

STATE:

OKLAHOMA

General Reference:

Oklahoma Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:

I. Under the influence of alcohol 47 §11-902(A)(2)
 II. Impaired by the consumption of alcohol (driving while impaired) 47 §761(A)

Illegal Per Se Law (BAC/BrAC):

≥.08^{972and973} 47 §§756(5) and 11-902(A)(1)
Persons Under 21 Years Old-Any Measurable Quantity of Alcohol in the Blood or Breath
 47 §6-106.4(A)⁹⁷⁴

Presumption (BAC):

None

Types of Drugs/Drugs and Alcohol:

I. Under the influence of (1) **Intoxicating Substances**⁹⁷⁵ or (2) a Combination of These and Alcohol 47 §11-902(A)(3) and (4)
 II. **Impaired by Any Other Substance** 47 §761(A)
 III. Persons Under 21 Years Old-Under the influence of (1) any other intoxicating substance or (2) a combination of alcohol and any other intoxicating substance 47 §6-106.4(A)

Other:

I. A BAC/BrAC **≥.08** is also *prima facie* evidence that a person was under the influence of alcohol. 47 §756(A)(3)
 II. A BAC/BrAC **>.05 but <.08** is “relevant evidence” of Driving While Impaired. 47 §756(A)(2)
 III. Any measurable quantity of alcohol is *prima facie* evidence that a person <21 years old violated 47§11-906.4(A). 47§756(A)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

No

Implied Consent Law:

Arrest Required (Yes/No):

Yes 47 §751(A)

⁹⁷² This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more. 47 §756(5)

⁹⁷³ Alcohol concentration is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. 47 §756(B)

⁹⁷⁴ See **Persons Under 21 Years Old** for the sanctions for violating this provision.

⁹⁷⁵ A person who has been convicted of driving under influence/illegal per se and who has had a prior conviction for these offenses within 10 years does not undergo an alcohol and drug substance abuse evaluation. Instead, such an offender, as a condition of any sentence imposed, is required to participate in an alcohol and drug abuse treatment program. 47 §11-902(K)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 mandatory year (3 years if transporting hazardous materials), if while operating a CMV, that person (1) has a BAC/BrAC $\geq .04$, (2) is under the influence of alcohol or an intoxicating substance, or (3) refuses to submit to a chemical test for an alcohol concentration. For either (1) a second "conviction" or (2) a combination of two "convictions" of any of the above listed items, the "disqualification" is for life (10 years mand). Note: A conviction includes an un-vacated adjudication of guilt, a failure to comply with the provisions of the CMV law (47 §6-205.2), or a violation of the admin per se law (47 §754). 47 §6-205.2

Implied Consent Law Applies to
 Drugs (Yes/No):
 Refusal to Submit to Chemical Test
 Admitted into Evidence:

Yes 47 §751(A)
Yes (Criminal Cases) 47 §756(A)

Other Information:

(1) A mandatory chemical test may be ordered in situations where there is probable cause that a person "while intoxicated" has operated a motor vehicle and that such operation has caused either death or serious physical injury to another person. 47 §753; (2) A mandatory chemical test for alcohol/drugs may be ordered in traffic accident situations where the driver (person to be tested) has been cited for a traffic offense. 47 §10-104(B)

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

Blood:

Yes For alcohol and intoxicating substances 47 §751(A)

Urine:

Yes For intoxicating substances only 47 §751(A)

Other:

Saliva For intoxicating substances only 47 §751(A)

Adjudication of DWI Charges:

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

No
No

Yes first offense – Driving While Under the Influence/Illegal per Se⁹⁷⁶ and first or subsequent offenses – Driving While Impaired-Offenders are required to submit to alcohol and drug evaluation prior to sentencing and follow all recommendations made in the assessment and evaluation at the defendant's expense, with a minimum of twenty-eight days of residential or inpatient treatment, followed by thirty days of aftercare at the defendant's expense. However, no citizen shall be compelled to travel more than seventy miles from the citizen's place of residence to attend a course or evaluation program. Offenders must pay not more than \$75 to cover the cost of the evaluation. 47 §§11-902(H) and 761(D)

Sanctions for Refusal to Submit to a Chemical Test:

⁹⁷⁶ "Other intoxicating substance" is defined as "any controlled dangerous substance" per Title 63 §2-101 et seq. or "other substance, other than alcohol, which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing, or other sensory or motor function." 47§1-140.1 **Special Note:** For any type of DWI offense, a defendant may be placed on probation before judgment. Following the completion of the proscribed probation period (which cannot exceed 5 years) and the satisfactory completion of any terms of probation (which could include jail, community service or restitution), the DWI charge is dismissed and the criminal record is expunged. 22 §991c(B) and (C).

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): N/A
 Administrative Licensing Action (Susp/Rev): N/A
 Other: N/A

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail): **None**
 Administrative Licensing Action (Susp/Rev):

First refusal – **Revocation 180 days** (may be modified)⁹⁷⁷; second refusal (within 5 years) – **Revocation 1 year mandatory**; subsequent refusal (within 5 years) – **Revocation 3 years** (1 year mandatory; may be modified after 1 year). 47 §§ 6-205.1, 6-211(I), 753, 754.1 and 755

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:
 Imprisonment:
 Term (Day, Month, Years, Etc.):

- I. Driving While Impaired – Not more than **6 months** 47 §761
- II. Driving While Under the Influence/Illegal Per Se: first offense (misdemeanor) – **10 days to 1 year**; second offense (within 10 years-felony) – **1 to 5 years**; third offense (within 10 years-felony) – **1 to 7 years**; fourth and subsequent offense (within 10 years-felony) – **1 to 10 years**. 47 §11-9024(c)
- III. Personal Injury Accident (Driving While Under the Influence/Illegal Per Se) – first offense (misdemeanor) – **90 days to 1 year**; second or subsequent offense – (felony) – **1 to 5 years**. 47 §11-904(A)
- IV. Great Bodily Injury (Driving While Under the Influence/Illegal Per Se) – (felony) – **1 to 5 years**. 21 §9(B) and 47 §11-904(A)

Mandatory Minimum Term:

Driving While Under the Influence/Illegal Per Se-second offense (within 10 years) – **5 days** jail (or 5 days inpatient treatment); third or subsequent offense (within 10 years) – **10 days** jail (or 10 days inpatient treatment); fourth or subsequent offense (within 10 years) – **10 days** jail(or 28 days of inpatient treatment). 47 §11-902(C)

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. *Kane v. State*, 915 P.2d 932 (Okla. Cr 1996). In *Price v. Reed*, 725 P.2d 1254 (Okla. 1986), a person's driving privileges were withdrawn via the administrative per se law after he had been **acquitted** of a drunk-driving offense. Nevertheless, the court upheld the licensing action and held that there was no double jeopardy issue.

⁹⁷⁷ This license revocation may be "modified" upon a showing that no other adequate means of transportation exists. As a condition of modification, the driver must agree, except in certain circumstances, to only operate motor vehicles that are equipped with an ignition interlock device. 47 §§ 754.1(B) and 755.

Persons Under 21 Years Old: Persons <21 years old who violate 47 §6-106.4(A) are subject to the following sanctions: first offense – a fine of **\$100 to \$500** and at least **20 hours of community service**; second offense – a fine of **\$100 to \$1,000**, at least **240 hours of community service**, and, after mandatory revocation, **use of an ignition interlock device for at least 30 days**; and, third or subsequent offense – a fine of **\$100 to \$2,000**, at least **480 hours of community service**, and, after mandatory revocation, **use of an ignition interlock device for at least 30 days**. For either a first or subsequent offense, a defendant may be required to complete a treatment program. 47 §6-106.4(B) and (C) An offender may also be prosecuted for a regular drunk-driving offense. 47 §6-106.4(E).

Prior Offenses: “Any person who, within 10 years after a previous conviction of a violation of murder in the second degree or manslaughter in the first degree in which the death was caused as a result of driving under the influence of alcohol or other intoxicating substance, is convicted of a violation of this section [47 §11-902] shall be deemed guilty of a felony.”

47 §11-902(C) (5).

Great Bodily Injury: Great bodily injury “means bodily injury that creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss of or impairment of the function of any bodily member or organ.” 47 §11-904(B) (2).

Aggravated Driving: A person is guilty of Aggravated Driving if convicted of driving under the influence with a BAC/BrAC $\geq .15$. The following sanctions are imposed and such do not preclude other possible punishments: mandatory minimum treatment for 28 days (inpatient) with 1 year aftercare; 480 hours of community service; and, **ignition interlock** use for a minimum of 30 days. 47 §11-902 (D).

Excessive User of Alcohol: No driver’s license shall be issued to any person classified as an excessive user of alcohol, any other intoxicating substance, or a combination of alcohol and any other intoxicating substance, and inimical to public safety, until all requirements granting or reinstating driving privileges are met, including, but not limited to, abstinence from the use of alcohol, any other intoxicating substance, or any combination of alcohol and any other intoxicating substance for a minimum of twelve months immediately preceding application for or application for reinstatement of driving privileges; and proof of installation of ignition interlock device on vehicles operated by offender—to be continued for 12 months. Restricted license issued to offender upon payment of a restricted driver license fee of \$50.

Sanctions Following a Conviction for a DWI Offense:

<p>Fine: Amount (\$ Range):</p>	<p>I. Driving While Impaired – \$100 to \$500. 47 §761 II. Driving While Under the Influence/Illegal Per Se: <u>first offense</u> (Misdemeanor) - \$150 to not more than \$1,000; <u>second offense</u> (within 10 years) – \$150 to not more than \$2,500; <u>third and subsequent offense</u> (within 10 years - felony) – Not more than \$150 to not more than \$5,000. 47 §11-902 III. Personal Injury Accident (Driving While Under the Influence/Illegal Per Se) – <u>first offense</u> (misdemeanor) – Not more than \$2,500; <u>second offense</u> (felony) – Not more than \$5,000. 47 §11-904(A) IV. Great Bodily Injury (Driving While Under the Influence/Illegal Per Se) (felony) – not more than \$5,000. 47 §11-904(B)</p>
<p>Mandatory Min. Fine (\$):</p>	<p>For all offenses – \$150. The minimum fine is deposited in the Public Safety Patrol Vehicle Revolving Fund. 47 §11-902(C)(8). In addition to any other penalty, \$100 assessment to be deposited in the Drug Abuse Education and Treatment Revolving Fund.</p>
<p>Other Penalties: Community Service:</p>	<p>Victims Impact Panel program-fee \$15 to \$25. Driving Under the Influence/Illegal Per Se Felony Convictions- I. <u>third offense</u> – 240 hours; <u>fourth or subsequent offense</u> – 480 hours following any aftercare treatment. 47 §11-902(C) II. A fine <u>cannot</u> be imposed in lieu of community service. 47 §11-902(M).</p>
<p>Restitution (e.g., Victim's Fund)</p>	<p>Yes The court may order a defendant to pay restitution to a victim. 22 §§991a(A)(1)(a) and 991f</p>
<p>Administrative Licensing Actions: <u>Pre-DWI Conviction</u> Licensing Action:</p>	
<p>Administrative Per Se Law:</p>	<p>Yes (1) BAC/BrAC ≥.08 or (2) <u>Persons Under 21 Years Old-Any Measurable Quantity of Alcohol in the Blood or Breath</u>⁹⁷⁸ <u>first action</u> – Revocation 180 days (may be modified immediately to allow driving with an ignition interlock);⁹⁷⁹ <u>second action</u> (within 5 years) – Revocation 1 year (mandatory, may not be modified)⁹⁸⁰; <u>subsequent action</u> (within 5 years) – Revocation 3 years (1 year mandatory, may be modified thereafter) 47 §§6-205.1, 6-211(I), 754, 754.1, 755 and 756</p>

⁹⁷⁸ The Administrative Per Se law provision that provides for licensing action against persons under 21 years old who have any measurable quantity of alcohol in their blood or breath does not violate constitutional provisions concerning equal protection of the laws. *Collins v. State Ex Rel. DPS*, 991 P.2d 557 (Okla. Civil. App. 1999)

⁹⁷⁹ This licensing action may be "modified" upon a showing that no other adequate means of transportation exists. As a condition of modification, the driver must agree, except in certain circumstances, to only operate motor vehicles that are equipped with an ignition interlock device. 47 §§ 754.1(B) and 755

⁹⁸⁰ For license sanction enhancement purposes only, a previous offense includes prior revocations based on either DWI offenses, admin per se violations or implied consent test refusals. 47 §6-205.1(a)(3) and (4)

Post DWI Conviction Licensing Action:

Type of Licensing Action.

(Susp/Rev):

Driving While Impaired – **Suspension.** 47 §761
 Driving While Under the Influence⁹⁸¹: first offense – **Revocation**; subsequent offense – **Revocation.** 47 §§6-205(A)(2) and 11-902

Term of License Withdrawal

(Days, Months, Years, etc.):

Driving While Impaired – first offense – **6 months {30 days minimum}**; second offense – **6 months**; third offense – **12 months.** 47 §761 Driving While Under the Influence/Illegal Per Se: first offense – **180 days**; second offense (within 5 years) – **Revocation 1 year**; subsequent offense (within 5 years) – **Revocation 3 years.** 47 §§6-205 and 6-205.1

Mandatory Minimum Term of Withdrawal:

Driving While Impaired: first offense – **30 days**; second offense – **6 months**; third offense – **12 months.** 47 §761 Driving While Under the Influence/Illegal Per Se: first offense – **None** (licensing action may be modified); second offense – **1 year**; subsequent offense – **1 year** (licensing action cannot be modified); subsequent offense – **1 year** (licensing action may be modified after 1 year).
 The license suspensions or revocations for respectively driving while impaired or driving while under the influence/illegal per se do not apply if the defendant’s license was revoked for a refusal to submit to a chemical test or for an administrative per se violation based on the same incident. 47 §§6-205(A)(2) and 761 **Ignition Interlock** – A second or subsequent conviction within 5 years requires installation of ignition interlock for at least 6 months. §6-212.3⁹⁸²

Other:

Rehabilitation:

Alcohol Education:

Yes First and subsequent offenders (all types of DWI offenses) may be ordered by the court to participate in alcohol or drug substance abuse courses.⁹⁸³ A first offender must successfully complete this course before license can be reinstated. 22 §§ 991a(A)(1)(p) and (A)(7) and 47 §6-212.2

Alcohol Treatment:

Yes I. The court may order first offenders and shall order subsequent offenders (all types of DWI offenses within 10 years) to participate in alcohol or drug rehabilitation treatment programs. 22 §991a(A)(6); §11-902 J

⁹⁸¹ The revocations for a violation of 47 §11-902 would, it appears, apply also to violations of 47 §11-904 (personal injury accident or causing great bodily injury while operating a vehicle under the influence/illegal per se). 47 §§6-205, 6-205.1 and 756. There are no specific licensing actions in 47 §11-904.

⁹⁸² No person may physically disable, disconnect or wire around an ignition interlock device or intentionally fail to return an ignition interlock device when it is no longer required in the vehicle or upon request by the owner of the device. Violations punishable by a fine of not more than \$500 or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment. § 11-902a B and C

⁹⁸³ If the person does not spend at least 5 days in inpatient care, that person must serve at least 5 days of incarceration

II. Driving Under the Influence/Illegal Per Se-Treatment in lieu of incarceration: second offense – **28 days⁹⁸⁴ with 30 days aftercare**; third offense – **28 days⁹⁸⁵ with 90 days aftercare**; fourth or subsequent offense – **28 days (inpatient)⁹⁸⁶ with 1 year aftercare** 47§11-902(C).

Special Note: In addition to the regular licensing sanctions for drunk-driving, under separate provisions of law, an offender <18 years old who is convicted of a regular drunk-driving offense is subject to having the license canceled or denied for one of the following periods: first offense – **6 months, 1 year, 2 years or until they reach 21 years old**; and, second or subsequent offense – **2 years or until they reach 18 years old** whichever is longer. Licensing action is not mandatory. A first or subsequent offender may obtain relief from this action upon a showing of hardship. 47 §§6-107.1 and 6-107.2

Persons Under 21 Years Old: Licensing sanctions for a violation of 47 §6-106.4(A). First offense – (1) for offenders 18, 19 or 20 years old, discretionary cancellation of driving privileges for 6 months, 1 year, 2 years or until the person is 21 years old and, (2), for **all** offenders <21 years old, license revocation for 180 days (may be “modified”); and, subsequent offense, for **all** offenders <21 years old, cancellation of driving privileges for 2 years or until the person is 18 years old whichever is the longer cancellation period (hardship driving privileges are available) and license revocation for 1 year (mand) for a second offense or 3 years (1 year mand) for a subsequent offense. 47 §§6-107.1, 6-107.2, 6-205(A)(2), 6-205.1(A) and 11-906.4(D).

Comment: The law appears to provide for two independent licensing action schemes for these offenders.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Vehicle Impoundment/Confiscation:
Authorized by Specific

Statutory Authority:

Vehicle Forfeiture (Discretionary): A subsequent DWI offender’s vehicle is subject to forfeiture.⁹⁸⁷ 47 §11-902b

⁹⁸⁴ 47 §11-902(C)(2)

⁹⁸⁵ If the person does not spend at least 10 days in inpatient care, that person must serve at least 10 days of incarceration. 47 §11-902(C)(3)

⁹⁸⁶ If the person does not spend at least 28 days in inpatient care, that person must serve at least 10 days of incarceration. 47 §11-902(C)(4)

⁹⁸⁷ If a person’s vehicle is involved in one of the offenses noted, it may be subject to forfeiture provided (1) the person has been convicted of driving while under the influence/illegal per se, vehicle negligent homicide, or a DWI injury-related offense and has a prior conviction for one of these offenses (within 10 years); and (2) one of the offenses, either present or prior, must have involved either an injury or a death to another person. 47 §11-902b

Ignition Interlock: I. The court may order a defendant to install an ignition interlock device on every vehicle used following reinstatement of driving privileges. This requirement shall remain in effect for a period of time as the court deems proper. 22 §991a(A)(1)(n) and (7)(d).

II. As a condition of license modification for either an admin per se violation or a driving while under the influence conviction, the licensing agency must require persons to install ignition interlock devices on the vehicles they operate. 47 §§754.1 and 755.

III. For Driving While Under the Influence/Illegal Per Se Offenses: second or subsequent offense – After any mandatory period of license revocation, offenders must install an ignition interlock device on all of the vehicles they own or regularly operate. The court must order a person to operate vehicles with this device for not less than 6 months or more than 3 years. For a third or subsequent offense (felony), there is a mandatory minimum use period of 30 days. 47 §11-902(C) and (J)

IV. Following inpatient substance abuse treatment, an offender may be assigned to a halfway house, structured community placement or home placement. If such an assignment is made, the offender shall be required to have either

Other:

Electronic Home Monitoring: A person who has been convicted of a felony offense may be subject to court-ordered electronic home monitoring. 22 §991(A)(o) and (7)(e) and 47 §11-902(K). See IV under Ignition Interlock below.

Victim Impact Program: The court may order a defendant to participate in a victim impact panel program and pay a **\$15 to \$25** fee to attend such program. 47 §11-902(I) and 22 §§987.2(B)(12) and 991a(A)(m) and (A)(7)(b).

Other Costs: A defendant may be required to pay other costs such as reimbursing the State for the cost of a victim’s medical expenses and for the cost of court appointed attorneys for the defendant. The defendant may also be required to pay amounts into victim’s compensation trust funds. 22 §991a(A)

Investigation Costs: The defendant may be required by the court to reimburse the Oklahoma State Bureau of Investigation for any services that were associated with the defendant's criminal offense. There is an exception based on "manifest hardship" to the defendant. 22 § 991a (A)(4)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:
State Has Such a Law:

Yes Negligent Homicide Misdemeanor⁹⁸⁸ 21 §§5 and 6 and 47 §11-903

Sanctions:

Criminal Sanction:

Not more than **1 year** in the county jail

Imprisonment (Term):

None

Mandatory Minimum Term:

\$100 to \$1,000

Fine (\$ Range):

\$100

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Revocation

Type of Action:

Length of Term of

First offense – 1 year; subsequent offense (within 5 years) – **3 years** 47 §6-205(A)(1), (B) and (C)

Licensing Withdrawal:

Mandatory Action--Minimum

Length of License

First offense – 1 year; subsequent offense (within 5 years) – **3 years**

Withdrawal:

electronic home monitoring or an **ignition interlock** use requirement. 57§612(A)(2).

⁹⁸⁸ **Special Note:** The Oklahoma Courts have decided that if a vehicle homicide is proximately caused by an alcohol-driving law offender, for a first offense, the charge may be Manslaughter 1, and for a second offense, the charge may be Murder II. See respectively paragraph 1 of section 711 of Title 21 (*Mc Connell v. State*, 485 P.2d.764 (1971) and *White v. State*, 483 P.2d 751 (1971)), and paragraph 2 section 701.8 of Title 21 (*Isom v. State*, 646 P.2d 1288 (1982)).

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

Other:	Restitution: The court may order a defendant to pay restitution to a victim. 22 §§991a(A)(1)(a) and 991f
<u>Driving While License Suspended or Revoked</u>	
<u>Where the Basis Was a DWI Offense*:</u>	This statute refers to any mandatory revocation in addition to DWI. 47§6-303(C)
Sanction:	
Criminal:	
Imprisonment (Term):	Misdemeanor Not more than 1 year ⁹⁸⁹ 47 §6-303(B)
Mandatory Minimum Term of Imprisonment:	None
Fine (\$ Range):	\$100 to \$500 47 §6-303(B)
Mandatory Minimum Fine:	None
Administrative Licensing Actions:	
Type of Licensing Action (Susp/Rev):	Suspension or revocation 47 §6-303(C)
Length of Term of License Withdrawal Action:	Period of suspension/revocation extended for 3 months 47 §6-303(E)
Mandatory Term of License Withdrawal Action:	Period of suspension/revocation extended for 3 months 47 §6-303(E)
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	No
Grounds for Being Declared an Habitual Offender:	
Term of License Rev While Under Habitual Offender Status:	
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	
Mandatory Minimum Term of Imprisonment:	
Fine (\$ Range):	
Mandatory Minimum Fine (\$):	
Licensing Actions (Specify):	

⁹⁸⁹ I. It is a misdemeanor to operate a CMV during a CDL disqualification. The sanctions for this offense are an imprisonment term for not more than 1 year and/or a fine of not less than \$100 and not more than \$500. 47 §6-205.2(I).
 II. A person who violates an out-of-service order is subject to the following CDL disqualification periods: first violation – 90 days (mand); second violation (within 10 years) – 1 year (mand); and, third or subsequent violation (within 10 years) – 3 years (mand). If the offense involved the transportation of hazardous materials, the disqualification periods are as follows: first violation – 1 year (mand); and, second or subsequent violation (within 10 years) – 3 years (mand). 47 §6-205.2(G) and (H)

Other State Laws Related To Alcohol Use:Laws Requiring BAC Chemical Tests on Persons Killed in TrafficAccidents:

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

BAC Chemical Test Is Given to the
the Following Persons:

Driver:

Vehicle Passengers:

Pedestrian:

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** 37 §§163.2(a), 241, 246(A) and 537(A)(1) and 528(C)(1).

Minimum Age (Years) Possession: **21** 21 §1215⁹⁹⁰ and 37 §246(A)⁹⁹¹

Minimum Age (Years) Consumption: **21**⁹⁹² 37 §§241(C) and 246

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **No**

"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):

Yes. *Brigance v. The Velvet Dove Restaurant, et al.*, 725 P.2d 300 (Okla. 1986), *Tomlinson v. Love's Country Stores, Inc.*, 854 P.2d 910 (Okla. 1993) and *Bennett v. 2 Poor White Boys, Inc.*, 973 P.2d 896 (Okla. Civil. App. Div. 4 1998)⁹⁹³

Dram Shop Actions-Social Hosts:

No. *Troxell v. Bingham*, 774 P.2d 1073 (Okla. App. 1989), *Battles v. Cough*, 947 P.2d 600 (Okla. Civil App Div 3 1997), *Teel v. Warren*, 22 P.3d 234 (Okla. Civil App Div 1 2001)(In this case, the court considered a fraternity as a social host.) and *McGee V. Alexander*, 37 P.3d 800 (Okla. 2001).

⁹⁹⁰ Under 21 §1215, it is illegal for a person under 21 years old to possess alcoholic beverages (alcoholic beverages containing more than 3.2 percent alcohol by weight) "upon any public street, road, or highway or in any public building or place."

⁹⁹¹ Under 37 §246(A), it is illegal for a person under 21 years old to possess "low-point beer" (alcoholic beverages containing more than ½ of 1 percent alcohol by volume but not more than 3.2 percent alcohol by weight) with the intent to consume such beverages in public.

⁹⁹² I. Under 37 §246, it is only illegal for a person under 21 years old to consume "low-point beer" (alcoholic beverages containing more than ½ of 1 percent alcohol by volume but not more than 3.2 percent alcohol by weight) in public. II. Under 37 §241(C), it is illegal for a licensee to allow a person under 21 years old to consume "low-point beer" on the licensed premises.

⁹⁹³ The *Bennett* case concerned an action by an intoxicated passenger injured in an automobile accident against a licensee who served alcoholic beverages to the vehicle's driver and to the passenger. The driver's intoxication was the cause of the injury- resulting accident.

Other: An adult patron has no cause of action against a licensee for injuries sustained as a result of becoming intoxicated at the licensee's establishment. *Ohio Cas. Ins. Co. v. Todd*, 813 P.2d 508 (Okla. 1991). However, a licensee may be held liable for the injuries sustained by an intoxicated minor patron. *Busby v. Quail Creek Golf and Country Club*, 885 P.2d 1326 (Okla. 1994), and *Mansfield v. Circle K. Corp.*, 877 P.2d 1130 (Okla. 1994)

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

Type of Criminal Action: For alcoholic beverages 3.2 percent and above – **felony**. 37 §506(3), §537(A)(2) and §538(G) For low-point beer half of 1 percent to 3.2 percent alcohol – **Misdemeanor**. 37 §247

Term of Imprisonment: For felony offense – Not more than **1 year**. 37 §538(G) For misdemeanor offense – Not more than **6 months**. 37 §247

Fine (\$ Range): For felony offense – **\$500 to \$1,000**. 37 §538(G) For misdemeanor offense – Not more than **\$500**. 37 §247

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes Revocation** 37 §§244, 247 and 528(C)(1) and (E)

Length of Term of License Withdrawal: (1) For alcoholic beverages 3.2 percent and above – the period of revocation is not stated in the statute. Revocation periods are established via regulations. The law provides that the revocation period shall be "increasingly severe" for subsequent offenses.⁹⁹⁴ However, for a fourth offense within 24 months, there is a mandatory revocation. (2) For low-point beer ½ of 1 percent to 3.2 percent alcohol – Revocation by the district court for **12 months**.

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: For alcoholic beverages 3.2 percent and above – **felony**. For low-point beer ½ of 1 percent to 3.2 percent alcohol **Misdemeanor**. 21 §§10, 21 and 1220 and 37 §§163.1, 163.2, 163.11, 163.20(a) and 241

Term of Imprisonment: For felony offense – Not more than **5 years**. For misdemeanor offense – Not more than **1 year**.

⁹⁹⁴ For package store licensees who "knowingly" sell alcoholic to persons under 21 years old, license revocation is mandatory. 37 §528(D)

Fine (\$ Range):

For felony offense – **\$2,500 to \$5,000**. For misdemeanor offense – Not more than **\$500**.

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 37 §§163.11(K)(3) and (L), 244, 528(C)(1), (D) and (E) and 538(F)

Length of Term License Withdrawal:

(1) For alcoholic beverages 3.2 percent or more alcohol- the period of revocation is not stated in the statute. Revocation periods are established via regulations. The law provides that the revocation period shall be "increasingly severe" for subsequent offenses. However, for a fourth offense within 24 months, there is a mandatory revocation. (2) For low-point beer ½ of 1 percent to 3.2 percent alcohol- Revocation by the district court for 1 year. This revocation is mandatory for subsequent offenses.

Anti-Happy Hour Laws/Regulations:

Yes 37 §537(B)(4)

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 Driver and passengers 21 §1220 and 37 §537(A)(7)

Anti-Consumption Law (Yes/No):

Yes Driver and passengers Under 37 §537(A)(8), "[i]t shall be unlawful to drink intoxicating liquor ... in a public place." Under 37 §8, no person shall consume intoxicating liquor in or upon any passenger coach, streetcar or in or upon any other vehicle commonly used for the transportation of passengers.