

STATE:  
General Reference:

NEW HAMPSHIRE  
New Hampshire Revised Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense: Illegal Per Se Law (BAC/BrAC):	Under the influence of intoxicating liquor <sup>770</sup> §265-A:2 ≥.08 <sup>771,772</sup> §265-A:2, I(b) <u>Persons Under 21 Years Old</u> ≥.02 <sup>773and774</sup> §265-A:21
Presumption (BAC):	0.03 BAC – <i>prima facie</i> evidence not intoxicated; Greater than 0.03 BAC less than 0.08 BAC – relevant evidence as to DUI but no presumption; ≥.08 is <i>prima facie</i> evidence of intoxication. §265-A:11
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) <b>Any Controlled Drug</b> and (2) Any Combination of Intoxicating Liquor and Controlled Drugs §265:82(I)(a)
Other:	<b>Aggravated Driving While Intoxicated Offense:</b> Either (1) driving while under the influence of intoxicating liquor or any controlled drug or any combination of intoxicating liquor and a controlled drug or with a BAC/BrAC ≥.08 and <u>one</u> of the following: exceeding the <i>prima facie</i> speed limit by more than 30 MPH; causing a collision that results in a serious bodily injury to another person; or, attempting to elude a law enforcement officer; or (2) Driving with a BAC/BrAC ≥.16. §265-A:3

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	<b>Yes</b> Test results may be introduced into evidence in a court for any relevant purpose, but refusal to submit to the test is not a violation, and evidence of refusal is only admissible for the purpose of determining whether the officer had probable cause to arrest the person § 265-A:15.
Implied Consent Law: Arrest Required (Yes/No):	<b>Yes</b> §265-A:4{operators in DUI-involved traffic crash may be arrested without warrant} – §265-A:17
Implied Consent Law Applies to Drugs (Yes/No):	<b>Yes</b> §265-A:4

<sup>770</sup> The term "intoxicating liquor" is defined to include all alcohol beverages containing more than one per cent alcohol by volume. §21:33

<sup>771</sup> This State's illegal per se law also makes it an offense to operate a motor vehicle with either a breath or a urine alcohol concentration of .08 or more. §259:3-b

<sup>772</sup> The term "alcohol concentration" is defined as grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 67 milliliters of urine. §259:3-b

<sup>773</sup> The sanctions for this offense (criminal and administrative) are the same as for any other drunk-driving offense.

<sup>774</sup> Under §265:89, it is *prima facie* evidence that a person was not under the influence of intoxicating liquor per §265:82,I (a) BAC was .03 or less. Therefore, drivers <21 years old who are charged with driving while under the influence of intoxicating liquor are entitled to use §265:89 as a defense against this charge, if their BACs were .03 or less, even though other provisions of the law make it illegal per se for them to operate a motor vehicle with a BAC ≥.02. *State v. Clyde*, 766 A. 2d 350 (N.H. 2000). It should be noted that in the case cited, the court specifically cited that the *prima facie* defense only applies to the driving while under the influence of intoxicating liquor offense and not to the per se offenses.

Chemical Breath Tests for Alcohol Concentration:  
(con't)

Refusal to Submit to Chemical Test  
Admitted into Evidence:

**Yes** (Criminal and Civil Cases) §265-A:10 and *State v. Parker*, 702 A.2d 306 (N.H. 1997)

Other Information:

I. If there is probable cause of DWI, a driver involved in a collision resulting in a death or serious injury shall be tested for evidence of alcohol or controlled drugs. §265-A:8

II. Under the implied consent law (§265-A:6), in addition to chemical tests, a person is deemed to have consented to "physical tests and examinations". A person who refuses to submit to these tests or examinations is subject to the same licensing action as for a refusal to submit to a chemical test.

Adjudication of DWI Charges:  
Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

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

**Yes** §265-A:5

**Yes** §26-A:5

**None**

**No**

**No.** The law requires the filing of reports on plea-bargaining agreements. Since these reports are public records, they are available for public inspection.

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

**Yes (Limited)** for third and subsequent offenses (within 7 years). A pre-sentence investigation is not normally required in misdemeanor cases, except if the misdemeanor was violent and is a second offense within 1 year.

Sanctions for Refusal to Submit to a Chemical Test:

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

**None** - but evidence of refusal is admissible only to show probable cause for the arrest. §265-A:15

Administrative Licensing Action  
(Susp/Rev):

**None**

Other:

**None**

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):  
Administrative Licensing Action  
(Susp/Rev):

**None**

First refusal where there has been no previous DWI offense – **Suspension for 180 days** (mand); second refusal or a first refusal where there has been a previous DWI offense – **Suspension for 2 years** (mand). These revocations are not to run concurrently with any other suspension or revocation. §265-A:14

Sanctions for Refusal to Submit to a Chemical Test(con't)

Other:

A person holding an "at-risk" probationary license whom police have reasonable cause to believe is driving with a BAC/BrAC  $\geq .03$  and who refuses to take a chemical test shall have the license suspended for 90 days. If crash results in death or serious injury, motor vehicle operators and all occupants and crash-involved pedestrians shall be tested for alcohol or controlled drugs. §865-A:16

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:<sup>775</sup>

Term (Day, Month, Years, Etc.):

First offense – Violation – Not a crime §265:82-b, I(a) – **None** ; first offense – **Aggravated Driving While Intoxicated Offense** (except bodily injury offenses) Misdemeanor<sup>776</sup> – Not more than **1 year**; second offenses<sup>777</sup> (including Aggravated DWI non-injury offenses within 10 years) – Misdemeanor – Not more than **1 year**; third offense (including Aggravated DWI non-injury offenses within 10 years) – Misdemeanor – Not more than **1 year**; fourth or subsequent offenses (including Aggravated DWI non-injury offenses within 10 years) – felony.

**Aggravated Driving While Intoxicated Offense with Serious Bodily Injury**– Class B felony – Not more than **7 years**<sup>778</sup> §§265:9, IV (A); 265:82-a; 265:82-b, I(b) and II and 651:2, I(c)

In order for a defendant to receive enhanced sanctions for a subsequent DWI offense conviction, the DWI complaint must allege the prior convictions.

§265:82-b, I(b)(1)

Mandatory Minimum Term:

Second and subsequent offense – all offenses including Aggravated DWI within 10 years – Misdemeanor-**10 consecutive days**. The 10 consecutive days are to be served as follows: 3 consecutive 24-hour periods in the county house of corrections and 7 consecutive 24-hour periods in a State-operated 7-day multiple DWI offender intervention detention center. §265-A:18

<sup>775</sup> **Gainful Employment and Home Confinement:** Offenders not confined to the State prison may be released for purposes of “gainful employment” or allowed to serve their sentence under home confinement. If home confinement is allowed, the offender must first serve either 8 consecutive weekends or 14 consecutive days in jail. §651:6, I(l) and (m) and II.

<sup>776</sup> The criminal code classifies this misdemeanor as a Class A misdemeanor. §625:9, IV (a)(2).

<sup>777</sup> For sentencing purposes, a prior offense includes a prior motor vehicle homicide offense related to drunk-driving and an Aggravated DWI offense related to serious bodily injury. §265:82-b, II.

<sup>778</sup> A defendant may receive an extended term of imprisonment of from 10 to 30 years if that person has committed an Aggravated DWI involving serious bodily injury and either (1) has been convicted of a prior like offense “or any crime in any other jurisdiction involving driving a motor vehicle under the influence of controlled drugs or intoxicating liquors,” or (2) has been convicted of two prior DWI offense in New Hampshire or any other jurisdiction. §625:6, I(l) and (m) and II.

Fine:

Amount (\$ Range):

First offense – **\$500 to \$1,000**; first offense – **Aggravated Driving While Intoxicated Offense** (except bodily injury offenses) – **\$500 to \$2,000**; second offense<sup>779</sup> (within 10 years) – **\$500 to \$2,000**; third offense (within 10 years) – **\$500 to \$2,000**; fourth or subsequent offenses (within 10 years) – **\$500 to \$4,000. Aggravated Driving While Intoxicated Offense with Serious Bodily Injury** – **\$1,000 to \$4,000** §§265-A:18

Mandatory Min. Fine (\$):

First offense – **\$500**; first offense – **Aggravated DWI** – **\$500**; second offense (within 10 years) – **\$500**; third offense (within 10 years) – **\$500**; fourth or subsequent offenses (within 10 years) – **\$500**; **Aggravated Driving While Intoxicated Offense with Serious Bodily Injury** – **\$1,000** §265-A:18.

Other Penalties:

The holder of a youth operator's license convicted of DUI shall not be eligible for re-issuance of a license prior to the age of 21 unless the person satisfies the director after an administrative hearing that the person will drive in a safe manner if the license is issued {minimum license suspension: first offense – 90 days but not more than 1 year; second offense – not less than 6 months or more than 2 years §263:56b}. The director may place such restrictions on any license so issued as the director deems in the best interest of public safety. §263:56b.

Any person who applies for re-issuance of the driver's license following revocation or suspension for DUI is an "**at-risk**" driver; that person's license shall be probationary for at least 5 years following re-issuance. Such "at-risk driver" may not drive with a BAC ≥ 0.03 {Sanction: administrative suspension – 90-180 days in addition to any other criminal penalties}. §265-A:35

For a felony or Class A misdemeanor, a defendant may receive conditional discharge which may include "uncompensated public service". §651:2, VI (a) **Sale of Drugs:** Under 18 – Revocation for 1-5 years; 18 or older – driver's license may be revoked at the discretion of the Court, for any period of time, including life. §263:56b

<sup>779</sup> All offenses including Aggravated DWI.

**Comment:** The sentencing provisions of the drunk-driving law provide that a fourth or subsequent offense is a felony. However, this law does not specify or classify whether this is a Class A or Class B felony. §265:82-b,II(c). Furthermore, unlike the provisions concerning unclassified misdemeanor offenses in the crime classification statute, §625:9, the law does not provide for a "default" classification for felony offenses in situations where an offense is defined as a felony but is not classified. The incarceration sanctions for Class A and Class B felonies are respectively not more than 15 and 7 years and the fine sanction for either felony is not more than \$4,000. §651:2, II and IV(a). The minimum mandatory sentences, fines and revocations listed shall not be suspended or reduced. §265:82-b

Restitution:  
(e.g., Victim's Fund)

I. Payment by the defendant to the victim.<sup>780</sup>  
§651:62 et seq.  
II. A victim may receive compensation for damages from a State fund. §21-M:8-g et seq.

Other:

**Penalty Assessment:** An offender must pay an assessment of either \$2 or 20 percent of the fine imposed. This assessment is used to fund police training and victim assistance programs. §188-F:31

**Liability for Response:** A DWI offender may be liable to reimburse a public agency for up to \$10,000 (or up to 500 hours of community service) of the cost incurred in responding to an incident involving the negligent use of a vehicle while under the influence of alcohol. §§153-A:24

Special Sanctions for Certain Multiple Offenders:

Any person who has completed a multiple DWI offender intervention program and who is subsequently convicted of a DWI offense within two years shall be imprisoned for 30 consecutive 24-hour periods. Second or subsequent offense within more than two years but less than 10 years – 10 consecutive days in jail plus 7-day multiple DWI offender intervention program. In addition, they must complete, at their own expense, either a 28-day residential treatment program or “an intensive course of substance abuse treatment” before their license can be restored. §265-A:18IV.

Administrative Licensing Actions:  
Pre-DWI Conviction Licensing Action:  
Administrative Per Se Law:

**Yes ≥.08 BAC/BrAC/UrAC (≥.02 for persons under 21 years old) first violation– suspension – 6 months (appears mand); subsequent violation– suspension – 2 years (appears mand)** A subsequent administrative per se violation also includes a prior refusal or DWI offense.

If a person is subject to both an admin per se suspension and a license revocation based on a DWI conviction as a result of the same occurrence, the total license suspension and revocation time cannot exceed the longer of the two periods. §265:91-c

Other:

Under §§263:56(I)(a) and 263:56(III), a person's license may be suspended/revoked for not more than 1 year if he/she has "committed" an offense that requires mandatory license revocation (e.g., DWI). A preliminary hearing is required before such action can be taken. §§265-A:30,:31,:32,:33 & :34

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<sup>780</sup> The offender may be ordered to pay restitution to the victims' compensation fund. Such payments are used to reimburse the fund for any amounts that were awarded to victims of the offense. §21-M:8-l

Post DWI Conviction Licensing Action:  
 Type of Licensing Action  
 (Susp/Rev):

First offense – **Revocation**; first offense – **Aggravated Driving While Intoxicated Offense** (except bodily injury offenses) – **Revocation**; second offense<sup>781</sup> (within 10 years) – **Revocation**; third offense (within 10 years) – **Revocation**; fourth or subsequent offenses (within 10 years) – **Revocation**; third or subsequent offenses (within 10 years) where there was a prior motor vehicle related negligent homicide offense – **Revocation** §265-A:18

Term of License Withdrawal  
 (Days, Months, Years, etc.):

First offense – **90 days to 2 years**; first offense – **Aggravated Driving While Intoxicated Offense** (except bodily injury offenses) – **1 to 2 years**; second offense<sup>782</sup> (within 10 years) – Not less than **3 years**; third offense (within 10 years) – For at least **5 years**; fourth or subsequent offenses (within 10 years) – **Indefinitely**; third or subsequent offenses (within 10 years) where there was a prior motor vehicle-related negligent homicide offense – **Indefinitely**  
**Aggravated Driving While Intoxicated Offense with Serious Bodily Injury** – **1 to 2 years** See Footnotes Nos. <sup>783</sup> and <sup>784</sup>.

Mandatory Minimum Term of  
 Withdrawal:

First offense – **90 days**; first offense – **Aggravated Driving While Intoxicated Offense** (except bodily injury offenses) – **18 months**; second offense (within 10 years) – **3 years**; third offense (within 10 years) – **5 years**; fourth or subsequent offenses (within 10 years) – **7 years**; third or subsequent offenses (within 10 years) where there was a prior motor vehicle related negligent homicide offense – **10 years**

<sup>781</sup> All offenses including Aggravated DWI.

<sup>782</sup> All offenses including Aggravated DWI.

<sup>783</sup> If a second or subsequent offense (within 10 years) is not alleged in the complaint but such is found to be the case, the defendant's license is suspended from 180 days to 3 years. The minimum 180 days appears to be mandatory. §265-A:18(b)

<sup>784</sup> A second or subsequent offender (within 10 years) must successfully complete a 7-day residential intervention program before the license can be reinstated. §265-A:18(b)

**Persons Under 21 Years Old:** Offenders who are <21 years old must have their driving privileges revoked for not less than 1 year. §265:82-b, I-b.

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person's privilege to operate a CMV is suspended for at least 1 year (3 years if transporting hazardous materials) if, while driving a CMV that person (1) is under the influence of alcohol with an alcohol concentration (BAC/BrAC/UrAC) ≥.04 or (2) is under the influence of a controlled substance. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above-listed items, the suspension is for life (10 years mand). If a person refuses to submit to a chemical test under the implied consent law while operating a CMV, the CDL is "revoked" for a first refusal for not less than 1 mandatory year and for a second or subsequent refusal for not less than 10 years. In addition, a CMV operator who has any alcohol in the system must be placed "out-of-service" for 24 hours. §§ 265-A:23,;24,;25.

**Aggravated Driving While Intoxicated Offense with Serious Bodily Injury – 1 year** 265:82-b, II

Child Endangerment:

If the DWI offender was transporting a person under 16 years old at the time of the offense, the offender must have their driving privileges revoked for the maximum time period provided by law.<sup>785</sup>  
§265:82-b, VIII

Rehabilitation:

Alcohol Education:

**Yes.** For any alcohol-related driving offense, a defendant must complete an impaired driver intervention program before the license can be restored; except if the person has previously been required to complete such a program, that person must complete multiple NH DWI offender intervention detention center program or an equivalent 7-day residential intervention program.  
§§265-A:18;:39 & :40

Alcohol Treatment:

Vehicle Impoundment/Confiscation:

**None**

Authorized by Specific

Statutory Authority:

Terms Upon Which Vehicle

Will Be Released:

Other:

**Vehicle Registration Revocation:**<sup>786</sup> For either (1) a second or subsequent DWI offense conviction or (2) an **Aggravated Driving While Intoxicated** offense conviction, the driver's vehicle's registration must be revoked for the same period of time as the driver's license suspension/revocation. §261:180, III

Miscellaneous Sanctions

Not Included Elsewhere:

**At-Risk Driver (Probationary License):** Any person who shall apply for re-issuance of the license following a drunk-driving conviction is an "at-risk" driver and whose license shall be probationary for 3 years. Such probationary license may be suspended from **90 to 180 days** if the driver operates a motor vehicle with a BAC/BrAC  $\geq .03$ . §265-A:35 This suspension may not be mandatory.

**Ignition Interlock:** Aggravated DWI or subsequent DWI offenders may be required to install an ignition interlock device on the vehicles owned or regularly used for 6 months to 2 years following license reinstatement. DWI offenders <21 years old may be required to use this device for 12 months or until they reach 21 whichever is longer. §265-A:36

<sup>785</sup> Before an offender's license can be restored, the person must complete either a 7-day State-operated multiple DWI offender program or a 7-day alcohol and drug residential intervention program. §§172-B:2-b and 265:82-b, VIII

<sup>786</sup> Under §261:180, IV, hardship registrations for the vehicles involved are available. In order to obtain such registrations, it must be shown that either a spouse or another individual must operate the vehicle or vehicles in order to avoid a hardship to either a family or an individual. N.H. Admin. Rules Saf-C 3001.01, 3003.01, 3003.03 and 3003.16

**Liquor Forfeiture:** Except for liquor intended for sale, any liquor on the defendant's person at the time the defendant is taken into custody is forfeited to the State. §179:4

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
State Has Such a Law:

**Yes I.** Death (or serious bodily injury) caused by unlawful motor vehicle operation without intent (Vehicle Assault) – Class A misdemeanor. §265:79-a  
**II.** Death caused by negligent operation of a motor vehicle (Negligent Homicide) – Class B felony §630:3, I  
**III.** Death resulting from the operation of a motor vehicle while DWI (Negligent Homicide) – Class A felony §630:3, II  
**IV.** Death caused by the reckless operation of a motor vehicle (Manslaughter) – Class A felony §§625:9, III(a)(1) and 630:2, I

Criminal Sanctions:  
Imprisonment (Term):

**I.** Not more than **1 year** §651:2, II(c)  
**II** Not more than **7 years** §651:2, II(b)  
**III.** Not more than **15 years**<sup>787</sup> §651:2, II(a)  
**IV.** Not more than **30 years** §630:2, II

Mandatory Minimum Term:  
Fine (\$ Range):

**None**  
**I.** Not more than **\$2,000** §651:2, IV(a)  
**II and III.** Not more than **\$4,000** §651:2, IV(a)  
**IV.** The law is not specific but a fine of not more than **\$4,000** may be possible. §§625:9, III (a)(1), 630:2 and 651:2, (IV(a))

Mandatory Minimum Fine:

**None**

Administrative Licensing Action:  
Licensing Authorized and  
Type of Action:

**I, II, III and IV. Revocation** §§263:56, I(g), 630:2, II and III and 630:3, III

Length of Term of  
Licensing Withdrawal:

**I and II.** Up to **7 years** §§263:56, III(a) and 630:3, III  
**III. Indefinitely**<sup>788</sup> §630:3, III  
**IV. Indefinitely** §630:2, III

Mandatory Action--Minimum  
Length of License Withdrawal:

**I and II. None**  
**III. 7 years** The use of an ignition interlock device may also be required for not more than 5 years following license reinstatement. §630:3, III

<sup>787</sup> A defendant may receive an extended term of imprisonment of from 10 to 30 years if that person has committed a DWI vehicle homicide and either (1) has been convicted of a prior like offense “or any crime in any other jurisdiction involving driving a motor vehicle under the influence of controlled drugs or intoxicating liquors” or (2) has been convicted of two prior drunk-driving offenses in New Hampshire or any other jurisdiction. § 651:6(I)(l) and (m) and (II).  
<sup>788</sup> **Persons Under 21 Years Old:** Offenders who are <21 years old must have their driving privileges revoked for not less than 1 year. A 1-year revocation appears to be mandatory. §265:82-b, I(b)



IV. **Indefinitely** §630:2, III

Other:

**Vehicle Registration Revocation:**<sup>789</sup> For Negligent Homicide and Manslaughter offenses, the driver's vehicle's registration must be revoked for the same period of time as the driver's license suspension/revocation. §261:180, III

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

Sanction:

Criminal:

Imprisonment (Term):

Misdemeanor (classified as a Class A misdemeanor) – Not more than **1 year** §§625:9, IV(a)((2), 263:64 and 651:2, II(c)

Mandatory Minimum Term of Imprisonment:

**7 consecutive 24-hour periods** §263:64, IV

Fine (\$ Range):

Not more than **\$1,000** §263:64, IV

Administrative Licensing Actions:

**Ignition interlock device** required on any vehicle registered to a person who drives after a suspension or revocation resulting from a DWI offense §265:93 I-a, b Prohibits that person from driving a motor vehicle not equipped with this device. §265:93-b I.

Type of Licensing Action (Susp/Rev):

**Revocation** §263:64, IV

Length of Term of License

**An additional 1 year** §263:64-a

Withdrawal Action:

Mandatory Term of License

**An additional 1 year** §263:64-a

Withdrawal Action:

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

**Yes** §§259:39 and 262:18 et seq.

Grounds for Being Declared an

Habitual Offender:

3 serious offenses (within 5 years), 12 moving violations (within 5 years), 1 serious offense and 8 moving violations (within 5 years), or a combination of

<sup>789</sup> Under §261:180, IV, hardship registrations for the vehicles involved are available. In order to obtain such registrations, it must be shown that either a spouse or another individual must operate the vehicle or vehicles in order to avoid a hardship to either a family or an individual. N.H. Admin. Rules Saf-C 3001.01, 3003.01, 3003.03 and 3003.16 **Special Note:** I. It appears to be a violation of the general provisions of the law which prohibit the operation of a motor vehicle while suspended or revoked, to operate a CMV during a CDL suspension. A person convicted of this offense is subject to probation and must have driving privileges revoked for not less than 1 year, or unconditional discharge or a fine of not more than \$1,000. §263:64, I and VII and 651:2, III and IV(a). A 1-year revocation appears to be mandatory. §265:82-b. II. A person who operates a motor vehicle while the license is either suspended or revoked commits a Class B felony (misdemeanor if they are <20 years old) if, as a result of a collision, that person causes either the death or serious bodily injury to another person. “Evidence the driver violated any of the rule of the road shall be *prima facie* evidence that the driver caused or materially contributed to the collision.” §263:64, V-a(a) and (b). The sanctions for a Class B felony are imprisonment for not more than 7 years and a fine of not more than \$4,000. The sanctions for a misdemeanor (Class A misdemeanor) are incarceration for not more than 1 year and a fine of not more than \$1,200. §651:2, II(b), II(c) and IV(a).

Term of License Rev While Under Habitual Offender Status:	2 serious offenses plus 4 moving violations (within 5 years).  Revocation <b>1 to 4 years</b> 262.19, III An habitual offender may have to successfully complete a "Driver Attitude Program" before the license is reinstated. §263:56-e <b>Vehicle Registration Revocation:</b> The habitual offender's vehicle's registration must be revoked for the same period of time as the driver's license revocation. §261:180, III. Under §261:180, IV, hardship registrations for the vehicles involved are available. In order to obtain such registrations, it must be shown that either a spouse or another individual must operate the vehicle or vehicles in order to avoid a hardship to either a family or an individual. N.H. Admin. Rules Saf-C 3001.01, 3003.01, 3003.03 and 3003.16
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	<b>Felony.</b> §262:23I{Class A misdemeanor – for those habitual offenders who have not committed any DWI or other criminal motor vehicle violations. §262:23, III.}
Sanctions Following a Conviction of Driving While on Habitual Offender Status: Imprisonment (Term):	Felony <b>1 to 5 years.</b> §§262:23, I and 625:9, III A person may also be sentenced to home confinement as a condition of probation. §651:2, V(b)
Mandatory Minimum Term of Imprisonment:	<b>1 year</b> if the person has been convicted of a misdemeanor or felony traffic offense convictions. §262:23, III. As an <u>alternative</u> , home confinement provided the offender first serves either 8 consecutive weekends or 14 consecutive days in jail. §262:23, I and III
Fine (\$ Range):	Possible fine of not more than <b>\$4,000</b> . No fine is stated in §262:23. However, §651:2, IV(a) provides that a person convicted of a felony may be subject to a fine of not more than \$4,000.
Mandatory Minimum Fine (\$): Licensing Actions (Specify):	<b>None</b> <b>None</b>
<u>Other State Laws Related To Alcohol Use:</u> <u>Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:</u> State Has Such a Law (Yes/No): BAC Chemical Test Is Given to the the Following Persons:	<b>Yes</b> (Required) §265:93

Driver: **Yes**  
 Vehicle Passengers: **Yes**  
 Pedestrian: **Yes**

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21**<sup>790</sup> §§175:1, 179:5 and 179:6  
 Minimum Age (Years) Possession: **21** There are employment exemptions. §§179:10 and 179:23  
 Minimum Age (Years) Consumption: **None**

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes** §507-F:1 et seq.<sup>791</sup> This statute appears to have abrogated previous case law concerning dram shop liability. §507-F:8

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case

**No.** Case law abrogated by §507-F:1 et seq. with regard to licensees.

Dram Shop Actions-Social Hosts:

**Yes.** *Hickingbotham v. Burke*, 662 A.2d 297 (N.H. 1995),<sup>792</sup> and *MacLeod v. Ball*, 663 A.2d 632 (N.H. 1995)

Other:

Under §507-F:5, a licensee may be held liable for the injuries sustained by an intoxicated patron if the service of alcoholic beverages was reckless.

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

**Misdemeanor**<sup>793</sup> (For corporations-felony) §§179:5 and 179:58, I

Term of Imprisonment:

Not more than **1 year** §651:2, I(c)

Fine (\$ Range):

Not more than **\$2,000** §651:2, IV(a) (For corporations – not more than \$100,000) §651:2, IV(b)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

**Yes Suspension/Revocation** §179:57

Length of Term of License Withdrawal:

Time period is not specified in the statute for either suspension or revocation.

<sup>790</sup> It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to "misrepresent" his/her age in order to obtain alcoholic beverages. §179:9(I)

<sup>791</sup> New Hampshire's Dram Shop Law is similar to the Model Alcoholic Beverage Retail Licensee Liability Act of 1985. This model law was developed via a grant for the National Institute on Alcohol Abuse and Alcoholism.

<sup>792</sup> The court based its decision on whether there was negligence based upon the reckless service of alcoholic beverages by the social host. The case concerned an injured intoxicated minor guest.

<sup>793</sup> The criminal code classifies this misdemeanor as a Class A misdemeanor. §625:9, IV(a)(2)

Administrative fine of \$100 to \$5,000 in lieu of a suspension/revocation. §179:57

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:  
Type of Criminal Action:

**Misdemeanor**<sup>794</sup> (For corporations-felony) §§179:5, 179:6 and 179:58, I

Other State Laws Related To Alcohol Use:

Term of Imprisonment:  
Fine (\$ Range):

Not more than **1 year** §651:2, I(c)  
Not more than **\$2,000** §651:2, IV(a) (For corporations – not more than \$100,000) §651:2, IV(b)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages  
Withdrawn (Yes/No):  
Length of Term License Withdrawal:

**Yes Suspension/Revocation** §179:57  
Time period is not specified in the statute for either suspension or revocation.  
Administrative fine of \$100 to \$5,000 in lieu of a suspension/revocation. §179:57

Anti-Happy Hour Laws/Regulations:

**No**<sup>795</sup>

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

**Yes** – violators may be suspended for 60 days if first offense or under age 21; and one year for subsequent offenders who are age 21 or more. §§265-A:44& :45.

Anti-Consumption Law (Yes/No):

**No**<sup>796</sup>

<sup>794</sup> The criminal code classifies this misdemeanor as a Class A misdemeanor. §625:9, IV(a)(2)

<sup>795</sup> However, the service of "free drinks" is prohibited except for wine-tasting purposes. §179:44

<sup>796</sup> However, the law does prohibit drivers and passengers from possessing alcoholic beverages within the passenger area of any motor vehicle. This prohibition does not apply to persons transporting, carrying, or possessing such beverages in a chartered bus, taxi, limousine for hire, or a section of a motor vehicle designed for overnight accommodations.