

CHAPTER 169A

DRIVING WHILE IMPAIRED

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169A.03 DEFINITIONS.

[For text of subs 1 to 5, see M.S.2002]

Subd. 5a. **Control analysis.** "Control analysis" means a procedure involving a solution that yields a predictable alcohol concentration reading.

[For text of subs 6 to 10, see M.S.2002]

Subd. 11. **Infrared or other approved breath-testing instrument.** "Infrared or other approved breath-testing instrument" means a breath-testing instrument that employs infrared or other technology and has been approved by the commissioner of public safety for determining alcohol concentration.

[For text of subs 12 to 20, see M.S.2002]

Subd. 21. **Prior impaired driving-related loss of license.** (a) "Prior impaired driving-related loss of license" includes a driver's license suspension, revocation, cancellation, denial, or disqualification under:

(1) section 169A.31 (alcohol-related school bus or Head Start bus driving); 169A.50 to 169A.53 (implied consent law); 169A.54 (impaired driving convictions and adjudications; administrative penalties); 171.04 (persons not eligible for drivers' licenses); 171.14 (cancellation); 171.16 (court may recommend suspension); 171.165 (commercial driver's license, disqualification); 171.17 (revocation); or 171.18 (suspension); because of an alcohol-related incident;

(2) section 609.21 (criminal vehicular homicide and injury, substance-related offenses), subdivision 1, clauses (2) to (6); subdivision 2, clauses (2) to (6); subdivision 2a, clauses (2) to (6); subdivision 2b, clauses (2) to (6); subdivision 3, clauses (2) to (6); or subdivision 4, clauses (2) to (6);

(3) Minnesota Statutes 1998, section 169.121 (driver under influence of alcohol or controlled substance); 169.1211 (alcohol-related driving by commercial vehicle drivers); or 169.123 (chemical tests for intoxication); or

(4) an ordinance from this state, or a statute or ordinance from another state, in conformity with any provision listed in clause (1), (2), or (3).

(b) "Prior impaired driving-related loss of license" also includes the revocation of snowmobile or all-terrain vehicle operating privileges under section 84.911 (chemical testing), or motorboat operating privileges under section 86B.335 (testing for alcohol and controlled substances), for violations that occurred on or after August 1, 1994; the revocation of snowmobile or all-terrain vehicle operating privileges under section 84.91 (operation of snowmobiles and all-terrain vehicles by persons under the influence of alcohol or controlled substances); or the revocation of motorboat operating privileges under section 86B.331 (operation while using alcohol or drugs or with a physical or mental disability).

(c) "Prior impaired driving-related loss of license" does not include any license action stemming solely from a violation of section 169A.33 (underage drinking and driving), 171.09 (conditions of a restricted license), or 340A.503 (persons under the age of 21, illegal acts).

[For text of subds 22 to 25, see M.S.2002]

History: 2003 c 96 s 1; 1Sp2003 c 2 art 9 s 1,2

169A.20 DRIVING WHILE IMPAIRED.

[For text of subd 1, see M.S.2002]

Subd. 2. **Refusal to submit to chemical test crime.** It is a crime for any person to refuse to submit to a chemical test of the person's blood, breath, or urine under section 169A.51 (chemical tests for intoxication), or 169A.52 (test refusal or failure; revocation of license).

[For text of subd 3, see M.S.2002]

History: 1Sp2003 c 2 art 9 s 3

169A.25 SECOND-DEGREE DRIVING WHILE IMPAIRED.

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

(b) A person who violates section 169A.20, subdivision 2 (refusal to submit to chemical test crime), is guilty of second-degree driving while impaired if one aggravating factor was present when the violation was committed.

[For text of subd 2, see M.S.2002]

History: 1Sp2003 c 2 art 9 s 4

169A.26 THIRD-DEGREE DRIVING WHILE IMPAIRED.

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

(b) A person who violates section 169A.20, subdivision 2 (refusal to submit to chemical test crime), is guilty of third-degree driving while impaired.

[For text of subd 2, see M.S.2002]

History: 1Sp2003 c 2 art 9 s 5

169A.27 FOURTH-DEGREE DRIVING WHILE IMPAIRED.

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

[For text of subd 2, see M.S.2002]

History: 1Sp2003 c 2 art 9 s 6

169A.275 MANDATORY PENALTIES; NONFELONY VIOLATIONS.

[For text of subds 1 and 2, see M.S.2002]

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;

(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; or

(3) a program of staggered sentencing involving a minimum of 180 days of incarceration, at least 30 days of which must be served consecutively 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;

(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; or

(3) a program of staggered sentencing involving a minimum of one year of incarceration, at least 60 days of which must be served consecutively 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.

[For text of subd 5, see M.S.2002]

Subd. 6. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Staggered sentencing" means a sentencing procedure in which the court sentences a person convicted of a gross misdemeanor or felony violation of section 169A.20 (driving while impaired) to an executed sentence of incarceration in a local correctional facility, to be served in equal segments in three or more consecutive years. Before reporting for any subsequent segment of incarceration after the first segment, the offender shall be regularly involved in a structured sobriety group and may bring a motion before the court requesting to have that segment of incarceration stayed. The motion must be brought before the same judge who initially pronounced the sentence. Before bringing the motion, the offender shall participate for 30 days in a remote electronic alcohol-monitoring program under the direction of the person's probation agent. It is within the court's discretion to stay the second or subsequent segment of remote electronic alcohol monitoring or incarceration that has previously been ordered. The court shall consider any alcohol-monitoring results and the recommendation of the probation agent, together with any other factors deemed relevant by the court, in deciding whether to modify the sentence by ordering a stay of the next following segment of remote electronic alcohol monitoring or incarceration that the court had initially ordered to be executed.

(c) When the court stays a segment of incarceration that it has previously ordered to be executed, that portion of the sentence must be added to the total number of days the defendant is subject to serving in custody if the person subsequently violates any of the conditions of that stay of execution.

(d) A structured sobriety group is an organization that has regular meetings focusing on sobriety and includes, but is not limited to, Alcoholics Anonymous.

History: 1Sp2003 c 2 art 9 s 7-9

169A.40 ARREST POWERS.

[For text of subs 1 and 2, see M.S.2002]

Subd. 3. **Certain 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, and the person must be detained until the person's first court appearance, if the officer has reason to believe that the violation occurred:

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

(2) under the circumstances described in section 169A.26 (third-degree driving while impaired) if the person is under the age of 19;

(3) in the presence of an aggravating factor described in section 169A.03, subdivision 3, clause (2) or (3); or

(4) while the person's driver's license or driving privileges have been canceled under section 171.04, subdivision 1, clause (10) (persons not eligible for drivers' licenses, inimical to public safety).

[For text of subd 4, see M.S.2002]

History: 1Sp2003 c 2 art 9 s 10

169A.44 CONDITIONAL RELEASE.

Subdivision 1. **Nonfelony violations.** (a) This subdivision applies to a person charged with a nonfelony violation of section 169A.20 (driving while impaired) under circumstances described in section 169A.40, subdivision 3 (certain DWI offenders; custodial arrest).

(b) Unless maximum bail is imposed under section 629.471, a person described in paragraph (a) may be released from detention only if the person agrees to:

(1) abstain from alcohol; and

(2) submit to a program of electronic alcohol monitoring, involving at least daily measurements of the person's alcohol concentration, pending resolution of the charge.

Clause (2) applies only when electronic alcohol-monitoring equipment is available to the court. The court shall require partial or total reimbursement from the person for the cost of the electronic alcohol-monitoring, to the extent the person is able to pay.

Subd. 2. **Felony violations.** (a) A person charged with violating section 169A.20 within ten years of the first of three or more qualified prior impaired driving incidents may be released from detention only if the following conditions are imposed:

(1) the conditions described in subdivision 1, paragraph (b), if applicable;

(2) the impoundment of the registration plates of the vehicle used to commit the violation, unless already impounded;

(3) if the vehicle used to commit the violation was an off-road recreational vehicle or a motorboat, the impoundment of the off-road recreational vehicle or motorboat;

(4) a requirement that the person report weekly to a probation agent;

(5) a requirement that the person abstain from consumption of alcohol and controlled substances and submit to random alcohol tests or urine analyses at least weekly; and

(6) a requirement that, if convicted, the person reimburse the court or county for the total cost of these services; and

(7) any other conditions of release ordered by the court.

(b) In addition to setting forth conditions of release under paragraph (a), if required by court rule, the court shall also fix the amount of money bail without other conditions upon which the defendant may obtain release.

History: 1Sp2003 c 2 art 9 s 11

169A.45 EVIDENCE.

[For text of subs 1 to 3, see M.S.2002]

Subd. 4. **Other competent evidence admissible.** The preceding provisions do not limit the introduction of any other competent evidence bearing upon the question of whether the person violated section 169A.20 (driving while impaired) or 169A.31 (alcohol-related school bus or Head Start bus driving), including tests obtained more than two hours after the alleged violation and results obtained from partial tests on an infrared or other approved breath-testing instrument. A result from a partial test is the measurement obtained by analyzing one adequate breath sample, as described in section 169A.51, subdivision 5, paragraph (b) (breath test using infrared or other approved breath-testing instrument).

History: 2003 c 96 s 2

169A.51 CHEMICAL TESTS FOR INTOXICATION.

[For text of subs 1 to 4, see M.S.2002]

Subd. 5. **Breath test using approved breath-testing instrument.** (a) In the case of a breath test administered using an infrared or other approved breath-testing instrument, the test must consist of analyses in the following sequence: one adequate breath-sample analysis, one control analysis, and a second, adequate breath-sample analysis.

(b) In the case of a test administered using an infrared or other approved breath-testing instrument, a sample is adequate if the instrument analyzes the sample and does not indicate the sample is deficient.

(c) For purposes of section 169A.52 (revocation of license for test failure or refusal), when a test is administered using an infrared or other approved breath-testing instrument, failure of a person to provide two separate, adequate breath samples in the proper sequence constitutes a refusal.

(d) For purposes of section 169A.52 (revocation of license for test failure or refusal), when a test is administered using an infrared or other approved breath-testing instrument, a breath test consisting of two separate, adequate breath samples within 0.02 alcohol concentration is acceptable. A breath test consisting of two separate, adequate breath samples failing to meet this criterion is deficient.

(e) If the first breath test is deficient, as defined by paragraph (d), a second breath test must be administered.

(f) Two deficient breath tests, as defined by paragraph (d), constitute a refusal.

[For text of subs 6 and 7, see M.S.2002]

History: 2003 c 96 s 3; 1Sp2003 c 2 art 9 s 12

169A.53 ADMINISTRATIVE AND JUDICIAL REVIEW OF LICENSE REVOCATION.

[For text of subs 1 and 2, see M.S.2002]

Subd. 3. **Judicial hearing; issues, order, appeal.** (a) A judicial review hearing under this section must be before a district judge in any county in the judicial district where the alleged offense occurred. The hearing is to the court and may be conducted at the same time and in the same manner as hearings upon pretrial motions in the criminal prosecution under section 169A.20 (driving while impaired), if any. The hearing must be recorded. The commissioner shall appear and be represented by the attorney general or through the prosecuting authority for the jurisdiction involved. The judicial district administrator shall establish procedures to ensure efficient compliance

with this subdivision. To accomplish this, the administrator may, whenever possible, consolidate and transfer review hearings among the locations within the judicial district where terms of district court are held.

- (b) The scope of the hearing is limited to the issues in clauses (1) to (10):
- (1) Did the peace officer have probable cause to believe the person was driving, operating, or in physical control of a motor vehicle or commercial motor vehicle in violation of section 169A.20 (driving while impaired)?
 - (2) Was the person lawfully placed under arrest for violation of section 169A.20?
 - (3) Was the person involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death?
 - (4) Did the person refuse to take a screening test provided for by section 169A.41 (preliminary screening test)?
 - (5) If the screening test was administered, did the test indicate an alcohol concentration of 0.10 or more?
 - (6) At the time of the request for the test, did the peace officer inform the person of the person's rights and the consequences of taking or refusing the test as required by section 169A.51, subdivision 2?
 - (7) Did the person refuse to permit the test?
 - (8) If a test was taken by a person driving, operating, or in physical control of a motor vehicle, did the test results indicate at the time of testing:
 - (i) an alcohol concentration of 0.10 or more; or
 - (ii) the presence of a controlled substance listed in schedule I or II, other than marijuana or tetrahydrocannabinols?
 - (9) If a test was taken by a person driving, operating, or in physical control of a commercial motor vehicle, did the test results indicate an alcohol concentration of 0.04 or more at the time of testing?
 - (10) Was the testing method used valid and reliable and were the test results accurately evaluated?

(c) It is an affirmative defense for the petitioner to prove that, at the time of the refusal, the petitioner's refusal to permit the test was based upon reasonable grounds.

(d) Certified or otherwise authenticated copies of laboratory or medical personnel reports, records, documents, licenses, and certificates are admissible as substantive evidence.

(e) The court shall order that the revocation or disqualification be either rescinded or sustained and forward the order to the commissioner. If the revocation or disqualification is sustained, the court shall also forward the person's driver's license or permit to the commissioner for further action by the commissioner if the license or permit is not already in the commissioner's possession.

(f) Any party aggrieved by the decision of the reviewing court may appeal the decision as provided in the Rules of Appellate Procedure.

(g) The civil hearing under this section shall not give rise to an estoppel on any issues arising from the same set of circumstances in any criminal prosecution.

History: 1Sp2003 c:2 art 9 s 13

169A.54 DWI CONVICTIONS, ADJUDICATIONS; ADMINISTRATIVE PENALTIES.

[For text of subds 1 to 5, see M.S.2002]

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); or

(2) a person whose driver's license has been revoked for, or who is charged with, a violation of section 169A.20 (driving while impaired) with an aggravating factor described in section 169A.03, subdivision 3, clause (2) or (3).

[For text of subds 7 to 11, see M.S.2002]

History: 1Sp2003 c 2 art 9 s 14

169A.60 ADMINISTRATIVE IMPOUNDMENT OF PLATES.

[For text of subds 1 to 7, see M.S.2002]

Subd. 8. **Reissuance of registration plates.** (a) The commissioner shall rescind the impoundment order of a person subject to an order under this section, other than the violator, if:

(1) the violator had a valid driver's license on the date of the plate impoundment violation and the person files with the commissioner an acceptable sworn statement containing the following information:

(i) that the person is the registered owner of the vehicle from which the plates have been impounded under this section;

(ii) that the person is the current owner and possessor of the vehicle used in the violation;

(iii) the date on which the violator obtained the vehicle from the registered owner;

(iv) the residence addresses of the registered owner and the violator on the date the violator obtained the vehicle from the registered owner;

(v) that the person was not a passenger in the vehicle at the time of the plate impoundment violation; and

(vi) that the person knows that the violator may not drive, operate, or be in physical control of a vehicle without a valid driver's license; or

(2) the violator did not have a valid driver's license on the date of the plate impoundment violation and the person made a report to law enforcement before the violation stating that the vehicle had been taken from the person's possession or was being used without permission.

(b) A person who has failed to make a report as provided in paragraph (a), clause (2), may be issued special registration plates under subdivision 13 for a period of one year from the effective date of the impoundment order. Following this period, the person may apply for regular registration plates.

(c) If the order is rescinded, the owner shall receive new registration plates at no cost, if the plates were seized and destroyed.

[For text of subds 9 to 12, see M.S.2002]

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. 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.

[For text of subs. 14 to 18, see M.S.2002]

History: 1Sp2003 c. 2 art 9 s 15,16

169A.75 IMPAIRED DRIVING-RELATED RULES.

(a) The commissioner may adopt rules to carry out the provisions of this chapter. The rules may include the format for notice of intention to revoke that describe clearly the right to a hearing, the procedure for requesting a hearing, and the consequences of failure to request a hearing; the format for revocation and notice of reinstatement of driving privileges as provided in section 169A.55; and the format for temporary licenses.

(b) Rules adopted pursuant to this section are subject to the procedures in chapter 14 (Administrative Procedure Act).

(c) Additionally, the commissioner may adopt rules indicating the commissioner's approval of instruments for preliminary screening or chemical tests for intoxication under sections 169A.41 and 169A.51 using the procedures specified in section 14.389 (expedited process).

History: 2003 c 96 s 4

169A.78 AIDING AND ABETTING.

Every person who commits or attempts to commit, conspires to commit, or aids or abets in the commission of any act declared in this chapter to be an offense, whether individually or in connection with one or more other persons or as principal, agent, or accessory, is guilty of that offense, and every person who falsely, fraudulently, forcibly, or willfully induces, causes, coerces, requires, permits, or directs another to violate any provision of this chapter is likewise guilty of that offense.

History: 1Sp2003 c 2 art 9 s 17