

STATE:	CALIFORNIA
General Reference:	West's Annotated California Codes
<u>Basis for a DWI Charge:</u>	See Bicycle Riders and Motorized Scooter Operators below.
Standard DWI Offense:	Under the influence of an alcoholic beverage Vehicle Code §§23152 and 23153
Illegal Per Se Law (BAC/BrAC):	≥ .08 ^{105 106 107} Vehicle Code §§23152(b) and 23153(b); ≥ .01 for persons under 21 §23136
Presumption (BAC/BrAC):	≥ .08 Vehicle Code §23610(a)(3)
Types of Drugs/Alcohol and Drugs:	Under the influence of (1) Any Drug or (2) a Combination of Alcohol and Any Drug ¹⁰⁸ Vehicle Code §§23152 and 23153
<u>Chemical Breath Tests for Alcohol Concentration:</u>	
Preliminary Breath Test Law:	Yes Vehicle Code §23612(h) ¹⁰⁹ <u>Persons under 21 years old</u> who have been detained for operating a motor vehicle with a blood alcohol concentration ≥.01. Vehicle Code §§13388 and 23136(c)
Implied Consent Law: Arrest Required (Yes/No):	Yes Vehicle Code §23612; detention with reasonable cause for persons under 21 Vehicle Code §23136(c)
Implied Consent Law Applies to Drugs (Yes/No): Refusal to Submit to Chemical Test Admitted into Evidence:	Yes Vehicle Code §23612(a)(1) Yes (Criminal and Civil Cases) Vehicle Code §23612(a)(4)
Other Information:	A person who has been arrested for a DWI offense may be compelled to submit to a blood test for either alcohol concentration or the presence of drugs. <i>Mercer v. Department of Motor Vehicles</i> , 809 P.2d 404 (Cal. 1991); <i>People v. Sugarman</i> 116 Cal Reporter 2d 689 (Cal. App. 2002)

¹⁰⁵ **Persons Under 21 Years Old.** See Juvenile Offenses Involving Alcohol and admin. licensing actions.

¹⁰⁶ “Percent by weight” of alcohol in the blood which is defined as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. Vehicle Code §§23152(b) The provision of the vehicle code related to DWI injury offenses, Vehicle Code §23153, only refers alcohol concentration in terms of “percent by weight.”

¹⁰⁷ This State’s illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration of .08 or more. *People v. Bransford*, 884 P.2d 70 (Cal. 1994)

¹⁰⁸ It is illegal to be under the influence of certain “controlled substances” irrespective of whether the offender was operating a motor vehicle. Health and Safety Code §11550

¹⁰⁹ A PBT may be conducted without legislative authority. A.G. Opinion 88-1102, Oct. 26, 1989

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

Blood:
Urine:

Yes Vehicle Code §23612
Yes (Limited)¹¹⁰ Vehicle Code §23612

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea-Bargaining Statute (Yes/No):

No
Yes Plea bargaining is prohibited in serious felony and DWI cases unless (1) there is insufficient evidence of the offense, (2) testimony of a material witness cannot be obtained, or (3) the reduction or dismissal of charges would not result in substantial change in sentence. Penal Code §1192.7 and *People v. Arauz*, 7 Cal.Rptr.2d 145 (Cal. App. 2 Dist. 1992) In addition, a criminal charge cannot be dismissed without the courts approval. Penal Code §1385. Under Vehicle Code §23635, the court must give the reasons a DWI charge was reduced to a lesser offense, changed to reckless driving, or was dismissed.

Pre-Sentencing Investigation Law (PSI) (Yes/No):

Yes¹¹¹ (Mand for subsequent offs) Vehicle. Code §§23646 se seq. and 23655

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail):
Administrative Licensing Action (Susp/Rev):

None

Persons Under 21 Years Old. Refusal to submit to a PBT where there has been a lawful detention and where there is reasonable cause to believe that the person was operating a motor vehicle with a blood alcohol concentration $\geq .01$. First Refusal – Suspension 1 year (mand); second Refusal¹¹² (within 7 years) – **Revocation 2 years** (mand); third and subsequent Refusal¹¹³ – **Revocation 3 years** (mand) Veh. Code §§13353.1(a), 13353.8, 13388 and 23136(c)

Other:

None

Refusal to Take Implied Consent Chemical Test:
Criminal Sanction (Fine/Jail):

No

¹¹⁰ Applies only to person who has been arrested for driving under the influence of drugs.

Bicycle Riders and Motor Scooter Operators. Bicycle riders and motor scooter operators are subject to the provisions of the drunk driving laws. Vehicle Code §§21200(a) and 21221 Nevertheless, there are separate provisions that make it illegal either to ride a bicycle or to operate a motor scooter on a highway while under the influence of either alcohol or drugs. A person who violates these provisions is subject to a fine of not more than \$250. Vehicle Code §§21200.5 and 21221.5 In addition, a bicycle rider ≥ 13 but < 21 years old who violates Vehicle Code §21200.5 is subject to license suspension under Vehicle Code §§13202.5 and 21200.5

¹¹¹ Each county must develop a PSI alcohol assessment program Vehicle Code §23646 et seq.

¹¹² Or a refusal where within 7 years of a DWI/Vehicle Homicide conviction, refusal to submit to a test under the implied consent law, or a prior admin. per se license suspension of any type.

¹¹³ Or a refusal where within 7 years a person has two or more separate DWI/Vehicle Homicide convictions, refusals to submit to a test under the implied consent law, or prior admin. per se license suspensions of any type.

Administrative Licensing Action
(Susp/Rev):

First Refusal – **Suspension – 1 year** (mand); second Refusal (within 7 years) – **Revocation – 2 years**¹¹⁴ (mand); third Refusal (within 7 years) **Revocation-3 years**¹¹⁵ (mand) These sanctions also apply to persons under 21 years old, who are arrested for a violation of Vehicle Code §23140 (driving with a BAC ≥.05) and who refuse to submit to a test under the implied consent law. Vehicle Code §§13353, 13353.4(a) and 23612

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Non-Injury DWI Offenses are misdemeanors. Vehicle Code §§23152 and 40000.15

Citations: Sanctions for violating the drunk driving laws are codified under §23536 et seq.

Imprisonment/Fine:

Non-Injury DWI Offense (with no previous DWI offs¹¹⁶ -**96 hours** (at least 48 hrs shall be continuous) **to 6 months, \$390 to \$1,000**

Non-Injury DWI Offense (with one previous DWI offense within 7 years) – **90 days to 1 year, \$390 to \$1,000**

Non-Injury DWI Offense (with two previous DWI offenses within 7 years) – **120 days to 1 year, \$390 to \$1,000**

Non-Injury DWI Offense (with three previous DWI offenses within 7 years) – **180 days to 1 year**¹¹⁷, **\$390 to \$1,000**

Injury Related DWI Offense (with no previous DWI offenses) – **90 days to 1 year, \$390 to \$1,000**

Injury Related DWI Offense¹¹⁸ (with one previous DWI offense within 7 years) – **120 days to 1 year, \$390 to \$5,000;**

¹¹⁴ Or within 7 years, a person has (1) been previously convicted of a DWI/Vehicle Homicide offense or (2) had his/her license previously suspended/revoked for an admin. per se violation as of the date of refusal.

¹¹⁵ Or within 7 years, a person has (1) been convicted of two or more DWI/Vehicle Homicide offenses or (2) had his/her license suspended/revoked two or more times for an admin. per se violation as of the date of refusal. Priors include vehicular homicide convictions in any other state, district or territory. §13353(a)(3)(D)

¹¹⁶ A previous offense includes Vehicle Code §§23152 and 23153 (non-injury or injury DWI offs). A guilty or nolo contendere plea to reckless driving (Vehicle Code §23103), instead of a DWI charge, also considered a previous DWI offense. Vehicle Code §23103.5(c) An out-of-state conviction, of what would amount to vehicular manslaughter in Calif., considered as a prior conviction CA51852 Vehicle §23_ also Vehicle. Code §13353(a)(3)(D) including Juvenile findings. Vehicle Code §23521

¹¹⁷ Or 16 months, 2 or 3 years in the State prison. See also Penal Code §18.

¹¹⁸ If more than one individual has been injured, an enhanced prison term of one year is added for each victim. The maximum number of such enhancements is three. Vehicle Code §23558

Injury Related DWI Offense¹¹⁹ (with two or more previous DWI offenses within 7 years) – State prison **2, 3 or 4 years, \$1,015 to \$5,000** Vehicle Code §§23536 *et seq.* And, if there has been a DWI offense with Great Bodily Injury where there have been 4 or more previous DWI offenses within 7 years, an **additional consecutive** sentence of **3 years** in the State prison. Vehicle Code §23566(c) Non-Injury DWI offense (with no previous DWI offenses) – **None**¹²⁰ Non-Injury DWI offense (with one previous DWI offense within 7 years) – **96 hours (w/2 continuous periods of 48 hrs)**¹²¹

Mandatory Minimum Term:

¹¹⁹ Also includes DWI offenses where there has been great bodily injury and there were 2 or more previous DWI offenses (injury/non-injury) within 7 years. Vehicle Code §23566(b)

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. *People v. Superior Court (Moore)*, 58 Cal.Rptr.2d 205 (Cal. App. 1 Dist. 1996)

Prior Drunk Driving Felony Offenses. A person (1) who has been convicted either of a drunk driving offense (injury or non-injury offense) with a prior conviction within 10 years either for a felony drunk driving offense (injury or non-injury) or for a felony vehicle manslaughter offense related to drunk driving with gross negligence or (2) who has been convicted of a drunk driving offense (injury or non-injury offense) with a prior conviction either for a “gross vehicular manslaughter while intoxicated” offense or for a felony vehicle manslaughter offense related to drunk driving without gross negligence is subject to the following sanctions: (1) Incarceration in either a county jail or State prison for not more than 1 year (or incarceration in the county jail from 180 days to 1 year if probation is granted) (either 48 con hours or 10 days of community service are mandatory); (2) a fine of not less than \$390 nor more than \$1,000; and, (3), unless a longer period would otherwise apply, license revocation for 4 years (24 months mandatory with restricted driving after this period provided the offender participates in either a 18-or 30-month alcohol rehabilitation program). Vehicle Code §§13352(a)(7), 23550.5, 23552, 23580 and 23600.

Felony/Misdemeanor. Generally, a non-injury drunk offense under Vehicle Code §23152 *et seq.* is classified as a misdemeanor. Vehicle Code §40000.15 However, a fourth or subsequent non-injury drunk driving offense is a felony if the offender is sentenced to incarceration in the State prison. Penal Code §17, Vehicle Code §§23550 and *People v. Coronado*, 906 P.2d 1232 (Cal. 1995)

¹²⁰ **Child Endangerment.** For non-injury offenses, where a minor under 14 years old was a passenger, the following mandatory jail sanctions are imposed: first offense – 48 continuous hours; second offense – 10 days; third offense – 30 days; fourth offense – 90 days. These sanctions are not imposed if the driver has been convicted of violating Penal Code §273a that concerns endangering the life or health of a child. Vehicle Code §23572

¹²¹ The legislature has authorized a pilot program in Sacramento County providing for the impoundment of a person's vehicle for a DUI offense that is undertaken in combination with an intervention and a referral of the person to a driving-under-the-influence program, as specified, if the person has one or more prior DUI convictions within the past 10 years. § 22651.10. But the program will be implemented only if funds from private or federal sources are available to fund the program and only if the Board of Supervisors of Sacramento County enacts an ordinance or resolution authorizing the implementation of the pilot program in the county.

Special Note I: A person convicted of a DWI injury-related offense in which more than one individual has been injured shall receive an enhanced prison term of one year for each additional injured individual. The maximum number of one-year enhancements which may be imposed is three. Veh. Code §23558

II: A person is subject to a mandatory 60 consecutive days of imprisonment if they operate a vehicle under the following three conditions: (1) In a reckless manner; (2) while DWI; and, (3) while driving 30 or more MPH above the posted speed limit on a freeway or 20 or more MPH above the posted speed limit on any other highway or street. Vehicle Code §23582

III: The Department shall grant a driver's license restriction instead of suspension to a person who (1) has been convicted of a second violation of a DUI provision that occurred on or before July 1, 1999; (2) was granted probation under a specified provision for that conviction; (3) is no longer subject to that probation; (4) has not completed the licensed driving-under-the-influence program requirements in existing law for reinstatement of the driving privilege; and (5) has no violations in the driving record that would preclude issuance of a restricted driver's license. Vehicle Code § 13352.5

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Non-Injury DWI offense (with two previous DWI offenses within 7 years) – **30 days** Non-Injury DWI offense (with three or more previous DWI offenses within 7 years) – **180 days**

Injury related DWI offense(with no previous DWI offenses) – **5 days**

Injury related DWI offense (with one previous DWI offense within 7 years) – **30 days**

Injury related DWI offense (with two or more previous DWI offenses within 7 years) – **30 days**

See Special Note below and **Home Detention.**

Mandatory Min. Fine (\$):

Non-Injury DWI offense (with no previous DWI offenses) – **\$390**

Non-Injury DWI offense (with one previous DWI offense within 7 years) – **\$390**

Non-Injury DWI offense (with two previous DWI offenses within 7 years) – **\$390**

Non-Injury DWI offense (with three or more previous DWI offenses within 7 years) – **\$390**

Injury related DWI offense (with no previous DWI offenses) – **\$390**

Injury related DWI offense (with one previous DWI offense within 7 years) – **\$390**

Injury related DWI offense (with two or more previous DWI offenses within 7 years) – **\$390**

Other Penalties:

Yes

Community Service:

Yes Penal 1203.1

Restitution (e.g., Victim’s Fund)

Yes Injury related DWI offenses Gov’t. Code §13950 et seq. (Victims' Assistance Fund)

The court may also order direct compensation by the defendant to the victim(s). Penal Code §1203.1

Other:

Test Fee. The counties are authorized to impose on defendants a fee of not more \$50 for conducting an alcohol chemical test. Penal Code §1463.14

EMS Cost. A person may be held liable for up to \$1,000 to pay for the cost of an emergency response which resulted from the negligent operation of a motor vehicle while under the influence of either alcohol or drugs. Gov’t. Code §§53150 et seq. Penal Code §1203.1L The law does not specifically require a DWI offense conviction as a condition of liability.

Alcohol Program Assessments. I. A person convicted of a DWI offense must pay an assessment, not to exceed \$50, for the purpose of funding alcohol abuse education and prevention programs. Vehicle Code §23645(a) II. A fee of not more than \$100 may be assessed against a person convicted of a DWI offense in counties participating in an alcohol and drug assessment program. Vehicle Code §23649 III. An assessment not to exceed \$100 may be imposed for PSI alcohol/drug evaluation. Vehicle Code §23649(a)

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Special State Penalty (Fine). An additional State penalty of \$10 is assessed against every defendant for every \$10 of a fine (or fraction thereof) actually imposed and paid by a defendant.¹²² Penal Code §§1463(l)(2) and 1464(a)

Special County Penalty (Fine). An additional county penalty of \$7 is assessed against every defendant for every \$10 of a fine (or fraction thereof) actually imposed and paid by a defendant Gov't. Code §76000 and Penal Code §§1463(l)(2) As a condition of probation the court may require the defendant to pay costs of probation investigation (§1203.16) incarceration (1203.1c) and provision of parole supervision (12031e).

Ignition Interlock. I. The court may order a first offender (injury or non-injury related) to operate only motor vehicles equipped with “ignition interlock” devices for not more than 3 years. Heightened consideration is to be given to first offenders with a BAC $\geq .15$ or to first offenders who refused to take a chemical test, including {to grant probation} participation for at least 9 months or longer in a licensed alcohol and other drug education program that consists of at least 60 hours of program activities. {normally 3-month programs are required of first-time offenders.} Vehicle Code § 23556, 23575(a)(1)

II. If a subsequent offender (injury/non-injury) is granted restricted driving privileges, the State driver licensing agency **must** require them to operate only motor vehicles equipped with “ignition interlock” devices. Vehicle Code §§13352(a) and 23575(f)(1)

Drunk Driver Visitation Program (Persons Under 21 Years Old). For a first DWI non-injury offense or a violation of Vehicle Code §23140 A person, with their consent and as part of their probation, may be ordered by the court to visit trauma or hospital facilities to observe victims of accidents where alcohol was involved. Vehicle Code In order to participate in this program, persons under 21 must agree not to drink alcoholic beverages until they are 21. Vehicle Code §23509 et seq.

Home Detention. DWI offenders are eligible for “home detention” as an alternative to imprisonment. This alternative includes “home detention” for certain minimum mandatory jail sentences. However, the mandatory sanctions for multiple DWI offenders under Vehicle Code §23580 (48 con hrs or 10 days of community service) apply nevertheless. Penal Code §1203.016 and *People v. Superior Court*

¹²² I.e., the portion of any fine that has been either suspended or reduced is not considered when calculating this assessment.

Juvenile Offenses Involving Alcohol. I. Under Vehicle Code §§23140, it is unlawful for a person under 21 years old to operate a motor vehicle if he/she has a BAC $\geq .01$. Offenders < 18 years old must participate in at an alcohol program for at least 3 months consisting of a minimum of 30 hours of activities (e.g., education, group counseling and individual interview sessions). Offenders ≥ 18 years old must complete a driving-under-the-influence program and are subject to license suspension until they complete such a program. However, first offenders ≥ 18 years old only have to complete the education component of such program. Health and Safety Code §§11836 and 11837(c)(1) and Vehicle Code §§13352.6 and 23502 **Licensing Action:** ALL persons <21 years old are subject to administrative license suspension if they operate a motor vehicle with a BAC $\geq .01$; but may receive restricted license instead of suspension with a showing of a ‘critical need to drive and no prior DUI convictions, and the person's driving privilege has not been suspended or revoked under DUI provisions, § 13353.8 A person under 21 years old who violates the regular DWI laws must also participate in either an alcohol education or rehabilitation program. Vehicle Code §23520 Also, if such person fails to complete such programs, their license may be either suspended or revoked until either the person shows proof of completion or reaches 21 years old. A person who has been convicted of any DWI offense and who has also “willfully refused” to submit to a chemical test is subject to the following sanctions: DWI non-injury offenses: first offense, if probation is granted, the court must use the following sentence structure: Jail-48 hours (mandatory) up to 6 months; fine – \$390 (mandatory) up to \$1,000; and license Suspension – 6 months; second offense – 96 hours in jail (mandatory); third offense – 10 days in jail (mandatory); fourth and subsequent offenses.-18 days in jail (mandatory) DWI injury offenses first offense – 48 continuous hours in jail (mandatory); second offense – 96 hours in jail (mandatory) Vehicle Code §23577

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is prohibited from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if convicted of driving a CMV while under the influence of alcohol or a controlled substance. For a subsequent conviction of driving a CMV while under the influence of alcohol or a controlled substance, a person is prohibited from operating such a vehicle for life. A person who refuses to submit to a chemical test while operating a CMV is subject to licensing sanctions (including license sanction enhancements) under the implied consent law; however, if transporting hazardous materials, the suspension is for 3 years (mand). A CMV operator must be placed “out-of-service” for 24 hours if that person has a BAC $\geq .01$ A CMV operator commits a DWI offense by operating a CMV with a BAC/BrAC $\geq .04$; a conviction for this offense subjects the offender to the same sanctions as would a conviction for any other DWI offense. Vehicle Code §§13353(a), 15210(b) and (d), 15300, 15302, 23152(d), 23153(d) and 34501.15(a) A person who has been injured in a traffic accident caused by an intoxicated CMV operator may recover treble damage from the operator's employer if the employer has “willfully failed” to comply with Federal CMV regulations related to alcohol use and controlled substances testing. Civil Code §3333.7(a) and Vehicle Code §34520(a)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes Persons 21 Years Old and Above-BAC $\geq .08$ ¹²³ or Persons Under 21 Years Old-BAC $\geq .05/.01$ first violation– suspension **6 months (mand for persons under 21 years old) A person 21 years old and above, who participates in an alcohol education or treatment program, is subject to a mandatory license suspension for 30 days followed by restricted driving privileges, except as noted, for 60 days for the purpose of either participating in the program or going to and from a place of employment. Following**

¹²³ Based upon a person driving either (1) with a blood alcohol concentration $\geq .05$ based on “percent by weight” of alcohol in the blood or (2) with an alcohol concentration of .01 based on either a preliminary breath test or “other chemical test.” Vehicle Code §13353.2(a)

successfully completion of the program, “unrestricted” driving privileges may be granted after the 60-day restricted driving privileges. However, if the restricted license is used to go to and from a place of employment, the suspension with restrictions must be for 6 months. Vehicle Code §13353.7 Second and subsequent violations^{124and125} (within 7 years) – **Suspension 1 year** (mand) Vehicle Code §§13353.2, 13353.3, 13353.4(a), and 133822 See Footnotes No. ¹²⁶, ¹²⁷, ¹²⁸ and ¹²⁹

Under Separate Provisions of Law, Persons Under 21 Years Old are subject to a **suspension for not less than 1 year** (30 days mand) if a “preliminary breath test” or “other chemical test” result indicates a blood alcohol concentration $\geq .01$. After the mandatory suspension period, restricted driving privileges are available based upon a critical need to drive. Vehicle Code §§13353.3(b)(3), 13353.8, 13390 and 23136

Other:

Comment: The law provides for two separate administrative licensing actions against persons under 21 years old who are operating a motor vehicle with an alcohol concentration $\geq .01$. See Vehicle Code §§13352.2 and 23136.

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

Non-Injury DWI Offense (with no previous DWI offenses) – **Suspension** Vehicle Code §§13352(a)(1) and 23536

Non-Injury DWI Offense (with one previous DWI offense within 7 years) – **Suspension** Vehicle Code §§13352(a)(3) and 23540

¹²⁴ For purposes of determining whether a license sanction enhancement should be imposed, the following convictions are considered prior violations: Any DWI offense, vehicle homicide, refusal to submit to a chemical test and a previous admin. per se violation (appears to include any previous type of admin. per se action). Vehicle Code §13353.3(b)(2)

¹²⁵ Under Vehicle Code §13353.7(d), the 1-year mandatory suspension remains in effect only so long as such suspension is required for subsequent violations per 23 USC §§408 and 410.

¹²⁶ If a person is “acquitted” of DWI charges associated with the admin. per se violation, the admin. per se suspension is cancelled and the driver’s license is reinstated. Vehicle Code §13353.2(e) But “dismissal” of DWI charges is not the same as “acquittal” of such charges and will not result in license reinstatement. *Gikas v. Zolin*, 863 P.2d 745 (Cal. 1993), *Agresti v. Dept. of Motor Vehicles*, 7 Cal.Rptr.2d 353 (Cal. App. 5 Dist. 1992), and *Helmandollar v. Director, DMV*, 9 Cal.Rptr.2d 155 (Cal. App. 3 Dist. 1992)

¹²⁷ Admin. per se suspensions and DWI suspensions/revocations are to run concurrently. The total period of license suspension/revocation shall not exceed the longer of the two periods. Vehicle Code §13353.3(c)

¹²⁸ Administrative suspensions are “independent” of licensing actions taken via convictions for DWI offenses. e.g., a mandatory suspension of 1 year for a second admin. per se violation will apply notwithstanding a court order allowing restricted driving privileges for a second DWI (non-injury) offense conviction. *Robertson v. Dept. of Motor Vehicles*, 9 Cal.Rptr.2d 319 A CDL driver who is found subject to the admin. per se law for first violation while not operating a CMV would have CDL privileges suspended for a mandatory period of 30 days followed by restricted driving privileges for 5 months. Vehicle Code §13353.6 and *Murphy v. Pierce*, 2 Cal.Rptr.2d 18 (Cal. App. 6 Dist. 1991)

¹²⁹ (Cal. App. 1 Dist. 1992) The administrative per se law does not violate a person’s constitutional rights to due process of law or equal protection of the laws. *Peretto v. Department of Motor Vehicles*, 1 Cal.Rptr.2d 392 (Cal. App. 1 Dist. 1991)

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Non-Injury DWI Offense (with two previous DWI offenses within 7 years) – **Revocation** Vehicle Code §§13352(a)(5) and 23546(a)

Non-Injury DWI Offense (with three or more previous DWI offenses within 7 years) – **Revocation** Vehicle Code §§13352(a)(7) and 23550
Injury Related DWI Offense (with no previous DWI offenses) – **Suspension** Vehicle Code §§13352(a)(2) and 23554

Injury Related DWI Offense (with one previous DWI offense within 7 years) – **Revocation** Vehicle Code §§13352(a)(4) and 23560

Injury Related DWI Offense(with two or more previous DWI offenses within 7 years) – **Revocation** Vehicle Code §§13352(a)(6) and 23566
See Footnote No. ¹³⁰ and ¹³¹ and the Special Note below.

Additional Citations: Vehicle Code §§23538, 23542, 23548, 23552, 23556, 23562 and 23568
Postponement of Licensing Action. If an offender is sentenced to serve either 1 year in the county jail or more than 1 year in prison, the court may postpone the imposition of either a suspension or revocation until the offender is release from incarceration. Vehicle Code §23665

Term of License Withdrawal
(Days, Months, Years, etc.):

Non-Injury DWI Offense (with no previous DWI offenses) – **6 months**;

Non-Injury DWI Offense (with one previous DWI offense within 7 years) – **2 years**;

Non-Injury DWI Offense (with two previous DWI offenses within 7 years) – **3 years**¹³²;

¹³⁰ The California Court of Appeal has held that the State has not established the reliability of preliminary breath screening devices. *Coniglio v. Department of Motor Vehicles*, 46 Cal.Rptr.2d 123 (Cal. App. 6 Dist. 1995) (review denied by the California Supreme Court, 1996 Cal. 533) Subsequent cases have upheld admission of breath tests where (1) the testing device was in proper working order (2) the test was properly administered, and (3) the operator was competent and qualified. *People v. Williams* 28 Cal. 4th 408, 49 P.3d 203 (2002); *People v. Bury* 49 Cal.Rptr.2d 107 (Cal. App. Dist. 1996)

¹³¹ If a person is involved in an accident and has a BAC $\geq .08$ and has been convicted of a DWI related vehicle homicide (within 5 years), the license shall be either suspended or revoked as follows: 1) If the accident does not result in a DWI conviction (either injury or non-injury) – suspension for 1 year (mandatory); and, 2) If the accident results in a DWI conviction (either injury or non-injury) – revocation for 3 years (mandatory). This revocation period is concurrent with any other DWI imposed restriction, suspension or revocation if this is a first DWI conviction or a second conviction within 5 years. This revocation period is cumulative with any other DWI imposed restrictions, suspension or revocation, if there have been two or more previous DWI convictions within 5 years. Vehicle Code §13954

There are two provisions of the California Vehicle Code that provide for special licensing sanctions against minors who violate the DWI laws. I. Under Vehicle Code §13352.3, a person who is < 18 years old and who is convicted of an alcohol driving offense is subject to a license revocation (1) until 18, (2) for 1 year or (3) per Vehicle Code §13352 whichever period is longer. II. Under Vehicle Code §13202.5, a person who is ≥ 13 but <21 years old and who is convicted either of a DWI (alcohol or drugs) offense or of a vehicle manslaughter offense, is subject to a license suspension for one year. However, such person may be eligible for restricted driving privileges based on “a showing of a critical need to drive” (Vehicle Code §13202.5(c)).

¹³² A license cannot be reinstated unless the defendant has completed either an 18-or 30-month alcohol treatment program. Vehicle Code §13352(a)(5) and gives proof of financial responsibility, pays all reissue fees, etc. Vehicle Code §13353.4 and §23538

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Non-Injury DWI Offense (with three or more previous DWI offenses within 7 years) – **4 years**;
Injury Related DWI Offense (with no previous DWI offenses) – **1 year**;
Injury Related DWI Offense (with one previous DWI offense within 7 years) – **3 years**;
Injury Related DWI Offense (with two or more previous DWI offenses within 7 years) – **5 years**
Vehicle Code §13352 and 13352.5

Mandatory Minimum Term
of Withdrawal:

Non-Injury DWI Offense (with no previous DWI offenses)¹³³ (6 months mandatory for persons who operate certain types of heavy trucks or buses. Vehicle Code §§12804.9, 13352(a)(1), and 23536(e));

Non-Injury DWI Offense (with one previous DWI offense within 7 years) – ¹³⁴;

Non-Injury DWI Offense (with two previous DWI offenses within 7 years) – **18 months {12 months with ignition interlock¹³⁵ and¹³⁶};**

Non-Injury DWI Offense (with three or more previous DWI offenses within 7 years) – **24 months {12 months with ignition interlock};**

Injury Related DWI Offense(with no previous DWI offenses) – **1 year**;

Injury Related DWI Offense (with one previous DWI off within 7 years) – **18 months {12 months with ignition interlock}¹³⁷;**

Injury Related DWI Offense (with two or more previous DWI offenses within 7 years) – **30 months 12 months with ignition interlock}**

If a DWI conviction results either in a jail sanction of 1 year in the county jail or in imprisonment of 1 year or more in the State prison, the court may postpone the suspension of driving privileges until the term of incarceration has been served. Vehicle Code §23665

¹³³ Driving privileges may be restricted for 90 days under certain probation conditions. Vehicle Code §§13352, 13352.5 and 23538 and Health and Safety Code §11837(a), (c) and (d)

¹³⁴ Restricted driving privileges may be granted after a defendant enrolls in or completes an alcohol rehabilitation program. This does not apply if they were operating certain types of heavy trucks or buses at the time of the offense. As an alternative, the defendant may be granted a restricted license after a 12-month suspension if enrolled in an alcohol treatment program and have an **ignition interlock** device installed on the vehicles. Vehicle Code §13352(a)(3) and 23542(b)(3) and Health and Safety Code §11837

¹³⁵ Persons required to drive vehicles equipped with ignition interlocks who drive a vehicle without an interlock are considered to have driven without a license and may be immediately arrested, with the vehicle impounded for 30 days. §14602.6. (a) (1)

¹³⁶ Restricted driving privileges may be granted after this period provided the defendant (1) has completed or is continuing to participate in an alcohol treatment program and (2) only uses vehicles equipped with an **ignition interlock** device. Vehicle Code §13352(a)(5), (6) and (7)

¹³⁷ Restricted driving privileges may be granted after 12 months provided the defendant has completed an alcohol treatment program and consents to use **ignition interlock** devices on the vehicles. Vehicle Code §§13352(a)(4) and 23562

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For either non-injury or injury related DWI offenses, an offender’s license (i.e., complete driving privileges) cannot be reinstated until completion of an alcohol or drug education and counseling program. Vehicle Code §§13352 and 13353.4(e)

Other:
Rehabilitation:
Alcohol Education:

Conditions of probation, which normally provide for a reduced period of incarceration, usually require a defendant to participate in an alcohol education/rehab program for any DWI offense conviction.^{138 and 139} Vehicle Code §§23538 et seq. and 13352 the court may also require a “driving under the influence” program for 18 or 30 months Vehicle Code §23552 A person convicted of a first DWI offense in a juvenile court must participate in and complete either an alcohol or drug education program. Vehicle Code §23538 and 23556 and Health and Safety Code §11837(a), (c) and (d)

Alcohol Treatment:
Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:

Yes
There are two vehicle impoundment laws:

Impoundment I¹⁴⁰ A vehicle owned and driven by the offender may be impounded as follows for a DWI offense (non- injury /injury): first offense of refusing to submit or complete a chemical test (within 7 years) or second DUI offense with **.10 B.A.C** (within 7 years) –minimum **5-day** impoundment; third and subsequent offenses – minimum **15-day** impoundment. Vehicle Code §23594

Impoundment II The vehicle owned and driven by the offender may be impounded as follows for a DWI offense (non-injury/injury): first offense – Not more than **6 months**; sub. offense – Not more than **12 months** Vehicle Code §23592(a)(1)

Forfeiture. However, a defendant’s vehicle may be subject to forfeiture if convicted of (1) a DWI vehicle homicide offense, (2) a non-injury related DWI offense and two or more (or combinations of) convictions within 7 years for either a vehicle homicide offense or a non-injury/injury related DWI offense or (3) a DWI serious injury offense and one

¹³⁸ However, in lieu of the more traditional alcohol and drug education and treatment programs, an offender, again as a condition of probation, may be allowed to participate in a special “live-in alternative.” This alternative focuses on substance abuse users and requires them to live full time at a special facility. Penal Code §8001

¹³⁹ first offenders who have been placed on probation and at the time of the offense had either a BAC ≥0.20 or refused to submit to a chemical test must be placed in an alcohol education/counseling program for at least 6 months. Health and Safety Code 11837(c)(2). The same holds true for those who plead guilty or nolo contendere to a reckless driving charge in lieu of DWI. Vehicle. Code §23103.5

¹⁴⁰ Under this impoundment/forfeiture law, no vehicle may be impounded or forfeited if another person has a community property interest in the vehicle and if it is the sole vehicle available to the defendant's immediate family. Vehicle Code §§23594 and 23596

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or more (or combinations of) convictions within 7 years for either a vehicle homicide offense or a non-injury/injury DWI offense. Vehicle Code §23596

Terms Upon Which Vehicle Will Be Released:

There are no special terms that have to be satisfied prior to releasing a vehicle. However, vehicles are impounded at the owners' expense. Vehicle Code §23594

Other:

Temporary Impoundment. A law enforcement officer may "remove" from the highway any vehicle driven (1) by a person who has been taken into custody or (2) by a person under 21 years old who has been issued a notice of license suspension for operating a motor vehicle with a BAC ≥.01. The vehicle may be released to the legal owner upon the payment of towing and storage charges. Vehicle Code §22651.

Miscellaneous Sanctions Not Included Elsewhere:

I. A person granted probation for a DWI (non-injury/injury) offense must include but is not limited to the following conditions:

(1) Placed on probation for 3 to 5 years (but not more than the maximum confinement time in State prison); (2) Agreed not to drive with any measurable amount of alcohol in the blood; (3) Agreed not to refuse to submit to an implied consent test; and (4) Agreed not to commit any criminal offense. Vehicle Code §§23600

II. For the purpose of imposing enhanced sanctions, the court shall consider whether either (1) the offender's blood alcohol level was ≥**0.20** or (2) the person refused to submit to a test under the implied consent law. Vehicle Code If the BAC was below .2, the offender must participate in a 6-month licensed program, with at least 45 hours of program participation. If the BAC was > .2 or the offender refused to take a chemical test, participation in a 9-month licensed program with 60 hours of program activities is required. §23578

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law: (Yes/No)

Yes Vehicular Manslaughter¹⁴¹ Penal Code §§17, 191.5, 192(c) and 193 *People v. Thompson* 93 Cal. Reporter 2d 803 (2000)

Sanctions:

Criminal Sanction:

¹⁴¹ **Implied Malice.** Under certain circumstances, in situations where a person has been killed by an intoxicated driver, evidence of voluntary intoxication can be introduced as evidence of implied malice in a second degree murder case against the driver. Penal Code §§22 and 188, Penal Code §191.5 (e), *People v. Watson*, 637 P.2d 279 (Cal. 1981), and *People v. Whitfield*, 868 P.2d 272 (Cal. 1994)

Imprisonment (Term):

1. Death caused by driving a motor vehicle not involving alcohol/drugs: a. with gross negligence – Either in the county jail for **not more than 1 year or 2, 4, or 6 years** in the State prison; b. without gross negligence.- Not more than 1 year
2. Death caused by driving a motor vehicle in violation of Vehicle Code §§23140¹⁴², 23152 or 23153: a. with gross negligence – **4, 6, or 10 years**^{143and144};
 b. without gross negligence – Not more than **1 year** in the county jail (or **16 months, 2 or 4 years** in the State prison).

Mandatory Minimum Term:

None

Fine (\$ Range):

For ANY Vehicle Homicide Offense – Not more than **\$10,000** Penal Code §672

Mandatory Minimum Fine:

None

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

1. Death caused by driving a motor vehicle not involving alcohol/drugs: a. with gross negligence – **Revocation – 3 years** (mand); b. without gross negligence – **Suspension** – not more than **6 months** (not mand)
2. Death caused by driving a motor vehicle in violation of Vehicle Code §§23140, 23152 or 23153:
 a. with gross negligence – **Revocation – 3 years** (mand); b. without gross negligence – Same license suspension/revocation action as for a DWI vehicle injury offense. Vehicle Code §§13350.5, 13351(a)(1) and (3), 13351(b), and 13361(c)

Length of Term of

See above.

Licensing Withdrawal:

Mandatory Action--Minimum Length of

See above.

License Withdrawal:

Other:

I. **Vehicle Forfeiture.** Vehicle Code §23596
 II. Victims' Assistance Fund. Gov't. Code §13959 et seq.
 III. See **Special State Penalty (Fine)** and **Special County Penalty (Fine)**.

Driving While License Suspended or

¹⁴² Vehicle Code §23140 makes it illegal for a person under 21 years old to operate a motor vehicle with a BAC ≥.05.

¹⁴³ If more than one individual has been killed, an enhanced prison term of one year is added for each victim. The maximum number of such enhancements is three. Vehicle Code §23558

¹⁴⁴ **Subsequent Offenses:** A defendant convicted of this offense is subject to imprisonment from **15 years to life**, if that person had either (1) a prior vehicle manslaughter offense with gross negligence, (2) a prior vehicle intoxicated manslaughter offense without gross negligence, (3) a prior injury related drunk driving offense or (4) two or more drunk driving offenses within 7 years. Penal Code §191.5(d)

Special Note: I. Generally, under Penal Code §17, a crime is classified as a felony only if the defendant is punishable by death or confinement in the State prison. However, if the court has discretion to punish a defendant for such a crime in a place other than the State prison (such as a county jail), impose just a fine, or place the person on probation without a confinement sentence, the crime is usually classified as a misdemeanor. II. Gross vehicle manslaughter while intoxicated is not a lesser included offense of murder. As a result, a person can be tried for both offenses. *People v. Sanchez*, 16 P.3d 118 (Cal. 2001)

Revoked Where the Basis Was a DWI Offense:

See **Vehicle Forfeiture, Ignition Interlock**, and Footnote No. ¹⁴⁵ below.

Sanction:

Criminal: Imprisonment (Term):

Misdemeanor first offense – **10 days to 6 months**; second and subsequent offenses¹⁴⁶ (within 5 years) – **30 days to 1 year** Vehicle Code §14601.2

Mandatory Minimum Term of Imprisonment:

First offense – **10 days**;¹⁴⁷ Second and subsequent offenses (within 5 years) – **30 days**; For a second or subsequent offense (within 7 but more than 5 years) – **10 days** Vehicle Code §14601.2(g)

Fine (\$ Range):

First offense – **\$300 to \$1,000**; second and subsequent offenses (within 5 years) – Not more than **\$500 to \$2,000**

Mandatory Minimum Fine:

None

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

2 points are assigned to the driving record. Vehicle Code §12810(i)

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

The following sanctions apply if a person was driving while their license was either suspended or revoked and where the basis for the licensing action was either an implied consent refusal or an admin. per se violation. First offense: Jail – Not more than **6 months**; fine – **\$300¹⁴⁸ to \$1,000** Subsequent offense(within 5 years)¹⁴⁹: Jail-**10 days (mand) to 1 year**; fine – **\$500 to \$2,000** Vehicle Code §14601.5

¹⁴⁵ **Impoundment.** If the vehicle used in the offense is owned by the offender, it may be impounded following a conviction as follows: first offense – 6 months impoundment; sub. offense – 12 months impoundment. Vehicle Code §§14602.5 and 23592 Any vehicle driven by an arrested person may be impounded for 30 days. Vehicle Code §14602.6(a)

¹⁴⁶ A previous offense includes not only a prior conviction under Vehicle Code §14601.2, but also a violation of Vehicle Code §§14601 (which prohibits driving after a license has been suspended or revoked for a reckless driving offense), 14601.1 (the general prohibition against driving while a license is either suspended or revoked) and 14601.5.

¹⁴⁷ If a defendant injures a person while violating this law, they must also serve this mandatory minimum imprisonment term. i.e., they cannot receive work release, community service or other similar programs. Vehicle Code §14601.4

¹⁴⁸ This fine is usually mandatory. However, the court may reduce this fine in the “interests of justice.”

¹⁴⁹ A previous offense includes a violation of Vehicle Code §§14601 (which prohibits driving after a license has been suspended or revoked for a reckless driving offense), 14601.1 (the general prohibition against driving while a license is either suspended or revoked) and 14602.2 (which prohibits driving while a license is either suspended or revoked for a drunk driving offense).

Vehicle Forfeiture. A vehicle is subject to forfeiture if it is driven by a person (1) who has a suspended or revoked license, (2) who has had a previous misdemeanor conviction either of driving while suspended or revoked under other provisions of law or the habitual offender law and (3) who is the registered owner of such vehicle. However, the vehicle is not subject forfeiture if there is a community property interest in the vehicle and it is the “only vehicle available to the driver’s immediate family.” Vehicle Code §14607.6

Ignition Interlock. The court must order offenders to only operate motor vehicles that are equipped with ignition interlock devices. This requirement can be imposed for not more than 3 years. Vehicle Code §23575(a)(2).

CMV/CDL. A self-employed CMV operator is prohibited from operating a CMV during either a CDL disqualification or a CDL out-of-service order. It appears to be an infraction to violate this prohibition. The sanctions for this offense are as follows: first offense, a fine ≤\$100; second offense (within 1 yr), a fine ≤\$200; and, for a subsequent offense (within 1 yr), a fine ≤\$250. Vehicle Code §§15240, 15242, 40000.1

Habitual Traffic Offender Law:
 State Has Such a Law (Yes/No):

Yes Penal Code §193.7 and Vehicle Code §§13350(b), 14601.3(a), 23546(b), 23550, 23550.5, 23564(d) and 23590

Grounds for Being Declared
 an Habitual Offender:

A person is declared to be a “**habitual traffic offender**” for 3 years, if any one of the following occurs: (1) That person commits a DWI-related vehicle homicide (Penal Code §192(c)(3)) and has two or more previous¹⁵⁰ convictions or a combination of two or more prior convictions for DWI (non-injury or injury offenses) or reckless driving instead of a DWI non-injury offense. (2) Commits a DWI non-injury or injury offense and has two or more previous DWI offenses (injury or non-injury or a combination thereof). (3) Sanctioned under Vehicle Code §23550 because he/she has Prior Drunk Driving Felony Offenses. (4) Accumulates a “driving record”¹⁵¹ while operating a vehicle when the license is either suspended or revoked; a declaration of “habitual offender status” on this basis “automatically” means a person may be subject to the criminal sanctions noted below.

Term of License Rev While
 Under Habitual Offender Status:

None

Type of Criminal Offense if
 Convicted on Charges of
 Driving While on Habitual
 Offender Status:

Misdemeanor Penal Code §17 and Vehicle Code §14601.3(e)

Sanctions Following a Conviction of
 Driving While on Habitual Offender
 Status: Imprisonment (Term):

For “habitual traffic offender” status based on vehicle homicide or DWI offenses: **180 days** imprisonment is in the county jail and is “consecutive” to any other sanction. Vehicle Code §14601.3(e)(3)
 For “habitual traffic offender” status based on vehicle operation while suspension/revocation and after accumulating a “driving record”: first offense – 30 days; second and subsequent offenses (within 7 years) – **180 days** Imprisonment is in the county jail.

Mandatory Minimum Term of

¹⁵⁰ Within 7 years.

¹⁵¹ A “driving record” consists of any one of the following: (1) Two or more convictions for 2 point violations within 12 months; three or more convictions for 1 point violations within 12 months; (3) three or more “reportable” accidents within 12 months; or (4) any combination of convictions/accidents which results in 3 points within 12 months. Vehicle Code §14601.3(a)

Imprisonment:	None
Fine (\$ Range):	For “habitual traffic offender” status based on vehicle homicide or DWI offenses: \$2,000 For “habitual traffic offender” status based on vehicle operation while suspension/revocation <u>and</u> after accumulating a “driving record”: <u>first offense</u> – \$1,000 ; <u>second and subsequent offenses</u> (within 7 years) – \$2,000
Mandatory Minimum Fine (\$):	None
Licensing Actions (Specify):	None

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):	Yes Govt. Code §27491.25
BAC Chemical Test Is Given to the Following Persons:	
Driver:	Yes
Vehicle passengers:	Yes
Pedestrian:	Yes

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	21 Bus. and Prof. Code §§25658 and 25662
Minimum Age (Years) Possession:	21 Possession in a public place; exception, possession under 21 is legal if the minor is acting via a parent’s order. Bus. and Prof. Code §§25658 and 25662
Minimum Age (Years) Consumption:	21 This applies only to consumption of alcohol on the premises of <u>licensed</u> “on sale” establishments. Bus. and Prof. Code §§25658 and 25662

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):	Limited. The law is limited to the serving of alcoholic beverages to minors obviously intoxicated. Bus. and Prof. Code §§25602 and 25602.1 and Civil Code §1714
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“Dram Shop Law” Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):	No See Bus. and Prof. Code §25602(c) and Via a 25602.1, Civil Code §1714 and <i>Cory v. Shierloh</i> , 629 P.2d 8, 174 Cal. Reporter 500 (1981), <i>Cardinal v. Santel Pita, Inc.</i> 286 Cal. Reporter. 275 (1991).
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Dram Shop Actions-Social Hosts:	No Bus. and Prof. Code §25602(c) and 25602.1, Civil Code §1714(c). <i>Cory v. Shierloh</i> , 629 P.2d 8 (Cal. 1981), <i>Strang v. Cabrol</i> , 691 P.2d 1013 (Cal. 1984), and <i>Zieff v. Weinstein</i> , 236 Cal. Reporter. 536 (Cal. App. 1 Dist. 1987)
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Other:	A social host is generally not liable for the injuries sustained by an intoxicated guest. Civil Code §1714(c) However, a parent or legal guardian who
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knowingly permits his or her child, or a person in the company of the child, or both, who are under the age of 18 years, to consume an alcoholic beverage or use a controlled substance at home; and knowingly permits that child or other underage person to drive a vehicle with a blood alcohol concentration of .05 percent or greater, or under the influence of a controlled substance, the parent or guardian is guilty of a misdemeanor if that child causes a traffic collision – Penalties: up to one year in county jail or fine not exceeding \$1,000 or both. and 25658.2

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:
Term of Imprisonment:
§25617
Fine (\$ Range):

Misdemeanor Bus. and Prof. Code §25602
Not more than **6 months** Bus. and Prof. Code

Not more than **\$1,000** Bus. and Prof. Code §25617

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages
Withdrawn (Yes/No):

Length of Term of License
Withdrawal:

Yes suspension or revocation Bus. and Prof. Code §24200

The length of suspension/revocation is not fixed by statute.

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Term of Imprisonment:
Fine (\$ Range):

See Footnote No. ¹⁵².
Misdemeanor Cal. Const. Art. 20, §22 and Bus. and Prof. Code §25658(a)
None. ¹⁵³
\$1,000 (mand) Bus. and Prof. Code §25658(e)(2)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

¹⁵² A defendant must also perform at least 24 hours of community service. Bus. and Prof. Code §256580(e)(2)
¹⁵³ Since Bus. and Prof. Code §25658 provides for a sanction, the general penalty provision for a violation of the alcoholic beverage control provisions of the Business and Professions Code (Bus. and Prof. Code §25617) would not apply. The general penalty provision provides for an imprisonment term of not more than 6 months. Per §25658(e)(3), a person guilty of selling alcohol to a minor who then consumes the alcohol and proximately causes great bodily injury or death to himself, herself, or a third person shall be imprisoned for at least 6 months and/or fined \$1000, or both.

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Withdrawn (Yes/No):

Yes suspension or revocation Bus. and Prof. Code §§24200 and 25658.1(b)

Length of Term License Withdrawal:

The length of suspension/revocation is not fixed by statute

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Yes Drivers and passengers Vehicle Code §§23222, 23223, 23225 and 23226

Anti-Consumption Law (Yes/No):

Yes Driver and passengers Vehicle Code §§23220 and 23221