

STATE: **MASSACHUSETTS**
 General Reference: Massachusetts General Laws Annotated

Basis for a DWI Charge:

Standard DWI Offense: Under the influence of intoxicating liquor⁵⁸⁵ Ch. 90 §24(1)(a)(1)

Illegal Per Se Law (BAC): $\geq .08$ Ch.90 § 24

Types of Drugs/Drugs and Alcohol: Under the influence of (1) Marijuana, Narcotic Drugs, Depressants or Stimulant Substances all as defined in Ch. 94C §1⁵⁸⁶ or (2) Vapors of Glue Ch.90§24(1)(a)(1)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law: **No**
 Implied Consent Law: **Yes** Ch. 90 §24(1)(f); Ch. 90F §11(B)
 Arrest Required (Yes/No): **Yes**

Implied Consent Law Applies to Drugs (Yes/No): **Yes**

Submit to Chemical Test Admittance into Evidence **No** – Prohibited by statute in both criminal and civil cases except that the registrar may use evidence in an administrative proceeding to suspend the driving license. {*Opinion of the Justices to the Senate*, 591 N.E.2d 1073 (Mass. 1992)}
 A driver may not refuse to submit to field sobriety tests but such refusal cannot constitutionally be admitted into evidence *Com. v. Blais*, 701 N.E.2d 314 (Mass. 1998) and *Com. v. Grenier*, 695 N.E.2d 1075 (Mass. App. Ct. 1998)}.

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

Blood: **Yes** Unless the defendant is brought in for treatment. Ch. 90§24(1)(f)
 Urine: **None**
 Other: **None**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No**
 Anti-Plea-Bargaining Statute (Yes/No): **No**
 Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes** Alcohol screening is required for a first offense. Ch. 90 §24(1)(a)(4)

⁵⁸⁵ The term “intoxicating liquor” includes beer and other alcoholic beverages “capable of subjecting a person to its alcoholic influence.” *Commonwealth v. Bridges*, 189 N.E. 616 (Mass. 1934) cited in *Commonwealth v. Cass*, 467 N.E.2d 1324 (Mass. 1984)

⁵⁸⁶ Under Ch. 94C, §1, a “narcotic drug” means either opium, opiate, opium poppy, opium poppy straw, coca leaves (not containing cocaine or ecgonine) or any chemical compound derivative therefrom. In situations involving driving under the influence of either cocaine or heroin, the State must prove that these substances are derivatives of the ones listed above. *Com. v. Green*, 556 N.E.2d 387 (Mass. 1990), and *Com. v. Finegan*, 699 N.E.2d 1228 (Mass. App. 1998)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

N/A

Criminal Sanctions (Fine/Jail):
Administrative Licensing Action (Susp/Rev):

N/A

N/A

Refusal to Take Implied Consent

Suspension – 180 days (90 days mand)⁵⁸⁷ second refusal or refusal by someone under the age of 21-- **suspension** for a period of **3 years**; third refusal – **suspension** for a period of **5 years**. Ch. 90 §24

A person’s driving privileges are restored either if the drunk-driving charges are dismissed or if the person is found not guilty of such charges. Ch.90 §§24(3)(c) and 24N

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:
Term (Day, Month, Years, Etc.) –

First offense – Not more than **2½ years**; second offense (within 10 years) – **60 days to 2½ years**; third offense (within 10 years) – **180 days to 2½ years** (or 2½ to 5 years in State prison-felony); fourth offense (within 10 years) – **2 to 2½ years** (or 2½ to 5 years in State prison (felony)); fifth and subsequent offenses (within 10 years) – **2½ years** (or 2½ to 5 years in State prison-felony) Ch. 90 §24(1)(a)(1) and Ch. 274 §1

Mandatory Minimum Term:

First offense – **None**; second offense – **30 days**⁵⁸⁸; third offense – **150 days**; fourth offense – **12 months**; fifth and subsequent offense – **24 months**

Fine:
Amount (\$ Range):

First offense – **\$500 to \$5,000**; second offense – **\$600 to \$10,000**; third offense – **\$1,000 to \$15,000**; fourth offense – **\$15,000 to \$25,000**; fifth and subsequent offenses – **\$2,000 to \$50,000** Ch.90§24(1)(a)(1)

Mandatory Min. Fine (\$):

None

Other Penalties:

For any offense – **30 hours** (minimum) via court order as a condition of probation Ch.90 §24D

Restitution :
(e.g., Victim's Fund)

Yes (1) By a compensation fund Ch. 258C §1 et seq. or (2) by a defendant as a condition of probation Ch.276 §92

⁵⁸⁷ Work release is available for this period. See Rehabilitation. Ch. 90 §24(1)(a)(l)

⁵⁸⁸Persons Under 21 Years Old. I. For persons < 21 but a ≥18 years old– suspension – 180 days. If a person does not have a previous drunk driving offense charge, the suspension may be waived if they participate in an alcohol education or treatment program. II. For persons < 18 years old– suspension – 1 year (mand). However, for a first refusal, there is only a 180-day mandatory suspension if the person participates in an alcohol education or treatment program. Ch. 90 §24(1)(f), §24N, and Ch 90 §24P(a)

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. *Leduc v. Com.*, 657 N.E.2d 755 (Mass. 1995) (cert. denied 519 U.S. 827, 136 L.Ed.2d 47, 117 S. Ct. 91

Administrative Licensing

Actions:

Pre-DWI Conviction

Licensing Action:

Administrative Per Se Law:

Yes BAC ≥ .08 (Persons under 21 years old-BAC ≥ .02) – **Suspension** until the drunk-driving charges are disposed of but not more than **90 days** (mand) Ch.90 §24(1)(f)(2) Persons Under 21 Years Old. The following suspensions apply notwithstanding the finding concerning any offense (e.g. drunk-driving). I.

A person < 21 but ≥ 18 years old who has a BAC ≥ .02 has the license suspended for **180 days**. If the person does not have a previous drunk-driving offense charge, the suspension may be waived if they participate in an alcohol education or treatment program. II. A person < 18 years old who has a BAC ≥ .02 has the license suspended for **1 year** (mand). However, for a first violation, there is only a 180-day mandatory suspension if the person participates in an alcohol education or treatment program. Ch. 90 §24P(a)

Other:

I. If the law enforcement officer does not take action under the admin. per se law at the time of arrest, the court, at the time of arraignment, shall suspend a defendant’s license until the case is disposed of (but not more than 90 days), provided the State establishes a *prima facie* showing that the defendant was operating a motor vehicle with a BAC ≥ .08 (persons under 21 years old BAC ≥ .02). Ch. 90 §24N II. A person’s license may be suspended without a hearing if he/she has “committed” a violation of the motor vehicle laws that “constitute an immediate threat to the public safety.” Ch. 90 §22(a)

Post DWI Conviction

Licensing Action:

Type of Licensing Action

(Susp/Rev):

Term of License Withdrawal

(Days, Months, Years, etc.):

Revocation for all offenses Ch. 90 §24(1)(b)

First offense – 1 year; second offense (within 10 years) 2 years; third offense (within 10 years) – 8 years; fourth offense (within 10 years) 10 years; fifth and subsequent offenses (within 10 years) – Life Ch. 90 §24 (3)(c)

Mandatory Minimum Term

of Withdrawal:

First offense – 3 months; second offense – 6 months-third offense – 2 years revocation; fourth offense – 5 years revocation; fifth and subsequent offenses – Life Ch. 90 §24(1)(c)

Other:

Rehabilitation:

Yes first offense – For first offenders who have not caused major injury or death, they may be placed on probation for not more than 2 years on the condition that they attend a residential alcohol treatment program for not less than 14 days and participate in an outpatient counseling program. They must pay for cost of treatment and also pay an additional fee of \$250. Ch. 90 §§24(1)(a)(4) and 24D and; second and subsequent offenses – In lieu of imprisonment, defendant may serve all or part of the mandatory

Alcohol Education

imprisonment term in a residential alcohol treatment program. Ch.90 §24

Alcohol Treatment:

Yes If B.A.C. was $\geq .20$ or if a repeat violation, the violator shall complete an assessment of the level of the offender's addiction to alcohol or drugs, and the department's recommended course of treatment. Ch.90 §§24D, 24Q

Vehicle Impoundment:

Authorized by Statutory Authority:

Yes – Impoundment for at least **12 hours** Ch.90 §24(1) (iii)

Vehicle Confiscation or license plates seized:

Yes for three-time DUI violators unless vehicle jointly owned (before the second DUI violation) by a parent, spouse, child, grandparent, brother, sister, or parent of the spouse living in the defendant's household who requires use of the vehicle.Ch.90 §§24W, 24X

Miscellaneous Sanctions

Not Included Elsewhere:

Ignition Interlock Devices: offenders with more than one drunken-driving conviction required to install an ignition-interlock device on their vehicles for a period of **2 years** as a condition of having their licenses reinstated.⁵⁸⁹

Second or subsequent conviction, by imprisonment in a State prison for **not less than 3 nor more than 5 years**.

Ch.90 § 24U

I. Special Surcharge. A defendant must pay a surcharge of \$125 – \$250 for the purpose of funding head injury treatment services, and a second assessment of \$50 to fund the Victims of Drunk Driving Trust Fund. Ch. 90

§24(1)(a)(I)

II. Alcoholic Beverage Licensee Reporting. The court shall inquire of a drunk driving offender, prior to sentencing, as to whether they were served alcoholic beverages at a licensed establishment. Any information obtained is to be transmitted to law enforcement authorities. Ch. 90 §24J

Tampering with ignition interlock punished by imprisonment in the house of correction for not less than 6 months nor more than 2 1/2 years or by imprisonment in the State prison for not less than 3 years nor more than 5 years; Ch.90 §24T

⁵⁸⁹ Operating in violation of an interlock requirement: fine of not less than \$1,000 nor more than \$15,000 and by imprisonment for not less than 180 days nor more than 2 1/2 years or by a fine of not less than \$1,000 nor more than \$15,000 and by imprisonment in the State prison for not less than 2 1/2 years nor more than 5 years. The sentence imposed upon such person shall not be reduced to less than 150 days, nor shall any such person be eligible for probation, parole or furlough or receive any deduction from his sentence for good conduct until he shall have served 150 days of such sentence. {But exceptions from 150 day rule possible to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at that institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction.} Two violations of interlock rules may lead to suspension for an extended period, conceivably even for life. Ch.90 §24S

Illegally breathing into an interlock device or otherwise starting an interlocked vehicle for the purpose of providing an operable motor vehicle to a person whose license or right to operate a vehicle is restricted to the operation of vehicles equipped with a certified ignition interlock device – punished by a fine not less than **\$1,000** nor more than **\$5,000** or imprisonment in a house of correction for not less than **6 months** nor more than **2 1/2 years** in the house of correction.

Other Criminal Actions Related to DWI

"Manslaughter by motor vehicle"

A motor vehicle-related death where offender was under the influence of intoxicating substances and acted with recklessness or negligence. Ch.265 §131/2

Sanctions:

Criminal Sanction:

Imprisonment (Term):

5 years to 20 years

Mandatory Minimum Term:

5 years

Fine (\$ Range):

Not more than **\$25,000**

Administrative Licensing Action:

Type of Action:

Revocation

Length of Term of

Licensing Withdrawal:

First offense – **15 years**; subsequent offense – **up to life**

Mandatory Action—Minimum

First offense – **15 years**; subsequent offense – **up to life**

Ch. 90 §24

Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:

Ch. 90 §23

Sanction:

Criminal:

Not less than **1 year** and not more than **2½ years**⁵⁹⁰

Ch. 90 §23 and Ch. 274 §1

Imprisonment (Term):

Mandatory Minimum Term

of Imprisonment:

Fine (\$ Range):

\$2,500 to \$10,000 Ch. 90 §23

Mandatory Minimum Fine:

None

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): Under Ch. 90F §9, a person is “disqualified” from operating a CMV for not less than 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC ≥ .04 (Comment: Ch. 90F §9 does not appear to apply to alcohol concentrations in urine or (2) are under the influence of alcohol or a controlled substance. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the “disqualification” is for life (mand). Under Ch. 90F §11, a

⁵⁹⁰ Sentence must be served consecutively to and not concurrent with any other sentence or penalty. At least one year of the sentence must be served, except a temporary release in the custody of an officer only to obtain emergency medical or psychiatric services unavailable, or to engage in employment pursuant to a work release program may be granted. Ch. 90 §23

person is “disqualified” from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) refuses to submit to a test to determine either alcohol concentration or the presence of other drugs or (2) submit to such a test which discloses a BAC/BrAC/UrAC ≥ .04 For two or more test refusals or “failures” or for a combination of two or more such violations, the “disqualification” is for life (mand). In addition, a CMV operator who has any alcohol in the system must be placed “out-of-service” for 24 hours. Ch.90 F §§1, 9, 10 and 11

A person is prohibited from operating a CMV during either a CDL disqualification or a CDL out-of-service order. Ch. 90F, §5(B) However, Ch. 90F does not provide sanctions for such a prohibition. Although the law is unclear, the general sanctions for driving while license is either suspended or revoked may apply to this prohibition. These sanctions are as follows: first offense, imprisonment for not more than 10 days and/or a fine of \$500 but not more than \$1,000; and, subsequent offense, imprisonment for 60 days but not more than 1 year (There appears to be no fine sanction.). For either a first or subsequent offense, an additional period of license suspension or revocation of 60 days. Ch. 90, §23

Administrative Licensing Actions:

Type of Licensing Action

(Susp/Rev):

Suspension/Revocation Ch. 90 §23

Length of Term of License

Withdrawal Action:

Suspension/revocation is extended for an additional period of **1 year**. Ch. 90 §23

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Yes Ch.90§22F

Grounds for Being Declared an Habitual Offender:

Any combination of three or more serious traffic offenses (e.g., DWI, reckless driving, etc.) (within 5 years) or 12 convictions (within 5 years) for traffic offenses (including serious offenses) for which a person may or must receive a 30-day license suspension/revocation.

Term of License Rev While Under Habitual Offender Status:

4 years If the defendant has a proven hardship, a license may be issued after 1 year. Ch. 90 §22F

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

Felony Ch. 274 §1

Sanctions Following a Conviction of Driving While on Habitual Offender Status:

Imprisonment (Term):

Not more than **2 years** Ch. 90 §23

Mandatory Minimum Term of Imprisonment:

None

Fine (\$ Range):

\$500 to \$5,000 Ch.90§23

Mandatory Minimum Fine (\$):

None

Licensing Actions (Specify):

Revocation is extended for an additional **60 days**. Ch. 90 §23

Other State Laws Related To Alcohol Use:

‘Child Endangerment’:

Individuals who drive under the influence with a child under the age of 14 in the vehicle. Ch. 90 §24V

Penalties:

First offense: not less than **90 days** nor more than **2 1/2 years** and a fine of not less than **\$1,000** nor more than **\$5,000**; For repeat offenders: imprisonment in the House of Corrections for not less than **6 months**⁵⁹¹ nor more than **2 1/2 years** or by imprisonment in State prison for not less than **3 years** but not more than **5 years**, and a fine of not less than **\$5,000** nor more than **\$10,000**. First offense: License **Suspension – 1 year**; second or subsequent violations – **3 years** Ch. 90 §24V
 Knowingly loaning a car to someone licensed to drive only a vehicle with ignition interlock - **Mandatory one-year jail sentence** and a fine of not more than **\$500** for a first offense; for a second or subsequent offense: by a fine of not more than **\$1,000** or imprisonment in a house of correction for not more than **2 1/2 years**; **one-year license suspension for first or subsequent offenses**.
 Ch. 90 §12 (c)

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

State Has Such a Law (Yes/No): **Yes Limited Ch. 38 §4A**
 BAC Chemical Test Is Given to the Following Persons:
 Driver: **Yes**⁵⁹²
 Vehicle Passengers: **No**
 Pedestrian: **No**

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** Ch. 138 §§34 and 34A
 Minimum Age (Years) Possession: **21** Applies to the transportation of alcoholic beverages by an unattended person under 21. There is an exemption for persons 18 and 19 years old for employment purposes. Ch §.138 34C
 Minimum Age (Years) Consumption: **None**

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **No**
 “Dram Shop Law” Concept Has Been

⁵⁹¹ The sentence of imprisonment imposed upon such person shall not be reduced to less than 6 months, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served at least 6 months of such sentence but the commissioner of correction may, on the recommendation of the warden, superintendent or other person in charge of a correctional institution, or of the administrator of a county correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at the institution; or to engage in employment pursuant to a work release program. Ch 90 § 24V

⁵⁹² In the case of a single vehicle accident, the law requires medical examiners to submit to the police laboratory blood samples of drivers who die of injuries received in auto accidents within 4 hours of an accident. However, the law only applies if, at the time of the accident, (1) the driver was the only occupant of the vehicle and (2) no other individuals were involved.

Adopted Via a Change to the Common Law Rule by Action of the Highest

Court in the State (Case Citation): **Yes** *Adamain v. Three Sons*, 233 N.E.2d 18 (Mass. 1967), *Cimino v. The Milford Keg, Inc.*, 431 N.E.2d 920 (Mass.1982), *Michnik-Zilberman v. Gordon's Liquor, Inc.*, 453 N.E.2d 430 (Mass. 1983), and *Douillard v. LMR, Inc.*, 740 N.E.2d 618 (Mass. 2001)

Dram Shop Actions-Social Hosts: **Yes** *McGuiggan v. New England Telephone Co.*, 496 N.E.2d 141 (Mass. 1986), and *Langemann v. Davis*, 495 N.E.2d 847 (Mass. 1986) An employer is not liable as a social host for the injuries caused by an intoxicated employee, who stored and consumed alcoholic beverages at work with the employer's permission, so long as such beverages were not supplied by the employer. *Kelly v. Avon Tape, Inc.*, 631 N.E.2d 1013 (Mass. 1994)

Other: A patron who sustains injuries as a result of becoming intoxicated at a licensed establishment may bring a negligence cause action for such injuries against the licensee. *O'Hanley v. Ninety-Nine, Inc.*, 421 N.E.2d 1217 (1981). The plaintiff must prove willful, wanton or reckless conduct on the part of the licensee to maintain an action. (Ch. 231 §85S and §85T) Likewise, the estate of a patron who died in an automobile accident after becoming intoxicated at a licensed establishment may maintain a wrongful death cause of action against such licensee. The comparative negligence statute does not apply in these types of cases. *Zeroulis v. Hamilton American Legion*, 705 N.E.2d 1164 (Mass. App. Ct. 1999)(review denied 710 N.E.2d 604 (Mass. 1999)) However, a social host will not be liable for the injuries sustained by an intoxicated (adult) guest. *Manning v. Nobile*, 582 N.E.2d 942 (Mass. 1991), and Ch. 231 §85T. An adult is a person ≥ 19 years old. *Hamilton v. Ganias*, 632 N.E.2d 407 (Mass. 1994)

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

Type of Criminal Action: **Misdemeanor** Ch. 138 §§62 and 69
 Term of Imprisonment: Not less than **1 month** and not more than **1 year**
 Fine (\$ Range): Not less than **\$50** and not more than **\$500**

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes- Suspension, revocation or cancellation**
 Ch.138 §64

Length of Term of License Withdrawal:

If revocation is imposed, a licensee is disqualified from receiving a license for 1 year after the expiration of the term of the revoked license. No established period for suspension or a cancellation.

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:	Misdemeanor Ch. 138 §34
Term of Imprisonment:	Not more than 1 year
Fine (\$ Range):	Not more than \$2,000

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

License to Serve Alcoholic Beverages Withdrawn (Yes/No):	Yes - Suspension, revocation or cancellation Ch. 138 §64
Length of Term License Withdrawal:	If revocation is imposed, a licensee is disqualified from receiving a license for 1 year after the expiration of the term of the revoked license. No established period for either a suspension or a cancellation. A licensee who is convicted of a violation within 24 months of a previous offense may be required to obtain liquor liability insurance to a limit of not less than \$100,000 to any one person and \$200,000 to all persons. Ch. 136, §64A and Ch. 138, §67 (116)

<u>Anti-Happy Hour Laws/Regulations:</u>	Yes 204 CMR 4.03 and (Regulation)
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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 This law applies to both drivers and passengers. Ch. 90 §241
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Anti-Consumption Law (Yes/No):	No
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