

STATE:
General Reference:

ALASKA
Alaska Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor ¹ §28.35.030(a)(1)
Illegal Per Se Law (BAC/BrAC):	≥ 0.08 ^{1,2&3} §28.35.030(a)(2)
Presumption (BAC/BrAC):	≥ 0.08 ³ §28.35.033(a)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) A Controlled Substance¹ or (2) Intoxicating Liquor and Another Substance ¹ §28.35.030(a)(1) & (3)
Other:	Persons Under 21 Years Old. See p. 3-11. For Commercial Motor Vehicle Operators, see p. 3-12.

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	Yes §28.35.031(b) Also applies to CMV operators §28.33.031
Implied Consent Law: Arrest Required (Yes/No):	Yes §28.35.031 See the Special Note below.
Implied Consent Law Applies to Drugs (Yes/No):	No Except as noted in "Other Information" below.
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal & Civil Cases) §§28.35.032(e) & 28.35.285(c)
Other Information:	A "chemical test" for either alcohol or a controlled substance may be administered to a person (or a CMV operator) without their consent if they have been arrested for a DWI off where there has been an accident involving death or physical injury to another person. §§28.35.035(a), 28.33.031(b) & <i>Municipality of Anchorage v. Ray</i> , 854 P.2d 740 (AlaskaApp. 1993)

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

Blood:	No Except as per the Special Note below.
Urine:	No Except as per the Special Note below.
Other:	None

¹The law defines the drunk driving offense as the crime of "driving while intoxicated" which includes driving while under the influence of intoxicating liquor/controlled substance or illegal per se at an alcohol concentration ≥0.08. §28.35.030

²This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of 0.08 or more.

³Alcohol concentration is based upon either percent by wgt. of alc. in the blood, grams of alc. per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §28.35.030(a)(2) Note: Under §28.35.033(b), percent by wgt. of alc. in the blood is defined as grams of alcohol per 100 milliliters of blood.

Special Note: This State's implied consent law also requires that a driver submit to a chemical test or tests (1) of their breath or blood for alcohol content or (2) of their blood or urine for a controlled substance if there is "reasonable grounds to believe that the person was operating or driving a motor vehicle in this state that was involved in an accident causing death or serious physical injury to another person." The sanctions for violating this requirement are the same as for violating the regular implied consent provisions. §28.35.031(g) However, the Alaska Court of Appeals has held that this provision violates the both U.S. Constitution's (4th Amendment) and the Alaska Constitution's prohibitions against unreasonable searches and seizures, because it does not provide for individual suspicion of criminal activity before a search can be undertaken. *Blank v. State*, 3 P.3d 359 (AlaskaApp. 2000) Note: There is a similar provision for CMV operators; see p. 3-12.

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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 §§28.35.030(h) & 28.35.032(l)

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> : Criminal Sanctions (Fine/Jail):	<u>Infraction</u> (non-criminal offense)-Not more than \$300 §§28.35.031(e) & 28.40.050(c) & (d)
Administrative Licensing Action (Susp/Rev): Other:	None Refusal to submit to a PBT may be admitted into evidence at either a criminal or civil proceeding. §28.35.031(c) Also applies to CMV operators. §28.33.031(d) It is a Cl B misd for a CMV operator to refuse to submit to a PBT. §28.33.031(f) The sanctions for this offense are as follows: Jail-not more than 90 dys ; fine-not more than \$1,000 . §§12.55.035(b)(4) & 12.55.135(b)
Refusal to Take <u>Implied Consent Chemical Test</u> : Criminal Sanction (Fine/Jail):	See the "Note" under Double Jeopardy on p. 3-11. <u>Cl A misd</u> -Not more than 1 yr imprisonment/not more than \$5,000 fine; <u>Cl C felony</u> -if 3rd or subsequent refusal w/n 10 yrs-Not more than 5 yrs /not more than \$50,000 fine §§12.55.035, 12.55.125, 12.55.135 and 28.35.032(f) & (q) Note: The jail and fine sanctions (including minimum mandatory sanctions), confinement in a community residential center, cost of incarceration (where applicable) for 1st and subsequent refusal offenses ¹ are the same as for DWI offenses. These sanctions run concurrently with any other sanctions. §28.35.032(f) & (g)(4) See Footnote No. 2.
Administrative Licensing Action (Susp/Rev):	Rev §§28.15.165(a)(1) & 28.15.181(a)(8) <u>1st Refusal-90 dys</u> (mand) License revocation periods, including the minimum mandatory periods, veh. forfeiture for <u>2nd and subsequent refusals</u> ¹ are the same as for 1st and subsequent revocations for DWI offense convictions. §§28.15.165(d) State Forfeiture of the vehicle used in subsequent refusal offenses. This action is not mandatory. §28.35.036
Other:	

¹For either DWI offense convictions or for convictions for refusal to submit to a chemical test, a previous off is considered to be either a previous chemical test refusal or a previous DWI conviction. §§28.35.030(k)(4), 28.35.032(o) & 28.35.036(b)

²**Persons Under 21 Years Old.** A person >14 but <21 yrs old commits an "infraction" if they refuse to submit to a chemical test after having been arrested for the offense of operating a motor vehicle after having consumed any quantity of alcohol. The sanctions for this offense are either a fine of not more than \$1,000 or community service. Community service may be offered to the defendant as an alternative to all or part of the fine sanction. §28.35.285(d) In addition, the driver's license is revoked via an administrative procedure for the following mandatory periods: 1st revocation-90 dys; 2nd revocation-1 yr; and, 3rd revocation-3 yrs. §28.15.183(d)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:
Imprisonment/Fine:

See Footnote No. 1, Electronic Monitoring and Double Jeopardy below.

Mandatory Minimum Term:

I. Cl A Misd-Not more than 1 yr/not more than **\$5,000**
II. Cl C felony if 3rd or subsequent offense w/n 10 yrs-Not more than 5 yrs/not more than **\$50,000**
§§12.55.035, 12.55.125, 12.55.135 & 28.35.030

Mandatory Minimum Fine (\$):

I. Cl A Misd offs*: 1st off-72 cons hrs²; 2nd off-20 dys²; 3rd off-60 dys; 4th off-120 dys; 5th off-240 dys; 6th and sub. off-360 dys
II. Cl C felony offs: 3rd off-120 dys; 4th off-240 dys; 5th and sub. off-360 dys
§§28.35.030(b) & (n) and 28.35.032(g) & (p)
Important. See Electronic Monitoring below.
I. Cl A Misd offs*: 1st off-\$250; 2nd off-\$500; 3rd off-\$1,000; 4th off-\$2,000; 5th off-\$3,000; 6th and sub. off-\$4,000
II. Cl C felony offs (3rd or sub off w/n 10 yrs)-**\$5,000**

Other Penalties:
Community Service:

Yes³ 1st off-At least 24 hrs; 2nd off-At least 160 hrs
§§28.35.030(k) & 28.35.032(o) Discretionary for subsequent offenses §12.55.055

Restitution (eg Victim's Fund)

Yes The court may order a defendant to pay direct compensation to a victim(s). §12.55.045

¹For either DWI offense convictions or for convictions for refusal to submit to a chemical test, a previous off is considered to be either a previous chemical test refusal or a previous DWI conviction. §§28.35.030(k)(4), 28.35.032(o) & 28.35.036(b)

²If possible, this incarceration sentence is to be served in a community residential center. §§28.35.030(l) & 28.35.032(p)

³This community service is not an alternative to the mandatory minimum terms of imprisonment. For 3rd and subsequent offenses, the length and type of community service is discretionary with the court.

Persons Under 21 Years Old. A person ≥14 but <21 yrs old commits an "infraction" if either (1) they operate a motor vehicle after having consumed any quantity of alcohol or (2) they operate a motor vehicle w/n 24 hrs after having either been cited for or refused to submit to a chemical test for such offense. The sanctions for these offenses are either a fine of not more than \$1,000 or community service. Community service may be offered to the defendant as an alternative to all or part of the fine sanction. §§28.35.280(a) & (d) and 28.35.290(a) & (d) In addition, for the offense of operating a motor vehicle "after having consumed any quantity of alcohol", the driver's license is revoked via an administrative procedure for the following periods: 1st revocation-30 dys (mand); 2nd revocation-60 dys (mand); 3rd revocation-90 dys (60 dys mand with limited driving privileges after this period); and, 4th or subsequent revocation-1 yr (60 dys mand with limited driving privileges after this period). §28.15.183(d) & (f)

Electronic Monitoring. A person, who is ordered to serve a definite term of imprisonment, may be allowed to serve all or part of this term by "electronic monitoring". §12.55.015(e)(2) **Comment:** This provision may have abrogated "mandatory" imprisonment.

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. Zerkel*, 900 P.2d 744 (AlaskaApp. 1995) Note: Likewise, a person, who has first been subjected to administrative licensing action for refusing to submit to a chemical test under the implied consent law, may also be subsequently prosecuted, under this law, for the criminal offense of refusing to submit to such a test. This subsequent criminal trial does not constitute double jeopardy. *Arron v. City of Ketchikan*, 927 P.2d 335 (AlaskaApp. 1996)

***Important.** The mandatory sanctions for a misdemeanor offense only apply if the offender has not been convicted of a felony offense. §§28.35.030(b) & (n) and 28.35.032(g) & (p)

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Sanctions Following a Conviction for a DWI Offense:
(continued)

Other:

Ignition Interlock. As a condition of probation, if granted, the court may order a defendant to only operate motor vehicles equipped with "ignition interlock" devices. However, mandatory licensing sanctions still apply. §12.55.102(a)

Incarceration Costs. Except for indigent defendants, an offender may be required to pay the cost of their incarceration. However, such cost is limited to a maximum of \$1,000. §§28.35.030(k) & 28.35.032(o)

EMS, Police, Fire Department Costs. A defendant may be ordered to pay the reasonable costs of any "emergency response" associated with an accident related to the drunk driving offense. An "emergency response" includes emergency medical, law enforcement and fire department services. §28.35.030

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:

On p. 3-11, see Persons Under 21 Years Old and Double Jeopardy.

Administrative Per Se Law:

Yes ≥0.08 (BAC/BrAC See Footnote No. 3 on p. 3-9.) §28.15.165(a)(1) & (d) Licensing revocation periods, including the minimum mandatory periods, for 1st and sub admin. actions are the same as for 1st and sub revocations for DWI off convictions.

Other:

None

Post DWI Conviction Licensing Action:
Type of Licensing Action
(Susp/Rev):
Term of License Withdrawal
(Days, Months, Years, etc.):

Rev §28.15.181(a)(5) & (c)

1st off-Not less than **90 dys**; 2nd off (w/n 10 yrs)-Not less than **1 yr**; 3rd off (w/n 10 yrs)-Not less than **3 yrs**; 4th and sub. off (w/n 10 yrs)-Not less than **5 yrs** §28.15.181(c) See Footnote No. 1 on p. 3-11.

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 yr (1 yr mand) (not less than 3 yrs (3 yrs mand) if transporting hazardous materials) if, while driving a CMV, they (1) have either a percent by wgt. of alc. in the blood ≥0.04, a blood alcohol concentration ≥40 milligrams of alcohol per 100 milliliters of blood, or a breath alcohol concentration of ≥0.04 grams of alc. per 210 liters of breath, (2) are under the influence of intoxicating liquor or any controlled substance or (3) refuse to submit to a breath test. For either (1) a second violation or (2) a combination of two violations of any of the above listed items, the "disqualification" is for life (10 yrs mand). For either (1) a subsequent violation or (2) a combination of more than two violations of any of the above listed items, there is a mandatory lifetime "disqualification". A person, who operates a CMV with a BAC/BrAC ≥0.04, while under the influence of any controlled substance or who refuses to submit to a breath test, is also subject to the regular DWI/IMPLIED consent law criminal and administrative (licensing) sanctions; this includes all mandatory sanctions. In addition, a CMV operator who has any "measurable" or detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. **Special Note:** This State's CDL implied consent law also requires that a CMV operator submit to a chemical test or tests (1) of their breath or blood for alcohol content or (2) of their blood or urine for a controlled substance if there is "reasonable grounds to believe that the person was operating or driving a motor vehicle in this state that was involved in an accident causing death or serious physical injury to another person." Note: A similar provision in the regular implied consent law, §28.35.031(g), was declared unconstitutional by the Alaska Court of Appeals; see the Special Note on p. 3-9. §§28.15.165, 28.15.219, 28.33.030, 28.33.031(a)(1) & (2), 28.33.130, 28.33.140 and 28.35.032(f)

Sanctions Following a Conviction for a DWI Offense:
(continued)

Mandatory Minimum Term of Withdrawal:	<u>1st off-90 dys or 30 dys</u> followed by a limited occupational license for 60 dys with participation in an alcohol education and treatment program §28.15.201(d); <u>2nd off</u> (w/n 10 yrs)-1 yr; <u>3rd off</u> (w/n 10 yrs)-3 yrs; <u>4th and sub. off</u> (w/n 10 yrs)-5 yrs
Other:	
Rehabilitation:	
Alcohol Education:	Yes ¹ §28.35.030(c)
Alcohol Treatment:	Yes ¹ §28.35.030(c)
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	Yes State Forfeiture of the vehicle used in subsequent DWI offenses. This action is not mandatory. §28.35.036
Terms Upon Which Vehicle Will Be Released:	N/A
Other:	Local Forfeiture. Under §28.35.038, municipalities may enact ordinances to impound/forfeit motor vehicles for violations of local DWI/chemical test refusal laws.
Miscellaneous Sanctions Not Included Elsewhere:	None
<u>Other Criminal Actions Related to DWI:</u>	
<u>Homicide by Vehicle:</u>	
State Has Such a Law:	No ²
Sanctions:	
Criminal Sanction:	
Imprisonment (Term):	
Mandatory Minimum Term:	
Fine (\$ Range):	
Mandatory Minimum Fine:	
Administrative Licensing Action:	
Licensing Authorized and Type of Action:	See Footnote No. 3.
Length of Term of Licensing Withdrawal:	

¹For any DWI or refusal conviction, a defendant may be required to complete either an alcohol education or an alcohol treatment program that the court feels is appropriate for that defendant before their license can be restored. §28.15.211(d) A defendant may participate in this rehabilitation program either while incarcerated or while on probation. §§12.55.015(a)(10), 12.55.100(a)(5), 28.35.030(j) & 28.35.032(m)

²In some circumstances, a DWI related death may be considered second degree murder. *Puzewicz v. State*, 856 P.2d 1178 (AlaskaApp. 1993)

³Even though this State does not have a veh homicide statute, it, nevertheless, provides for license rev for a conviction of manslaughter resulting from the operation of a motor vehicle. §28.15.181(a)(1) & (b)