

## At a Glance

If test is refused, refer to test refusal chart

| Level  | DWI with a Test   | Seize   |
|--|---|---|
| 1 <sup>st</sup> Degree DWI (Felony)<br>(A) 169A.20.1(x*)<br>(B) 169A.24.1(x*)<br>(C) 169A.24.2     | (1) 3 or more qualified prior impaired driving incidents within 10 years;<br>(2) Prior felony DWI conviction (lifetime); or<br>(3) Prior felony conviction for an impaired driving related criminal vehicular homicide/operation (lifetime) | DL** if test:<br>■ 0.08 or more;<br>■ 0.04 or more in a commercial vehicle;<br><br><b>MN License Plates Vehicle Forfeited Mandatory Booking</b> |
| 2 <sup>nd</sup> Degree DWI (Gross Misd.)<br>(A) 169A.20.1(x*)<br>(B) 169A.25.1(a)<br>(C) 169A.25.2 | 2 or more aggravating factors   | DL** if test:<br>■ 0.08 or more;<br>■ 0.04 or more in a commercial vehicle;<br><br><b>MN License Plates Vehicle Forfeited Mandatory Booking</b> |
| 3 <sup>rd</sup> Degree DWI (Gross Misd.)<br>(A) 169A.20.1(x*)<br>(B) 169A.26.1(a)<br>(C) 169A.26.2 | 1 aggravating factor  | DL** if test:<br>■ 0.08 or more;<br>■ 0.04 or more in a commercial vehicle;<br><br><b>MN License Plates Mandatory Booking may apply***</b>      |
| 4 <sup>th</sup> Degree DWI (Misd.)<br>(A) 169A.20.1(x*)<br>(B) 169A.27.1<br>(C) 169A.27.2          | No aggravating factors  | DL** if test:<br>■ 0.08 or more;<br>■ 0.04 or more in a commercial vehicle  |

\* Replace 'x' with the appropriate letter or number according to the circumstances of the offense.

\*\* Driver's license must be invalidated and returned.

\*\*\* If violation is 0.16 or higher, child endangerment, with cancel IPS or violation under 19 years old.

### Aggravating Factors

- Each prior DWI conviction or driver's license revocation within last 10 years (cannot count both if arising from the same incident);
- Current test 0.16 or over;
- Child endangerment (less than 16 years of age and greater than 36 months difference from offender).

## Test Refusal – DWI

Charge in addition to DWI

| Level  | Test Refusal | Seize  |
|--|--------------|--|
| 1 <sup>st</sup> Degree DWI (Felony)  |              | See <i>At a Glance</i>   |
| "2 <sup>nd</sup> Degree" Refusal / 1 or more aggravating factors (Gross Misd.)<br>(A) 169A.20.2<br>(B) 169A.25.1(b)<br>(C) 169A.25.2 |              | DL**<br><b>MN License Plates Vehicle Forfeited Mandatory Booking</b> |
| "3 <sup>rd</sup> Degree" Refusal / No aggravating factors (Gross Misd.)<br>(A) 169A.20.2<br>(B) 169A.26.1(b)<br>(C) 169A.26.2        |              | DL**<br><b>Mandatory Booking may apply***</b>                        |

\*\* Driver's license must be invalidated and returned.

\*\*\* If violation is 0.16 or higher, child endangerment, with cancel IPS or violation under 19 years old.

### Under 21 Alcohol Violations Consumption and Operation

| Violation  | Statute                | Penalty         |
|--|------------------------|-----------------|
| <b>Under 21 Consumption</b>                                |                        |                 |
| ■ DWI, if applicable                                       | See <i>At a Glance</i> | Misd./GM/Felony |
| ■ Unlawful to drive after consuming any amount of alcohol* | 169A.33.2              | Misd.           |

\* A conviction for this offense cannot be used as an aggravating factor.

### Alcohol-Related

| Violation                      | Statute          | Penalty |
|--------------------------------|------------------|---------|
| <b>Passenger Consumption</b>   |                  |         |
| ■ Under 21 years of age        | 340A.503.1(a)(2) | Misd.   |
| <b>Passenger Possession</b>    |                  |         |
| ■ Under 21 years of age        | 340A.503.3       | Misd.   |
| <b>Open Container</b>          | 169A.35.3        | Misd.   |
| <b>Allowing Open Container</b> | 169A.35.4        | Misd.   |

## 609.2112-609.2114 Criminal Vehicular Homicide or Operation

A person is guilty of criminal vehicular homicide or operation if the person causes injury to or the death of another as a result of operating a motor vehicle:

- (1) In a grossly negligent manner;
- (2) In a negligent manner while under the influence (i) of alcohol, (ii) a controlled substance, or (iii) combination;
- (3) While having an alcohol concentration of 0.08 or more;
- (4) While having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving;
- (5) In a negligent manner while knowingly under the influence of a hazardous substance;
- (6) In a negligent manner while any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols, is present in the person's body;
- (7) Where the driver who causes the crash leaves the scene of the crash in violation of section 169.09, subdivision 1 or 6; or
- (8) Driver was previously cited or warned for defective equipment, remedial action was not taken, and defect caused the injury or death.

If probable cause exists that a person has committed CVO or CVH while impaired, the officer shall certify this to the Commissioner of Public Safety. Forms are available on the crash report page of MyBCA or eCharging.

### 171.306 Ignition Interlock Device Program

To assure that the device is properly installed in the car and the driver has not been drinking, ask the driver to shut off their vehicle, wait three minutes and restart it by using the ignition interlock.

### Exception

Waivers are provided by DVS that allow the person to drive an employer owned vehicle without an interlock device and without special plates while in the normal course and scope of employment duties. The waiver must be in the vehicle.

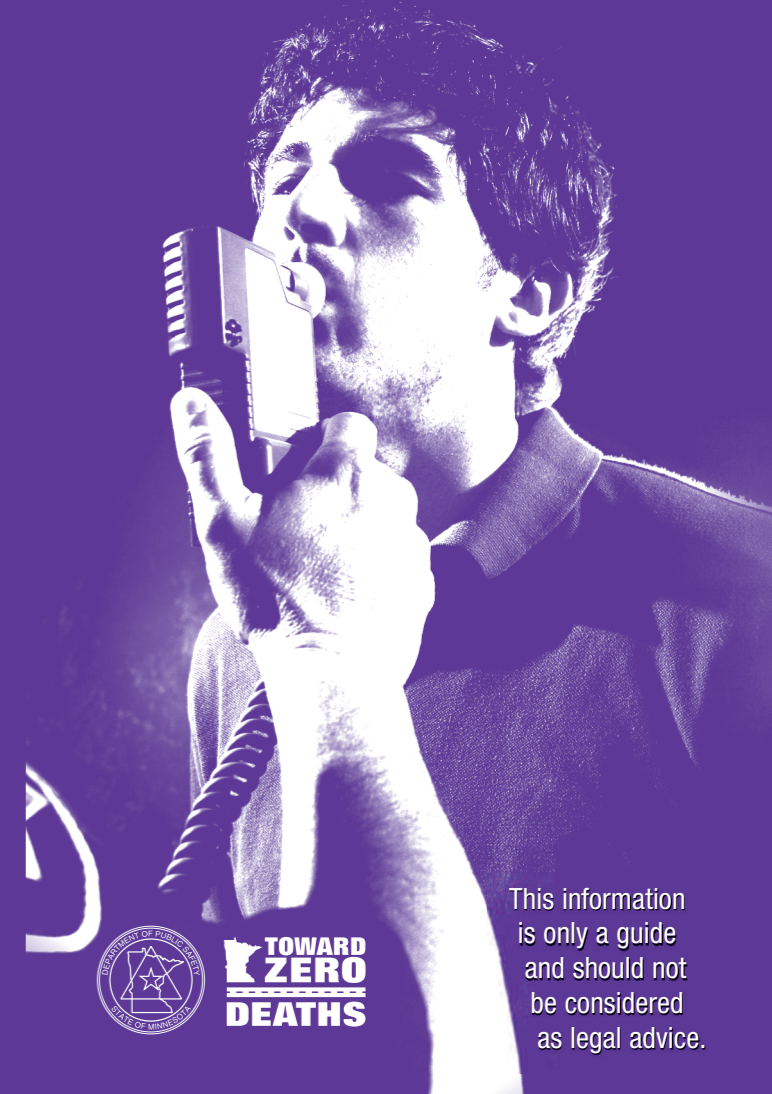
### Ignition Interlock Violations

- 171.09 Subd 1(g): Misdemeanor – for a person who holds an ignition interlock restricted license to drive a vehicle not equipped with a functioning ignition interlock device.
- 171.306 Subd 6(a): Misdemeanor – for a person to knowingly lend, rent, or lease a motor vehicle that is not equipped with an ignition interlock device to a person with a restricted ignition interlock driver license.
- 171.306 Subd 6(b): Misdemeanor – for a person to tamper with, circumvent, or bypass the ignition interlock device, or assists another to do so.

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# DWI-EZ

Reference Guide for Enforcing Minnesota DWI Laws



**TOWARD ZERO DEATHS**

This information is only a guide and should not be considered as legal advice.

## Charging DWI/Refusal Cases

Each DWI or Refusal count should cite three statute numbers:

- (A) a charging statute representing the offense charged;
- (B) a charging statute representing level of offense; and
- (C) a penalty statute representing level of offense.

## How to Correctly Charge DWI Violations

**Example: First-time DWI, 0.14 test:**

Count 1: DWI(A) 169A.20.1(1); (B) 169A.27.1; (C) 169A.27.2

Count 2: 0.08 or more(A) 169A.20.1(5); (B) 169A.27.1; (C) 169A.27.2

**Example: "2nd Degree" Refusal, DWI (1 agg. factor):**

Count 1: Refusal(A) 169A.20.2; (B) 169A.25.1(b); (C) 169A.25.2

Count 2: DWI(A) 169A.20.1(1); (B) 169A.26.1(a); (C) 169A.26.2

\* Replace 'x' with the appropriate letter or number.

## (A) Charging Statutes – Offenses

**169A.20.1(x\*) – DWI in a motor vehicle (relevant evidence at 0.04 AC)**

**169A.20.1a(x\*) – DWI in a motor boat**

**169A.20.1b(x\*) – DWI on a snowmobile or ATV**

**169A.20.1c(x\*) – DWI on a off road vehicle**

- Subd. 1: Drive, operate or be in physical control:
  - (1) Influence of alcohol;
  - (2) Influence of a controlled substance;
  - (3) Knowingly under the influence of a hazardous substance;
  - (4) Any combination of (1), (2), and/or (3);
  - (5) AC is 0.08 or more at the time or within 2 hours;
  - (6) Commercial vehicle and AC 0.04 or more or
  - (7) Body contains any amount of a controlled substance listed in schedule I or II, or its metabolite (other than marijuana or tetrahydrocannabinols).

**169A.20.2 – DWI: Refusal**

- Subd. 2(1): Refusal to breath test.
- Subd. 2(2): Refusal to blood/urine test.

## (B) Charging Statutes – Offense Level

**169A.24.1(x\*) – 1st Degree (Felony)**

- DWI test or refusal (169A.20.1(x\*) or 169A.20.2) and
  - (a) Three or more qualified prior impaired driving incidents within 10 years; or
  - (b) Prior felony DWI conviction; or
  - (c) Prior felony conviction for an impaired driving related criminal vehicular homicide or operation (609.2112–609.2114).
- Mandatory booking and hold (169A.40).

**169A.25.1(x\*) – 2nd Degree (Gross Misd.)**

- (a) DWI (169A.20.1(x\*)) and two or more aggravating factors present when the violation occurs.
  - Mandatory booking and hold (169A.40).
- (b) Refusal (169A.20.2) and one or more aggravating factors present when the violation occurs.
  - Mandatory booking and hold (169A.40).

**169A.26.1(x\*) – 3rd Degree (Gross Misd.)**

- (a) DWI (169A.20.1(x\*)) and one aggravating factor present when the violation occurs.
- (b) Refusal (169A.20.2) with no aggravating factors present when the violation occurs.

**169A.27.1 – 4th Degree (Misd.)**

DWI (169A.20.1(x\*)) with no aggravating factors present when the violation occurs.

## (C) Penalty Statutes

**169A.24.2 – 1st Degree (Felony)**

**169A.25.2 – 2nd Degree (Gross Misdemeanor)**

**169A.26.2 – 3rd Degree (Gross Misdemeanor)**

**169A.27.2 – 4th Degree (Misdemeanor)**

## Additional Statutes

**169A.41 Preliminary Screening Test**

May request where there is reason to suspect (articulable suspicion) the person has violated DWI law.

Results of the PBT can only be used in the following court actions:

- To prove that a test was properly required of a person under the implied consent law (169A.51);
- In a civil action arising out of the operation of a motor vehicle;
- In an action for license reinstatement under 171.19;
- In a prosecution for test refusal under 169A.20.2, subd. 2(1) and 2(2);
- Prosecution or juvenile court proceeding for underage driving after drinking "zero tolerance law" (169A.33.2) or minor consumption (340A.503.1(a)(2));
- Prosecution for violation of the "zero tolerance" law for school bus drivers (169A.31.1);
- Prosecution for violation of conditions of a limited license (171.30);
- Prosecution of violation of restricted driver's license that prohibits a person from consuming any alcohol or controlled substance (171.09).

**169A.40 Custodial Arrests / Mandatory Hold for Court**

**169A.44 Conditional Release / Mandatory Bail**

Jail and hold the offender until first court appearance (169A.40) and impose maximum bail or electronic monitoring (169A.44) if there is any reason to believe the violation occurred under any of the following:

- 1st Degree DWI (169A.24.1(x\*)) and 2nd Degree DWI (169A.25.1(x\*)) or refusal violation;
- 3rd Degree DWI (169A.26.1(x\*)) or refusal violation if under 19 years old;
- DWI 0.16 AC or more at the time or within two hours;
- DWI or refusal violation with child endangerment;
- DWI or refusal violation with cancel-IPS.

**169A.50-53 and 171.177 Chemical Testing**

- May charge *breath test refusal* (169A.20 Subd. 2(1)) only if:
  - Breath test advisory is read to the driver; and
  - Driver is given opportunity to contact an attorney.
- Must allow the person tested an opportunity to arrange for additional test if requested.
- May charge *blood/urine refusal* (169A.20 Subd. 2(2)) only if:
  - A search warrant is issued by a judge pursuant to 626.04 – 626.18;
  - The driver is advised that refusal to submit to a test is a crime; and
  - Both bodily fluid tests are refused.
- Can require blood or urine test after breath test, if controlled substance is suspected (obtain a search warrant for blood and/urine test).

**169A.20.1(2, 3 or 7) Drug Impairment**

If the driver's impairment is not consistent with their AC, call a Drug Recognition Evaluator (DRE) for further evaluation.

- Document specific observations of the offender's demeanor (i.e. accelerated reflexes, easily agitated, perspiring) and eyes (i.e. marked reddening of whites of eyes, dilated or constricted pupils);
- Arrest offender;
- Obtain a search warrant for a fluid test;
- Call a DRE (contact the local State Patrol dispatcher).

The DRE will document additional signs of impairment and the lab will verify the presence of the impairing substance.

**169A.78 Aiding and Abetting (Allow illegal operation)**

Every person who aids, abets or permits the commission of a violation of chapter 169A is likewise guilty of that offense.

**169A.60 Administrative Plate Impoundment**

(Only Minnesota motor vehicle plates can be impounded)

- (1) DWI test at 0.08 and higher or refusal plus at least one aggravating factor:
  - DWI test with AC or 0.16 or higher;
  - Child endangerment;
  - Prior impaired driving offense in the last 10 years.
- (2) Violator's driver's license is cancel-IPS (any instance).
  - Includes related offenses from other states and includes motor vehicle plates if the violator is on a recreational vehicle (snowmobile, ATV or motorboat).
  - Issue notice of impoundment and temporary permit.
  - *Seize and destroy* plates of vehicle the violator is currently driving regardless of ownership.

**169A.63 Vehicle Forfeiture**

Impound Plates (169A.60)

Vehicle subject to forfeiture if one of the following:

- 1st Degree Felony DWI test or refusal;
- 2nd Degree GM DWI test or refusal;
- 3rd Degree DWI with test refusal only; ("*2nd degree*" test refusal)
- DWI or refusal violation with a cancel-IPS status; or
- DWI or refusal violation with an alcohol abstinence restriction.

**169A.31.1 Alcohol Related School Bus or Head Start Bus Driving: "Zero Tolerance"**

- Subd. 2: Gross Misdemeanor – physical evidence present in the body of any alcohol consumption while using any class of school bus or Head Start bus and one of the following:
  - (1) child under the age of 16 is in the vehicle and more than 36 months younger than the violator; or
  - (2) qualified prior impaired driving incident within 10 years.
- Subd. 3: Misdemeanor – physical evidence present in the body of any alcohol consumption while using any class of school bus or Head Start bus.

**171.24.5 Driving After Cancellation-IPS**

- Subd. 5: Gross Misdemeanor to drive if cancel-IPS (DWI or sober)
- Seize and destroy plates (169A.60)
- Notify Driver and Vehicle Services of "Total Abstinence" restriction violation if evidence of alcohol or drug consumption.

*Additional statutes continued on back*