

## At a Glance

If test is refused, refer to test refusal chart

Level	DWI with a Test	Seize
1 <sup>st</sup> Degree DWI (Felony) (A) 169A.20.1(x*) (B) 169A.24.1(x*) (C) 169A.24.2	(1) 3 or more qualified prior impaired driving incidents within 10 years; (2) Prior felony DWI conviction (lifetime); or (3) Prior felony conviction for an impaired driving related criminal vehicular homicide/operation (lifetime)	DL** if test: ■ 0.08 or more; ■ 0.04 or more in a commercial vehicle; ■ Test Refusal. <b>MN License Plates Vehicle Mandatory Booking</b>
2 <sup>nd</sup> Degree DWI (Gross Misd.) (A) 169A.20.1(x*) (B) 169A.25.1(a) (C) 169A.25.2	2 or more aggravating factors	DL** if test: ■ 0.08 or more; ■ 0.04 or more in a commercial vehicle; <b>MN License Plates Vehicle Mandatory Booking</b>
3 <sup>rd</sup> Degree DWI (Gross Misd.) (A) 169A.20.1(x*) (B) 169A.26.1(a) (C) 169A.26.2	1 aggravating factors	DL** if test: ■ 0.08 or more; ■ 0.04 or more in a commercial vehicle; <b>MN License Plates Mandatory Booking may apply**</b>
4 <sup>th</sup> Degree DWI (Misd.) (A) 169A.20.1(x*) (B) 169A.27.1 (C) 169A.27.2	No aggravating factors	DL** if test: ■ 0.08 or more; ■ 0.04 or more in a commercial vehicle;

\* Replace 'x' with the appropriate letter or number according to the circumstances of the offense.

\*\* Driver's license must be invalidated and returned.

\*\*\* If violation is 0.20 or higher, child endangerment, with cancel IPS or violation under 19 years old.

### Aggravating Factors

- Each prior DWI conviction or implied consent revocation within last 10 years (cannot count both if arising from the same incident);
- Current test 0.20 or over;
- Child endangerment (less than 16 years of age and greater than 36 months difference from offender).

## Test Refusal – DWI

Charge in addition to DWI

Level	Test Refusal	Seize
1 <sup>st</sup> Degree DWI (Felony)	See <i>At a Glance</i>	
2 <sup>nd</sup> Degree Refusal (Gross Misd.) (A) 169A.20.2 (B) 169A.25.1(b) (C) 169A.25.2	1 or more aggravating factors	DL** <b>MN License Plates Vehicle Mandatory Booking</b>
3 <sup>rd</sup> Degree Refusal (Gross Misd.) (A) 169A.20.2 (B) 169A.26.1(b) (C) 169A.26.2	No aggravating factors	DL** if test: <b>MN License Plates Mandatory Booking may apply***</b>

\*\* Driver's license must be invalidated and returned.

\*\*\* If violation is 0.20 or higher, child endangerment, with cancel IPS or violation under 19 years old.

## Under 21 Alcohol Violations Consumption and Operation

Violation	Statute	Penalty
<b>Under 21 Consumption</b>		
■ DWI, if applicable	See <i>At a Glance</i>	Misd./GM/Felony
■ Unlawful to drive after consuming any amount of alcohol*	169A.33.2	Misd.

\* A conviction for this offense cannot be used as an aggravating factor.

## Alcohol-Related

Violation	Statute	Penalty
<b>Passenger Consumption</b>		
■ Under 21 years of age	340A.503.1(a)(2)	Misd.
<b>Passenger Possession</b>		
■ Under 21 years of age	340A.503.3	Misd.
<b>Open Container</b>	169A.35.3	Misd.
<b>Driver/Owner Allowing O.B.</b>	169A.35.4	Misd.

## 609.21.1(x\*) Criminal Vehicular Homicide or Operation

- Subd. 1: A person is guilty of criminal vehicular homicide or operation if the person causes injury to or death of another (must be to a person other than the driver) as a result of operating a motor vehicle:
  - (1) in a grossly negligent manner;
  - (2) in a negligent manner while under the (i) influence of alcohol; (ii) a controlled substance; or (iii) a combination;
  - (3) while having an alcohol concentration of 0.08 or more;
  - (4) while having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving;
  - (5) in a negligent manner while knowingly under the influence of a hazardous substance;
  - (6) in a negligent manner while any amount of a controlled substance listed in schedule I or II, or its metabolite, other than marijuana or THC, is present in the person's body;
  - (7) where the driver who causes the accident leaves the scene of the accident in violation of section 169.09, subdivision 1 or 6; or
  - (8) where the driver had actual knowledge that a peace officer had previously issued a citation or warning that the motor vehicle was defectively maintained, the driver had actual knowledge that remedial action was not taken, the driver had reason to know that the defect created a present danger to others, and the injury or death was caused by the defective maintenance.

## 609.21.1a(x\*) Penalty Statute – CVH / CVO

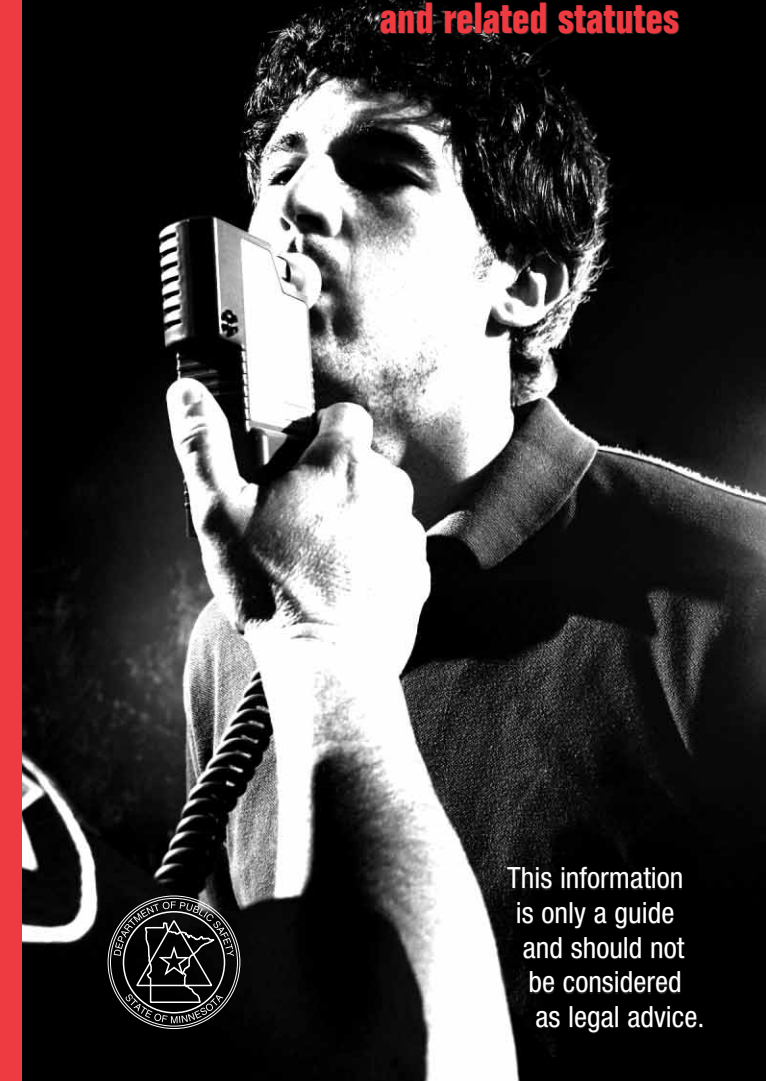
- Subd. 1a.
  - (a) Criminal vehicular homicide is a felony if the accident causes the death of another, not constituting murder or manslaughter, or the death of an unborn child.
  - (b) CVO is a felony if the accident causes great bodily harm to another or to an unborn child subsequently born alive (serious permanent disfigurement, permanent injury, or protracted impairment – MS 609.02, subd. 8).
  - (c) CVO is a felony if the accident causes substantial bodily harm (temporary but substantial disfigurement, temporary but substantial impairment or fracture – MS 609.02, subd. 7a.).
  - (d) CVO is a gross misdemeanor if the accident causes bodily harm to another (any physical pain or injury or illness, or any impairment of physical condition – MN 609.02, subd 7.).



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# 2008 DWI e-z

Quick reference guide for the enforcement of Minnesota DWI and related statutes



This information is only a guide and should not be considered as legal advice.



## Charging DWI/Refusal Cases

Each DWI or Refusal count should cite three statute numbers:

- (A) a charging statute representing the offense charged;
- (B) a charging statute representing the offense level of the count; and
- (C) a penalty statute representing the level of the offense for that count.

## Examples of How to Correctly Charge DWI Violations

### Example: First-time DWI, 0.14 test:

Count 1: DWI (A) 169A.20.1(1); (B) 169A.27.1; (C) 169A.27.2

Count 2: 0.08 or more (A) 169A.20.1(5); (B) 169A.27.1; (C) 169A.27.2

### Example: Second-time Refusal, DWI (1 agg. factor):

Count 1: Refusal (A) 169A.20.2; (B) 169A.25.1(b); (C) 169A.25.2

Count 2: DWI (A) 169A.20.1(1); (B) 169A.26.1(a); (C) 169A.26.2

\* Replace 'x' with the appropriate letter or number according to the circumstances of the offense.

## (A) Charging Statutes – Offenses

### 169A.20.1(x\*) – DWI (relevant evidence at 0.04 AC)

- Subd. 1: Drive, operate or be in physical control:
  - (1) Influence of alcohol;
  - (2) Influence of a controlled substance;
  - (3) Knowingly under the influence of a hazardous substance;
  - (4) Any combination of (1), (2), and/or (3);
  - (5) AC is 0.08 or more at the time or within 2 hours;
  - (6) Commercial vehicle and AC 0.04 or more; or
  - (7) Body contains any amount of a controlled substance listed in schedule I or II, or its metabolite (other than marijuana or tetrahydrocannabinols).

### 169A.20.2 – DWI: Refusal

- Subd. 2: Refusal to test.

## (B) Charging Statutes – Offense Level

### 169A.24.1(x\*) – 1<sup>st</sup> Degree (Felony)

- DWI test or refusal (169A.20.1(x\*) or 169A.20.2) and
  - (1) Three or more qualified prior impaired driving incidents within 10 years; or
  - (2) Prior felony DWI conviction; or
  - (3) Prior felony conviction for an impaired driving related criminal vehicular homicide or operation (609.21.1(x\*)).
- Mandatory booking and hold (169A.40).

### 169A.25.1(x\*) – 2<sup>nd</sup> Degree (Gross Misd.)

- (a) DWI (169A.20.1(x\*)) and two or more aggravating factors present when the violation occurs.
  - Mandatory booking and hold (169A.40).
- (b) Refusal (169A.20.2) and one or more aggravating factors present when the violation occurs.
  - Mandatory booking and hold (169A.40).

### 169A.26.1(x\*) – 3<sup>rd</sup> Degree (Gross Misd.)

- (a) DWI (169A.20.1(x\*)) and one aggravating factors present when the violation occurs.
- (b) Refusal (169A.20.2) with no aggravating factors present when the violation occurs.

### 169A.27.1 – 4<sup>th</sup> Degree (Misd.)

DWI (169A.20.1(x\*)) with no aggravating factors present when the violation occurs.

## (C) Penalty Statutes

### 169A.24.2 – 1<sup>st</sup> Degree (Felony)

### 169A.25.2 – 2<sup>nd</sup> Degree (Gross Misdemeanor)

### 169A.26.2 – 3<sup>rd</sup> Degree (Gross Misdemeanor)

### 169A.27.2 – 4<sup>th</sup> Degree (Misdemeanor)

## Additional Statutes

### 169A.40 Custodial Arrests / Mandatory Hold for Court

### 169A.41 Preliminary Screening Test

May request where there is reason to suspect (articulable suspicion) the person has violated DWI law.

Results of the PBT can only be used in the following court actions:

- To prove that a test was properly required of a person under the implied consent law (169A.51);
- In a civil action arising out of the operation of a motor vehicle;
- In an action for license reinstatement under 171.19;
- In a prosecution for test refusal under 169A.20, subd. 2;
- Prosecution or juvenile court proceeding for underage driving after driving “zero tolerance law” (169A.33.2) or minor consumption (340A.503.1(a)(2));
- Prosecution for violation of the “zero tolerance” law for school bus drivers (169A.31.1);
- Prosecution for violation of conditions of a limited license (171.30);
- Prosecution of violation of restricted driver’s license that prohibits a person from consuming any alcohol or controlled substance (171.09).

### 169A.44 Conditional Release / Mandatory Bail

Jail and hold the offender until first court appearance (169A.40) and impose maximum bail or electronic monitoring (169A.44) if there is any reason to believe the violation occurred under any of the following:

- 1<sup>st</sup> Degree DWI (169A.24.1(x\*));
- 2<sup>nd</sup> Degree DWI (169A.25.1(x\*));
- 3<sup>rd</sup> Degree DWI (169A.26.1(x\*)) if under 19 years old;
- DWI 0.20 AC or more at the time or within two hours;
- DWI or refusal with child endangerment;
- DWI violation with cancel-IPS.

### 169A.50-53 Chemical Testing (Implied Consent)

- May require when there is probable cause to believe person has violated DWI law or 609.21.1(x) (criminal vehicular homicide and operation).
- May charge *test refusal* only if:
  - (1) Advisory is read;
  - (2) Driver is given opportunity to contact attorney; and
  - (3) One of the following:
    - Breath test refused;
    - Bodily fluid test and an alternative refused; or
    - Fails to provide two adequate breath samples within .02 AC and is retested with same result.
- 169A.51, subd. 4: if controlled substance is suspected, alternative to blood test must be urine, and vice versa.
- Can require blood or urine test after breath test, if controlled substance is suspected (reinvoke Implied Consent Advisory for controlled substances only).
- Must allow driver reasonable opportunity to seek advice of counsel before decision on testing, if requested.
- Must allow person tested opportunity to arrange for additional test, if requested.

### 169A.20.1(2, 3 or 7) Drug Impairment

If the driver’s impairment is not consistent with his or her alcohol concentration, call a Drug Recognition Evaluator (DRE) for further evaluation.

- Document specific observations of the offender’s demeanor (i.e. accelerated reflexes, easily agitated, perspiring) and eyes (i.e. marked reddening of whites of eyes, dilated or constricted pupils);
- Arrest offender;
- Invoke the Implied Consent Advisory;
- Call a DRE (contact the local State Patrol dispatcher).

The DRE will document additional signs of impairment and the Bureau of Criminal Apprehension lab will verify the presence of the impairing substance.

### 169A.78 Aiding and Abetting (Allow illegal operation)

Every person who aids, abets or permits the commission of a violation of chapter 169A is likewise guilty of that offense.

### 169A.60 Administrative Plate Impoundment

(Only MN motor vehicle license plates can be impounded)

- DWI test or refusal plus at least one aggravating factor;
- Violator’s driver’s license is cancel-IPS (DWI or sober).

Includes related offenses from other states and includes motor vehicle plates if the violator is on a recreational vehicle (snowmobile, ATV or motorboat).

Issue notice of impoundment and temporary permit.

*Seize and destroy* plates of vehicle the violator is currently driving regardless of ownership.

### 169A.63 Vehicle Forfeiture

Impound Plates (169A.60)

Vehicle subject to forfeiture if one of the following:

- 1<sup>st</sup> Degree Felony DWI test or refusal;
- 2<sup>nd</sup> Degree GM DWI test or refusal;
- 3<sup>rd</sup> Degree DWI with test refusal only; (*2<sup>nd</sup> degree test refusal*)
- DWI or refusal violation with a cancel-IPS status; or
- DWI or refusal violation with a “B” card license restriction.

### 169A.31.1 Alcohol Related School Bus or Head Start Bus Driving: “Zero Tolerance”

- Subd. 2: Gross Misdemeanor – physical evidence present in the body of any alcohol consumption while using any class of school bus or Head Start bus and one of the following:
  - (1) child under the age of 16 is in the vehicle and more than 36 months younger than the violator; or
  - (2) qualified prior impaired driving incident within 10 years.
- Subd. 3: Misdemeanor – physical evidence present in the body of any alcohol consumption while using any class of school bus or Head Start bus.

### 171.24.5 Driving After Cancellation-IPS

- Subd. 5: Gross Misdemeanor to drive if cancel-IPS (DWI or sober)
- Seize and destroy plates (169A.60)
- Notify Driver and Vehicle Services of “Total Abstinence” restriction violation if evidence of alcohol or drug consumption.

*Additional statutes continued on back*