presumptive limit" for alcohol concentration for motor vehicle drivers and sets the limit at 0.15 percent blood alcohol concentration; under the law a driver with a blood alcohol concentration of 0.15 percent or higher is presumed to be impaired, but that presumption may be rebutted with contrary evidence.**
1960s & 1970s	The results of numerous pharmacological and epidemiological (i.e., laboratory and accident analysis) studies reveal a positive relationship between driver alcohol concentration level and driver impairment and motor vehicle crash risk.
1967	**Minnesota reduces its presumptive limit for alcohol concentration from 0.15 percent to 0.10 percent.**
1971	**Minnesota enacts a "per se" type of DWI law, in which it is illegal "in itself" to drive with an alcohol concentration at or above 0.10 percent.**
1980s & 1990s	Scientific studies reveal that several driving-related abilities are significantly impaired at or before 0.05 percent alcohol concentration, with nearly all important driving-related abilities being impaired by 0.08 percent.
1983 to 2000	Eighteen states and the District of Columbia lower their per se or presumptive limits for alcohol concentration from 0.10 percent to 0.08 percent.

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The Zero-Tolerance Standard for Underage Drivers

By 1997, 20 states had lowered their alcohol concentration standards for drivers under the age of 21, ranging from a high of 0.07 percent in Texas to a low of zero percent in six states. However, a subsequent federal enactment required all states to enact zero-tolerance laws for underage drinking and driving by October 1, 1998, or be subject to federal highway funding sanctions. As a result, all 50 states, plus the District of Columbia, now have zero-tolerance laws for underage drivers.

In some states, violation of such law constitutes a full-fledged DWI violation. Minnesota's underage drinking and driving law (Minn. Stat. § 169A.33) prohibits a person under the age of 21 from driving with any amount of alcohol present in the body[35] and, upon conviction for a violation, provides misdemeanor penalties and license suspension.[36] However, unless the person's alcohol concentration is in excess of 0.10 percent (or 0.04 percent in a commercial vehicle) or the person has been driving while impaired, the offense is not a violation of the DWI law (Minn. Stat. § 169A.20) itself.[37]

Furthermore, a violation of Minnesota's underage drinking and driving law is defined neither as a "prior impaired driving conviction" (Minn. Stat. § 169A.03, subd. 20) nor as a "prior impaired driving loss of license" (Minn. Stat. 169A.03, subd. 21) and, thus, does not "count" for purposes of enhancing penalties and sanctions for any subsequent DWI violation(s) by the person.[38]

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[35] NHTSA credits Minnesota with having a zero percent per se level for underage drivers. However, as explained herein, that is not entirely accurate. See: National Highway Traffic Safety Administration, *Digest of State Alcohol-Highway Safety Related Legislation,* 11th edition, 1993.

[36] The period of license suspension is 30 days for the first violation and 180 days for any repeat violation.

[37] A separate section of this guidebook provides a full description of underage drinking and driving laws.

[38] Nevertheless, auto insurance providers report that the industry customarily treats a violation of Minnesota's underage drinking and driving law (Minn. Stat. § 169A.33) as equivalent to a violation of DWI law (Minn. Stat. § 169A.20) itself, for purposes of assessing "risk premiums."

Driver's License Revocation

Minnesota's Dual Revocation System

In most states, courts have long had the authority, or been required, to order the revocation of a person's driver's license upon the person's conviction for an impaired driving offense. However, in 1974, Minnesota became the first state to enact "administrative license revocation," which makes the license action contingent upon the arrest itself. As intended, this arrangement greatly accelerates the imposition of license revocation, thereby providing quicker protection for the motoring public. By now, nearly all states have adopted administrative license revocation. Nevertheless, the statutory authority for court-ordered (actually, conviction-based) driver's license revocation has been retained (Minn. Stat. § 169A.54).

The administrative driver's license revocation process is specified within the implied consent law (Minn. Stat. § 169A.52) and is contingent upon the presentation of the implied consent advisory to the DWI suspect prior to administration of the evidentiary test. In the overwhelming majority of impaired driving arrests, the advisory is administered and, following alcohol test failure or refusal, the administrative revocation proceeds as designed. However, in a small percentage of arrests the advisory is not read or the revocation is determined, through an administrative or judicial hearing, to be invalid and is thus rescinded. In either of these cases, there can be no administrative license revocation. Nevertheless, if the person is convicted of the DWI charge, the conviction-based license revocation occurs (Minn. Stat. § 169A.54).

A significant percentage of DWI violators are not convicted of the DWI charge.[39] Generally, this involves a situation of a first-time violator whose alcohol concentration reading is just above the legal limit and, through plea bargaining, the person agrees to plead guilty to the lesser charge of careless driving. Nevertheless, the lack of conviction for a DWI violation does not terminate or undo the administrative license revocation for the violation, nor does it prevent the use of that revocation for the automatic enhancement of penalties and sanctions for any subsequent DWI violations by the person.

For first-time impaired driving offenders, the conviction-based revocation period is shorter than the administrative revocation period, thereby providing an incentive for a violator to quickly plead guilty to the DWI charge since, as soon as the conviction-based revocation is imposed, it overrides the administrative license revocation, with credit for revocation time served, thereby

[39] Analysis of the 1995 driver license data base obtained from the Minnesota Department of Public Safety reveals that of the total number of DWI arrests that year: 82.5 percent resulted in conviction for DWI, test refusal, or criminal vehicular operation (and sometimes other crimes, as well); 9.5 percent resulted in conviction for some crime other than DWI (including some convictions for more serious crimes), but not for DWI itself; and the remaining 8 percent resulted only in an implied consent revocation, but no conviction for any crime. Missed entirely by this analysis were an estimated additional 1 to 2 percent of DWI arrestees whose driver's license records had no entry whatsoever for the event, due to the rescission of the revocation (or decision not to invoke implied consent upon arrest), coupled with acquittal, plea bargaining, or dropping of the charge. (Unpublished House Research analysis, 2000.)

hastening license reinstatement for the person. This arrangement helps to alleviate prosecution and court caseloads, while still getting the violation "on record" for the purpose of enhancing sanctions for any subsequent impaired driving violation that the person might commit.[40]

The implied consent and DWI criminal laws provide another incentive—this time to first-time and second-time violators—by prescribing longer license revocation periods to suspects who refuse the alcohol concentration test than to those who cooperate with the test but fail it. This incentive helps the state to obtain a key piece of evidence for prosecution—i.e., the alcohol concentration test result.

Both of these laws also provide longer revocation periods (a minimum of six months) to first-time offenders who are under the age of 21 at the time of the violation, thereby attempting to strongly discourage drinking and driving by underage persons. Both laws also call for a doubling of the applicable revocation period if the violation involved an alcohol concentration of 0.20 percent or higher.

Criminal DWI law provides the additional stipulation that, if the violation involved death or injury to any person, an additional 90 days is added to the base revocation period.

Limited Licenses and "Hard Revocation"

Under the driver licensing law (Minn. Stat. § 171.30), a person whose driver's license has been suspended or revoked for a DWI or implied consent violation (or certain other violations) may apply for a limited license to drive:

- to or for a job;
- to chemical dependency treatment;
- to provide for the educational, medical, or nutritional needs of the family; or
- for attendance at a post-secondary educational institution.

However, the law requires a waiting period—i.e, a period of "hard revocation"—before a suspended or revoked driver may be issued a limited license. The waiting period is as follows:

- 15 days for a first-time DWI or implied consent violator;
- 90 days for a second-time or subsequent violator who took the alcohol concentration test on the current violation;

[40] Minnesota Statutes, section 169A.03, defines the terms "prior impaired driving conviction" and "prior impaired driving-related loss of license." DWI law and related statutes that enhance penalties and administrative sanctions for repeat DWI violations generally treat these two outcomes as equivalent and combine them within the umbrella term "qualified prior impaired driving incident." See Minn. Stat. § 169A.03, subds. 20, 21, and 22.

- 180 days for a second-time or subsequent violator who refused the test; and

- one year for a person revoked for committing manslaughter resulting from the operation of a motor vehicle or for committing criminal vehicular homicide or injury (Minn. Stat. § 609.21).

In addition, the law provides for a 60-day waiting period for anyone who commits any felony in which a motor vehicle was used, or who fails to stop and provide identification (as required under Minnesota Statutes, section 169.09, the "hit and run" law) in the event of an accident resulting in death or injury to another person. This waiting period is in addition to any other waiting period imposed for a DWI violation.

If the driver was under the age of 18 at the time of the violation for which his or her license has been revoked, then the waiting period for the issuance of a limited license is the greater of 90 days or twice the length of the period noted above.

The Revocation Periods

The driver's license revocation periods are displayed in Table 4, and may be interpreted as follows.

A first-time impaired driving violator, for example, incurs an administrative license revocation of 90 days (or 180 days if under age 21) if the person has taken and failed the alcohol concentration test, and one year if the person has refused the test.

However, upon conviction for the DWI charge, those periods are superseded by the periods provided under the criminal DWI law, with credit given for revocation time served: 30 days to the test taker, and 90 days to the test refuser, respectively (or 180 days in both cases if under age 21).

For the first-time violator, at least 15 days of the license revocation period must be served (i.e., done as "hard revocation"), since no limited license (i.e., "work permit") may be issued during that time. However, if the person is under the age of 18 at the time of the violation, the waiting period for a limited license is 90 days or longer.

Longer revocation periods apply to repeat offenders. It is necessary to consult either the table or the statutes to determine the period applicable to any particular offender (Table 4).

Table 4

Driver's License Revocation Periods for DWI Violations

Alcohol-Concentration Test Status	Offense[a]	Administrative Revocation under Minn. Stat. § 169A.52 (Implied Consent Law)	Revocation for Conviction under Minn. Stat. § 169A.20 (Criminal DWI Law)[b]	Revocation under Minn. Stat. § 171.30 with No Limited License (Hard Revocation)[c, d]
Test Failure	First	90 days	30 days	15 days
AC ≥ .10 percent	First, < 21 years old[e]	180 days	180 days	(Not differentiated)
	Second	180 days	180 days and treatment	90 days
	Third	180 days	One year and cancel and deny until rehabilitation	90 days
	Fourth+	180 days	Two years and cancel and deny until rehabilitation	90 days (If under 18 years old, greater of 90 days or twice the above)
Test Refusal	First	One year	90 days	15 days
(AC level unknown)	First, <21 years old[e]	One year	180 days	(Not differentiated)
	Second	One year	One year and treatment	180 days
	Third	One year	One year and cancel and deny until rehabilitation	180 days
	Fourth+	One year	Two years and cancel and deny until rehabilitation	180 days (If under 18 years old, greater of 90 days or twice the above)

a. Prior offenses and revocations are counted if they occurred within the previous ten years.

b. If the DWI incident involves injury or death to any party, the license revocation period under criminal law is lengthened by 90 days.

c. Other hard revocation periods are: 60 days, if the vehicle was being used in the commission of a felony or for failure to stop in an injury accident; and one year, for criminal vehicular homicide or injury or for manslaughter involving a motor vehicle.

d. If AC > 0.20 percent, then the applicable revocation period is doubled.

e. Juvenile DWI offenses are given the same status as adult DWI offenses for purposes of enhancing penalties for subsequent DWI offenses.

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Appealing the License Revocation

The implied consent law provides two independent review processes to a person whose license has been revoked under the implied consent law: an administrative review process and a judicial review process.[41]

The Administrative Review Process

At any time during the license revocation period, a person may make a written request to the commissioner of the Department of Public Safety (DPS) for an administrative review of that revocation.[42] The DPS must respond within 15 days with a written report either sustaining or rescinding the revocation. That decision may not be contested under the Administrative Procedures Act. The availability of administrative review has no effect upon the availability of judicial review. (Minn. Stat. § 169A.53)

Compared with the number of requests for judicial review of license revocations (see section below), only a minute percentage of the total number of alcohol-related license revocations (about 1 percent of the roughly 30,000 annually) are appealed administratively. Similarly, only a small fraction of administrative reviews result in rescission of the revocation (see Table 5). A common claim in such reviews—one that usually results in denial (i.e., a decision to sustain the license revocation)—is that the person whose license was revoked was not the person driving the vehicle at the time of the violation. Reasons for successful reviews (i.e., for rescission of the revocation) are more likely to involve inaccurate police reports or faulty lab reports of the alcohol test results.

[41] This review process should not be confused with the appellate process, in which an appeal is taken to the court of appeals or supreme court.

[42] The implied consent law (Minn. Stat. § 169A.53, subd. 1) directs that the administrative review of the license revocation must take place, if possible, at the same time as any review of the person's license plate impoundment order under Minnesota Statutes, section 169A.60, subdivsion 9.

Table 5

Requests for Administrative Review of DWI and Implied Consent Driver's License Revocations by Year

	Total Alcohol-Related License Revocations	Requests for Administrative Review	Revocations Rescinded	
1990	38,287	333	4	1.2%
1991	33,583	432	22	5.1%
1992	32,180	388	37	9.5%
1993	30,717	351	33	9.4%
1994	28,310	317	49	15.5%
1995*	29,070	238	44	18.5%
1996	29,368	348	49	14.1%
1997	29,107	222	7	3.2%
1998	30,901	326	18	5.5%
1999	30,668	317	9	2.8%

* Full year data were unavailable for 1995. Thus, the figures for that year are estimates based on multiplying January to September data by 1.33.

Source: Driver and Vehicle Services Division, Minnesota Department of Public Safety

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The Judicial Review Process

In addition to, or instead of, seeking administrative review, a revoked driver may seek judicial review of the license revocation. (Minn. Stat. § 169A.53) A petition for judicial review must be filed with the district court in the county in which the offense occurred within 30 days of the person's receipt of the revocation notice. The petition must specifically state the grounds upon which the petitioner seeks rescission of the revocation order. The filing of the petition does not stay the revocation.[43] However, the reviewing court may order a stay of the balance of the revocation if the hearing has not been conducted within 60 days after filing.

[43] The provision prohibiting the stay, when enacted in 1983, reduced the number of judicial appeals by nearly 90 percent.

Judicial reviews are conducted according to the rules of civil procedure, except that prehearing discovery is mandatory and, unless otherwise ordered by the court, limited to the following:

- the notice of revocation;
- the alcohol concentration test record or certificate of analysis;
- the arresting officer's certificate; and
- disclosure of potential witnesses and the basis of their testimony.

The hearing is held before a judge in any county within the judicial district in which the offense occurred. It may be conducted at the same time and in the same manner as hearings upon pretrial motions in the criminal prosecution for the DWI charge under Minnesota Statutes, section 169A.20, if any. The attorney general represents the Commissioner of Public Safety at this hearing. The hearing is limited to whether:

- there was probable cause for the arrest;
- the person was lawfully arrested;
- the person was involved in a traffic crash;
- the person refused to take the screening test;
- the screening test registered an alcohol concentration of 0.10 percent or more;
- the implied consent warning was administered properly;
- the person refused the evidentiary test;
- the evidentiary test indicated an alcohol concentration of 0.10 percent or more or the presence of any controlled substance in schedule I or II, other than marijuana;
- the test showed an alcohol concentration of 0.04 percent or more if the person was driving a commercial motor vehicle; and
- the testing method was valid and reliable, and the results accurately evaluated.

Lab or medical reports are admissible as evidence. The court must order the revocation to be sustained or rescinded within 14 days of the hearing. Failure of a key authority to be present at the hearing can be grounds for rescission of the revocation.

Legal counsel from the Office of the Attorney General (AG) represent the DPS in the judicial review hearings. This is a very labor-intensive responsibility for the AG, being the principal responsibility for 14 attorneys from that office. As shown in Table 6, the number of requests for judicial review of the license revocation has risen sharply in recent years (so that they now outnumber administrative hearing requests by more than ten times—see Table 5 for comparison).

Table 6
Requests for Judicial Review of Administrative Driver's License Revocations by Year

	Total Alcohol-Related License Revocations	Requests for Judicial Review	Revocations Rescinded	
1990	38,287	2,378	352	14.8%
1991	33,583	2,547	546	21.4%
1992	32,180	2,120	398	18.8%
1993	30,717	1,960	329	16.8%
1994	28,310	2,101	356	16.9%
1995	29,070	2,338	300	12.8%
1996	29,368	2,389	271	11.3%
1997	29,107	2,893	391	13.5%
1998	30,901	3,574	485	13.6%
1999	30,668	3,987	510	12.8%

Source: Driver and Vehicle Services Division, Minnesota Department of Public Safety; Annual Implied Consent Activity Reports

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An assistant attorney general attributes this increase to two main factors:

- An amendment to the DWI law in 1997 (effective January 1, 1998) to permit the record of a person's prior administrative license revocation for an impaired driving violation to be used to enhance the legal penalties for a subsequent DWI violation, just as a prior DWI conviction has long been used for that purpose; and

- The recent enactment of numerous enhancements to the penalties and sanctions for DWI violations—i.e., the stakes are now higher. In particular, the spokesperson noted the importance of having expanded the applicability of license plate impoundment and vehicle forfeiture sanctions as well as the stiffening of penalties and sanctions for violations involving an alcohol concentration of 0.20 percent or more. These changes were also enacted in 1997, and became effective January 1, 1998.

Most judicial reviews involve defendants who are being represented by a private defense attorney, though in a small number of cases the defendant is self-represented ("pro se"). Public defenders rarely represent their clients in judicial reviews, since the administrative license revocation process is a civil, rather than criminal, proceeding. Nevertheless, in a rare instance (perhaps a dozen times per year) a public defender—asserting that license revocation for impaired driving is at least a "quasi-criminal" process—chooses to represent an indigent client in a judicial hearing. Although the attorney general's office disagrees with that assertion, it has not officially challenged the public defender's occasional presence in those proceedings.

Table 6 reveals that in recent years about 13 percent to 14 percent of judicial reviews have resulted in a rescission of the administrative license revocation. A spokesperson for the AG relates that in previous years the most common reason for a decision to rescind was the absence of a key witness at the hearing (e.g., the arresting officer, the nurse who drew a blood sample, the BCA toxicologist who analyzed the blood or urine sample, etc.). However, the spokesperson notes that in recent years, an absent witness is rare and a decision to rescind is more likely to be based on legal issues (e.g., issues involving the traffic stop, the arrest, the alcohol testing, the reading of the implied consent advisory, etc.). He explains that with the higher stakes associated with the enhanced penalties and sanctions, defendants are more likely to retain legal counsel and to scrutinize their cases.

According to the AG's spokesperson, in many situations in which a defendant has requested judicial review, the defense counsel does not expect to prevail and, just minutes before the scheduled hearing when it becomes clear that all the key state witnesses are present, the defense will attempt to settle by pleading guilty after some last-minute negotiation. Thus, only some of the requested judicial hearings are actually conducted.[44] Nevertheless, the AG and the relevant witnesses still must prepare for each requested judicial hearing in the event that there is no last-minute settlement in the case. Clearly, judicial hearings are demanding and expensive for all parties involved, with expenses including not only defense attorney fees, but also the time and travel expenses of the AG, law enforcement, the BCA toxicologist, any private medical expert (if a blood test was used), and for the court itself.

[44] Likewise, relatively few DWI cases actually go to trial (less than 1 percent), unless they involve a charge of criminal vehicular homicide or injury or some other felony-level crime.

Vehicle License Plate Impoundment

Minnesota Statutes provide for two types of vehicle license plate impoundment: court-ordered (Minn. Stat. § 168.041) and administrative (Minn. Stat. § 169A.60). Prior to the enactment of the administrative plate impoundment law in 1990, license plate impoundment for DWI could be done only upon court order following conviction for the offense. However, studies revealed that the courts were ordering plate impoundment in only about one-third of the eligible cases. Thus, in 1990 the legislature enacted a separate statute providing for administrative plate impoundment, thereby more than doubling its rate of use and greatly accelerating its application in any given case.

Court-Ordered Plate Impoundment

Minnesota Statutes, section 168.041, directs the court to impound the plates of the vehicle for anyone convicted of driving after suspension, revocation, or cancellation of his or her license. The law has been in effect since 1955. In addition, the court, at its discretion, may impound the license plates of any vehicles owned or registered to a person convicted of any moving violation that requires the revocation of the person's driver's license. The impoundment period lasts until the violator is validly relicensed or until the court authorizes reissuance of the plates. A violator or owner, with written authorization of the court, may apply to the DPS for specially coded (WY) plates if a member of the violator's household has a valid driver's license, the violator has a limited license, or the owner is not the violator and has a valid driver's license.

Currently, nearly all court-ordered plate impoundments occur for people driving after license revocation or without insurance, rather than for new DWI violations or other violations. The administering agency—the Driver and Vehicle Services Division (DVS) of the DPS—reports that statewide in recent years there have been over 29,000 convictions annually for driving after suspension, revocation, cancellation, or otherwise without a valid driver's license. Despite the requirement under Minnesota Statutes, section 168.041, for the court to order plate impoundment in all such cases, and its discretionary authority to order it in many other cases, the DVS annually receives fewer than 2,000 plate impoundment orders from the courts. In turn, the DVS annually authorizes fewer than a couple of hundred of the specially coded (WY) replacement plates for other validly licensed drivers in the household under the court-ordered plate impoundment program (see Table 7).

Administrative Plate Impoundment

Minnesota Statutes, section 169A.60, directs the commissioner of DPS, or a police officer acting on behalf of the commissioner, to impound the plates of all vehicles owned by or registered to:

- a driver whose driver's license is revoked for:

- a second DWI violation within ten years; or

- a first or subsequent DWI violation involving child endangerment or an alcohol concentration of 0.20 percent or more; or

- a driver who is arrested for or charged with driving after license cancellation for being "inimical to public safety" (IPS).

Thus, administrative plate impoundment is entirely alcohol-related, involving either DWI itself or "driving after - IPS."

The plate impoundment order may be issued by the arresting officer in person upon ordering the administrative license revocation (i.e., at the time of arrest) or subsequently by DPS (via mail) upon notification by the officer of the administrative driver's license revocation. In either case, the implied consent law must have been invoked. The notice of impoundment must advise the violator of:

- his or her obligation to surrender within seven days the license plates of all vehicles subject to impoundment (i.e., the motor vehicle involved in the violation, as well as all motor vehicles owned or co-owned by the violator);

- the right to obtain both administrative and judicial review of the impoundment order; and

- if the violator is not the owner, the procedure to obtain new registration plates (which may be either specially coded or regular plates, depending on circumstances of the violation and the owner's awareness of and response to it).

When an officer issues a plate impoundment order, the officer must issue a temporary vehicle permit that is valid for seven days if the vehicle is registered to the violator, or for 45 days if the violator is not the registered owner.

DPS may rescind the impoundment order and reissue regular plates for the vehicle at no cost to the owner if the owner is not the violator, and:

- the violator had a valid license on the date of the violation and the owner files a written statement acknowledging awareness that the violator is prohibited from driving during the impoundment period; or

- the violator did not have a valid driver's license at the time of the violation, but took the vehicle without permission and the owner reported it prior to the violator's arrest.

In the case of a nonviolator-owner who fails to report the offense as provided above, the statute provides for the issuance of specially coded (usually WX or WZ) plates for the vehicle for a minimum of one year and until the next regular registration date (i.e., effectively for 12 to 23 months), with the clock reset for any repeat offense during the impoundment period.

The law prohibits the owner of a vehicle subject to plate impoundment or a vehicle bearing the specially coded plates from selling the vehicle without first obtaining permission from the court.

As expected, administrative plate impoundment is being implemented considerably more often than court-ordered plate impoundment, as reflected by data in Table 7. These numbers increased sharply beginning in fiscal year 1998, given the advancement of administrative plate impoundment from the third to the second DWI offense, and its application to any DWI violation (including any first offense) involving an alcohol concentration of 0.20 percent or more, beginning January 1, 1998.[45] The application of the law was expanded further in 2000 to apply to first-time DWI violations involving child endangerment.[46]

[45] Laws 1997, 1st spec. sess., ch. 2 (the 1997 omnibus DWI bill).

[46] Laws 2000, ch. 478 (DWI recodification).

Table 7

Use of License Plate Impoundment Programs
Court-Ordered vs. Administrative

	Court-Ordered Program		Administrative Program		
	Impoundment Orders Issued	**Special WY Plates Issued**	**Impoundment Orders Issued~**	**Special WX/WZ Plates Issued**	**Administrative Reviews@**
1991	1,247	82	2,599	270	n.a.
1992	795	40	2,450	236	n.a.
1993	858	42	3,424	282	n.a.
1994*	1,323	79	3,981	426	n.a.
FY95*	1,360	99	3,670	524	598
FY96	1,749	121	5,113	608	820
FY97	1,885	148	5,049	1,134**	496
FY98	1,692	120	7,743***	2,117	590
FY99	763	76	12,214	3,561	1,509
FY00	603	66	16,866	3,967	1,330

~ In this column, the numbers for FY91 to FY94 reflect the number of vehicles for which plate impoundment was ordered, rather than the number of orders itself. On average in any given year, there are about 1.5 vehicles affected per impound order.

@ DPS officials estimate that about 75 percent of the requested administrative reviews of plate impoundment orders result in rescission of the order, largely due to the violator having had a valid license upon borrowing an innocent owner's vehicle.

* Data for the six overlapping months of these two time periods (i.e., 7/1/94 to 12/31/94) appear in each of these two rows; hence, each row is accurate, even though a column total cannot be obtained by summing over all rows.

** The disproportionate increase in special plates issued after August 1, 1996, is due to a 1996 amendment prohibiting the immediate reissuance of regular plates, but permitting the issuance of special plates, for a vehicle that is owned by someone, other than the violator, who fails to report the offense in advance.

***Effective January 1, 1998, administrative license plate impoundment was expanded ("advanced") by lowering the criteria from third- to second-time DWI violations, and also to first offenses if the person's alcohol concentration equals or exceeds 0.20 percent; hence the large increases in the number of orders issued in FY98 and FY99. The application of the law was expanded further in 2000 to apply to first-time violators in child endangerment cases.

Source: Driver and Vehicle Services Division, Minnesota Department of Public Safety

Stops of Vehicles Bearing Special Plates

Effective January 1, 1998, Minnesota Statutes, section 168.0422, authorizes a peace officer to stop any vehicle bearing special series registration plates issued under either the court-ordered or administrative plate impoundment laws to determine whether the driver is operating the vehicle lawfully with a valid driver's license.

Law enforcement officers relate that, as a practical matter, upon encountering a vehicle being driven with the specially coded WY, WZ, or WX plates they do a "rolling check" (by radio or computer from the squad car) of the vehicle registration and (owner's) driver's license data bases at DPS to determine whether the apparent gender and age of the driver match that of the revoked violator. If there is any suspicion, the officer stops the vehicle to investigate further. Officers using this method report a high "hit rate" in apprehending and rearresting persons who are illegally driving after revocation.

Deterrence Effectiveness of Plate Impoundment

The effectiveness of administrative plate impoundment is one of the few features of Minnesota's DWI laws that has been systematically evaluated. A 1994 study by the DPS revealed that it has a high rate of deterrence. In a two-year follow-up of 2,396 third-time DWI offenders[47] who were eligible for plate impoundment, the study found a two-year recidivism rate of:

- 13 percent within two years for offenders who received a plate impoundment order from the arresting officer;
- 19 percent for offenders who received the impoundment order, not from the arresting officer, but from the DPS in a follow-up mailing; and
- 26 percent for those offenders who were eligible for impoundment, but for whatever reason, did not receive an impoundment order.

The study also found that implementation of plate impoundment (at about 65 percent of those eligible) is 12 times greater under the administrative impoundment law than it was under the court-order law. Implementation is expected to increase further as law enforcement awareness of the program increases, and with the recent implementation of a computer programming change to automatically notify the arresting officer of an arrestee's eligibility for impoundment.

[47] By focusing only on third-time offenders, rather than third-time and greater offenders, the study controlled an important potential source of extraneous variance. The study includes a separate analysis of fourth- and fifth-time DWI offenders, with generally similar results but a somewhat higher level of recidivism overall. See: Alan Rodgers (Minnesota Department of Public Safety). "Effect of Minnesota's License Plate Impoundment Law on Recidivism of Multiple DWI Violators," *Alcohol, Drugs and Driving*, pp. 127-134, 1994.

Releasing an Impounded Vehicle

In most cases involving an arrest for DWI, the arresting officer arranges for the suspect's vehicle to be towed to a storage facility or impound lot. Under Minnesota Statutes, section 169A.42, the impounded vehicle can be released to a person (whether the violator, a new buyer, the lienholder, or some other authorized person) only if that person pays the towing and storage fees, provides proof of ownership and insurance, and has a valid driver's license. The owner need not be validly licensed if the vehicle is being released to a properly licensed person or a towing company, as authorized by the owner.

When a vehicle is impounded, the impound lot must provide the owner with notice of the taking within ten days and inform the owner of his or her right to reclaim the vehicle within 15 days after the notice. After the 15-day period has elapsed, the vehicle is eligible for disposal or sale by the impounding authority.

According to some prosecutors, law enforcement personnel, and impound lot operators, many of the vehicles driven by chronic DWI offenders are relatively low-valued "junkers" that often go unclaimed at the impound storage lots. In such cases, the towing and storage fees may soon exceed the value of the vehicle. Following proper notification to the owner, the impound lot then sells the abandoned vehicle to a salvage yard.

Some vehicles are also eligible for forfeiture under Minnesota Statutes, section 169A.63 (described below), if they were used in the commission of a "designated" DWI offense, such as a first-degree DWI crime. As a practical matter, however, the prosecutors sometimes decide not to pursue the forfeiture under this law when the vehicle has a low value, claiming that the process of "de facto forfeiture through abandonment" is generally simpler and quicker than the more formal forfeiture process.

Vehicle Forfeiture

Designated Offense

Under Minnesota's vehicle forfeiture law (Minn. Stat. § 169A.63) a "designated offense" includes:

- a first-degree DWI crime;
- any DWI offense committed by a person whose driver's license has been canceled for being "inimical to public safety" (i.e., "canceled - IPS"), which typically occurs upon the person's third DWI violation and does not expire until the person becomes properly relicensed following treatment and revocation of at least a year; or
- any DWI offense by a person subject to a restriction on the driver's license indicating that the person may not use or consume any amount of alcohol or a controlled substance at any time (which is the usual requirement for a driver seeking license reinstatement following treatment after having been canceled-IPS).

A vehicle is subject to forfeiture under this law only if it was used in the commission of a designated offense, and:

- the driver is convicted of the designated offense;
- the driver fails to appear at trial on the charge (in violation of Minnesota Statutes, section 609.49); or
- the violation results in a designated license revocation and the driver either fails to seek administrative or judicial review of the revocation in a timely manner, or the revocation is sustained.

Other vehicles owned by the offender are not subject to forfeiture since they were not involved in the commission of the designated offense.

As protection for an owner or co-owner who is not the offender, the law states that a motor vehicle is subject to forfeiture under this section only if its owner knew or should have known of the unlawful or intended use of the vehicle (Minn. Stat. § 169A.63, subd.7(d)).

Administrative Forfeiture

The administrative forfeiture procedure, which became effective January 1, 1998, was designed to streamline and expedite the forfeiture process and, thereby, encourage prosecutors to pursue vehicle forfeiture in eligible situations more consistently. Upon an arrest for a designated offense,

the law enforcement agency making the arrest serves notice to the driver of the agency's intent to seize and forfeit the vehicle and notifies any others having a property interest in the vehicle, as well. The notice includes a written statement (in English, Hmong, and Spanish) of the owner's right to obtain judicial review of the forfeiture action.

Within 30 days following notification of the agency's intent to seize and forfeit the vehicle, the owner may file a demand for a judicial review of the forfeiture. The judicial review of the administrative forfeiture action is governed by the procedures described in Minnesota Statutes, section 169A.53—the implied consent law—and, at the prosecutor's option, may occur at the same time as any judicial review of the person's license revocation under that law. If no review is requested, the administrative forfeiture becomes effective. (Minn. Stat. § 169A.63, subd. 8.)

Judicial Forfeiture

Under the judicial forfeiture procedure, a separate complaint must be filed against the vehicle describing the vehicle and its unlawful use and specifying whether it was used in the commission of a designated offense or whether it was used in conduct resulting in a designated license revocation. If the forfeiture complaint is based on the commission of a designated offense, and the person appears in court but is not convicted of the offense, the court must dismiss the complaint and return the property to the owner. Likewise if the forfeiture complaint is based on a designated license revocation and the revocation is rescinded, the complaint must be dismissed. Of course, the court may find the forfeiture justified and order it executed. (Minn. Stat. § 169A.63, subd. 9.)

Prior to January 1, 1998, the judicial process was the only DWI-related motor vehicle forfeiture process available, and forfeiture was contingent upon the person's conviction for the designated DWI offense. The 1998 law—permitting forfeiture to be based on the license revocation itself, and allowing it to be undertaken through an administrative process—greatly facilitates the prosecutor's role in, and speeds up, the forfeiture process. There is no statewide data base on DWI-related vehicle forfeitures; however, anecdotal information suggests that it is being undertaken much more often using these new administrative procedures.

The new law also expanded the scope of vehicle forfeiture to apply to offenders with shorter prior DWI records. It is likely that these statutory changes have more than doubled the proportion of DWI cases meeting the eligibility requirements for vehicle forfeiture.[48]

[48] The proportion of all DWI violators who are eligible for vehicle forfeiture may be as high as one-fourth, given that in 1998 approximately 24 percent of DWI violators were third time or more violators (though not all them committed those violations within a five-year period), and given that about one-fourth of the additional 24 percent of violators who were second-time offenders had an alcohol concentration of 0.20 percent or more. (Source: Driver and Vehicle Services Division, DPS; and unpublished House Research analysis of the 1995 DVS driver's license data base.)

Disposition of Forfeited Vehicles

Following forfeiture, the arresting agency may keep the vehicle for official use, though it must make a reasonable effort to make the vehicle available for use by officers involved in the agency's drug abuse resistance education (DARE) program.

However, the security interest or lease of any financial institution is protected, in that when a forfeited vehicle is seized the lienholder may choose to sell the vehicle at its own foreclosure sale or agree to its sale at a law enforcement agency forfeiture sale. Under either of these options, the lienholder receives its proportionate share of the proceeds from the forfeiture sale, following deduction for vehicle storage costs and certain other expenses.[49] Other parties with a financial interest in a vehicle, such as a co-owner, also receive their proportionate share of the proceeds. Any remaining proceeds from the sale of a forfeited vehicle are directed to the political subdivision that employs the arresting agency for use in DWI enforcement, training, and education.

If the arresting agency is a state agency (e.g., the highway patrol), the proceeds are directed toward the state's general fund. However, if the forfeited vehicle is an off-road recreational vehicle or motorboat, the proceeds must be directed to the type of account in the Department of Natural Resources fund corresponding to the type of vehicle involved.

[49] Minnesota Statutes, section 169A.63, subdivision 7, stipulates (among other things) that a vehicle is subject to forfeiture under this section "only if its owner knew or should have known of the unlawful use or intended use" of the vehicle in the DWI violation. Some prosecutors report having interpreted this language as authorizing them, in the situation of a co-owned or loaned vehicle, to vigorously pursue the forfeiture, unless the violator was properly licensed at the time of the incident.

Bail and Pretrial Release

Electronic Alcohol Monitoring During Pretrial Release

DWI law (Minn. Stat. § 169A.44) specifies that, unless maximum bail of $12,000 (see below) is imposed, a person charged with any of the following DWI offenses may be released from pretrial detention pending resolution of the charge only if the person agrees to:

- abstain from alcohol; and
- submit to a program of electronic alcohol monitoring (EAM) involving at least once-daily measurements of the person's alcohol concentration, providing that such equipment is available.

These conditions apply to a person charged with:

- a DWI violation within ten years of two or more prior impaired driving convictions (but not prior license revocations);
- a second or subsequent DWI violation, if the person is under the age of 19;
- a DWI violation while the person's driver's license is canceled for being inimical to public safety; or
- any DWI violation (even a first offense) involving an alcohol concentration of 0.20 percent or more.

Other Conditions of Release

The same statute also specifies that, unless maximum bail is imposed, a person charged with a DWI offense within ten years of three prior impaired driving convictions may be released from detention pending resolution of the charge only if all of the following conditions are imposed:

- impoundment of the license plates of the vehicle used in the violation;
- impoundment of the vehicle itself, if it was an off-road recreational vehicle or motorboat;
- weekly reporting to a probation officer;
- abstinence from alcohol and controlled substances, and submission to random alcohol testing or urine analysis at least weekly; and

- if convicted of the violation, reimbursement of the court or county for the cost of these services.

These conditions are in addition to the alcohol abstinence and EAM conditions described above and any other conditions of release ordered by the court.

Maximum Bail

The maximum bail that may be imposed for pretrial release is contingent upon the maximum fine that may be levied for the charged offense. By definition under criminal law (Minn. Stat. § 609.02), the maximum fine is $3,000 for a gross misdemeanor and $1,000 for a misdemeanor.

Generally, maximum bail is limited to twice the amount of the maximum fine. However, for offenses involving DWI, driving after revocation for being inimical to public safety, fleeing the scene of an injury accident, and certain other offenses, the maximum bail is four times the maximum fine (Minn. Stat. § 629.471).

The offenses to which the above-listed conditions of release apply are all gross misdemeanor crimes, resulting in a maximum bail of $12,000.[50]

[50] Under the formula: 4 x $3,000 = $12,000 for a gross misdemeanor DWI violation; and 4 x $1,000 = $4,000 maximum bail for a misdemeanor DWI violation.

Chemical Use Assessment

When a person is convicted of a DWI violation or pleads guilty to a reduced offense following arrest for a DWI violation, the court must require the person to submit to an alcohol use assessment administered by the county in accordance with DPS rules and standards (Minn. Stat. § 169A.70).

When sentencing the person, the court must impose a fee of $125 for the assessment (with an additional $5 surcharge for most repeat offenders). Of this amount, $25 is forwarded to the state's general fund and $100 is returned to the county. (Minn. Stat. § 169A.284)

If the person is being sentenced for a second or subsequent DWI violation within ten years or for any offense involving an alcohol concentration of 0.20 percent or more, the court must order the person to submit to the level of care recommended by the assessment. (Minn. Stat. § 169A.275, subd. 5)

Criminal Penalties

This section of the guidebook describes the levels of DWI offenses, the definitions of prior offenses for purposes of enhancing criminal penalties, and the mandatory minimum and maximum jail sentences applicable to each offense level.

Fines and penalty assessments are discussed in the "Costs to the DWI Offender" chapter of this guidebook. Probation periods and programs are discussed in the "Probation" chapter. Administrative sanctions—including driver's license revocation, vehicle license plate impoundment, and vehicle forfeiture—are discussed in separate chapters.

The Offense Levels

As described in detail in the first chapter of this guidebook, "Defining the DWI Crime," a DWI offense may be a misdemeanor or a gross misdemeanor, depending on whether it is the person's first offense or a repeat offense within ten years, as well as whether it occurs under certain other aggravating circumstances. That chapter also describes criminal vehicular operation (CVO), noting that five of the six levels of CVO crime are felony-level offenses.

Defining "Qualified Prior Impaired Driving Incident"

For purposes of enhancing the criminal penalties, Minnesota Statutes, section 169A.03, subdivision 22, defines "qualified prior impaired driving incident" to include both prior impaired driving convictions and prior impaired driving-related losses of license.

- "Prior impaired driving conviction" includes a conviction under Minnesota Statutes, section:
  - 84.91, DWI involving an all-terrain vehicle or snowmobile (first offense);
  - 86B.331, DWI involving a motorboat in operation (first offense);
  - 169A.20,[51] DWI involving a motor vehicle, including a commercial motor vehicle, as well as any repeat DWI offense involving an off-road recreational vehicle or a motorboat in operation;
  - 169A.31, an alcohol-driving violation involving a school bus (employing a zero-tolerance standard);

[51] A prior conviction under Minnesota Statutes, sections 169.121, 169.1211, or 169.129 (1998)—the predecessor sections to the recodified DWI laws in Chapter 169A—also is included in this definition.

- 360.0752, DWI involving an airplane;
- 609.21, criminal vehicular homicide or injury;
- any local ordinance or law of another state in conformity with any of these laws.[52]

- "Prior impaired driving-related loss of license" refers to driver's license suspension, revocation, cancellation, denial, disqualification, or the revocation of operating privileges under any of several listed statutes for an alcohol-related incident involving a motor vehicle, commercial motor vehicle, off-road recreational vehicle, or motorboat in operation.

For purposes of enhancing criminal penalties and administrative sanctions, the various DWI and implied consent laws count a person's prior convictions and losses of license if they occurred within the preceding ten years.

The overwhelming majority of DWI arrests result in both an administrative license revocation[53] and a conviction for the violation.[54] On occasion, however, a DWI arrest results in only the revocation or the conviction, but not both. Thus, to ensure that each of an offender's prior violations is considered, Minnesota's DWI-related sanctions and penalties usually incorporate both the person's prior impaired driving convictions and prior alcohol-related losses of license when totaling the person's "priors." Nevertheless, there is some inconsistency among those laws and, thus, the reader is advised to consult the specific statute of interest for an understanding of the applicable rules.

Circumstances Preventing License Revocation

Minnesota Statutes, section 169A.52—the implied consent law—directs the DPS to revoke a person's driver's license[55] in the event of an alcohol concentration test failure or test refusal if there is probable cause to believe that the person has violated Minnesota Statutes, section 169A.20—the DWI law—and the person has been arrested for such violation, has been involved in a traffic collision, has taken and failed the preliminary screening test, or has refused to take the

[52] The various types of vehicles referenced in this discussion are defined in Minnesota Statutes, section 169A.03.

[53] As described in a separate chapter of this guidebook, the license revocation is authorized under the implied consent law, Minnesota Statutes, section 169A.52, and is triggered by the failure or refusal of the alcohol concentration test following administration of the implied consent warning.

[54] The conviction results from either the entry of a guilty plea to the criminal charge or a finding of guilt at trial. In either case, but particularly the latter, conviction usually lags the revocation considerably.

[55] The action is recorded on the person's driving record as a license revocation, even in the event that the person's license is already revoked, suspended, canceled, denied, or disqualified for a prior offense of any sort, and even if the person has never had a valid driver's license.

screening test.
However, before administering the alcohol concentration test, the arresting officer must administer the "implied consent warning" to inform the person that he or she is legally required to take the test, that test refusal is a crime, and that the person has the right to consult an attorney before taking the test. (Minn. Stat. § 169A.51, subd. 2.) Nevertheless, in some cases, the officer chooses not to invoke implied consent and, thus, the DPS cannot revoke the license until being notified of the person's conviction for the offense.

For example, the person might not speak English and the officer might not have time to telephone or locate a translator who speaks the person's language and who would be willing to translate the warning statement. In such circumstances, the officer can proceed with the alcohol testing and DWI arrest without invoking the implied consent law. Even though there can be no administrative license revocation in such cases, the violation can nevertheless be successfully prosecuted and may result in conviction.

Circumstances Resulting in No DWI Conviction

It is also possible that a DWI arrest will result in an implied consent revocation but no conviction for the charge. The most likely situation in which this occurs is for a first-time DWI violator whose alcohol concentration is at or just above the legal limit, particularly if the violation occurs in a Twin Cities metro-area county where court dockets are full.

For example, for several years Hennepin County prosecutors generally routinely accepted a plea for a charge reduction to careless driving for first-time DWI violators arrested with an alcohol concentration of 0.14 percent or less. Over time, that (nonbinding) threshold has been reduced to about 0.12 percent.

Analysis presented in the following chapter (Table 9) reveals that somewhat over 20 percent of first-time DWI arrests and about 10 percent of repeat DWI arrests do not result in conviction for DWI, perhaps primarily due to such plea bargaining. That phenomenon appears to have little consequence for DWI violators, however, since most violators receive the implied consent license revocation, which itself counts as a prior offense for enhancing sanctions and penalties for subsequent DWI offenses.

Maximum Incarceration and Fines by Offense Level

Minnesota Statutes, section 609.02, specifies the maximum jail sentences and fines for nonfelony offenses. Upon conviction of a misdemeanor offense, the court may sentence a person to a maximum of 90 days in jail and impose a fine of up to $1,000. For a gross misdemeanor offense, the maximums are one year in jail and a $3,000 fine.

However, recent analysis[56] shows that those maximums are rarely, if ever, imposed and executed.[57] Systematic data on misdemeanor and most gross misdemeanor sentencing is not readily available for analysis on a statewide basis. However, the cited research using Hennepin County court data shows most first-time DWI offenders serve no jail time, other than what occurs during the arrest itself (for which they are typically credited by the court), with the typical fine being in the range of $200 to $500, and with the maximum sentence of one year of jail for a gross misdemeanor DWI offense generally being imposed only for chronic offenders. Similarly, sentencing to the maximum fine of $3,000 for a gross misdemeanor also appears uncommon; this may be partly due to the perceived likelihood that many chronic DWI offenders are of limited financial means, and partly due to the fact that when sentencing such an offender the court frequently suspends part of the fine with the stipulation that the offender undertake and pay for chemical dependency treatment.

Mandatory Minimum Incarceration: Repeat Offenses

As noted above, the maximum period of incarceration for a gross misdemeanor offense is one year, to be served in a local jail or workhouse. Minimum jail penalties also apply to most repeat DWI offenses.

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[56] That analysis involves examination of Hennepin County court records for a representative sample of DWI offenders from 1995. It is part of a larger study of DWI recidivism being undertaken by Steve Simon, University of Minnesota law professor and chair of the standing Statewide DWI Task Force, and his colleagues, under partial funding from the Insurance Institute for Highway Safety, Washington, D.C.

[57] There is an important distinction between the "imposition" and the "execution" of a sentence to incarceration. For multiple-repeat DWI offenders, the court will often "impose" a harsher sentence than it expects the defendant to serve. Typically, a portion of that sentence will then be "stayed" by the court—pending the person's successful performance of certain specified conditions of probation (which follows the period of actual incarceration), and the remainder of the imposed sentence will be ordered "executed."

For example, a judge might sentence a third-time DWI offender to one year in jail (i.e., the sentence imposed), with 275 days stayed and 90 days to be served (i.e., the sentence executed), along with various conditions of probation. If, subsequent to release from jail, the person violates those conditions of probation, the judge has the authority to order part or all of the stayed sentence to be executed. In this example, faced with the defendant's persistent or serious probation violations (e.g., a repeated failure to report for random urinalysis or testing positive for alcohol or drugs), the judge might order another 60 days of incarceration to be executed, leaving the remaining 215 stayed days for continued leverage over the offender when he or she is again released from jail and placed on probation.

It is also important to note that most incarcerated offenders are able to earn the maximum of one-third reduction of an executed jail/workhouse sentence for "good time" served (Minn. Stat. § 643.29). In addition, many DWI offenders are able to qualify for "work release" from the workhouse or jail, in order to retain employment while serving their executed jail sentences.

Minnesota Statutes, section 169A.275, subdivision 2, requires that a person convicted of a gross misdemeanor violation involving DWI within ten years of a qualified prior impaired driving incident, must be sentenced to a minimum of 30 days incarceration,[58] or eight hours of community work service for each day less than 30 that the person is ordered to serve in jail. The court, however, may sentence the offender without regard to the 30-day mandatory minimum jail requirement, if it sentences the person to probation and orders him or her to participate in a program of intensive probation.[59]

In addition, if mitigating factors exist, the court, either at its own initiative or in response to a motion of the prosecutor, may sentence the person without regard to the 30-day mandatory minimum sentence, provided that the reasons for that downward departure are stated in writing. The statute requires, in such cases, that the person be sentenced to at least 48 hours in jail or 80 hours of community work service.

If the offender has two or more qualified prior impaired driving incidents within the previous ten years, longer mandatory minimum jail penalties apply. These mandatory penalties may involve a combination of jail time, intensive probation, and home detention and an increase in sentence length, depending on the number of prior violations the person has (see Table 8).

[58] At least 48 hours of this incarceration must be served consecutively, implying that the court may order the remainder of the sentence to be served in increments of less than 48 hours. For example, the court might order that the offender be permitted to attend school or work during the day, but required to spend each night in jail.

[59] The intensive probation program referred to here is defined in Minnesota Statutes, section 169A.74, and is described in a separate section of this guidebook.

Table 8

Mandatory Minimum Sentences for Repeat DWI Offenses

Minn. Stat. § 169A.275

Type of Repeat Offense	Mandatory Minimum Sentence
Second DWI offense within ten years of qualified prior impaired driving incident	30 days of incarceration or eight hours of community work service for each day less than 30 the offender is ordered to serve in jail; or participation in an intensive probation program Court may waive this mandatory sentence if written reasons are stated on the record and if offender is ordered to serve at least 48 hours consecutively in jail or 80 hours of community work service
Third DWI offense within ten years of qualified prior impaired driving incident	90 days of incarceration, at least 30 days of which must be served consecutively; or Participation in an intensive probation program that requires the offender to serve at least six days in jail Court may order that 60 days of the 90-day minimum jail penalty be served on home detention or in an intensive probation program
Fourth DWI offense within ten years of qualified prior impaired driving incident	180 days of incarceration, at least 30 days of which must be served consecutively; or Participation in an intensive probation program that requires offender to serve at least six days in jail Court may order that 150 days of the 180-day minimum jail penalty be served on home detention or in an intensive probation program
Fifth or subsequent DWI offense within ten years of qualified prior impaired driving incident	One year of incarceration, at least 60 days of which must be served consecutively; or Participation in an intensive probation program that requires offender to serve at least six days in jail Court may order that 305 days of the one-year minimum jail penalty be served on intensive probation using an electronic monitoring system or, if such a system in unavailable, on home detention

House Research Department

License Revocations and Adjudications

To date, there has been little, if any, published information regarding the outcomes of court adjudications for DWI charges in Minnesota. However, Table 9—compiled in conjunction with a separate ongoing DWI study[60]—provides some valuable information related to this topic. The data consist of the driver's license records of the 27,316 Minnesotans who were arrested for DWI within Minnesota during 1995 and whose driver's license records currently indicate that the person received either or both of the following consequences:

- administrative revocation of the person's drivers license under the implied consent law; and/or

- conviction for DWI, implied consent test refusal, or criminal vehicular operation (CVO).[61]

Absent from these data are any drivers who were arrested for DWI but who received neither an implied consent revocation nor a conviction for DWI, implied consent test refusal, or CVO.[62] The missing information causes all the percentages in Table 9 to be overstated somewhat (since the denominator for each percentage, which is the total number of arrested persons, is understated); however, that statistical effect is expected to be rather small since it is generally thought that very few persons arrested for impaired driving happen to receive neither the implied consent license revocation nor a DWI conviction.

In reviewing adjudication outcomes, it is important to consider implied consent license revocations as well since, for purposes of enhancing most administrative sanctions and criminal penalties for any subsequent DWI violation, a prior impaired driving-related loss of license counts equally to a prior impaired driving conviction (see definitions in Minnesota Statutes, section 169A.03).

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[60] That study is being conducted by Steve Simon, University of Minnesota Law School professor and chair of the standing Statewide DWI Task Force, and colleagues, under partial funding from the Insurance Institute for Highway Safety, Washington, D.C. The study is attempting to assess the specific DWI deterrence effectiveness of speedy DWI adjudication.

[61] This analysis reflects the exclusion of the records of 2,994 drivers who were either: (1) non-Minnesotans arrested for DWI within Minnesota; or (2) Minnesotans arrested for an out-of-state DWI violation. These categories of cases were intentionally excluded due to their having a higher rate of missing adjudication information.

[62] For example, an arrested driver for whom the implied consent law was not invoked and who was convicted of some crime other than DWI—irrespective of whether that other crime was more or less serious than DWI (e.g., a felony drug crime or careless driving)—would not be included in this data base since there would be no evidence of the alcohol-related arrest on the driving record.

License Revocations

Table 9 reveals that 96.9 percent of the Minnesotans arrested for DWI in Minnesota during 1995 received an alcohol-related administrative license revocation pursuant to the implied consent law. That group of persons receiving administrative license revocation consists of three subgroups:

- 8.0 percent who received only the license revocation—i.e., they were not convicted of DWI or any other crime as a result of the arrest;

- 79.4 percent who received both the implied consent driver's license revocation and a conviction for DWI, implied consent test refusal, and/or CVO (some of these persons may have received a conviction for some other crime, as well); and

- 9.5 percent who received, in addition to the implied consent revocation, a conviction for some other crime, but not a conviction for DWI, implied consent test refusal, or CVO.

A total of 88.9 percent of those arrested for DWI in 1995 received both the implied consent license revocation and a conviction for DWI or some other crime as a result of the impaired driving incident. Given the data selection criteria, one can assume that 3.1 percent of arrested drivers did not receive an implied consent revocation but were convicted of DWI, implied consent test refusal, or CVO, since either a revocation or DWI conviction was required for inclusion in the analysis (i.e., 100% - 96.9% = 3.1%).

Conviction for DWI, Test Refusal, or CVO

The second section of Table 9 shows the percentages of arrested drivers who were convicted of one or more of the three DWI-type crimes. Conviction for DWI itself was by far most frequent, at 78.6 percent of the arrested drivers, followed by conviction for implied consent test refusal (a category of DWI crime) at 4.0 percent, and by conviction for CVO at 0.2 percent.[63] Taking into consideration the fact of multiple convictions for a few of these persons, 82.5 percent of the arrested drivers were convicted of DWI, implied consent test refusal, and/or CVO. Finally, 4.2 percent of the arrested drivers were convicted of some other crime in addition of one or more of these three DWI type crimes.

Conviction for Some Other Crime

The third section of Table 9 shows that 13.9 percent of the arrested drivers were convicted of some other crime or crimes instead of, or in addition to, DWI, test refusal, and/or CVO, with 9.5

[63] While statewide data on the number of test refusals is unavailable, it is widely thought to be far higher than the 4 percent figure for convictions for the test refusal crime, with the difference thought to be attributable to the common practice of plea bargaining such charge to a regular DWI.

percent having been convicted only of some other crime besides those three. The remaining rows of the table show the percentage convicted for each of those other crimes (for some, in addition to conviction for DWI).

Charge Reduction

The percentages presented in the three right columns of Table 9 further specify these data by the DWI offense level. The patterns in those columns can be interpreted as reflecting, in part, the frequency and nature of charge reductions. It would appear that there have been relatively few charge reductions for DWI violations—perhaps no more than 10 percent or so overall—with most of those being directed toward first-time DWI violators, and nearly all of the reductions involving an alternative conviction for careless or reckless driving. Of course, these driver's license records data do not directly indicate that charge reduction occurred; one would need to study actual court records to confirm (or refute) these interpretations.

Summary of the Conviction Data

In summary, the data in Table 9 confirm that the overwhelming majority of drivers arrested for a DWI crime receive an administrative (implied consent) license revocation (96.9 percent), a DWI conviction (82.5 percent), or both (79.4 percent), or the license revocation and a conviction for one or more other crimes (9.5 percent). Thus, it appears that DWI arrest nearly always leads to imposition of DWI-related administrative sanctions and/or legal penalties.

Nevertheless, the reader should be mindful that the data base for the analysis reported here does not contain those drivers who were arrested for DWI but who received neither the implied consent license revocation nor a DWI conviction. That group is expected to be quite small—perhaps 3 percent or less of the total number of drivers arrested for DWI; however, data is not available to confirm or refute that estimate. The net effect of that missing information causes all of the percentages reported in Table 9 to be overestimated somewhat.

Table 9

Revocation and Convictions Following Arrest for DWI As Recorded on the Driver's License Record for 1995 Arrests

Sanction or Conviction	All DWI Offenders (27,316)*	DWI Offense Level		
		First Time (15,223)	Second Time (5,730)	Third or More (6,363)
Implied Consent Revocation of the Driver's License:				
a) IC driver's license revocation	96.9%	97.2%	97.2%	95.9%
b) IC revocation only: no conviction for any crime	8.0	8.4	7.0	8.1
c) IC revocation and DWI-type conviction: DWI, IC test refusal, or CVO	79.4	73.9	87.2	85.4
d) IC revocation and conviction only for crime other than DWI, IC test refusal or CVO (but not DWI)	9.5	14.9	3.0	2.3
Court Conviction for DWI, IC Test Refusal, or CVO:				
e) DWI	78.6%	74.4%	85.5%	82.1%
f) IC test refusal	4.0	2.3	4.5	7.7
g) CVO	0.2	0.2	0.2	0.3
h) DWI, test refusal, or CVO	82.5	76.7	89.9	89.6
i) DWI, test refusal, or CVO, plus any other crime (a subset of line "h")	4.2	3.8	3.7	5.5
Court Conviction for Non-DWI Crimes:				
j) Some other crime (possibly in addition to DWI, IC test refusal, or CVO)	13.9%	18.9%	6.8%	8.1%
k) Only some other crime (but not DWI, IC test refusal, or CVO; all with and IC revocation)	9.5	14.9	3.0	2.3
l) Careless/reckless driving	9.1	14.8	2.9	1.2
m) No proof of insurance	1.9	1.8	1.9	2.1
n) Driving after cancellation/revocation/suspension	1.5	1.0	1.0	3.3
o) Open bottle in vehicle	0.9	1.1	0.7	0.5
p) Fleeing police	0.5	0.4	0.4	0.9
q) Drug felony	0.2	0.2	0.2	0.2
r) Motor vehicle theft	0.1	0.1	0.1	0.1

Source: Analysis of 1995 driver's license data base obtained from the Driver and Vehicle Services Division, Minnesota Department of Public Safety

*This excludes 2,994 DWI violators arrested during 1995 who were either: (a) not Minnesota residents at the time of arrest; or (b) were Minnesota residents, but committed the violation out-of-state.

House Research Department

Probation

Minnesota Statutes, section 609.135, provides that when sentencing an offender to incarceration, the court may stay the imposition or execution of that sentence, and a) may order intermediate sanctions without placing the offender on probation, or b) may place the offender on probation with or without supervision and on terms the court prescribes, including intermediate sanctions where practicable. The term "intermediate sanctions" includes, but is not limited to, incarceration in a local jail or workhouse, home detention, electronic monitoring, intensive probation, sentencing to service, reporting to a day reporting center, chemical dependency or mental health treatment or counseling, restitution, fines, day-fines, community work service, work in lieu of or to work off fines, and, with the victim's consent, work in lieu of or to work off restitution. However, the court may not stay the revocation of the driver's license of a DWI offender.

The maximum period of the stay is limited to two years for a misdemeanor DWI offense, and six years for a gross misdemeanor DWI offense.

The court must provide for unsupervised probation during the last year of the stay, unless it finds that supervision is necessary.

Minnesota Statutes, section 609.14, provides for revocation of a stay of sentence. The court may without notice revoke a stayed sentence and order that a defendant be taken into immediate custody when it appears that the defendant has violated any of the conditions of probation or intermediate sanctions, or has otherwise been guilty of misconduct which warrants the imposing or execution of sentence. The court must subsequently provide the defendant with written notice of the grounds for revocation. The defendant may request a summary hearing and be represented by counsel. Following such hearing, the court may order the sentence executed. Alternatively, it may again stay the sentence or impose the sentence and stay its execution and, in either event, order probation or intermediate sanctions. Or, the court may simply release the defendant if it finds no grounds for the revocation.

Upon conviction and sentencing for a DWI violation, nearly all repeat offenders, and some first-time offenders as well, are sentenced to some period of incarceration in a local jail or workhouse. Indeed, as noted in the foregoing discussion of criminal penalties, some period of incarceration is mandatory for most repeat offenders. Often, part of the jail sentence is ordered executed and part of it is stayed pending the offender's successfully serving a period of probation.

Conditions of probation vary widely among individual offenders, depending in part upon the policies of the court, the philosophies of the judge, and the characteristics and situations of the offenders. However, except for felony-level crimes, sentencing information is not routinely gathered and publicly reported by the courts; thus, the typical conditions of probation for DWI offenders cannot be systematically known and described.

Nevertheless, it is widely known that two probation programs for repeat DWI offenders are in frequent use throughout the state: electronic alcohol monitoring and intensive probation, modeled after the Anoka County program.

Electronic Alcohol Monitoring Program (EAM)

Electronic alcohol monitoring (EAM) is a program (Minn. Stat. § 169A.73) for remotely monitoring the alcohol concentration of offenders who have been ordered by the court to abstain from alcohol while awaiting trial or while serving probation following conviction—a requirement for most third-time and greater DWI offenders (Minn. Stat. §§ 169A.44 and 169A.277). EAM permits authorities to quickly detect and intervene when an offender violates a court order not to consume alcohol.

An EAM device resembles a desktop computer with a monitor and telephone modem. A mouthpiece connected to a tube enables a person to blow into the device to provide a breath sample for an alcohol concentration test. A staff person at a remote, centralized location initiates the testing by telephoning the offender and requesting the breath sample. As the breath sample is being blown, the monitor captures the person's facial image and electronically transmits it to the central control station for identity verification purposes (to ensure that the correct person is providing the breath sample). The device simultaneously analyzes the breath sample and transmits the person's alcohol concentration result to the central monitoring station, as well. The operator observes the test result and, if the alcohol reading is positive, immediately requests a second sample for verification, and then notifies local authorities of the violation.[64]

When sentencing a convicted offender to EAM, the court determines the number of alcohol tests a person must take per day and their timing.

- If the offender has been ordered confined to the home, the tests are scheduled randomly throughout the day and night. The number of tests and their timing are programmed into the computer each day by the centralized operator and, for home detention, they are randomly scheduled and can range up to a dozen or so times per day. If the court has permitted the person to attend a planned event—such as a meeting with a parole officer—the tests are timed to accommodate the person's schedule.

- If the court has not ordered home confinement and the EAM is intended only to ensure alcohol abstinence, then there are typically only three tests per day and they are scheduled to accommodate the person's daily routine—generally, before and after work, and at bedtime (for example, at 7:00 a.m., 5:00 p.m., and midnight).

[64] Most of the EAM technology is owned by the contracting firm, Onsite Monitoring Systems - Division of 180 Degrees, Inc., Minneapolis, Minn. However, at least two other firms have recently entered the business. The remote testing devices are owned by the firms and leased directly to the offenders, upon sentencing by the court. The firm itself is responsible for collecting the rental fees from the offenders, though some offenders are partially subsidized by the court using state funding provided by the enabling legislation. Recently, some county probation offices have purchased some of the remote EAM devices.

EAM costs approximately $9 to $12 per person per day and, generally, the court orders the offender to pay part or all of this cost. Legislation in 1995 created a $40 surcharge on the $250 driver's license reinstatement fee ($290 total) for DWI violators, with part of the proceeds from that surcharge targeted to the courts for use in subsidizing the EAM monitoring fees for indigent offenders.

Since the inception of the program, roughly 6,000 or more DWI offenders have been placed on EAM statewide, with approximately 400 to 500 of them currently on the program.[65] This number increased sharply in 1998, due to the new mandates for EAM incorporated into the restructuring of criminal penalties for repeat DWI offenders effective January 1, 1998.

The effectiveness of EAM as a method for ensuring alcohol abstinence—whether used pretrial or following conviction and irrespective of whether it is combined with home detention—is reputedly quite high, but in fact is unknown.[66]

Split Sentencing and Probation Using EAM

Another innovative offender management tool for chronic DWI offenders, as well as drug offenders, is split sentencing.[67] Under this approach, for example, a multiple-repeat DWI offender may be sentenced to serve a jail sentence of 270 days in up to three separate installments; for example, 90 days immediately following conviction, another 90 days one year later, and a third 90-day period after two years. However, at the time of sentencing, the judge informs the offender that the second and third 90-day jail terms may be suspended if the offender closely complies with the conditions of probation and shows other evidence of a successful readjustment in the community.[68]

The judge then orders the court administrator to schedule a probation hearing before the court just prior to the start of each subsequent jail sentence period. If the offender can demonstrate strict compliance during the year—for example, with chemical dependency treatment and abstinence, driving restrictions, employment, avoidance of other new crimes, and so on—and manifests other positive adaptations (e.g., coaching a child's sports team, involvement at church or in a community organization, etc.), then the judge will order that year's portion of the sentence

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[65] A spokesperson for 180 Degrees Inc., a principal monitoring agency, has stated that Minnesota is pioneering the use of EAM technology and currently has more offenders using it than any other state. Other principal alcohol monitoring service providers active in Minnesota are General Securities Systems Corporation (GSSC) and Watchguard. The estimates above were developed in consultation with these service providers.

[66] An evaluation study performed by the DOC reported good results for EAM; however, that study presented no baseline data for comparison to offenders not on EAM.

[67] Split sentencing is being used frequently in the new Hennepin County Drug Court, where it is reputedly having a noticeable positive effect in motivating many drug offenders to comply with terms of pretrial release and probation.

[68] This is an actual example of the kind of sentencing being used with some repeat DWI offenders by Judge Dehn, Tenth Judicial District, who pioneered the use of EAM in Minnesota.

to be stayed. Otherwise, the sentence will be immediately executed.
Split sentencing, as described above, appears to have several advantages over traditional sentencing and probation. First, it provides the offender with a clear and significant incentive to comply with the conditions of probation. No longer is the offender in the position of being able to test, through increasing acts of noncompliance, the limits of patience and tolerance of the probation officer and court. Secondly, it minimizes the need for the probation officer to prove to the court that a probation violation has occurred; rather, it becomes the offender's responsibility to demonstrate strict compliance and positive adaptation. Finally, it results in more efficient court processing in the event of the need to reincarcerate an offender.

Intensive Probation Programs

Legislation enacted in 1991[69] created a grant program for counties to create intensive probation programs for repeat DWI offenders. The program is currently administered by the Department of Corrections (DOC). The 1991 legislation appropriated $164,000 for this purpose, supplemented by additional appropriations of $500,000 in each of the years 1992, 1993, and 1995.[70] This funding has been used to provide startup grants to approximately 14 programs serving 26 of the state's 87 counties, with nearly all of those programs still operating.

The purpose of the program is to provide an appropriate sentencing alternative for repeat DWI offenders who are deemed to be at high-risk to reoffend. To be eligible for the grant, a county program must contain the following elements:

- an initial chemical dependency assessment, with the offender being required to comply with its recommendations for treatment and aftercare;
- several stages of probation supervision, including:
  - a period of incarceration in a local jail or workhouse;
  - a period of home detention;
  - a period during which the offender is at all times either working, on home detention, being supervised at a program facility, or traveling between work and home; and
  - a period of gradually decreasing involvement with the program

[69] Laws 1991, ch. 270, § 8, initially codified as Minn. Stat. § 169.1265, and currently codified as Minn. Stat. § 169A.74.

[70] Laws 1992, ch. 570, art. 1, § 30; Laws 1993, ch. 146, art. 2, § 4; and Laws 1995, ch. 226, art. 1, § 11. Note that the 1991 and 1992 appropriations were directed to the DPS, whereas the 1993 and 1995 appropriations were directed to the DOC, reflecting a shift of responsibility for the grant program from DPS to DOC at that time. Beginning with fiscal year 1998, the program funding is included in the DOC's base funding.

- decreasing levels of intensity and contact with probation officials based on the offender's successful participation in the program and compliance with its rules;

- a provision that offenders continue or seek employment;

- a requirement that offenders abstain from alcohol and controlled substances during the probation period and be tested for them on a routine basis; and

- a requirement that offenders pay all or a substantial part of the cost of the program.

An evaluation of the county-intensive probation programs that received startup funding under this grant program provided some evidence of their general effectiveness in monitoring repeat DWI offenders during their probation period. The study found that the repeat DWI offenders who participated in the intensive probation programs experienced a lower rate of recidivism (i.e., rearrest for DWI) during a 15-month follow-up period (14 percent versus 23 percent for the comparison group), as well as a longer average time to failure for those who did reoffend (21 months versus 17 months).[71]

Despite the requirement that offenders pay for at least part of the costs, intensive supervision programs for repeat DWI offenders are far from cost neutral. The DOC estimates the costs for intensive supervision at roughly $1,500 per offender. In Hennepin County in 1999, for example, each program participant was expected to pay $475; program services in that county include 30 days of home confinement via electronic monitoring using an ankle bracelet (not to be confused with remote EAM), cognitive skills training, a level-of-supervision inventory to assess the offender's risk of recidivism, routine urinalysis, and frequent meetings with the probation officer. Hennepin County received a state startup grant of $208,000 for that year, to cover the shortfall from the offender fees.

Some counties have created intensive probation programs for repeat DWI offenders without receiving funding under this state grant program. The earliest one, the Anoka County program, has been in existence since 1987; it is highly regarded and has served as a model for most of the other counties' programs.

To some extent, intensive probation programs are regarded as an alternative to the use of EAM during probation, since both approaches involve intense monitoring of offenders. One difference is that EAM can be used pretrial, in addition to following conviction. EAM could also be used to supplement intensive probation programs by ensuring the home compliance requirement, as well as by ensuring the alcohol abstinence requirement without the offender having to travel to the intensive probation site for alcohol testing.

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[71] Bradel, Don, Rodney L. Witt, and Greg Warchol. *Minnesota's Repeat DWI Intensive Probation Grant Program: Evaluation Report*, Phase I (June 1995) and Phase II (November 1996); Bemidji State University. This research was performed under contract with the DPS, even though the DOC has had responsibility for this program since fiscal year 1994.

As with EAM, the use of intensive probation programs was expected to increase substantially beginning in early 1998, given its prominence as a sentencing alternative in the recently restructured criminal penalties for multiple-repeat DWI offenders.[72]

Other Advantages of Alcohol Abstinence

As noted above, both the intensive probation programs and the remote EAM program are targeted toward multiple-repeat DWI offenders who have been ordered by the court to abstain from alcohol and controlled substances as a condition of probation (or sometimes pretrial release). Given that the triggering crime in such cases involved impaired driving, the chief goal of the requirement to abstain from these substances is traffic safety—that is, someone who no longer drinks cannot be involved in further drinking and driving.

However, those concerned with DWI enforcement—including judges, probation officers, and offenders' family members—are increasingly recognizing that when this group of offenders abstains from alcohol and controlled substances, they are also much less likely to commit domestic assault and other violent crimes.

[72] Laws 1997, 1st spec. sess., ch. 2, § 34.

Costs to the DWI Offender

Costs stemming from a DWI offense vary greatly among offenders, depending on factors such as the following: whether the vehicle is towed and stored; whether the plates are impounded; whether the vehicle is forfeited; the level of the crime (misdemeanor, gross misdemeanor, or even felony for criminal vehicular operation); the amount of any fine assessed by the court; whether the person retains an attorney; whether alcohol treatment is ordered or sought; the amount of work time lost; and whether the person gets relicensed and reinsured following the revocation period. Many of these factors depend on whether the offense is the person's first offense or a repeat offense, the latter generally being considerably more costly. Each of these factors is discussed below.

Vehicle Towing and Storage Fees

At the time of the arrest, the vehicle may immediately be released to a sober passenger. If none is present, the officer orders that the vehicle be towed to the city impound lot at the owner's expense. For example, the Minneapolis impound lot currently charges a minimum of $75 for towing and $15 per day for storage, while comparable costs in Brooklyn Park are $70 to $125 for towing and $15 per day for storage. Most DWI offenders whose vehicles are towed retrieve them the next day. Some towed vehicles are never reclaimed and, after the required waiting period, are scrapped as junk.[73] Prior to junking a vehicle, most impound lots routinely destroy the vehicle registration plates and report that fact to the state.

Plate Impoundment Fees

Most repeat DWI offenders, and some first-time offenders, qualify for administrative plate impoundment, in which the registration (i.e., license) plates of every vehicle owned or co-owned by the person are to be seized and destroyed (Minn. Stat. § 169A.60). A co-owner or other validly licensed member of the violator's household may obtain specially coded license plates for use during the impoundment period, which typically lasts a year or longer. The state charges a $50 per vehicle fee for the special plates. In addition, there is a $50 per vehicle fee at the end of the plate impoundment period to reobtain regular license plates. The DVS reports that drivers who qualify for plate impoundment have, on average, 1.5 vehicles.

[73] The impound lots typically receive about $40 to $50 for a junked vehicle, thus recapturing a portion of their expenses. Rarely is a more valuable vehicle abandoned at an impound lot.

Vehicle Forfeiture Costs

Vehicle forfeiture applies to persons convicted of a first-degree DWI crime and to certain other repeat offenders. Only the vehicle involved in the violation is subject to forfeiture. The cost to the violator, of course, is the value of the vehicle, less the property interest of any co-owner, lender, or lessor, which is protected. (Minn. Stat. § 169A.63)

The law provides that vehicle forfeiture actions be undertaken by the prosecuting authority (typically the city), but there is no centralized data base that would indicate the extent to which vehicle forfeiture is actually being done. Many prosecutors report that they have been reluctant to pursue vehicle forfeitures since, prior to the enactment of an administrative forfeiture procedure on January 1, 1998, the forfeiture could not be completed until the offender was convicted of the offense. Thus, storage costs frequently outweighed the value of the vehicle, making forfeiture a money-losing proposition for local governments in many cases. However, forfeiture is expected to increase in frequency under the revised law, both as a result of the new administrative forfeiture process, and because both the administrative and judicial forfeiture processes can now be based on either the conviction or the license revocation following arrest.

Chemical Use Assessment Fee

Minnesota Statutes, section 169A.70, mandates that, upon conviction for a DWI offense or a reduced charge, the offender must submit to a chemical use assessment administered by the county agency administering the alcohol safety program. The results are reported to both the court and the DPS. Minnesota Statutes, section 169A.284, establishes the chemical use assessment charge at $125, plus an additional $5 surcharge for certain offenders.

Fines and Penalty Assessments

The maximum fine for a crime is established by law and depends on the level of the offense. The Criminal Code (Minn. Stat. § 609.02) sets the maximum fine at $1,000 for a misdemeanor and $3,000 for a gross misdemeanor. In addition, DWI law (Minn. Stat. § 169A.285) provides that, if the offender is convicted of DWI involving an alcohol concentration of 0.20 percent or more, the court may impose an additional penalty assessment of up to $1,000. Minnesota Statutes, section 609.101, specifies that the minimum fine for any offense, including DWI, is 30 percent of the maximum fine, though it may be reduced to not less than $50 for an indigent offender.

In practice, courts rarely impose the maximum allowable fine. Data on sentencing practices, other than for felony offenses, is not systematically reported. However, anecdotal information suggests that fines for first-time DWI offenders generally range from $100 to $400, while fines for second-time offenders generally range from $300 to $600. The court sometimes further reduces the fine by crediting the amount of an offender's alcohol treatment program, and sometimes it finds an offender too indigent to assess even the minimum fine specified by law.

License Reinstatement Fee

A person whose driver's license has been revoked for DWI must pay, in addition to the license application fee described below, a license reinstatement fee of $250, plus a $40 surcharge (Minn. Stat. § 171.29).

The surcharge has been credited to the remote electronic alcohol monitoring program account, part of which has been appropriated for use in subsidizing the courts' use of EAM for indigent offenders.

The $250 fee is credited as follows:

- 20 percent to the trunk highway fund;
- 55 percent to the general fund;
- 8 percent to the BCA account;
- 12 percent to the impaired driver education account for use by the Department of Children, Families and Learning and the Department of Transportation for alcohol and highway safety education programs in elementary and secondary schools; and
- 5 percent to the traumatic brain injury and spinal cord injury account.

The $40 surcharge must be deposited in the remote electronic alcohol monitoring program account of the state treasury, from which it is transferred monthly to the state's general fund.

License reinstatement fees from approximately 26,000 reinstated drivers totaled approximately $6.75 million in fiscal year 1997, with the $10 surcharge composing approximately $260,000 of that amount.

License Application Fees

Every person desiring a driver's license, whether the person is a new driver or has previously been revoked, must apply for a driver's license (Minn. Stat. § 171.06). The fee is $18.50 for a regular (Class D) license, and it ranges up to $37.50 for a tractor-trailer (commercial Class A) license.

Unfortunately, not all revoked drivers bother to become relicensed before returning to driving. Recent unpublished information from the DPS shows that about 20 percent of those drivers who get revoked for an alcohol-related incident do not get relicensed, even allowing for the necessary time lag associated with the revocation period. No attempt has yet been made to determine the reasons they have not gotten relicensed: undoubtedly some of those revoked drivers move out of state, die, or quit driving entirely. However, anecdotal evidence suggests that a growing number

of revoked drivers simply never bother to get relicensed and, nevertheless, continue driving.[74]

Other Expenses

Other expenses resulting from a DWI violation are more difficult to quantify, even though they comprise by far the greatest costs for most offenders. Those expenses include attorney fees, alcohol treatment costs, increased auto insurance costs, and lost earnings.

It is not unusual for defense attorney fees for a DWI offense to fall in the range of $2,000 to $3,000. A few attorneys will start the tab at about $300 for a pretrial appearance, though that's usually just the beginning step of the process. Some attorneys routinely charge as little as $1,200 for a DWI defense, and a few of the more well-known criminal defense lawyers in the area charge $10,000.

Alcohol treatment costs also vary from several hundred dollars for outpatient group counseling to over $15,000 for a 30-day inpatient program at a private treatment facility such as the Hazelden Foundation in Center City, Minnesota. Many repeat offenders receive alcohol/chemical dependency treatment as part of the intensive probation program offered by their county's community corrections agency; generally, the offender is assessed a fee of $500 for such treatment. Many employee health insurance programs provide some coverage for chemical dependency treatment; however, the amount of coverage varies greatly among employers.

Auto insurance policies routinely state the consequences for an impaired driving violation—typically, the consequence is cancellation of the policy (Minn. Stat. § 65B.15). Then, following the license revocation period and driver's license reinstatement, the violator is typically offered only risk rates for reinsurance for a three- to five-year time frame. The increased insurance costs could amount to as much as a few thousand dollars per year.[75] Under Minnesota Statutes, section 171.12, a first-time DWI violation must remain on the driving record for at least 15 years, while a repeat violation is kept permanently on the record—in contrast to five years on the record for most other traffic violations and all reported traffic accidents. Such information is defined as "public" data under Minnesota Statutes, section 13.82, and is available to insurance companies, news media, and all members of the public during those periods of time. Actually, these data often persist in the official data bases for an unspecified longer period of time; however, under DPS rules, after five years from the date of the incident, information about all non-DWI traffic citations and traffic accidents is restricted to law enforcement and certain public safety officials.

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[74] For example, a Duluth man was arrested for his 21st DWI violation in 1998, but has not had a valid driver's license since 1967 when his license was revoked for his first DWI offense. However, even first-time DWI offenders who do not re-offend often remain unlicensed well past their revocation period. For example, a recent analysis by House Research reveals that 23 percent of all drivers who were arrested for their first DWI violation in 1995 and who did not reoffend within three years following arrest nevertheless remained unlicensed at that time. This analysis was part of a larger study of recidivism by Steve Simon, University of Minnesota law professor and chair of the standing Statewide DWI Task Force, and colleagues, under partial funding from the Insurance Institute for Highway Safety, Washington, D.C.

[75] The offender must show proof of insurance to the DPS as one condition for license reinstatement.

Lost earnings may be another consequence of a DWI violation. For DWI violators, the minimum period of hard revocation is 15 days. Without a limited license to drive to work, many violators must take vacation, sick leave, or unpaid leave from their jobs (or, at a minimum, must arrange for alternative transportation to and from work). Frequently, offenders must take additional time off work to deal with such things as any implied consent hearing or other court proceedings, jail or community work service, alcohol treatment, and license re-examination. Some DWI offenders, primarily repeat offenders, even lose their jobs as a direct or indirect consequence of the violation—for example, commercial drivers and others who routinely drive in conjunction with their jobs.

Special Laws for Youth

Three separate laws govern alcohol consumption and drinking and driving by youth in Minnesota: the drinking age law, the underage drinking and driving law, and the DWI laws.

Legal Drinking Age Changes

As a historical note, Minnesota's legal drinking age has changed as follows:

- 1973 - drinking age lowered from 21 to 18
- 1976 - drinking age raised from 18 to 19
- 1986 - drinking age raised from 19 to 21

During the mid-1980s, all states raised the legal drinking age to 21, largely in response to federal highway funding incentives. This change is credited with an approximately 13 percent reduction in traffic fatalities for the affected age group.[76]

Drinking Age Law—Underage Consumption

Minnesota Statutes, section 340A.503, prohibits a person who is under 21 years old from:

1) consuming alcohol without parental permission and supervision (subd. 1, cl. 2);
2) purchasing or attempting to purchase alcohol (subd. 2, cl. 2);
3) possessing alcohol with the intent to consume (subd. 3);
4) entering a liquor store or bar for the purpose of purchasing or consuming alcohol (subd. 4); or
5) misrepresenting one's age for the purpose of purchasing alcohol (subd. 5).

The statute provides an affirmative defense to the charge if the person was provided and/or consumed the alcohol in the household of the person's parent or guardian and with the permission of the parent or guardian.

A violation of any of the cited provisions of this statute constitutes a misdemeanor crime and carries a mandatory minimum fine of $100 (Minn. Stat. § 340A.703). However, in contrast to violations of the two statutes discussed in the following two sections of this guidebook, most

[76] Arnold, Robert D. *Effect of Raising the Legal Drinking Age on Driver Involvement in Fatal Crashes: The Experience of Thirteen States*. National Center for Statistics and Analysis, November 1985.

violations of the underage consumption statute do not trigger loss of the driver's license.[77] Nevertheless, Minnesota Statutes, section 171.171, provides a 90-day license suspension for a person who is under 21 years of age and is convicted of purchasing or attempting to purchase an alcoholic beverage in violation of Minnesota Statutes, section 340A.503, if the person used a license, Minnesota ID card, or any type of false identification to do so.[78] [79]

Underage Drinking and Driving—Zero Tolerance

Minnesota Statutes, section 169A.33, provides misdemeanor penalties and driver's license suspension for any person under the age of 21 convicted of driving or operating a motor vehicle (anywhere in the state, whether on public or private property) while consuming alcoholic beverages, or after having consumed alcoholic beverages while there is physical evidence of the consumption present in the person's body. The driver's license suspension period is 30 days for a first offense and 180 days for any repeat offense.

This statute applies to the consumption of any amount of alcohol and, thus, incorporates a zero-tolerance standard. As a practical matter, however, some law enforcement personnel might not charge this offense unless the person's breath alcohol level tests at 0.02 percent or higher, or unless the person refuses the test.

This statute applies only to the person who is driving or operating the motor vehicle—it does not apply to any passengers in the vehicle, even if the passenger is under the age of 21 and has consumed alcohol (though that would constitute an underage consumption violation under Minnesota Statutes, section 340A.503, and, if the consumption occurred in the vehicle, an open bottle violation under Minnesota Statutes, section 169A.35).

Unlike the underage consumption law above, this statute does not provide any affirmative defense based on parental permission.

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[77] Some underage persons convicted only of underage consumption, but who had been passengers in a motor vehicle at the time of the violation, have nevertheless had their driver's licenses revoked. A spokesperson from the Driver and Vehicles Services Division of DPS explains that, "Some courts routinely submit conviction notices to the DVS for all of the underaged persons who had consumed alcohol and been in the vehicle, without indicating which person was driving and whether a person's conviction was for underage consumption or underage drinking and driving. Thus, we revoke them all, as if they had all been driving; if a person protests, they must go back to court for a clarification of their conviction, because the DVS does not have time to do that." The spokesperson noted that most insurance companies treat a conviction for underage drinking and driving similarly to a DWI by increasing the youth's auto insurance rates dramatically. Nevertheless, the spokesperson noted that—based on the frequency of court orders for several youth in a vehicle and the scarcity of inquiries to the DVS by those youth—it appears that most of the youth incurring license revocation in this manner never notice the court's mistake.

[78] See also Minnesota Statutes, section 260B.235, subdivision 4, which provides parallel language, including the 90-day license suspension, for a violator who is a juvenile.

[79] Some typical violations of the underage consumption law include attempting to purchase alcohol in a bar or liquor store, and possessing or drinking alcohol while a passenger in a motor vehicle, while at a school event, park or other public place, or at home in the parents' absence.

A violation of this statute is not a DWI offense and, thus, does not enhance penalties for any subsequent DWI offense committed by the person. Minnesota Statutes, section 169A.41, permits use of the preliminary breath test result in a prosecution of this crime.

DWI

The DWI statutes[80] apply equally to drivers of all ages. DWI violations require either evidence of impaired driving or an alcohol concentration of 0.10 percent or higher (or the presence of certain illegal substances).

As with any adult, a youth under the age of 21 who is observed driving impaired or while over the 0.10 percent per se limit would be charged with violating one or more of these laws (instead of, or in addition to, one or both of the youth-only laws described above).[81]

Within the DWI and implied consent laws, youth are subject to longer driver's license revocation periods and waiting periods for limited licenses, as discussed in other sections of this guidebook.

DWI Trends Among Youth

Data presented in Table 10 illustrate changes in DWI arrests, both overall and by age group, from 1986 to 1995, the last year of available population adjusted data. Between 1986 and 1995, arrests fell by 15.7 percent overall after adjusting for population changes. The largest decrease (by 55.4 percent) has been among youth under 20, with the second largest decrease (by 23.5 percent) in the next youngest age group—drivers aged 20 to 24. The largest increase (by 9.1 percent) has been among drivers in the 35 to 49 age group. Data for the intervening years (not shown) reveal that these age-related shifts have been gradual and, thus, probably not due to the 1986 increase in the legal drinking age.

[80] See Minn. Stat. §§ 169A.20; 169A.50 to 169A.53; and 609.21.

[81] Unlike some states, Minnesota does not have a lower per se standard for youth for defining DWI offenses. During the 1997 legislative session, the governor vetoed a bill that would have provided a 0.04 percent per se standard for youth under 19 years of age. Upon its repassage, that bill preserved the 0.10 percent per se standard for all drivers.

Table 10
DWI Arrests by Age Group - 1986 to 1995

	Number		Percent		Percent Change: 1986 to 1995	
Age Group	1986	1995	1986	1995	Actual	Population Adjusted
< 20	3,799	1,739	10.4%	5.2%	-54.2%	-55.4%
20 - 24	10,273	6,441	28.2	19.3	-37.3	-23.5
25 - 34	13,297	12,676	36.5	38.0	-4.7	+2.8
35 - 49	6,688	10,211	18.4	30.6	52.7	9.1
50+	2,333	2,288	6.4	6.9	-1.9	-9.6
All Ages	36,390	33,355	100.0%	100.0%	-8.30%	-15.70%

Source: "Crash Facts: 1995," Office of Traffic Safety, Minnesota Department of Public Safety

House Research Department

Driver's license revocation data, presented in Table 11,[82] corroborate this age-related finding by revealing that nearly all of the 24.9 percent overall decrease in revocations during that same ten-year period has been in the number of first-time offenders; in contrast, the number of repeat offenders being revoked has remained nearly constant.

Taken together, these trends are encouraging in suggesting that a generational change away from drinking and driving may be underway among Minnesota's youth. It would appear that the apparent improvements stem primarily from less youth involvement in drinking and driving, rather than from significantly improved deterrence of repeat offenders or from any general slackening of enforcement efforts.

It seems likely that some of this age-related reduction in impaired driving may be due to the many educational efforts in the schools, media, and homes since September 1984, when the well-known lobbying organization Mothers Against Drunk Driving (MADD) was formed. This youth-related improvement might also be partly due to the enactment of numerous harsher DWI laws and increased enforcement efforts. Finally, some of this improvement for youth under 21 may also be due to a phased-in or lagged effect of the 1986 increase in the legal drinking age law from age 19 to 21.

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[82] For reasons that are not well understood, Minnesota's DWI arrest data do not correspond very closely with its alcohol-related driver's license revocation data. The arrest data are reported by local police departments and the highway patrol to the BCA, while the license revocation data are extracted from the license management data files created and maintained by the DVS. Despite the differences, both data series are regarded as valid measures of the respective phenomena.

Table 11
Alcohol-Related License Revocations in Minnesota: 1986 to 1999*
First-Time vs. Repeat Offense

DWI Offense	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
First-Time														
Number	23,527	22,778	20,424	21,062	22,804	19,656	18,168	16,683	14,149	14,871	14,749	14,658	16,046	15,204
Percent	60.8%	61.3%	60.4%	60.2%	59.6%	58.5%	56.5%	54.3%	50.0%	51.2%	50.2%	50.4%	51.9%	49.6%
Repeat														
Number	15,190	14,405	13,403	13,936	15,483	13,927	14,012	14,034	14,161	14,199	14,619	14,449	14,855	15,464
Percent	39.2%	38.7%	39.6%	39.8%	40.4%	41.5%	43.5%	45.7%	50.0%	48.8%	49.8%	49.6%	48.1%	50.4%
All Offenses														
Number	38,717	37,183	33,827	34,998	38,287	33,583	32,180	30,717	28,310	29,070	29,368	29,107	30,901	30,668
Percent	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

* Data include revocations for both implied consent violations (i.e., DWI arrests) and DWI convictions.

Source: Driver and Vehicle Services Division, Minnesota Department of Public Safety

House Research Department

DWI and Recreational Vehicles

For many years, Minnesota laws governing the impaired driving of snowmobiles, all-terrain vehicles, and motorboats had been separate from the general DWI and implied consent laws governing the driving of regular motor vehicles.[83] When addressing similar areas of behavior or sanctions, those separate laws were generally structured similar to the regular DWI laws; however, they were generally much less comprehensive and much less developed, lagging regular DWI law by several years and differing in major ways.[84] Those differences resulted in continuing confusion among, and much additional work by, both policymakers and members of the DWI enforcement community, as well as confusion among the driving public.

Legislation enacted in 1997,[85] effective January 1, 1998, repealed much of the separate impaired driving law for snowmobiles, all-terrain vehicles, and motorboats and, in its place, extended regular DWI law (Minn. Stat. ch. 169; now recodified as ch. 169A) to apply to any repeat impaired driving violation involving any off-road recreational vehicle.

Specifically, this recodification subjects impaired recreational vehicle operators, with a prior impaired driving record involving any kind of vehicle, to the same civil sanctions and criminal penalties as other impaired motor vehicle drivers, including driver's license revocation, chemical dependency assessment and treatment, mandatory jail penalties, vehicle license plate impoundment, and vehicle forfeiture for a third or subsequent offense.

First-time offenders are given more lenient treatment by the new law. A first-time DWI offense on a recreational vehicle will result in a criminal conviction and loss of operating privileges for only that type of vehicle, but will not affect the offender's license to drive a regular motor vehicle or any other type of recreational vehicle. However, a repeat DWI offense by that offender on any type of vehicle will result in the imposition of all civil and criminal sanctions available under the general DWI law. (Minn. Stat. § 169A.07)

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[83] The principal recreational vehicle DWI laws have been: Minnesota Statutes, sections 84.91, 84.911, 86B.331, and 86B.335.

[84] For example, under the separate laws, it was not a crime to refuse to submit to the alcohol concentration test when driving a snowmobile, all-terrain vehicles, or motorboat. In contrast, under regular DWI law, test refusal was criminalized for repeat offenders in 1989 and for first-time offenders in 1992.

[85] Laws 1997, 1st spec. sess., ch. 2.

Commercial Vehicle Driving

A Single Driver's License—With Endorsements

Minnesota historically had a separate chauffeur's license for commercial vehicle driving in addition to the regular driver's license. A truck driver, for example, would possess both types of licenses, and some truck drivers possessed a chauffeur's license from each of several different states. However, with federal urging, Minnesota's driver's licensing system was consolidated in the early 1970s.

Thus, Minnesota currently issues a single driver's license to a driver, with the class of license depending on the special endorsements held by the driver. Nevertheless, some of the separate treatment for commercial licensing, including some DWI laws and terminology, persists.

Driver's License Classification System

Minnesota Statutes, section 171.02, classifies driver's licenses according to the types of vehicles that may be driven by the license holder. There are four general classes of license, with the typical driver falling into Class D:

- Class A - valid for any type of vehicle, including a semi tractor-trailer;
- Class B - valid for any single-unit vehicle including, with a passenger endorsement, a bus; also any vehicle in classes C or D; maximum towing gross vehicle weight (g.v.w.) up to 10,000 pounds;
- Class C - any class D vehicle, including, with a hazardous materials endorsement, carrying hazardous materials in a class D vehicle; and, with a school bus endorsement, school buses designed to carry no more than 15 people;
- Class D - all single unit vehicles, including autos, pickups, taxis, vans, farm trucks, fire trucks, etc., but excluding any vehicle with a g.v.w. of 26,000 pounds or more; any vehicle designed to carry 15 or more people, and any vehicle carrying hazardous materials.

No class of license is valid to operate a motorcycle, school bus, tank vehicle, double- or triple-trailer combination, a vehicle transporting hazardous materials, or bus, unless it is specifically endorsed for that purpose.

Impaired Driving in a Commercial Motor Vehicle—0.04 Percent Per Se

Minnesota Statutes, section 169A.20, subdivision 1, the DWI law, sets a lower per se level of 0.04 percent alcohol concentration for driving commercial vehicles generally. In addition, Minnesota Statutes, section 169A.31, the school bus DWI law, sets a separate zero-tolerance standard for driving a school bus or Head Start bus. A violation of either of these laws constitutes either a misdemeanor or gross misdemeanor, depending upon the presence of enhancing factors.

Chemical testing for all drivers, including commercial motor vehicle drivers and school bus and Head Start bus drivers, is governed by Minnesota Statutes, section 169A.50 to 169A.53, the implied consent law. However, chemical testing of commercial drivers, including most school bus drivers, is governed by a different, more lenient, standard. Specifically, commercial drivers may be subjected to testing if there is probable cause to believe the person has driven the commercial vehicle with the presence of "any amount" of alcohol whatsoever in the person's body. (Minn. Stat. § 169A.51, subd. 1)

School buses and Head Start buses, other than the small "type III" school buses, are regulated as both school buses and commercial motor vehicles. Thus, although all school bus drivers are subject to the separate zero-tolerance law, the regular DWI law applies to them as well if their alcohol concentration is 0.04 percent or more, or 0.10 percent or more if driving a type III school bus.[86] Thus, a person apprehended while driving a school bus with an alcohol concentration of 0.04 percent or more, or 0.10 percent or more if it is a type III school bus, could be charged with violating both the school bus zero tolerance law and the regular DWI law, and would be subject to the penalties and sanctions of both laws. This topic is discussed further in the following chapter of this guidebook titled, "School Bus Driving."

Minnesota Statutes, section 171.165, provides for a period of disqualification from commercial motor vehicle driving—i.e., cancellation of the commercial vehicle endorsement on the driver's license—if a person violates the 0.04 percent or zero-tolerance standard of the implied consent law, or is convicted of violating the regular, commercial, or school bus DWI laws, provided that the violation occurred in a commercial motor vehicle. These disqualification periods are:

- one year for the first violation;
- three years for a first violation if committed while transporting hazardous materials; and
- ten years for a second or subsequent violation.

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[86] The relevant definitions can be found in Minnesota Statutes, section 169.01, subdivision 75 ("commercial motor vehicles), subdivision 6 (school buses), and subdivision 80 (Head Start buses). Note that under Minnesota Statutes, section 169.01, subdivision 75, paragraph (a), clause 5 (which currently contains an obsolete but nevertheless effective reference), a "type III school bus" or "type III Head Start bus" is not a "commercial motor vehicle." Minnesota Statutes, section 169.01, subdivision 6, clause 5, defines type III school buses and type III Head Start buses as being restricted to passenger cars, station wagons, vans, and buses having a seating capacity of ten or fewer people, including the driver, and a gross vehicle weight of 10,000 pounds or less.

The statute provides for commercial driving disqualification for other crimes committed while driving commercial vehicles as well.

Out of Service Order—Zero Tolerance

Minnesota Statutes, section 169A.54, subdivision 7, stipulates that a person driving, operating, or in physical control of a commercial motor vehicle with any presence of alcohol is prohibited from operating a commercial motor vehicle for 24 hours upon issuance of an out-of-service order.

DWI Violations in a Private Passenger Vehicle

Minnesota Statutes, section 171.30, provides for the conditional issuance of a limited license—often referred to as a "work permit"—to permit an individual to drive during part of the period that the person's license is revoked. A limited license may be issued if needed for work, chemical dependency treatment or counseling, the educational, medical, or nutritional needs of the family (i.e., homemaking), or post-secondary education.[87]

Prior to 1995, the law protected commercial driving privileges by requiring the immediate issuance of a limited license, restricted to commercial driving, to a person with commercial driving endorsement if the violation leading to the revocation of the person's license occurred in a private passenger vehicle. That exception essentially guaranteed that a commercial driver who committed a first-time or second-time DWI violation in the person's private vehicle could continue to drive a commercial vehicle without interruption during the revocation period.[88]

However, legislation enacted in 1995[89] disallows this exception in the event of a DWI or implied consent violation. Thus, under current law, a commercial driver who commits a DWI violation in a personal passenger vehicle receives no special dispensation from license revocation sanctions that would not also be available to noncommercial drivers.

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[87] See the separate section of this report dealing with this topic, entitled "Driver's License Revocation: Limited Licenses and 'Hard Revocation'."

[88] Generally, upon a person's third impaired driving violation, the person's driver's license is canceled, making the person ineligible for any limited license.

[89] Laws 1995, ch. 231, § 10.

School Bus Driving

Zero-Tolerance Per Se Standard

As noted in the previous section, Minnesota Statutes, section 169A.31—the school bus DWI law—sets a "zero-tolerance" per se standard for driving a school bus or Head Start bus. Under this standard, it is unlawful to drive "when there is physical evidence present in the person's body of the consumption of *any alcohol*." Thus, the school bus driving per se standard is more restrictive than the 0.04 percent per se standard that Minnesota Statutes, section 169A.20, prescribes for driving commercial vehicles generally (a vehicle category which also includes all school buses and Head Start buses except the small class III buses).

A violation of the zero-tolerance per se standard while driving a school bus results in cancellation of the person's school bus driving endorsement, in addition to criminal penalties. Moreover, under Minnesota Statutes, section 171.165, a conviction for violating the school bus DWI law also results in the disqualification of the person's commercial driving privileges.

However, unless the person's level of impairment or alcohol concentration level is sufficiently high to constitute a simultaneous violation of the regular DWI law under Minnesota Statutes, section 169A.20, or the person refuses to take the alcohol test under Minnesota Statutes, section 169A.50 to 169A.53 (the implied consent law), then the person's driver's license itself would not be revoked. In that case, the person could validly continue to drive noncommercial vehicles.

A more detailed discussion of school buses as commercial motor vehicles is contained in the preceding chapter titled "Commercial Vehicle Driving." Generally, in addition to being subject to the zero tolerance standard for alcohol under Minnesota Statutes, section 169A.31, most school bus drivers are also subject to the 0.04 percent per se alcohol concentration standard applicable to commercial motor vehicle drivers under Minnesota Statutes, section 169A.20. An exception is for drivers of type III school buses which, by definition, are not "commercial motor vehicles;" those drivers are subject to the 0.10 percent per se alcohol concentration standard in the regular DWI law.

Cancellation of the School Bus Endorsement

Minnesota Statutes, section 171.321, provides that no person shall drive a school bus transporting school children to or from school, or on a school-related trip or activity, without having a valid class A, B, or C driver's license with a school bus endorsement.[90] Before issuing a school bus endorsement or renewing a driver's license with a school bus endorsement, the DPS must conduct a background check of the person's criminal history and driving record to ensure that the person

[90] A person with a valid driver's license but not a school bus endorsement may drive a vehicle with a seating capacity of ten or fewer persons used as a school bus, but not outwardly equipped or identified as a school bus (Minn. Stat. § 171.321, subd. 1).

has committed no "disqualifying offense." The person must also participate in a DPS-approved training and assessment program, including an annual refresher course. Under Minnesota Statutes, section 171.3215, the school bus endorsement on a driver's license may be canceled under the following circumstances:[91]

- The person commits a DWI offense (Minn. Stat. § 169A.20) while driving or in control of a school bus. In this situation, the person's school bus endorsement is permanently canceled, and the person may not apply for reinstatement of that endorsement.[92]

- The person's license is revoked for an impaired driving violation or the person is convicted of DWI while driving a vehicle other than a school bus. In this situation, the person's school bus endorsement is canceled for a period of five years, after which the person may apply for reinstatement. The person must show proof of successful completion of an alcohol or controlled substance treatment program.[93]

[91] Minnesota Statutes, section 631.40, directs the court administrator to notify the DPS of any conviction for a "disqualifying offense."

[92] Other "disqualifying offenses" include: any violation of Minnesota Statutes chapter 152 (various drug laws); any felony offense; and certain offenses involving criminal sexual conduct (Minn. Stat. § 171.3215).

[93] Minnesota Statutes, section 171.3215, further requires a one-year cancellation of the school bus endorsement upon a person's conviction for a fourth moving (traffic) violation within a three-year period. A driver who has no new convictions within one year may apply for reinstatement of the endorsement.

Flying Airplanes

Minnesota Statutes, section 360.0752, prohibits the same behaviors, including test refusal, for airplane pilots as Minnesota Statutes, section 169A.20, prohibits for motor vehicle drivers, with four principal differences:

- it involves "operating or attempting to operate" an airplane, as compared to "driving, operating, or being in physical control" of a motor vehicle;
- the per se level for operating airplanes is 0.04 percent instead of 0.10 percent, similar to the commercial motor vehicle per se standard;[94]
- it prohibits operating or attempting to operate an airplane within eight hours of having consumed any alcoholic beverages or used any controlled substances; and
- a violation—even a first violation—is always a gross misdemeanor crime, except for violation of the eight-hour time frame, which is always a misdemeanor.

The eight-hour prohibition is particularly noteworthy, since it applies irrespective of whether any alcohol or controlled substance remains in the person's body during flying. This is the only DWI law that utilizes a time frame alone, without a chemical requirement, to define the crime. It seems likely that such an approach may have been adopted by lawmakers to compensate for the fact that law enforcement generally is not able to apprehend and test a pilot during flight.

This statute applies:

- equally to the flying of private airplanes and commercial carriers;
- to any airspace over the state or boundary waters of the state; and
- irrespective of whether the plane lands within the state.

Minnesota Statutes, section 360.0753, governs chemical testing with regard to flying and is generally structured similarly to Minnesota Statutes, sections 169A.50 to 169A.53, the implied consent law for driving motor vehicles. Test refusal results in an administratively issued cease and desist order prohibiting operation of the aircraft for one year. However, a request for a judicial hearing on the order stays the order pending the hearing.

[94] This per se type of law and the 0.04 percent alcohol concentration standard for flying airplanes was established by Laws 1990, article 6, sections 4 and 5. Prior to 1990, it was illegal to fly while "under the influence" of any intoxicating liquor or narcotic drug.

Apart from the disqualification of flying privileges for test refusal, an arrest or conviction for a violation of Minnesota Statutes, section 360.0752, carries no mandatory administrative sanctions (i.e., no automatic disqualification from flying). However, Minnesota Statutes, section 360.075, subdivision 6, authorizes the court, when sentencing a person for a violation of Minnesota Statutes, section 360.0752, to prohibit the violator from operating an aircraft within the state for up to one year.

Driving Military Vehicles

Minnesota Statutes, section 192A.555, is a little known provision in Minnesota's Uniform Code of Military Justice (UCMJ) that prohibits driving, operating, or being in physical control of any vehicle or aircraft while under the influence of alcohol or a narcotic drug or while having an alcohol concentration of 0.10 percent or more. Violations are punishable as a court martial may direct. Chemical tests for intoxication may be made only in accordance with rules developed under this code.

Presumably, this statute would permit the National Guard to prosecute any member of the Guard who violates this provision while acting in an official capacity, whether on or off military property.

This law dates to 1963. However, upon inquiry, a spokesperson for the Adjutant General's Office was unaware of it. The spokesperson noted that it is the Minnesota National Guard's policy to defer to the civilian DWI laws and judiciary in matters of impaired driving and flying. The spokesperson could not recall a single case involving a member of the Minnesota National Guard or other military unit driving a military vehicle in Minnesota while impaired.

Appendix: Selected Minnesota Laws Regarding DWI

Minn. Stat. § 84.91	Prohibits operation of snowmobiles or all-terrain vehicles while under the influence of alcohol or controlled substance.
Minn. Stat. § 86B.331	Prohibits operation of watercraft while under the influence of alcohol or controlled substance.
Minn. Stat. § 152.02	Provides for "schedules" or categories of controlled substances.
Minn. Stat. § 168.041	Provides for judicial vehicle registration plate impoundment.
Minn. Stat. § 168.0422	Authorizes peace officers to stop vehicles bearing special series registration plates.
Minn. Stat. § 169A.03	Defines terms contained in Impaired Driving Code.
Minn. Stat. § 169A.20	Prohibits operation of motor vehicles while under the influence of alcohol or a controlled substance or while exceeding the per se alcohol concentration limit.
Minn. Stat. § 169A.33	Prohibits underage drinking and driving.
Minn. Stat. § 169A.35	Prohibits "open bottles" or consumption of alcohol by any person while vehicle is on a public highway.
Minn. Stat. § 169A.42	Provides for impoundment of vehicles under local ordinance.
Minn. Stat. § 169A.50 to 169A.53	Provides for chemical testing of persons believed to be operating a motor vehicle under the influence.
Minn. Stat. § 169A.54, subd. 7	Provides for "out-of-service" orders for commercial drivers.
Minn. Stat. § 169A.60	Provides for administrative vehicle registration plate impoundment.
Minn. Stat. § 169A.63	Authorizes the seizure and forfeiture of motor vehicles for commission of designated offenses.
Minn. Stat. § 169A.70	Authorizes the conducting of chemical use assessments of defendants convicted of designated offenses.

Minn. Stat. § 169A.73	Authorizes remote electronic alcohol monitoring programs.
Minn. Stat. § 169A.74	Authorizes intensive probation programs for repeat DWI offenders.
Minn. Stat. § 171.02	Provides for and requires driver's licenses.
Minn. Stat. § 171.06	Provides for procedures and fees for applications for driver's license.
Minn. Stat. § 171.09	Authorizes the Commissioner of Public Safety to impose restrictions on a driver's license or licensee.
Minn. Stat. § 171.12	Provides for the filing of applications for driver's licenses and driving records by the Department of Public Safety.
Minn. Stat. § 171.165	Provides for commercial driver's license disqualifications.
Minn. Stat. § 171.171	Provides for suspension of driver's licenses of persons convicted of designated offenses relating to illegal purchase of alcoholic beverages.
Minn. Stat. § 171.19	Provides for a petition to reinstate driver's license.
Minn. Stat. § 171.29	Provides for fees and examination as requirements for issue of another license following revocation.
Minn. Stat. § 171.30	Provides for issuance of a "limited license."
Minn. Stat. § 171.321	Provides qualifications for school bus drivers.
Minn. Stat. § 192A.555	Minnesota Uniform Code of Military Justice, prohibiting operation of any vehicle or aircraft while under the influence of alcohol or a controlled substance.
Minn. Stat. § 340A.503	Prohibits underage purchase, possession, and consumption of alcohol.
Minn. Stat. § 340A.703	Provides penalties for underage purchase, possession, and consumption of alcohol.
Minn. Stat. § 360.075	Provides for violations and penalties relating to operation of aircraft.
Minn. Stat. § 360.0752	Prohibits operation of aircraft while under the influence of alcohol or a controlled substance.

Minn. Stat. § 360.0753	Provides for testing of persons believed to be operating aircraft under the influence of alcohol or a controlled substance.
Minn. Stat. § 609.02	Provides definitions for the criminal code.
Minn. Stat. § 609.135	Authorizes a stay of imposition or execution of sentence.
Minn. Stat. § 609.14	Authorizes revocation of a stay of sentence.
Minn. Stat. § 609.21	Prohibits criminal vehicular homicide and injury.
Minn. Stat. § 629.471	Provides for bail for misdemeanors and gross misdemeanors.