

STATE: **TENNESSEE**
 General Reference: Tennessee Code Annotated

Basis for a DWI Charge:

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|---------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Standard DWI Offense: | I. Under the influence of any intoxicant ¹¹⁰⁷ (e.g., alcohol) §55-10-401(a)(1) II. Adult Driving While Impaired (Persons ≥21 Years Old) §55-10-418(a) |
| Illegal Per Se Law (BAC/BrAC): | ≥.08 ^{1108and1109} §55-10-401(a)(2) <u>Persons ≥16 but <21 Years Old->.02</u> (Underage Impaired Driving Offense) §55-10-415(a)(1)(A) |
| Presumption (BAC/BrAC): | ≥.08 ¹¹¹⁰ §55-10-408(a) and (b) |
| Types of Drugs/Drugs and Alcohol: | I. Under the influence of (1) Any Intoxicant, (2) Marijuana, (3) Narcotic Drug or (4) Drugs Producing Stimulating Effects on the Central Nervous System ¹¹¹¹ §55-10-401(a)(1) II. Adult Driving While Impaired (Persons ≥21 Years Old) §55-10-418(a) |
| Other: | Arrests without warrants authorized for drivers leaving the scene of an accident apprehended within four hours of the accident when the officer has probable cause to believe the driver drove under the influence. §40-7-103 (a) |
| <u>Chemical Breath Tests for Alcohol Concentration:</u> | |
| Preliminary Breath Test Law: | No |
| Implied Consent Law: | |
| Arrest Required (Yes/No): | Yes §55-10-406(a)(1) |

¹¹⁰⁷ **Persons ≥16 but <21 Years Old:** Sec. 55-10-415 establishes the offense of "underage driving while impaired" (which is a lesser included offense of regular DWI) for persons aged 16 or over but under age 21. This offense consists of (1) driving with an alcohol concentration >.02 (Based on percent of alcohol in the blood, (2) driving while under the influence of alcohol, (3) driving while under the influence of any intoxicant, marijuana, narcotic drug or stimulating drug under §55-10-401(b), or (4) driving while under the combined influence of alcohol and any of the substances or drugs listed in (3). For persons >18 but <21, this offense is a Class A misdemeanor; for persons >16 but <18, this offense is a "delinquent act." §55-10-415(d) and (e). Note: An appellate court has held that §55-10-415 does not violate a person's Federal or State constitutional rights to equal protection of the laws. *State v. Crain*, 972 S.W.2d 13 (Tenn. Cr. App. 1998)

Persons ≥21 Years Old: A person ≥21 years old commits an "adult driving while impaired" offense if operating a motor vehicle or being in physical control of any vehicle while the ability to safely drive is impaired "as the proximate result of the consumption or ingestion of alcohol, drugs, any other intoxicant or any combination thereof." §55-10-418(a); §55-10-603(2)(A), (viii)

¹¹⁰⁸This 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.

¹¹⁰⁹Standard: Percent or "percent by weight" of alcohol in the blood. §§55-10-401(a)(2) and 55-10-408(a) and (b) The Tennessee Supreme Court has noted that blood alcohol concentration is expressed as "grams of alcohol per 100 cubic centimeters of blood or 210 liters of breath." *State v. Sensing*, 843 S.W.2d 412 (Tenn. 1993) 843 S.W.2d at 415. See also *State v. McKinney*, 605 S.W.2d 842 (Tenn. Cr. App. 1980).

¹¹¹⁰A lower BAC presumptive level for repeat offenders does not violate the constitutional protection of equal protection of the laws. *State v. Robinson*, 29 S.W.3d 476 (Tenn. 2000)

¹¹¹¹Drugs "producing stimulating effects" include "[t]he salts of barbituric acid, also known as malonyl urea, or any compound, derivatives, or mixtures thereof that may be used for producing hypnotic or somnifacient effects, and includes amphetamine, desoxyephedrine or compounds or mixtures thereof, including all derivatives of phenylethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit of internal use." §55-10-401(b)

Implied Consent Law Applies to
 Drugs (Yes/No): **Yes** §55-10-406(a)(1)
 Refusal to Submit to Chemical Test
 Admitted into Evidence: **Yes** (Criminal Cases) *State v. Smith*, 681 S.W.2d 569
 (Tenn. Cr. App. 1984), and *State v. Frasier*, 914
 S.W.2d 467 (Tenn. 1996)

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

Blood: **Yes** §55-10-405(5)
 Urine: **Yes** §55-10-405(5)
 Breath: **Yes** §55-10-405(5)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **Yes** §55-10-403(b)(1)¹¹¹²
 Anti-Plea-Bargaining Statute (Yes/No): **No**
 Pre-Sentencing Investigation Law (PSI)
 (Yes/No): **No**

Sanctions for Refusal to Submit to a
 Chemical Test:

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): **(1) Revocation – 1 year** with no prior DWI, Vehicle
 Homicide or Vehicle Assault convictions (2)
Revocation – 2 years with a prior DWI, Vehicle
 Homicide or Vehicle Assault conviction, or (3)
Revocation – 2 years if person is involved in an
 accident causing serious bodily injury; (4) **Revocation**
 – **5 years** where there has been a death-related
 accident §55-10-406(a)(3). A restricted license may
 be issued. §55-10-406(d)

Sanctions Following a Conviction for a DWI Offense¹¹¹³:

¹¹¹² Pre-trial diversion is prohibited until the minimum sentence is served. §55-10-403(b)(1), §55-10-418(g) and *State v. Washington*, 866 S.W.2d 950 (Tenn. 1993)

¹¹¹³ If appropriate for the offense and if not themselves an essential element of the offense, the court shall consider, but is not bound by, the following advisory factors in determining whether to enhance a defendant's DUI felony sentence: (1) The defendant has a previous history of criminal convictions or criminal behavior in addition to those necessary to establish the appropriate range; (2) The defendant was a leader in the commission of an offense involving two or more criminal actors; (3) The offense involved more than one victim; (4) A victim of the offense was particularly vulnerable because of age or physical or mental disability; (5) The defendant treated or allowed a victim to be treated with exceptional cruelty during the commission of the offense; (6) The personal injuries inflicted upon or the amount of damage to property sustained by or taken from the victim was particularly great; (7) The offense involved a victim and was committed to gratify the defendant's desire for pleasure or excitement; (8) The defendant, before trial or sentencing, has failed to comply with the conditions of a sentence involving release into the community; (9) The defendant possessed

Criminal Sanctions:

Imprisonment:

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

First offense (Class A misdemeanor) – **48 hours**¹¹¹⁴
to 11 months 29 days; second offense (within 10
years-Class A misdemeanor) – **45 days to 11 months
29 days**¹¹¹⁵; third offense (within 10 years) (Class A

or employed a firearm, explosive device, or other deadly weapon during the commission of the offense; (10) The defendant had no hesitation about committing a crime when the risk to human life was high; (11) The felony resulted in death or serious bodily injury or involved the threat of death or serious bodily injury to another person and the defendant has previously been convicted of a felony that resulted in death or serious bodily injury; (12) During the commission of the felony, the defendant intentionally inflicted serious bodily injury upon another person, or the actions of the defendant resulted in the death of or serious bodily injury to a victim or a person other than the intended victim; (13) At the time the felony was committed, one of the following classifications was applicable to the defendant: (A) Released on bail or pretrial release, if the defendant is ultimately convicted of such prior misdemeanor or felony; (B) Released on parole; (C) Released on probation; (D) On work release; (E) On community corrections; (F) On some form of judicially ordered release; (G) On any other type of release into the community under the direct or indirect supervision of any State or local governmental authority or a private entity contracting with the State or a local government; (H) On escape status; or (I) Incarcerated in any penal institution on a misdemeanor or felony charge or a misdemeanor or felony conviction; (14) The defendant abused a position of public or private trust, or used a professional license in a manner that significantly facilitated the commission or the fulfillment of the offense; (15) The defendant committed the offense on the grounds or facilities of a pre-kindergarten through grade twelve public or private institution of learning when minors were present; (16) The defendant was adjudicated to have committed a delinquent act or acts as a juvenile that would constitute a felony if committed by an adult... §40-35-114.

(a) At the conclusion of the sentencing hearing, the court shall first determine the appropriate range of sentence.

(b) To determine the specific sentence and the appropriate combination of sentencing alternatives that shall be imposed on the defendant, the court shall consider the following:

(1) The evidence, if any, received at the trial and the sentencing hearing;

(2) The pre-sentence report;

(3) The principles of sentencing and arguments as to sentencing alternatives;

(4) The nature and characteristics of the criminal conduct involved;

(5) Evidence and information offered by the parties on the mitigating and enhancement factors set out in Sections 40-35-113 and 40-35-114;

(6) Any statistical information provided by the administrative office of the court as to sentencing practices for similar offenses in Tennessee; and

(7) Any statement the defendant wishes to make in the defendant's own behalf about sentencing.

(c) The court shall impose a sentence within the range of punishment determined by whether the defendant is a mitigated, standard, persistent, career, or repeat violent offender. In imposing a specific sentence within the range of punishment, the court shall consider, but is not bound by, the following advisory sentencing guidelines:

(1) The minimum sentence within the range of punishment is the sentence which should be imposed because the general assembly set the minimum length of sentence for each felony class to reflect the relative seriousness of each criminal offense in the felony classifications.

(2) The sentence length within the range should be adjusted as appropriate by the presence or absence of mitigating and enhancement factors set out in Sections 40-35-113 and 40-35-114.

(d) The sentence length within the range should be consistent with the purposes and principles of this chapter.

(e) When the court imposes a sentence, it shall place on the record orally or in writing what enhancement or mitigating factors it considered, if any, as well as the reasons for the sentence in order to ensure fair and consistent sentencing.

(f) A sentence must be based on evidence in the record of the trial, the sentencing hearing, the pre-sentence report, and the record of prior felony convictions filed by the district attorney general with the court as required by Section 40-35-202(a). § 40-35-210.

¹¹¹⁴ The court may substitute 48 hours roadside cleanup in lieu of the 48-hour confinement. §55-10-403 (s) (3) Each offender ordered to remove litter pursuant to this subsection shall be required to wear a blaze orange or other distinctively colored vest with the words "I am a DRUNK DRIVER" stenciled or otherwise written on the back of such vest in letters no less than four inches (4") in height. When considering sentence,

¹¹¹⁵ I. The court may order a second offender to serve not more than 28 days of the jail sentence in an inpatient alcohol or drug treatment program. The remainder of the confinement period must be spent in jail. §55-10-403(a)(4) II. A second offender, where the drunk-driving offense involved neither a death nor an injury, is also eligible to participate in

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| Mandatory Minimum Term: | <p>misdemeanor) – 120 days to 11 months 29 days; <u>fourth and subsequent offense</u> (within 10 years-Class E felony) – 1 to 6 years §55-10-403 Vehicle Assault¹¹¹⁶ (Class D felony) – 2 to 12 years. §§39-13-106 and 40-35-111(b)(4) and (5) Persons ≥16 but <21 Years Old (Underage Impaired Driving) – None <u>First offense</u> – 48 hours¹¹¹⁷ (If BAC/BrAC ≥0.20 – 7 consecutive days); <u>second offense</u> (within 10 years) - 45 days; <u>third offense</u> (within 10 years) – 120 days; <u>fourth and subsequent offense</u> (within 10 years) – 150 consecutive days. Vehicle Assault – None</p> |
| Fine: Amount (\$ Range): | <p><u>First offense</u> – \$350 to \$1,500¹¹¹⁸; <u>second offense</u> (within 10 years) – \$600 to \$3,500; <u>third offense</u> (within 10 years) – \$1,100 to \$10,000; <u>fourth and subsequent offense</u> (within 10 years) – \$3,000 to \$15,000 §55-10-403 Vehicle Assault – Not more than \$5,000. §40-35-111(b)(4) Persons ≥16 but <21 Years Old (Impaired Driving) – \$250 §55-10-415(d) <u>First offense</u> – \$350; <u>second offense</u> (within 10 years) – \$600; <u>third and subsequent offense</u> (within 10 years) – \$1,100. Note: These fines are mandatory unless a judge determines that a defendant is indigent. §55-10-403(b)(2) Vehicle Assault – None Persons ≥16 but <21 Years Old (Underage Impaired Driving) – \$250. For sanction enhancement purposes for subsequent drunk-driving offenses, a prior offense includes a previous vehicle homicide or assault offense related to drunk driving. §55-10-403</p> |
| Mandatory Min. Fine (\$): | <p><u>First offense</u> – \$350; <u>second offense</u> (within 10 years) – \$600; <u>third and subsequent offense</u> (within 10 years) – \$1,100. Note: These fines are mandatory unless a judge determines that a defendant is indigent. §55-10-403(b)(2) Vehicle Assault – None Persons ≥16 but <21 Years Old (Underage Impaired Driving) – \$250. For sanction enhancement purposes for subsequent drunk-driving offenses, a prior offense includes a previous vehicle homicide or assault offense related to drunk driving. §55-10-403</p> |
| Other Penalties: | <p>Adult Driving While Impaired Offense: <u>first offense</u> (Class B Misdemeanor) – The only sanction is a fine of \$500. §55-10-418(d)(1) 418(d)(1) However, a person who is convicted of this offense again is subject to the same sanctions as a person who is convicted of “driving while under the influence of an intoxicant” (§55-10-401(a)(1)) for a second, third, fourth or subsequent offense. §55-10-418(d)(3). A person is considered a first offender only if that person</p> |

a work-release program. To participate in this program, an offender must agree (1) to be screened daily for alcohol or drug use, (2) not to operate a motor vehicle, (3) to remain incarcerated when not at work and (4), if financially able, to pay the cost of incarceration or treatment. §41-2-128(c)

¹¹¹⁶ Recklessly causing a serious bodily injury to another person where such injury was the proximate result of operating a vehicle while in violation of §55-10-401.

¹¹¹⁷ DWI offenders who are allowed to serve imprisonment sentences on non-consecutive days must, nevertheless, spend the first 48 hours of such a sentence in a consecutive manner. §40-35-216

¹¹¹⁸ Impaired Drivers Trust Fund: The State has established a three-year pilot program to financially assist persons in need who have suffered "traumatic brain injuries." To fund this program, every person who is convicted of a DWI offense must pay an assessment of \$5. This assessment is paid into the Impaired Drivers Trust Fund. The trust fund cannot expend more than \$98,000 annually on this project. §§9-4-206 and 55-10-403(i)

has not had a previous drunk-driving offense of any kind. If there have been one or more prior drunk-driving offense convictions and the person is convicted of this offense for the first time, that person is sentenced as a second or subsequent "driving while under the influence of an intoxicant" offender.

§55-10-418(e)

Community Service:

I. In metropolitan areas with a population of over 100,000, the court is authorized to sentence a first offender to perform 200 hours of community service in lieu of the 48 hours minimum jail term.

§55-10-403¹¹¹⁹

II. After serving the minimum sentence, a judge may order the defendant to remove litter from various public areas or work in a recycling center or "other appropriate location" for any period of time in lieu of or in additional to other penalties. The community service work may be accomplished during non-working hours. §55-10-403(a)(1)

III. **Persons ≥16 but <21 Years Old** (Underage Impaired Driving). The court may impose "public work" service. §55-10-415(d)

Restitution

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

Yes (1) A defendant may be "sentenced" to pay compensation directly to a victim. §§39-11-118, 40-35-104 and 40-35-304 or (2) A victim's compensation fund §§29-13 101 et seq. and 40-24-107(a)(3) But a victim who knew or should have known that the operator was intoxicated and who is injured while riding with a DWI offender is not entitled to compensation. §§29-13-119 and 40-24-107(e). (3) Also, the defendant shall be ordered to pay restitution as a condition of probation if defendant can afford it. Probation may commence only after minimum jail sentence has been served. §55-10-403(c)(3)

Other:

BAC Test Fee: DWI offenders in certain counties or counties with a metropolitan form of government are required to pay a BAC test fee. §55-10-403(h)

Ignition Interlock: In addition to any other penalties provided for a DWI offense conviction, a defendant may be required to operate vehicles equipped with "ignition interlock" devices.¹¹²⁰ §55-10-412.

¹¹¹⁹ Given the holding by the Tennessee Supreme Court in *State v. Tester*, 879 S.W.2d 823 (Tenn. 1994), there is a question as to whether this provision is constitutional. In this case, the court held that provision of the law, §41-2-128(c), limiting drunk-driving work-release programs for second offenders to counties with a population >700,000, violated Federal and State constitutional provisions concerning equal protection. This law was amended by the Tennessee Legislature in 1995 to eliminate this constitutional impediment. Public Chapter No. 187 of 1995

¹¹²⁰The use of such devices could be required for up to one year after a person's license is no longer suspended or revoked. §55-10-412(d) For a second or subsequent DWI law offender, the law creates an inference that the court should order the use of an ignition interlock device as a means of protecting the public. The court may require the use of these devices during all or part of suspension/restriction period or after such suspension/restriction period has expired. §§55-10-412(i) and 50-10-4039 (d)(4)(B).

Addiction Treatment Fee: Offenders will be assessed \$100 for each conviction. §55-10-403(R).

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

None
 Under §55-50-502(a), the licensing agency can suspend a person's license if that person has "committed" an offense that requires mandatory license revocation.

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

Revocation^{1121and1122} §§55-10-403, 55-7-501(a)(2) and 55-7-502

Persons ≥16 but <21 Years Old (Underage Impaired Driving). Suspension §55-10-415(d) Vehicle Assault-The court prohibits a person from operating a motor vehicle. §39-13-106

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

The following action is by the courts: first offense – **1 year**; second offense (within 10 years) – **2 years**; third offense (within 10 years) – **3 to 10 years**; fourth and subsequent offense (within 10 years) – **5 years** §§55-10-403 and 55-50-501

Persons ≥16 but <21 Years Old (Underage Impaired Driving) – 1 year
 Vehicle Assault – first offense – **1 year**; second offense – **2 years**; third offense – **3 years**; fourth and subsequent offense – **5 years** §39-13-106

Mandatory Minimum Term of
 Withdrawal:

First offense – **None** (1 year if injury/death-related)

The law uses various terms to describe the licensing action to be taken against DWI offenders. Under §55-10-403, the courts "prohibit" the offender from driving. However, §55-50-501 provides that the licensing agency shall "revoke" the offender's license.

Under §§55-50-501(a)(2) and 55-50-502(f)(1), the licensing agency may take the following action against a DWI offense: first offense – revocation for 6 months; subsequent offense – revocation for 1 year.

Under §55-50-502(e)(4), if this is the defendant's first license revocation, it appears that person may apply for a new license after only 6 months.

¹¹²¹ See Alcohol Treatment.

¹¹²² Hardship license for employment, college/university education (only full time students), an alcohol safety program or ignition interlock monitoring is available following a first conviction only if no one was killed or seriously injured as a result of the DWI offense. §55-10-403(d)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person's CDL is suspended for 1 mandatory year (3 years mandatory if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC ≥.04 or (2) is under the influence of alcohol (with a BAC ≥.04) or 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 mandatory). A commercial motor vehicle operator who drives a CMV with a BAC ≥.04 violates the regular DWI laws (§55-10-401). §§55-50-102(12), 55-50-405(a) and 55-50-408. The disqualification provisions also apply to non-CDL drivers who are operating commercial vehicles with a gross vehicle weight ≥10,001 lbs through 26,000 lbs. §55-50-405(f).

Second offense – 2 years; third offense – 3 years; fourth and subsequent offense – 5 years

§55-10-403(d)(2) and (3)

Persons ≥16 but <21 Years Old (Underage Impaired Driving) – **1 year** {The law is not clear on whether this licensing action is mandatory}.

Vehicle Assault – first offense – 1 year; second offense – 2 years; third offense – 3 years; fourth and subsequent offense – 5 years. §39-13-106

Under separate statutory authority, the court can impose the following additional licensing sanctions for DWI offense convictions: first offense – Prohibit driving for up to and including 6 months; second offense – Prohibit driving for up to and including 3 years; third and subsequent offense – Prohibit driving for up to and including 10 years. §55-10-412(a)

Rehabilitation:

Drug and Alcohol Assessment:

Yes – Every person convicted of a DUI offense must undergo drug and alcohol assessment, to be paid by the convicted party (unless indigent). 55-10-403(c)(1)

Alcohol Education:

Alcohol Treatment:

Yes

Yes Participation in an alcohol safety DWI program is required as part of probation. {This may consist of a court-ordered outpatient alcohol or drug treatment program. §55-10-403(d)(1)(A)(iv)(e)} Probation can begin only after serving the minimum imprisonment term. §55-10-403(c)(1) For second and subsequent convictions, a condition of probation is participation in a rehabilitation program treatment facility.

§55-10-403(c)(2) Under §55-50-502(c), the licensing agency, prior to reissuing a license to persons following a second or subsequent DWI conviction, must require them to complete an alcohol or drug abuse education or treatment program.

Vehicle Impoundment/Confiscation:

Authorized by Specific

Statutory Authority:

Forfeiture (Appears to be Mandatory):¹¹²³ The vehicle used in the offense is subject to forfeiture for a second or subsequent DWI offense conviction.¹¹²⁴ §55-10-403(k)(1)

Miscellaneous Sanctions

Not Included Elsewhere:

Child Endangerment: I. A person incurs a sentence enhancement by committing a DWI offense "accompanied" by a child under 18 years old: Jail -30 days mandatory; fine – \$1,000 mandatory. II. If the child was seriously injured at the time of the offense,

¹¹²³ Special Note: Because of a lack of statutory authority, a court-ordered DWI probation condition that provided for the temporary forfeiture of a defendant's vehicle was voided by the Tennessee Supreme Court. *State v. Bouldin*, 717 S.W.2d 584 (Tenn. 1986).

¹¹²⁴ One prior offense must occur either on or after 1/1/97 and a second within 5 years after the first. §55-10-403(k)(2).

the person commits a Class D felony: Jail -2 to 12 years; fine – not more than \$5,000. III. If the child was killed at the time of the offense, the person commits a Class C felony: Jail- 3 to 15 years; fine – not more than \$10,000. §§40-35-111(b)(3) and 55-10-403 (a)(1)(B): (B) In addition, violators are subject to investigation for suspected child abuse or neglect. §37-1-403(d)(2)

Homicide by Vehicle:

State Has Such a Law:

Yes I. Class C felony §39-13-213(a)
 II. If DWI-related- Class B felony §39-13-213(a) & (b)
 III. Aggravated Vehicle Homicide¹¹²⁵ - Class A felony §39-13-218

Sanctions:

Criminal Sanction:

Imprisonment (Term):

I. Class C felony – **3 to 15 years** §40-35-111(b)(3)
 II. Class B felony – **8 to 30 years** §40-35-111(b)(2)
 III. Class A felony – **15 to 60 years** §40-35-111(b)(1)

Mandatory Minimum Term:

Fine (\$ Range):

None
 I. Class C felony – Not more than **\$10,000** §40-35-111(b)(3)
 II. Class B felony – Not more than **\$25,000** §40-35-111(b)(2)
 III. Class A felony – Not more than **\$50,000** §40-35-111(b)(1)

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and Type of Action:

None

Revocation §§39-13-213 and 55-50-501(1)

Length of Term of

Licensing Withdrawal:

There are two separate driving privilege withdrawal schemes which could apply to all vehicle homicide offenses: (1) the licensing agency can revoke the offender's license for a period of time **equal to the term of the sentenced received**¹¹²⁶(§55-50-501(a)(1)), or (2) the court can prohibit the offender from operating a motor vehicle from **3 to 10 years**. §39-13-213

Mandatory Action--Minimum

Length of License

Withdrawal:

3 years §39-13-213

¹¹²⁵ Aggravated Vehicle Homicide is vehicle homicide where the defendant had either (1) two or more prior DWI/vehicle assault convictions (or any combination of them), (2) a prior vehicle homicide conviction, or (3) at the time of the vehicle homicide offense, a BAC ≥0.20 and a previous DWI or vehicle assault conviction. It is a Class A felony. §39-13-218

¹¹²⁶ If paroled, defendants may have their licenses reissued upon satisfactory completion of a licensing exam and on petition of the defendant's parole officer. §55-50-501(a)(1)

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

Sanction:
 Criminal:

Imprisonment (Term):

I. If based on driving while revoked for a first DWI offense¹¹²⁷-**2 days to 6 months** §55-50-504(a)(1).
 II. If based on a second or subsequent DWI offense¹¹²⁸-**45 days to 1 year.** §55-50-504(a)(2).

Mandatory Minimum Term of Imprisonment:

I. If based on driving while revoked for a first DWI offense – **2 days** §50-55-504(a)(1) and (f)
 II. If based on a second or subsequent DWI offense – **45 days** §50-55-504(a)(2) and (f)

Fine (\$ Range):

I. If based on driving while revoked for a first DWI offense – Not more than **\$1,000.** §55-50-504(a)(1)
 II. If based on a second or subsequent DWI offense – Not more than **\$3,000.** §55-50-504(a)(2).

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev):

Revocation¹¹²⁹- If the conviction was based on driving while revoked. §55-50-504(b)

Length of Term of License

Withdrawal Action:

The original revocation period extended **1 year.** §55-50-504(b)

Mandatory Term of License

Withdrawal Action:

The original revocation period extended **1 year.** §55-50-504(b)

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes §§55-10-601 to 55-10-618

Grounds for Being Declared an

Habitual Offender:

I. Three or more serious traffic offenses¹¹³⁰ within 3 years. II. Three or more serious traffic offenses within 5 years. III. Five or more serious traffic offenses within 10 years. §55-10-603.

Term of License Rev While

Under Habitual Offender Status:

3 years¹¹³¹§55-10-615

Type of Criminal Offense if

¹¹²⁷ Or a first vehicle assault or vehicle homicide offense. §55-50-504(a)(1).

¹¹²⁸ Or a second or subsequent vehicle assault or vehicle homicide offense. §55-50-504(a)(2).

¹¹²⁹ For driving while suspended, the suspension period is extended for an additional mandatory like period. §55-50-504(b).

¹¹³⁰ The following are serious traffic offenses: (1) voluntary or involuntary motor vehicle homicide or manslaughter; (2) Adult DWI; (3) failure to stop at the scene of an accident; (4) overtaking a school bus; (5) driving on a revoked, canceled or suspended license; (6) aggravated vehicle homicide; (7) reckless driving; (8) drag racing; (9) reckless endangerment; (10) evading arrest in a motor vehicle., and (11) vehicular assault.

¹¹³¹ Exception: The court may immediately restore an offender's license on any conditions it sees fit if habitual offender status was the result of driving while suspended/revoked but where the underlying suspension/revocation was not one of the serious offenses listed in §55-10-603(2)(A).

Convicted on Charges of
 Driving While on Habitual
 Offender Status **Class E felony** §55-10-616

Sanctions Following a Conviction of
 Driving While on Habitual Offender
 Status:
 Imprisonment (Term): **1 to 6 years** §§40-35-111(b)(5) and 55-10-616

Mandatory Minimum Term of
 Imprisonment: **1 year**¹¹³²§55-10-616

Fine (\$ Range): Not more than **\$3,000** §§40-35-111(b)(5) and
 55-10-616

Mandatory Minimum Fine (\$): **None**

Licensing Actions (Specify): **None**

Laws Requiring BAC Chemical Tests on

Persons Killed in Traffic Accidents:
 State Has Such a Law (Yes/No): **Discretionary** §38-7-109

BAC Chemical Test Is Given to the
 the Following Persons:

Driver: **Discretionary**

Vehicle Passengers: **Discretionary**

Pedestrian: **Discretionary**

Laws Establishing the Minimum Ages
 Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** §§1-3-113, 57-3-406(d), §57-4-203(b)(1) and
 (2)(A) and 57-5-301(a) and (d)(1)
 Conviction of using “false identification” for a second
 time may result in license suspension for up to one
 year (although restricted driving license still
 available). §57-3-412(c)

Minimum Age (Years) Possession: **21** There are exceptions for employment and religious
 services. §§1-3-113, 57-3-412 (a)(3),
 57-4-203(b)(2)(A) and (b)(3) and 57-5-301(e)(1)

Minimum Age (Years) Consumption: **21** §1-3-113

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Limited** §57-10-101 et seq.^{1133 and 1134} This statute may
 have abrogated, at least in part, the case law noted
 below.

¹¹³² One year of imprisonment is mandatory unless the habitual offender operated a motor vehicle in order to save life or limb. §55-10-616

¹¹³³ Before a commercial server can be held liable for the actions of his/her intoxicated patrons, the following must be proven "beyond a reasonable doubt": the sale of alcoholic beverages was the proximate cause of the injury sustained and such beverages were sold either to a person under 21 years old or to an obviously intoxicated person whose consumption was the direct cause of the injury.

¹¹³⁴ Under the dram shop law, a licensee may be liable for the actions committed by intoxicated minors who did not directly purchase alcoholic beverages from the licensee. *Worley v. Weigels, Inc.*, 919 S.W.2d 589 (Tenn. 1996). However, a licensee who “gives” but does not “sell” alcoholic beverages to a minor is not liable under the dram shop law for the injuries caused by a minor as a result of consuming such beverages. *LaRue v. 1817 Lake Inc.*, 966 S.W.2d 423 (Tenn. App. 1997) (appeal denied 1996)

"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 *Mitchell v. Ketner*, 393 S.W.2d 755 (Tenn. App. 1964)

Dram Shop Actions-Social Hosts:

No §§57-10-101 and 57-10-102

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

Type of Criminal Action:

Class A Misdemeanor §§40-35-111, 57-3-406(c), 57-3-412(a)(1), 57-4-203(c) and 57-4-203(j)(1)

Term of Imprisonment:

I. Package sales of alcoholic beverages (Except beer containing less than 5 percent alcohol) – **11 months, 29 days**. II. On premises consumption of alcoholic beverages- **11 months, 29 days**

Fine (\$ Range):

I. Package sales of alcoholic beverages (Except beer containing less than 5 percent alcohol) – **\$2,500**. II. On premises consumption of all alcoholic beverages – **\$2,500**

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

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes Suspension/Revocation §§40-35-111, 57-3-104(c)(1)(A), 57-3-214, 57-3-215(a), 57-4-202(a) and 57-4-203(j)(3)

Length of Term of License Withdrawal:

I. Package sales of alcoholic beverages (Except beer containing less than 5 percent alcohol) – Suspension length not specified; **Revocation – 1 year**. II. On-premises consumption of all alcoholic beverages – first offense – Length of suspension/revocation is not specified; second offense – **Permanent revocation**.

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 §§40-35-111, 57-3-406(d), 57-3-412(a)(1), 57-4-101(a), 57-4-203(b)(1), (j)(1) and (4), 57-5-101, 57-5-301(a) and 57-6-102(1)

Term of Imprisonment:

I. Package sales of alcoholic beverages (Except beer containing less than 5 percent alcohol) – **11 months 29 days** II. On-premises consumption of all alcoholic beverages- **11 months 29 days**

Fine (\$ Range):

I. Package sales of alcoholic beverages (Except beer containing less than 5 percent alcohol) – **\$2,500** II. On-premises consumption of all alcoholic beverages – **\$2,500**

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 Suspension/Revocation §§57-3-104(c)(1)(A), 57-3-214, 57-3-215(a), 57-4-202(a), 57-4-203(j)(4), 57-5-109(c) and (k) and 57-5-303(c)

Length of Term License Withdrawal:

I. Package sales of alcoholic beverages (Except beer containing less than 5 percent alcohol) – Suspension – length not specified; **Revocation- 1 year** II. On-premises consumption of all alcoholic beverages – first offense – Length of suspension/revocation is not specified; second offense – **Permanent revocation**

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 Drivers only¹¹³⁵§55-10-416

Anti-Consumption Law (Yes/No):

Yes Drivers only §55-10-416

¹¹³⁵ However, a municipality may enact an open container/anti-consumption ordinance that applies to passengers. §55-10-416(c)