

Sourcebook of Criminal Justice Statistics Online

Table 1.88

Statutory provisions related to alcohol use and driving

By jurisdiction, as of Jan. 1, 1999

Jurisdiction	Preliminary breath test law	Administrative per se at:	Blood alcohol concentration levels as evidence in State courts		Open container law	Anti-consumption law	Dram shop law
			Illegal per se at:	Presumption at:			
Alabama		0.08	0.08	0.08			S
Alaska	S	0.10	0.10	0.10	S ^a	S ^a	S
Arizona	S	0.10	0.10	0.10		S	S
Arkansas		0.10	0.10			S	(b)
California	S	0.08 ^c	0.08	0.08	S	S	S ^d
Colorado	S	0.10	0.10	0.05, 0.10 ^e		S	S
Connecticut		0.10	0.10				S ^f
Delaware	S	0.10	0.10	0.10 ^g		S ^a	
District of Columbia	S	0.05 ^g	0.10	0.05 ^g	S	S	(b)
Florida	S	0.08	0.08	0.08 ^g	S		S ^h
Georgia		0.10	0.10	0.08	S ^a		S
Hawaii		0.08	0.08	0.08 ⁱ	S	S	(b)
Idaho		0.08	0.08		S	S	S
Illinois	S	0.08	0.08	0.08	S		S ⁱ
Indiana		0.10	0.10	0.10 ^j	S ^k	S ^a	S
Iowa	S	0.10	0.10	0.10	S ^a	S	S
Kansas	S	0.08	0.08	0.08 ^g	S	S	
Kentucky	S	(l)	0.10			S	S
Louisiana		0.10	0.10	0.10			(m)
Maine		0.08	0.08			S ^a	S ^f
Maryland	S	0.10	0.10	0.07 ⁿ	S ^o	S ^a	
Massachusetts		0.08	0.08	0.08		S ^a	(b)
Michigan	S		0.10	0.07, 0.10 ^e	S	S	S
Minnesota	S	0.10	0.10		S	S	S
Mississippi	S	0.10	0.10			S	S
Missouri	S	0.10	0.10			S ^a	(p)
Montana	S	0.10	0.10	0.10	S ^q	S ^q	S
Nebraska	S	0.10	0.10			S	
Nevada	S	0.10	0.10		S	S ^a	
New Hampshire	S	0.08	0.08	0.08 ^g	S		S
New Jersey			0.10			S	S
New Mexico		0.08	0.08		S	S	S
New York	S	(l)	0.10	0.07, 0.10 ^f	S	S	S
North Carolina	S	0.08	0.08		S ^o	S ^{a,o}	S ^{f,s}
North Dakota	S	0.10	0.10		S	S	S
Ohio		0.10	0.10		S	S	S
Oklahoma		0.10	0.10	0.05, 0.10 ^t	S	S	(b)
Oregon		0.08	0.08	0.08 ^u	S	S	S
Pennsylvania	S		0.10			S ^a	S
Puerto Rico	S			0.10 ^v			
Rhode Island	S		0.10			S ^a	S
South Carolina		0.15		0.08 ^w	S	S	(x)
South Dakota	S		0.10	0.10	S		
Tennessee			0.10	0.10, 0.08 ^y	S ^a	S ^a	S
Texas		0.10	0.10			S ^a	S ^o
Utah		0.08	0.08		S	S	S ^f
Vermont	S	0.08	0.08	0.08 ^w		S ^a	S
Virginia	S	0.08	0.08	0.08		S ^a	
Washington		0.08	0.08		S	S	(b,h)
West Virginia	S	0.10	0.10	0.10 ^j		S	(b)
Wisconsin	S	0.10 ^z	0.10 ^z	0.10 ^{aa}	S	S	S ^d
Wyoming		0.10	0.10				S ^{ab}

Note: These data were collected through a review of the statutory provisions of the 50 States, the District of Columbia, and Puerto Rico.

In the table, "S" indicates that such a provision is provided expressly by statute. "Preliminary breath test" laws refer to a breath test given by a law enforcement officer to a suspected drunk driver prior to an arrest for a drunk driving offense. These results are used, along with other evidence, by the officer to determine if there is probable cause to arrest the driver. "Administrative per se" laws allow State driver licensing agencies to either suspend or revoke a driver's license based on the specified blood alcohol concentration (BAC) or on other criteria related to alcohol or drug use and driving. Such action is independent of licensing action resulting from a criminal conviction for a drunk driving offense. The evidentiary weight given to BAC levels generally falls into one of two categories. "Illegal per se" laws make it a criminal offense to operate a motor vehicle at or above the specified alcohol concentration level in either the blood, breath, or urine. Under these laws, the specified level is considered conclusive evidence of intoxication in a court of law. "Presumption" indicates that the specified level of alcohol concentration in a driver's blood,

breath, or urine creates a presumption of intoxication in a court of law. Statutory provisions of several jurisdictions treat the 0.10 level as both presumptive and illegal per se evidence of driving under the influence.

This appears to be the result of States having adopted one of the standards without amending statutes that had previously authorized the other standard. In such cases, the actual statutes should be consulted for clarification. "Open container law" refers to laws prohibiting the possession of open containers of alcoholic beverages in the passenger compartment of a motor vehicle. "Anti-consumption law" refers to laws prohibiting the consumption of alcoholic beverages in the passenger compartment of a motor vehicle. "Dram shop law" refers to laws that make owners of drinking establishments civilly liable for serving alcohol to an intoxicated patron who then goes out and injures another individual in a motor vehicle accident.

In all jurisdictions, use of a controlled substance or use of a controlled substance in conjunction with alcohol also constitutes the basis for a driving while intoxicated charge. Most jurisdictions have established more stringent BAC levels for operators of commercial motor vehicles, as well as juvenile motor vehicles operators. Statutes should be consulted for the full text and meaning of specific provisions.

Table 1.88

Statutory provisions related to alcohol use and driving

By jurisdiction, as of Jan. 1, 1999--Continued

<p>^aApplies to drivers only.</p> <p>^bAdopted via case law decisions.</p> <p>^cApplies only to persons aged 21 and older.</p> <p>^dApplies only to the actions of intoxicated minors.</p> <p>^eThe lower number is driving while impaired; the higher is driving while under the influence.</p> <p>^fThis State has a statute that places a monetary limit on the amount of damages that can be awarded in dram shop liability actions.</p> <p>^gConstitutes prima facie evidence of driving while under the influence.</p> <p>^hApplies only to the actions of intoxicated minors or persons known to be habitually addicted to alcohol.</p> <p>ⁱCompetent evidence of driving while intoxicated.</p> <p>^lHas both prima facie and presumptive evidence laws with blood alcohol concentration levels at 0.10.</p> <p>^kProvided the driver has an alcohol concentration of 0.04 or more.</p> <p>^jAlternative before driving while intoxicated criminal adjudication licensing action by the courts.</p> <p>^mThe statute appears to have limited actions to those committed by minors.</p> <p>ⁿAn alcohol concentration equal to or greater than 0.07 but less than 0.10 constitutes prima facie evidence of driving while under the influence.</p> <p>^oLimited application.</p> <p>^pCause of action limited to licensees who have been convicted of selling alcoholic beverages to minors or intoxicated individuals.</p> <p>^qAppears to be limited to persons operating "common carriers."</p> <p>^rConstitutes prima facie evidence of impairment.</p>	<p>^sApplies specifically to the actions of intoxicated minors, but the law does not foreclose developing case law as to other types of dram shop action.</p> <p>^tThe lower number is driving while impaired; the higher is prima facie evidence of driving under the influence.</p> <p>^uNot less than 0.08 constitutes being under the influence of intoxicating liquor.</p> <p>^v0.05 for persons who operate buses, trucks, or other large motor vehicles.</p> <p>^wThis blood alcohol level is an inference of driving while intoxicated.</p> <p>^xPossible via case law. Applies to actions of intoxicated minors.</p> <p>^yFor a first offense, an alcohol concentration of 0.10 or more; for a subsequent offense, an alcohol concentration of 0.08 or more.</p> <p>^zFirst and second offense 0.10; third or subsequent offenses 0.08.</p> <p>^{aa}0.10 is prima facie evidence for first and second offenses. 0.08 is prima facie evidence for third and subsequent offenses.</p> <p>^{ab}Liability limited only to the actions of persons who are under 21 years old.</p>
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Source: U.S. Department of Transportation, National Highway Traffic Safety Administration, *Digest of State Alcohol-Highway Safety Related Legislation, Current as of January 1, 1999* (Washington, DC: U.S. Department of Transportation, 1999), pp. 2-1--2-4. Table adapted by SOURCEBOOK staff.