

STATE:
General Reference:

NORTH DAKOTA
North Dakota Century Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor ⁹²⁸ §39-08-01(1)(b)
Illegal Per Se Law (BAC/BrAC): Presumption (BAC):	≥.08 ^{929and930} §§39-08-01(1)(a) and 39-20-07(3) and (4) None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug or Substance, (2) Any Combination of Drugs or Substances and (3) combined influence of alcohol and any drug or substance. §39-08-01(1)(c) and (d) {"drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely driving". §39-20-01
Other:	A person is "under the influence of intoxicating liquor" if that person has an alcohol concentration of at least .08 (if under 21 years old, this level is at least .02) ⁹³¹ §39-20-07(3)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	Yes ⁹³² §39-20-14 Refusal of the person to submit to a screening test may result in a revocation for up to three years unless the person provides a sufficient breath, blood, or urine sample for a chemical test requested {under section 39-20-01} for the same incident.
Implied Consent Law: Arrest Required (Yes/No):	Yes §39-20-01 {"A lawful arrest is a condition precedent to the administration of a chemical test."}
Implied Consent Law Applies to Drugs (Yes/No):	Yes §39-20-01
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal and Civil Cases) §39-20-08 and <i>State v. Murphy</i> , 527 N.W.2d 254 (N.D. 1995) ⁹³³
Other Information:	In any accident in which there is either a death or a

⁹²⁸ The term "intoxicating liquor" means and includes any beverage containing alcohol. §39-01-01(28)

⁹²⁹ This State's illegal per se law also makes it an offense to operate a motor vehicle with either a breath or urine alcohol concentration of .08 or more.

⁹³⁰ Alcohol concentration is described as "percent by weight" of alcohol in the blood. However, this is defined to mean either 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. §39-20-07(4)

⁹³¹ These alcohol concentrations must still be supported by physical evidence of intoxication. N.D. Atty. Gen. Opinion 98-01, 1/8/98

⁹³² Under §39-06.2-10.2(5), a CMV operator is deemed to have given consent to a PBT under §39-20-14.

⁹³³ See also, *City of West Fargo v. Maring*, 458 N.W.2d 318 (N.D. 1990), and *State v. Murphy*, 516 N.W.2d 285 (N.D. 1994). If an arrested drunk-driving offender has not been given *Miranda* warnings, statements made refusing to submit to a chemical test cannot be admitted into evidence at trial. However, the fact of refusal to submit to such a test is admissible. *State v. Beaton*, 516 N.W.2d 645 (N.D. 1994), and *State v. Satrom*, 524 N.W.2d 92 (N.D. 1994)

Chemical Breath Tests for Alcohol Concentration:
(cont)

serious bodily injury and there is probable cause showing that a driver has committed any DWI offense, such driver may be compelled to submit to a chemical test or tests of the driver's blood, breath, saliva, or urine §39-20-01.1

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

Blood:	Yes §39-20-01
Urine:	Yes §39-20-01
Other:	Saliva, Breath ("chemical test" or "chemical analysis" mean any test to determine the alcohol, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the State toxicologist §39-20-01)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea-Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Addiction evaluation is mandatory for all offenders. §39-08-01 (4)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> : Criminal Sanctions (Fine/Jail): Administrative Licensing Action (Susp/Rev):	No <u>First offense</u> (within five years): Suspension – one year; second offense: three years; third offense – four years §§39-20-04 and 39-20-14
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Refusal to Take <u>Implied Consent Chemical Test</u> : Criminal Sanction (Fine/Jail): Administrative Licensing Action (Susp/Rev):	None <u>First refusal</u> – suspension -91 days, but 180 days if BAC > .18; second refusal ⁹³⁴ (within 5 years) Revocation – 1 year; third or subsequent refusal (within 5 years) Revocation-4 years . These license revocations are mandatory; however, a temporary restricted license may be issued under certain circumstances. §§39-06.1-11(2) and 39-20-04. There is no licensing action for a refusal if a person pleads guilty to a DWI offense. §39-20-04(2)
Other:	None

⁹³⁴ Previous DWI convictions are also considered as prior refusals.

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

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

First offense (Class B Misdemeanor) – **none**; second offense (within 5 years) (Class B Misdemeanor) – at least **5 days (48 hours consecutively) or 30 days community service**; third offense (within 5 years) (Class A Misdemeanor) – at least **60 days (48 hours consecutively)**; fourth offense (within 7 years) (Class A Misdemeanor) -at least **180 days (48 hours consecutively)**; §39-08-01

Mandatory Minimum Term:⁹³⁵

First offense – **None**; second offense (within 5 years) – **5 days** of which 48 hours must be served consecutively⁹³⁶; third offense (within 5 years) – **60 days** of which 48 hours must served consecutively⁹³⁷; fourth or subsequent offense (within 7 years) – **180 days** of which 48 hours must be served consecutively. §§39-08-01(4)

Mandatory Minimum Term:

Special Note: If an offender has been ordered to participate in an addiction treatment program and is also subject to mandatory imprisonment, the time spent in the treatment program "must be credited as a portion of the sentence of imprisonment...." §39-08-01

Fine:

Amount (\$ Range):

First offense – At least **\$250**; second offense (within 5 years) – at least **\$500**; third offense (within 5 years) – **\$1,000**; fourth offense – Not more than **\$1,000**;

Mandatory Min. Fine (\$):

First offense – **\$250**; second offense (within 5 years) – **\$500**; third offense (within 5 years) **\$1,000**; fourth or subsequent offense (within 7 years) – **\$1,000**.

Other Penalties:

Community Service:

Second offense (within 5 years) – **30 days** as an alternative to imprisonment (does not apply to other subsequent offenses)

Restitution

(e.g., Victim's Fund)

Yes. By the defendant for all offenses (§§12.1-32-02 and 12.1-32.08) and via a victims' compensation fund (§54-23.4-01 et seq.).

⁹³⁵ If sentence is not more than 1 year of imprisonment, the offense is considered a misdemeanor. §12.1-32-02(9).

⁹³⁶ "Imprisonment" includes house arrest with electronic home detention where the offender is prohibited from consuming alcoholic beverages. However, this requirement does not apply to persons under the control of the Department of Corrections and Rehabilitation. §39-08-01(5).

⁹³⁷ **Alternative Mandatory Sentence:** Ten days of mandatory imprisonment on the condition that the offender undergoes and completes a drug/alcohol evaluation. Based on this evaluation, the court may place the offender on probation and require treatment and rehabilitation. §39-08-01(4)(e).

Double Jeopardy: Based upon the same factual situation, a person who has been subjected to licensing action under the administrative per se law may also be subsequently prosecuted for a drunk-driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Zimmerman*, 539 N.W.2d 49 (N.D. 1995), *State v. Kvislen*, 544 N.W.2d 876 (N.D. 1996), *State v. Jacobson*, 545 N.W.2d 152 (N.D. 1996), *State v. Barth*, 545 N.W.2d 162 (N.D. 1996), and *State v. Storbakken*, 552 N.W. 78 (N.D. 1996)

Other:

Ignition Interlock: The court or driver licensing agency may order a defendant to install an "ignition interlock" device on his/her vehicle. This requirement applies to the issuance of temporary restricted driving privileges. §§39-06.1-11 and 39-08-01.3.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person: (1) has a BAC/BrAC/UrAC $\geq .04$ (Standards: Grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters or breath or grams of alcohol per 67 milliliters of urine.), (2) is under the influence of alcohol or drugs, or (3) refuses to submit to a chemical test for an alcohol concentration. Note: The disqualification section, §39-06.2-10, appears to only apply to a refusal to submit to a chemical test for an alcohol concentration; however, the CMV implied consent section, §39-06.2-10.2, applies to tests for either an alcohol concentration or for the presence of other drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above-listed items, the "disqualification" is for life (10 years mand). A person who operates a CMV with any "measurable or detectable amount of alcohol" in the system must be placed "out-of-service" for 24 hours. Note: It appears to be an infraction to operate a CMV with an alcohol concentration $\geq .04$. A person who is convicted of committing an infraction is subject to a fine of not more than \$500. However, under the Criminal Code, an offender who has been convicted of a prior infraction within 1 year of the present offense may be convicted of a Class B misdemeanor. The sanctions for this misdemeanor are an imprisonment term of not more than 30 days and/or a fine of not more than \$1,000. §§12.1-32-01(7), 39-06.2-02, 39-06.2-10, 39-06.2-10.1, 39-06.2-10.2, 39-06.2-10.9 and 39-07-06 and N.D. Admin. Code 37-10-01-01.

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes (1) $\geq .08$ or (2) Persons Under 21 Years Old $\geq .02$ (BAC/BrAC/UrAC §§39-06.1-11(2), 39-20-03.1, 39-20-04.1 and 39-20-07. First offense – **91-day suspension** -30 days mandatory, but a restricted license may be issued after this mandatory period. {80 days if BAC > .18}; second offense⁹³⁸ (within 5 years) – **1-year suspension** (mand); third and subsequent offense or second with .18 BAC (within 5 years) – **2- year suspension** (mand); 3 years for third and subsequent offense and last offense exceeded .18 BAC.

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

See Alcohol Education/Treatment below.

First offense – **Suspension**; second offense (within 5 years) – **Suspension**; third and subsequent offense (within 5 years) – **Suspension**. §39-06.1-10

Term of License Withdrawal

(Days, Months, Years, etc.):

First offense – **91 days unless BAC > .18, then 180 days**; second offense (within 5 years) – **365 days**; third and subsequent offense (within 5 years) – **2**

⁹³⁸ A previous violation also includes a previous DWI offense conviction or previous implied consent refusal.

Persons Under 18 Years Old: A person under 18 years old who commits a drunk-driving offense must have his/her driving privileges canceled. Such a person is considered to never to have had a license and, after any period of suspension or revocation, he/she may apply for and be issued an instructional permit. Such individuals must complete certain State-required classroom and behind-the-wheel instruction and satisfy all other requirements for licensing prior to being issued a driver's license. §§14-10-01 and 39-06-01.1

years. Second offense and violation is .18 BAC – 2 years §39-06.1-10(7). Three years; if third violation and violation is at least.18 BAC.

Mandatory Minimum Term of
Withdrawal:

First offense – **30 days** (a temporary license may be issued after the 30-day mandatory period §39-06.1-11(2)); second offense (within 5 years) – **365 days;** third and subsequent offense (within 5 years) – **2 years.** §§39-06.1-10(3.1) (b)and 39-06.1-11
Note: No restricted licenses can be issued in cases where there has been a serious injury related to a DWI offense. §§39-06-31 and 39-06.1-11(2)

Other:
Rehabilitation:
Alcohol Education:
Alcohol Treatment:

Yes I. For a first, second or third DWI offense conviction, the defendant must be referred to an alcohol rehabilitation facility for addiction evaluation. Following the evaluation, the court may require the defendant to complete an alcohol education or treatment program. §39-08-01(4). A defendant's license cannot be restored until the defendant furnishes a written statement from an approved treatment program either that he/she does not need alcohol education/treatment or that he/she has complied with the "attendance rules" of such program.
§39-06.1-10 (3.1) (a)
II. For a fourth or subsequent offense (within 7 years), a defendant must complete an addiction treatment program and have no alcohol or drug-related offense convictions within 2 consecutive years before his/her driving privileges can be restored.
§39-06.1-10 (3.1) (b)

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:

Forfeiture (Non-Mandatory): For a second or subsequent DWI offense conviction (within 5 years), a defendant's vehicle may be subject to forfeiture.
§39-08-01.3

Terms Upon Which Vehicle
Will Be Released:

Impoundment: License plates may be impounded following a conviction for an alcohol-driving offense. They must be impounded upon a second or subsequent offense within 5 years; except that a court may grant a hardship exception to a person completely dependent on the motor vehicle for the necessities of life, including a family member of the convicted individual and co-owner of the motor vehicle, but not including the offender. The period of impoundment is for the same period of time as the defendant's license suspension period. §39-08-01(3)

Miscellaneous Sanctions
Not Included Elsewhere

Mandatory Sanctions DWI Injury/Death:

Mandatory imprisonment sanctions apply if either a death or a serious injury is DWI-related. If a person is convicted of a homicide that is related to DWI (e.g., manslaughter (§12.1-16-02) or negligent homicide (§12.1-16-03)), there is a mandatory penalty of **1 year** imprisonment. If a person is convicted of DWI where there is a serious injury caused by the defendant, there is a mandatory penalty of **90 days** imprisonment. §39-08-01.2

Child Endangerment: It is a Class A misdemeanor (imprisonment term for not more than 1 year and/or a fine of not more than \$1,000) for a person ≥21 years old to commit a DWI offense while transporting a "minor". §§12.1-32-1 and 39-08-01.4. Note: The term "minor" is not defined in the motor vehicle law (Title 39). However, North Dakota law usually defines a "minor" as any person under 18 years old (e.g., §14-10-01).

Exemplary Damages: A person who while operating a motor vehicle injures another person (1) while BAC was ≥.08, (2) while under the influence of a controlled substance (except in cases where the substance was legally prescribed), (3) while under the influence of alcohol and refused to submit to a chemical test under the implied consent law, or (4) while under the influence of a volatile chemical listed in §19-03.1-22.1, may be liable for “exemplary damages” – not exceeding two times the amount of compensatory damages or \$250,000, whichever is greater. §32-03.2-11 4.

Habitual Drunkard: defined as three or more DUI violations or three or more administrative suspensions within a 5-year period-- denied driver’s license unless offender submits adequate proof of the removal of the habit which may include satisfactory completion of a licensed alcohol or drug treatment program. § 39-06-03 3.

Manslaughter: Even though this State does not have a vehicle homicide statute, it nevertheless provides for mandatory license revocation from 30 days to 1 year for a conviction of manslaughter resulting from the operation of a motor vehicle. §39-06-31(1)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:
Sanctions:
Criminal Sanction:
Imprisonment (Term):

No

Mandatory Minimum Term:
 Fine (\$ Range):
 Mandatory Minimum Fine:

Administrative Licensing Action:
 Licensing Authorized and
 Type of Action:
 Length of Term of

Revocation

Licensing Withdrawal:
 Mandatory Action--Minimum
 Length of License
 Withdrawal:
 Other:

30 days to 1 year

30 days

Driving While License Suspended or Revoked
Where the Basis Was a DWI Offense:

§39-06-42.

Sanction:
 Criminal:

Imprisonment (Term):

First offense, second offense (within 5 years) and third offense (within 5 years) – **Class B Misdemeanor** Not more than **30 days**; subsequent offense (within 5 years) – **Class A Misdemeanor** Not more than **1 year**. §§12.1-32-01(5) and (6) and 39-06-42

Mandatory Minimum Term
 of Imprisonment:
 Fine (\$ Range):

4 consecutive days §§39-06-42(2) and 39-08-01 First offense, second offense (within 5 years) and third offense (within 5 years) – Not more than **\$1,000**; subsequent offense (within 5 years) – **Class A Misdemeanor** Not more than **\$1,000**. §12.1-32-01(5) and (6)

Mandatory Minimum Fine:

None

Administrative Licensing Actions:
 Type of Licensing Action
 (Susp/Rev):

I. For driving while license is suspended, the license suspension is extended for an additional period as follows: first offense – **at least 6 months** (90 days if the original license suspension was not DWI-related); second offense (within 3 years) – **180 days**; third and subsequent offense (within 3 years) – **1 year**. §39-06-43 II. For driving while license is revoked, the license revocation is extended for and additional period of **1 year**. §39-06-43. Note: Special licensing actions apply for a violation of the conditions of a restricted license. 39-06.1-11, 39-06-43 and 39-08-01
License Plate Impoundment: Under §39-06-42 (3), license plates may also be impounded for the duration of the driver's license suspension/ revocation.

Special Note: It appears to be an infraction to operate a CMV during a CDL disqualification. Although the law is not clear, it may also be an infraction to operate a CMV while in violation of a CDL out-of-service order as prescribed by State regulations. A person who is convicted of committing an infraction is subject to a fine of not more than \$500. However, under the Criminal Code, a defendant convicted of a prior infraction within 1 year of the present offense may be convicted of a Class B misdemeanor. The sanctions for this misdemeanor are an imprisonment term of not more than 30 days and/or a fine of not more than \$500. §§12.1-32-01(7), 39-06.2-06(2), 39-06.2-10.9 and 39-07-06.

Other Criminal Actions Related to DWI: (continued)

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

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:
 State Has Such a Law (Yes/No): **Yes** §39-20-13
 BAC Chemical Test Is Given to the the Following Persons:
 Driver: **Yes**
 Vehicle Passengers: **Yes**
 Pedestrian: **Yes**

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:
 Minimum Age (Years) Sale/Purchase: **21** §§5-01-08, 5-01-09, 5-02-01.1(2)(d) and 5-02-06
 Minimum Age (Years) Possession: **21**^{939and940} §5-01-08
 Minimum Age (Years) Consumption: **21** §5-01-08

Dram Shop Laws and Related Legal Actions:
 State Has a Dram Shop Law (Yes/No): **Yes** §5-01-06.1 **Special Note:** The law prohibits an adult passenger who is injured while riding with an intoxicated driver or the intoxicated person from bringing a dram shop cause of action.

"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 Citation): **No**

Dram Shop Actions-Social Hosts: **Yes**⁹⁴¹ §5-01-06.1
 Other: **None**

⁹³⁹ There is an employment exemption for persons who are 19-20 years old. §5-02-06.

⁹⁴⁰ There is an exception when an "underage" person is accompanied by a parent or legal guardian, and also one for religious services. §5-01-08.

⁹⁴¹ *Olson v. Griggs County*, 491 N.W.2d 725 (N.D. 1992) and *Born v. Mayers*, 514 N.W.2d 687 (N.D. 1994)

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

Type of Criminal Action: Class A Misdemeanor §5-01-09
 Term of Imprisonment: Not more than **1 year** §12.1-32-01
 Fine (\$ Range): Not more than **\$1,000** §12.1-32-01

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

License to Serve Alcoholic Beverages
 Withdrawn (Yes/No): **Yes Revocation/suspension** §§5-02-10 and 5-02-11
 Length of Term of License Withdrawal: Time period is not specified in the statute. §5-02-11

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: **Class A Misdemeanor** §§5-01-09 and 5-02-06
 Term of Imprisonment: Not more than **1 year** §12.1-32-01
 Fine (\$ Range): Not more than **\$1,000** §12.1-32-01

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): **Yes Revocation/suspension** §§5-02-10 and 5-02-11
 Length of Term License Withdrawal: Time period is not specified in the statute. §5-02-11

Anti-Happy Hour Laws/Regulations:

No

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** §39-08-18

Anti-Consumption Law (Yes/No):

Yes Driver and passengers. §39-08-18. The law states that "no person shall drink or consume alcoholic beverages ... in or on any motor vehicle when such vehicle is upon a public highway or in an area used principally for public parking."