

CHAPTER 169A

DRIVING WHILE IMPAIRED

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169A.03 DEFINITIONS.

[For text of subs 1 to 11, see M.S.2000]

Subd. 12. **Misdemeanor.** "Misdemeanor" means a crime for which a person may be sentenced to imprisonment for not more than 90 days, or to payment of a fine of not more than \$1,000, or both.

[For text of subs 13 to 25, see M.S.2000]

History: *1Sp2001 c 8 art 8 s 4*

169A.07 FIRST-TIME DWI VIOLATOR; OFF-ROAD RECREATIONAL VEHICLE OR MOTORBOAT.

A person who violates section 169A.20 (driving while impaired) while using an off-road recreational vehicle or motorboat and who does not have a qualified prior impaired driving incident is subject only to the criminal penalty provided in section 169A.25 (second-degree driving while impaired), 169A.26 (third-degree driving while impaired), or 169A.27 (fourth-degree driving while impaired); and loss of operating privileges as provided in section 84.91, subdivision 1 (operation of snowmobiles or all-terrain vehicles by persons under the influence of alcohol or controlled substances), or 86B.331, subdivision 1 (operation of motorboats while using alcohol or with a physical or mental disability), whichever is applicable. The person is not subject to the provisions of section 169A.275, subdivision 5, (submission to the level of care recommended in chemical use assessment for repeat offenders and offenders with alcohol concentration of 0.20 or more); 169A.277 (long-term monitoring); 169A.285 (penalty assessment); 169A.44 (conditional release); 169A.54 (impaired driving convictions and adjudications; administrative penalties); or 169A.54, subdivision 11 (chemical use assessment); the license revocation sanctions of sections 169A.50 to 169A.53 (implied consent law); or the plate impoundment provisions of section 169A.60 (administrative impoundment of plates).

History: *1Sp2001 c 8 art 11 s 1; 1Sp2001 c 9 art 19 s 2*

NOTE: The amendments to this section by Laws 2001, First Special Session chapter 8, article 11, section 1; and chapter 9, article 19, section 2, are effective August 1, 2002, and apply to crimes committed on or after that date. Laws 2001, First Special Session chapter 8, article 11, section 17; and chapter 9, article 19, section 17.

169A.20 DRIVING WHILE IMPAIRED.

[For text of subs 1 and 2, see M.S.2000]

Subd. 3. **Sentence.** A person who violates this section may be sentenced as provided in section 169A.24 (first-degree driving while impaired), 169A.25 (second-degree driving while impaired), 169A.26 (third-degree driving while impaired), or 169A.27 (fourth-degree driving while impaired).

History: *1Sp2001 c 8 art 11 s 2; 1Sp2001 c 9 art 19 s 3*

NOTE: The amendments to subdivision 3 by Laws 2001, First Special Session chapter 8, article 11, section 2; and chapter 9, article 19, section 3, are effective August 1, 2002, and apply to crimes committed on or after that date. Laws 2001, First Special Session chapter 8, article 11, section 17; and chapter 9, article 19, section 17.

169A.24 FIRST-DEGREE DRIVING WHILE IMPAIRED.

Subdivision 1. **Degree described.** A person who violates section 169A.20 (driving while impaired) is guilty of first-degree driving while impaired if the person:

- (1) commits the violation within ten years of the first of three or more qualified prior impaired driving incidents; or
- (2) has previously been convicted of a felony under this section.

Subd. 2. **Criminal penalty.** A person who commits first-degree driving while impaired is guilty of a felony and may be sentenced to imprisonment for not more than seven years, or to payment of a fine of not more than \$14,000, or both. The person is subject to the mandatory penalties described in section 169A.276 (mandatory penalties: felony violations).

History: *1Sp2001 c 8 art 11 s 3; 1Sp2001 c 9 art 19 s 4*

NOTE: This section, as added by Laws 2001, First Special Session chapter 8, article 11, section 3; and chapter 9, article 19, section 4, is effective August 1, 2002, and applies to crimes committed on or after that date. Laws 2001, First Special Session chapter 8, article 11, section 17; and chapter 9, article 19, section 17.

169A.25 SECOND-DEGREE DRIVING WHILE IMPAIRED.

Subdivision 1. **Degree described.** A person who violates section 169A.20 (driving while impaired) is guilty of second-degree driving while impaired if two or more aggravating factors were present when the violation was committed.

Subd. 2. **Criminal penalty.** Second-degree driving while impaired is a gross misdemeanor. The mandatory penalties described in section 169A.275 and the long-term monitoring described in section 169A.277 may be applicable.

History: *1Sp2001 c 8 art 11 s 4; 1Sp2001 c 9 art 19 s 5*

NOTE: The amendments to this section by Laws 2001, First Special Session chapter 8, article 11, section 4; and chapter 9, article 19, section 5, are effective August 1, 2002, and apply to crimes committed on or after that date. Laws 2001, First Special Session chapter 8, article 11, section 17; and chapter 9, article 19, section 17.

169A.26 THIRD-DEGREE DRIVING WHILE IMPAIRED.

Subdivision 1. **Degree described.** A person who violates section 169A.20 (driving while impaired) is guilty of third-degree driving while impaired if one aggravating factor was present when the violation was committed.

Subd. 2. **Criminal penalty.** Third-degree driving while impaired is a gross misdemeanor. The mandatory penalties described in section 169A.275 and the long-term monitoring described in section 169A.277 may be applicable.

History: *1Sp2001 c 8 art 11 s 5; 1Sp2001 c 9 art 19 s 6*

NOTE: The amendments to this section by Laws 2001, First Special Session chapter 8, article 11, section 5; and chapter 9, article 19, section 6, are effective August 1, 2002, and apply to crimes committed on or after that date. Laws 2001, First Special Session chapter 8, article 11, section 17; and chapter 9, article 19, section 17.

169A.27 FOURTH-DEGREE DRIVING WHILE IMPAIRED.

Subdivision 1. **Degree described.** A person who violates section 169A.20 (driving while impaired) is guilty of fourth-degree driving while impaired.

Subd. 2. **Criminal penalty.** Fourth-degree driving while impaired is a misdemeanor.

History: *1Sp2001 c 8 art 11 s 6; 1Sp2001 c 9 art 19 s 7*

NOTE: The amendments to this section by Laws 2001, First Special Session chapter 8, article 11, section 6; and chapter 9, article 19, section 7, are effective August 1, 2002, and apply to crimes committed on or after that date. Laws 2001, First Special Session chapter 8, article 11, section 17; and chapter 9, article 19, section 17.

169A.275 MANDATORY PENALTIES; NONFELONY VIOLATIONS.

Subdivision 1. **Second offense.** (a) The court shall sentence a person who is convicted of a violation of section 169A.20 (driving while impaired) within ten years of a qualified prior impaired driving incident to either:

- (1) a minimum of 30 days of incarceration, at least 48 hours of which must be served consecutively in a local correctional facility; or
- (2) eight hours of community work service for each day less than 30 days that the person is ordered to serve in a local correctional facility.

Notwithstanding section 609.135 (stay of imposition or execution of sentence), the penalties in this paragraph must be executed, unless the court departs from the mandatory minimum sentence under paragraph (b) or (c).

(b) Prior to sentencing, the prosecutor may file a motion to have a defendant described in paragraph (a) sentenced without regard to the mandatory minimum sentence established by that paragraph. The motion must be accompanied by a statement on the record of the reasons for it. When presented with the prosecutor's motion and if it finds that substantial mitigating factors exist, the court shall sentence the defendant without regard to the mandatory minimum sentence established by paragraph (a).

(c) The court may, on its own motion, sentence a defendant described in paragraph (a) without regard to the mandatory minimum sentence established by that paragraph if it finds that substantial mitigating factors exist and if its sentencing departure is accompanied by a statement on the record of the reasons for it. The court also may sentence the defendant without regard to the mandatory minimum sentence established by paragraph (a) if the defendant is sentenced to probation and ordered to participate in a program established under section 169A.74 (pilot programs of intensive probation for repeat DWI offenders).

(d) When any portion of the sentence required by paragraph (a) is not executed, the court should impose a sentence that is proportional to the extent of the offender's prior criminal and moving traffic violation record. Any sentence required under paragraph (a) must include a mandatory sentence that is not subject to suspension or a stay of imposition or execution, and that includes incarceration for not less than 48 consecutive hours or at least 80 hours of community work service.

Subd. 2. **Third offense.** (a) The court shall sentence a person who is convicted of a violation of section 169A.20 (driving while impaired) within ten years of the first of two qualified prior impaired driving incidents to either:

- (1) a minimum of 90 days of incarceration, at least 30 days of which must be served consecutively in a local correctional facility; or
- (2) a program of intensive supervision of the type described in section 169A.74 (pilot programs of intensive probation for repeat DWI offenders), that requires the person to consecutively serve at least six days in a local correctional facility.

(b) The court may order that the person serve not more than 60 days of the minimum penalty under paragraph (a), clause (1), on home detention or in an intensive probation program described in section 169A.74.

(c) Notwithstanding section 609.135, the penalties in this subdivision must be imposed and executed.

Subd. 3. **Fourth offense.** (a) Unless the court commits the person to the custody of the commissioner of corrections as provided in section 169A.276 (mandatory penalties; felony violations), the court shall sentence a person who is convicted of a violation of section 169A.20 (driving while impaired) within ten years of the first of three qualified prior impaired driving incidents to either:

- (1) a minimum of 180 days of incarceration, at least 30 days of which must be served consecutively in a local correctional facility; or

(2) a program of intensive supervision of the type described in section 169A.74 (pilot programs of intensive probation for repeat DWI offenders) that requires the person to consecutively serve at least six days in a local correctional facility.

(b) The court may order that the person serve not more than 150 days of the minimum penalty under paragraph (a), clause (1), on home detention or in an intensive probation program described in section 169A.74. Notwithstanding section 609.135, the penalties in this subdivision must be imposed and executed.

Subd. 4. Fifth offense or more. (a) Unless the court commits the person to the custody of the commissioner of corrections as provided in section 169A.276 (mandatory penalties; felony violations), the court shall sentence a person who is convicted of a violation of section 169A.20 (driving while impaired) within ten years of the first of four or more qualified prior impaired driving incidents to either:

(1) a minimum of one year of incarceration, at least 60 days of which must be served consecutively in a local correctional facility; or

(2) a program of intensive supervision of the type described in section 169A.74 (pilot programs of intensive probation for repeat DWI offenders) that requires the person to consecutively serve at least six days in a local correctional facility.

(b) The court may order that the person serve the remainder of the minimum penalty under paragraph (a), clause (1), on intensive probation using an electronic monitoring system or, if such a system is unavailable, on home detention. Notwithstanding section 609.135, the penalties in this subdivision must be imposed and executed.

Subd. 5. Level of care recommended in chemical use assessment. Unless the court commits the person to the custody of the commissioner of corrections as provided in section 169A.276 (mandatory penalties; felony violations), in addition to other penalties required under this section, the court shall order a person to submit to the level of care recommended in the chemical use assessment conducted under section 169A.70 (alcohol safety program; chemical use assessments) if the person is convicted of violating section 169A.20 (driving while impaired) while having an alcohol concentration of 0.20 or more as measured at the time, or within two hours of the time, of the offense or if the violation occurs within ten years of one or more qualified prior impaired driving incidents.

History: *1Sp2001 c 8 art 11 s 7; 1Sp2001 c 9 art 19 s 8*

NOTE: The amendments to this section by Laws 2001, First Special Session chapter 8, article 11, section 7; and chapter 9, article 19, section 8, are effective August 1, 2002, and apply to crimes committed on or after that date. Laws 2001, First Special Session chapter 8, article 11, section 17; and chapter 9, article 19, section 17.

169A.276 MANDATORY PENALTIES; FELONY VIOLATIONS.

Subdivision 1. Mandatory prison sentence. (a) The court shall sentence a person who is convicted of a violation of section 169A.20 (driving while impaired) under the circumstances described in section 169A.24 (first-degree driving while impaired) to imprisonment for not less than three years. In addition, the court may order the person to pay a fine of not more than \$14,000.

(b) The court may stay execution of this mandatory sentence as provided in subdivision 2 (stay of mandatory sentence), but may not stay imposition or adjudication of the sentence or impose a sentence that has a duration of less than three years.

(c) An offender committed to the custody of the commissioner of corrections under this subdivision is not eligible for release as provided in section 241.26, 244.065, 244.12, or 244.17, unless the offender has successfully completed a chemical dependency treatment program while in prison.

(d) Notwithstanding the statutory maximum sentence provided in section 169A.24 (first-degree driving while impaired), when the court commits a person to the custody of the commissioner of corrections under this subdivision, it shall provide that after the person has been released from prison the commissioner shall place the person on conditional release for five years. The commissioner shall impose any conditions of release that the commissioner deems appropriate including, but not limited to, success-

ful completion of an intensive probation program as described in section 169A.74 (pilot programs of intensive probation for repeat DWI offenders). If the person fails to comply with any condition of release, the commissioner may revoke the person's conditional release and order the person to serve all or part of the remaining portion of the conditional release term in prison. The commissioner may not dismiss the person from supervision before the conditional release term expires. Except as otherwise provided in this section, conditional release is governed by provisions relating to supervised release. The failure of a court to direct the commissioner of corrections to place the person on conditional release, as required in this paragraph, does not affect the applicability of the conditional release provisions to the person.

(e) The commissioner shall require persons placed on supervised or conditional release under this subdivision to pay as much of the costs of the supervision as possible. The commissioner shall develop appropriate standards for this.

Subd. 2. Stay of mandatory sentence. The provisions of sections 169A.275 (mandatory penalties; nonfelony violations), subdivision 3 or 4, and subdivision 5, and 169A.283 (stay of execution of sentence), apply if the court stays execution of the sentence under subdivision 1 (mandatory prison sentence). In addition, the provisions of section 169A.277 (long-term monitoring) may apply.

Subd. 3. Driver's license revocation; no stay permitted. The court may not stay the execution of the driver's license revocation provisions of section 169A.54 (impaired driving convictions and adjudications; administrative penalties).

History: *1Sp2001 c 8 art 11 s 8; 1Sp2001 c 9 art 19 s 9*

NOTE: This section, as added by Laws 2001, First Special Session chapter 8, article 11, section 8; and chapter 9, article 19, section 9, is effective August 1, 2002, and applies to crimes committed on or after that date. Laws 2001, First Special Session chapter 8, article 11, section 17; and chapter 9, article 19, section 17.

169A.277 LONG-TERM MONITORING.

[For text of subd 1, see M.S.2000]

Subd. 2. Monitoring required. When the court sentences a person described in subdivision 1 to a stayed sentence and when electronic monitoring equipment is available to the court, the court shall require that the person participate in a program of electronic alcohol monitoring in addition to any other conditions of probation or jail time it imposes. The court must order the monitoring for a minimum of 30 consecutive days during each year of the person's probationary period.

[For text of subd 3, see M.S.2000]

History: *1Sp2001 c 8 art 12 s 1*

169A.28 CONSECUTIVE SENTENCES.

[For text of subd 1, see M.S.2000]

Subd. 2. Permissive consecutive sentences; multiple offenses. (a) When a person is being sentenced for a violation of a provision listed in paragraph (e), the court may sentence the person to a consecutive term of imprisonment for a violation of any other provision listed in paragraph (e), notwithstanding the fact that the offenses arose out of the same course of conduct, subject to the limitation on consecutive sentences contained in section 609.15, subdivision 2, and except as provided in paragraphs (b) and (c).

(b) When a person is being sentenced for a violation of section 171.09 (violation of condition of restricted license), 171.20 (operation after revocation, suspension, cancellation, or disqualification), 171.24 (driving without valid license), or 171.30 (violation of condition of limited license), the court may not impose a consecutive sentence for another violation of a provision in chapter 171 (drivers' licenses and training schools).

(c) When a person is being sentenced for a violation of section 169.791 (failure to provide proof of insurance) or 169.797 (failure to provide vehicle insurance), the court

may not impose a consecutive sentence for another violation of a provision of sections 169.79 to 169.7995.

(d) This subdivision does not limit the authority of the court to impose consecutive sentences for crimes arising on different dates or to impose a consecutive sentence when a person is being sentenced for a crime and is also in violation of the conditions of a stayed or otherwise deferred sentence under section 609.135 (stay of imposition or execution of sentence).

(e) This subdivision applies to misdemeanor and gross misdemeanor violations of the following if the offender has two or more prior impaired driving convictions within the past ten years:

- (1) section 169A.20, subdivision 1 (driving while impaired; impaired driving offenses);
- (2) section 169A.20, subdivision 2 (driving while impaired; test refusal offense);
- (3) section 169.791;
- (4) section 169.797;
- (5) section 171.09 (violation of condition of restricted license);
- (6) section 171.20, subdivision 2 (operation after revocation, suspension, cancellation, or disqualification);
- (7) section 171.24; and
- (8) section 171.30.

[For text of subd 3, see M.S.2000]

History: *1Sp2001 c 8 art 12 s 2*

169A.283 STAY OF EXECUTION OF SENTENCE.

Subdivision 1. **Stay authorized.** Except as otherwise provided in sections 169A.275 (mandatory penalties; nonfelony violations) and 169A.276 (mandatory penalties; felony violations), when a court sentences a person convicted of a violation of section 169A.20 (driving while impaired), the court may stay execution of the criminal sentence described in section 169A.24 (first-degree driving while impaired), 169A.25 (second-degree driving while impaired), 169A.26 (third-degree driving while impaired), or 169A.27 (fourth-degree driving while impaired) on the condition that the convicted person submit to the level of care recommended in the chemical use assessment report required under section 169A.70 (alcohol safety programs; chemical use assessments): If the court does not order a level of care in accordance with the assessment report recommendation as a condition of a stay of execution, it shall state on the record its reasons for not following the assessment report recommendation.

[For text of subs 2 and 3, see M.S.2000]

History: *1Sp2001 c 8 art 11 s 9; 1Sp2001 c 9 art 19 s 10*

NOTE: The amendments to subdivision 1 by Laws 2001, First Special Session chapter 8, article 11, section 9; and chapter 9, article 19, section 10, are effective August 1, 2002, and apply to crimes committed on or after that date. Laws 2001, First Special Session chapter 8, article 11, section 17; and chapter 9, article 19, section 17.

169A.35 OPEN BOTTLE LAW.

Subdivision 1. **Definitions.** As used in this section:

- (1) "alcoholic beverage" has the meaning given it in section 340A.101, subdivision 2;
- (2) "distilled spirits" has the meaning given it in section 340A.101, subdivision 9;
- (3) "motor vehicle" does not include motorboats in operation or off-road recreational vehicles;
- (4) "possession" means either that the person had actual possession of the bottle or receptacle or that the person consciously exercised dominion and control over the bottle or receptacle; and

(5) "3.2 percent malt liquor" has the meaning given it in section 340A.101, subdivision 19.

Subd. 1a: **Alcoholic beverage, distilled spirit, 3.2 malt liquor; determination.** For purposes of this section only, when determining whether a beverage is an alcoholic beverage, a distilled spirit, or 3.2 percent malt liquor:

(1) "alcohol by volume" means milliliters of alcohol per 100 milliliters of beverage; and

(2) "alcohol by weight" means grams of alcohol per 100 grams of beverage.

[For text of subs 2 to 6, see M.S.2000]

History: 1Sp2001 c 8 art 12 s 3,4

169A.37 LICENSE PLATE IMPOUNDMENT VIOLATION CRIMES.

Subdivision 1. **Crime described.** It is a crime for a person:

(1) to fail to comply with an impoundment order under section 169A.60 (administrative plate impoundment);

(2) to file a false statement under section 169A.60, subdivision 7, 8, or 14;

(3) to operate a self-propelled motor vehicle on a street or highway when the vehicle is subject to an impoundment order issued under section 169A.60, unless specially coded plates have been issued for the vehicle pursuant to section 169A.60, subdivision 13;

(4) to fail to notify the commissioner of the impoundment order when requesting new plates;

(5) who is subject to a plate impoundment order under section 169A.60, to drive, operate, or be in control of any motor vehicle during the impoundment period, unless the vehicle has specially coded plates issued pursuant to section 169A.60, subdivision 13, and the person is validly-licensed to drive; or

(6) who is the transferee of a motor vehicle and who has signed a sworn statement under section 169A.60, subdivision 14, to allow the previously registered owner to drive, operate, or be in control of the vehicle during the impoundment period.

[For text of subd 2, see M.S.2000]

History: 1Sp2001 c 8 art 12 s 5

169A.40 ARREST POWERS.

[For text of subs 1 and 2, see M.S.2000]

Subd. 3. **First-degree and second-degree DWI offenders; custodial arrest.** Notwithstanding rule 6.01 of the Rules of Criminal Procedure, a peace officer acting without a warrant who has decided to proceed with the prosecution of a person for violating section 169A.20 (driving while impaired), shall arrest and take the person into custody if the officer has reason to believe the violation occurred under the circumstances described in section 169A.24 (first-degree driving while impaired) or 169A.25 (second-degree driving while impaired). The person shall be detained until the person's first court appearance.

[For text of subd 4, see M.S.2000]

History: 1Sp2001 c 8 art 11 s 10; 1Sp2001 c 9 art 19 s 11

NOTE: The amendments to subdivision 3 by Laws 2001, First Special Session chapter 8, article 11, section 10; and chapter 9, article 19, section 11, are effective August 1, 2002, and apply to crimes committed on or after that date. Laws 2001, First Special Session chapter 8, article 11, section 17; and chapter 9, article 19, section 17.

169A.41 PRELIMINARY SCREENING TEST.

[For text of subd 1, see M.S.2000]

Subd. 2. **Use of test results.** The results of this preliminary screening test must be used for the purpose of deciding whether an arrest should be made and whether to

require the tests authorized in section 169A.51 (chemical tests for intoxication), but must not be used in any court action except the following:

- (1) to prove that a test was properly required of a person pursuant to section 169A.51, subdivision 1;
- (2) in a civil action arising out of the operation or use of the motor vehicle;
- (3) in an action for license reinstatement under section 171.19;
- (4) in a prosecution for a violation of section 169A.20, subdivision 2 (driving while impaired; test refusal);
- (5) in a prosecution or juvenile court proceeding concerning a violation of section 169A.33 (underage drinking and driving), or 340A.503, subdivision 1, paragraph (a), clause (2) (underage alcohol consumption);
- (6) in a prosecution under section 169A.31, (alcohol-related school or Head Start bus driving); or 171.30 (limited license); or
- (7) in a prosecution for a violation of a restriction on a driver's license under section 171.09, which provides that the license holder may not use or consume any amount of alcohol or a controlled substance.

[For text of subds 3 and 4, see M.S.2000]

History: *1Sp2001 c 8 art 12 s 6*

169A.51 CHEMICAL TESTS FOR INTOXICATION.

[For text of subds 1 to 6, see M.S.2000]

Subd. 7. Requirements for conducting tests; liability. (a) Only a physician, medical technician, emergency medical technician-paramedic, registered nurse, medical technologist, medical laboratory technician, or laboratory assistant acting at the request of a peace officer may withdraw blood for the purpose of determining the presence of alcohol, controlled substances, or hazardous substances. This limitation does not apply to the taking of a breath or urine sample.

(b) The person tested has the right to have someone of the person's own choosing administer a chemical test or tests in addition to any administered at the direction of a peace officer; provided, that the additional test sample on behalf of the person is obtained at the place where the person is in custody, after the test administered at the direction of a peace officer, and at no expense to the state. The failure or inability to obtain an additional test or tests by a person does not preclude the admission in evidence of the test taken at the direction of a peace officer unless the additional test was prevented or denied by the peace officer.

(c) The physician, medical technician, emergency medical technician-paramedic, medical technologist, medical laboratory technician, laboratory assistant, or registered nurse drawing blood at the request of a peace officer for the purpose of determining the concentration of alcohol, controlled substances, or hazardous substances is in no manner liable in any civil or criminal action except for negligence in drawing the blood. The person administering a breath test must be fully trained in the administration of breath tests pursuant to training given by the commissioner of public safety.

History: *1Sp2001 c 8 art 12 s 7*

169A.54 IMPAIRED DRIVING CONVICTIONS AND ADJUDICATIONS; ADMINISTRATIVE PENALTIES.

[For text of subds 1 to 5, see M.S.2000]

Subd. 6. Applicability of implied consent revocation. (a) Any person whose license has been revoked pursuant to section 169A.52 (license revocation for test failure or refusal) as the result of the same incident, and who does not have a qualified prior impaired driving incident, is subject to the mandatory revocation provisions of subdivision 1, clause (1) or (2); in lieu of the mandatory revocation provisions of section 169A.52.

(b) Paragraph (a) does not apply to:

(1) a person whose license has been revoked under subdivision 2 (driving while impaired by person under age 21);

(2) a person charged with violating section 169A.20 (driving while impaired) with the aggravating factor of having an alcohol concentration of 0.20 or more as measured at the time, or within two hours of the time, of the offense, and the person is convicted of that offense or any other offense described in section 169A.20 arising out of the same set of circumstances; or

(3) a person charged with violating section 169A.20 (driving while impaired) with the aggravating factor of having a child under the age of 16 in the vehicle and the child is more than 36 months younger than the offender, and the person is convicted of that offense or any other offense described in section 169A.20 arising out of the same set of circumstances.

[For text of subs 7 to 11, see M.S.2000]

History: 1Sp2001 c 8 art 12 s 8

169A.60 ADMINISTRATIVE IMPOUNDMENT OF PLATES.

Subdivision 1. **Definitions.** (a) As used in this section, the following terms have the meanings given in this subdivision.

(b) "Motor vehicle" means a self-propelled motor vehicle other than a motorboat in operation or an off-road recreational vehicle.

(c) "Plate impoundment violation" includes:

(1) a violation of section 169A.20 (driving while impaired) or 169A.52 (license revocation for test failure or refusal), or a conforming ordinance from this state or a conforming statute or ordinance from another state, that results in the revocation of a person's driver's license or driving privileges, within ten years of a qualified prior impaired driving incident;

(2) a license disqualification under section 171.165 (commercial driver's license disqualification) resulting from a violation of section 169A.52 within ten years of a qualified prior impaired driving incident;

(3) a violation of section 169A.20 or 169A.52 while having an alcohol concentration of 0.20 or more as measured at the time, or within two hours of the time, of the offense;

(4) a violation of section 169A.20 or 169A.52 while having a child under the age of 16 in the vehicle if the child is more than 36 months younger than the offender; and

(5) a violation of section 171.24 (driving without valid license) by a person whose driver's license or driving privileges have been canceled under section 171.04, subdivision 1, clause (10) (persons not eligible for driver's license, inimical to public safety).

(d) "Significant relationship" has the same meaning as given in section 609.341, subdivision 15, and includes any person with whom the actor regularly associates and communicates outside of a workplace setting.

(e) "Violator" means a person who was driving, operating, or in physical control of the motor vehicle when the plate impoundment violation occurred.

[For text of subs 2 to 12, see M.S.2000]

Subd. 13. **Special registration plates.** (a) At any time during the effective period of an impoundment order, a violator or registered owner may apply to the commissioner for new registration plates, which must bear a special series of numbers or letters so as to be readily identified by traffic law enforcement officers. The commissioner may authorize the issuance of special plates if:

(1) the violator has a qualified licensed driver whom the violator must identify;

(2) the violator or registered owner has a limited license issued under section 171.30;

(3) the registered owner is not the violator and the registered owner has a valid or limited driver's license;

(4) a member of the registered owner's household has a valid driver's license; or

(5) the violator has been reissued a valid driver's license.

(b) The commissioner may not issue new registration plates for that vehicle subject to plate impoundment for a period of at least one year from the date of the impoundment order and until the next regularly scheduled registration date following the impoundment period. In addition, if the owner is the violator, new registration plates may not be issued for the vehicle unless the person has been reissued a valid driver's license in accordance with chapter 171.

(c) A violator may not apply for new registration plates for a vehicle at any time before the person's driver's license is reinstated.

(d) The commissioner may issue the special plates on payment of a \$50 fee for each vehicle for which special plates are requested:

(e) Paragraphs (a) to (d) notwithstanding, the commissioner must issue upon request new registration plates for a vehicle for which the registration plates have been impounded if:

(1) the impoundment order is rescinded;

(2) the vehicle is transferred in compliance with subdivision 14; or

(3) the vehicle is transferred to a Minnesota automobile dealer licensed under section 168.27, a financial institution that has submitted a repossession affidavit, or a government agency.

Subd. 14. Sale of vehicle subject to impoundment order. (a) A registered owner may not sell or transfer a motor vehicle during the time its registration plates have been ordered impounded or during the time its registration plates bear a special series number, unless:

(1) the sale is for a valid consideration;

(2) the transferee and the registered owner:

(i) are not, and have not been, related by blood, adoption, or marriage;

(ii) do not reside in the same household; and

(iii) do not have, and have not had at any time, a significant relationship with one another;

(3) the transferee signs an acceptable sworn statement with the commissioner attesting that:

(i) the transferee and the violator do not have, and have not had at any time, a significant relationship with one another;

(ii) the transferee understands that the vehicle is subject to an impoundment order; and

(iii) it is a crime under section 169A.37 to file a false statement under this section or to allow the previously registered owner to drive, operate, or be in control of the vehicle during the impoundment period; and

(4) all elements of section 168A.10 (transfer of interest by owner) are satisfied.

(b) If the conditions of paragraph (a) are satisfied, the registrar may transfer the title to the new owner upon proper application and issue new registration plates for the vehicle.

[For text of subs 15 to 18, see M.S.2000]

History: *ISp2001 c 8 art 12 s 9-11*

169A.63 VEHICLE FORFEITURE.

Subdivision 1. Definitions. (a) As used in this section, the following terms have the meanings given them.

(b) "Appropriate agency" means a law enforcement agency that has the authority to make an arrest for a violation of a designated offense or to require a test under section 169A.51 (chemical tests for intoxication).

(c) "Designated license revocation" includes a license revocation under section 169A.52 (license revocation for test failure or refusal) or a license disqualification under section 171.165 (commercial driver's license disqualification) resulting from a violation of section 169A.52; within ten years of the first of two or more qualified prior impaired driving incidents.

(d) "Designated offense" includes:

(1) a violation of section 169A.20 (driving while impaired) under the circumstances described in section 169A.24 (first-degree driving while impaired) or 169A.25 (second-degree driving while impaired); or

(2) a violation of section 169A.20 or an ordinance in conformity with it:

(i) by a person whose driver's license or driving privileges have been canceled as inimical to public safety under section 171.04, subdivision 1, clause (10); or

(ii) by a person who is subject to a restriction on the person's driver's license under section 171.09 (commissioner's license restrictions), which provides that the person may not use or consume any amount of alcohol or a controlled substance.

(e) "Motor vehicle" and "vehicle" do not include a vehicle which is stolen or taken in violation of the law.

(f) "Owner" means the registered owner of the motor vehicle according to records of the department of public safety and includes a lessee of a motor vehicle if the lease agreement has a term of 180 days or more.

(g) "Prosecuting authority" means the attorney in the jurisdiction in which the designated offense occurred who is responsible for prosecuting violations of a designated offense or a designee. If a state agency initiated the forfeiture, and the attorney responsible for prosecuting the designated offense declines to pursue forfeiture, the attorney general's office or its designee may initiate forfeiture under this section.

[For text of subs 2 to 6, see M.S.2000]

Subd. 7. Limitations on vehicle forfeiture. (a) A vehicle is subject to forfeiture under this section only if:

(1) the driver is convicted of the designated offense upon which the forfeiture is based;

(2) the driver fails to appear with respect to the designated offense charge in violation of section 609.49 (release; failure to appear); or

(3) the driver's conduct results in a designated license revocation and the driver either fails to seek administrative or judicial review of the revocation in a timely manner as required by section 169A.53 (administrative and judicial review of license revocation), or the license revocation is sustained under section 169A.53.

(b) A vehicle encumbered by a bona fide security interest, or subject to a lease that has a term of 180 days or more, is subject to the interest of the secured party or lessor unless the party or lessor had knowledge of or consented to the act upon which the forfeiture is based. However, when the proceeds of the sale of a seized vehicle do not equal or exceed the outstanding loan balance, the appropriate agency shall remit all proceeds of the sale to the secured party. If the sale of the vehicle is conducted in a commercially reasonable manner consistent with the provisions of section 336.9-610, the agency is not liable to the secured party for any amount owed on the loan in excess of the sale proceeds if the secured party received notification of the time and place of the sale at least three days prior to the sale.

(c) Notwithstanding paragraphs (b) and (d), the secured party's, lessor's, or owner's interest in a vehicle is not subject to forfeiture based solely on the secured party's, lessor's, or owner's knowledge of the act or omission upon which the forfeiture is based if the secured party, lessor, or owner took reasonable steps to terminate use of the vehicle by the offender.

(d) A motor vehicle is subject to forfeiture under this section only if its owner knew or should have known of the unlawful use or intended use.

(e) A vehicle subject to a security interest, based upon a loan or other financing arranged by a financial institution, is subject to the interest of the financial institution.

[For text of subds 8 and 9, see M.S.2000]

Subd. 10. **Disposition of forfeited vehicle.** (a) If the vehicle is administratively forfeited under subdivision 8, or if the court finds under subdivision 9 that the vehicle is subject to forfeiture under subdivisions 6 and 7, the appropriate agency shall:

(1) sell the vehicle and distribute the proceeds under paragraph (b); or

(2) keep the vehicle for official use. If the agency keeps a forfeited motor vehicle for official use, it shall make reasonable efforts to ensure that the motor vehicle is available for use by the agency's officers who participate in the drug abuse resistance education program.

(b) The proceeds from the sale of forfeited vehicles, after payment of seizure, storage, forfeiture, and sale expenses, and satisfaction of valid liens against the property, must be distributed as follows:

(1) 70 percent of the proceeds must be forwarded to the appropriate agency for deposit as a supplement to the state or local agency's operating fund or similar fund for use in DWI-related enforcement, training, and education; and

(2) 30 percent of the money or proceeds must be forwarded to the prosecuting authority that handled the forfeiture for deposit as a supplement to its operating fund or similar fund for prosecutorial purposes.

Subd. 11. **Sale of forfeited vehicle by secured party.** (a) A financial institution with a valid security interest in or a valid lease covering a forfeited vehicle may choose to dispose of the vehicle under this subdivision, in lieu of the appropriate agency disposing of the vehicle under subdivision 9. A financial institution wishing to dispose of a vehicle under this subdivision shall notify the appropriate agency of its intent, in writing, within 30 days after receiving notice of the seizure and forfeiture. The appropriate agency shall release the vehicle to the financial institution or its agent after the financial institution presents proof of its valid security agreement or of its lease agreement and the financial institution agrees not to sell the vehicle to a member of the violator's household, unless the violator is not convicted of the offense on which the forfeiture is based. The financial institution shall dispose of the vehicle in a commercially reasonable manner as defined in section 336.9-610.

(b) After disposing of the forfeited vehicle, the financial institution shall reimburse the appropriate agency for its seizure, storage, and forfeiture costs. The financial institution may then apply the proceeds of the sale to its storage costs, to its sale expenses, and to satisfy the lien or the lease on the vehicle. If any proceeds remain, the financial institution shall forward the proceeds to the state treasury, which shall credit the appropriate fund as specified in subdivision 9.

History: 2001 c 195 art 2 s 8,9; 1Sp2001 c 8 art 11 s 11; art 12 s 12,13; 1Sp2001 c 9 art 19 s 12

NOTE: The amendments to subdivision 1 by Laws 2001, First Special Session chapter 8, article 11, section 11; and chapter 9, article 19, section 12, are effective August 1, 2002, and apply to crimes committed on or after that date. Laws 2001, First Special Session chapter 8, article 11, section 17; and chapter 9, article 19, section 17.