

STATE:

TEXAS

General Reference:

Most citations are to Vernon's Texas Transportation Code, Penal Code, Alcoholic Beverage Code or Code of Criminal Procedure.

Basis for a DWI Charge:

Standard DWI Offense:

Intoxicated while driving<sup>1136</sup> Penal Code §§49.01(2)(A) and 49.04

Illegal Per Se Law (BAC/BrAC):

≥.08 Penal Code §§49.01(2)(B) and 49.04  
Persons Under 21 Years Old->.00<sup>1137</sup> Alcoholic Beverage Code §§106.01 and 106.041(a)

Presumption (BAC):

**None**

Types of Drugs/Drugs and Alcohol:

**Intoxicated** while driving Penal Code §§49.01(2)(A) and 49.04

Other:

It is illegal for a person to operate a motor vehicle if "addicted to the use of alcohol or a controlled substance." Tran. Code §§521.201 and 521.319

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

**No**

Implied Consent Law:

**Yes** Tran. Code §724.011(a)

Arrest Required (Yes/No):

**Yes** Tran. Code §724.011(a)

Implied Consent Law Applies to

Drugs (Yes/No):

Refusal to Submit to Chemical Test

Admitted into Evidence:

**Yes** (Criminal Cases) Tran. Code §724.061 and *Jamail v. State*, 787 S.W.2d 380 (Tex. Cr. App. 1990)<sup>1138</sup> (cert denied) 498 U.S. 853, 112 L.Ed.2d 115, 111 S. Ct. 148 (1990)) and *McClain v. State*, 984 S.W.2d 700 (Tex. App. – Texarkana 1998).

Other Information:

A law enforcement "shall require" a driver who has been arrested for "driving while intoxicated" and has refused to submit to test voluntarily to submit to a blood or breath test if the driver was involved in an accident that either resulted in a death or will likely result in one. Tran. Code §724.012

<sup>1136</sup> The term "intoxicated" means either (1) not having normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug or a combination or two or more of these substances into the body or (2) having an "alcohol concentration" ≥.08. Penal Code §49.01(2) (A) and (B) and *Sullivan v. State*, 807 S.W.2d 342 (Tex. App. – Houston [14th Dist.] 1991) (Note: This case was decided when the alcohol concentration level was an ≥.10.) The term "alcohol concentration" is defined as grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 67 milliliters of urine. Penal Code §49.01(1)

<sup>1137</sup> It is illegal for a person <21 years old to operate a motor vehicle while having any detectable amount of alcohol in his/her system. Alcoholic Beverage Code §§106.01 and 106.041(a)

<sup>1138</sup> Evidence of a refusal cannot be admitted if the driver was not warned of the consequences of such refusal. *Janak v. State*, 826 S.W.2d 803 (Tex. App. -Texarkana 1992)

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

Blood:	<b>Yes</b> Tran. Code §724.011(a)
Urine:	<b>No</b>
Other:	<b>None</b>

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	<b>No</b>
Anti-Plea-Bargaining Statute (Yes/No):	<b>No</b> <sup>1139</sup>
Pre-Sentencing Investigation Law (PSI)(Yes/No):	<b>Yes</b> <sup>1140</sup> <u>Second or subsequent offense</u> (within 5 years) – An evaluation is conducted to determine the appropriateness of an alcohol or drug rehabilitation program. Code of Criminal Procedure Article 42.12, §9(h).

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a <u>Preliminary Breath Test</u> : Criminal Sanctions (Fine/Jail):	<b>N/A</b>
Administrative Licensing Action (Susp/Rev):	<b>N/A</b>
Other:	<b>N/A</b>
Refusal to Take <u>Implied Consent Chemical Test</u> : Criminal Sanction (Fine/Jail):	<b>None</b>
Administrative Licensing Action (Susp/Rev):	<b>I. Refusal – Suspension 180 days. II. Refusal</b> where there has been a prior “alcohol-related or drug-related enforcement contact” – <b>Suspension – 2 years.</b> Tran. Code §§724.035 <b>Occupational License:</b> If a person has not had a prior “alcohol-related or drug-related enforcement contact,” an occupational license may be issued at any time based on essential need. If a person had had a prior “alcohol-related or drug-related enforcement contact”, such a license is not available until the person’s license has been suspended for 90 days. An occupational license is only available once in a 10-year period.

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<sup>1139</sup> For persons ≥21 years old, there is no "deferred adjudication or disposition" for a drunk-driving offense. Code of Criminal Procedure Art. 42.12, §5(d). For persons <21 years old, there is no "deferred adjudication" for a drunk-driving offenses committed under the Penal Code and for a third or subsequent offense of driving with any detectable amount of alcohol in the system. Family Code §53.03(g). Note: Under "deferred disposition," a defendant is placed on probation and, after the probation period has been successfully completed, the charges against the defendant are dismissed.

<sup>1140</sup> I. There is a general pre-sentence investigation law which has been codified as §9 of Art. 42.12 of the Code of Criminal Procedure.

II. The law appears to allow a court to defer the sentence of a drunk-driving offender. As part of this deferral, the court may require an offender to submit to (1) diagnostic testing for alcohol/controlled substance/drug, (2) a psychosocial assessment or (3) alcohol/drug treatment. Tex. Code of Crim. Proc. Art. 45.051(b), (3), (4), (5), and (6). III. Before the court can assign a drunk-driving offender to community supervision (probation), the offender is required to submit to an alcohol and drug evaluation. Code of Crim. Proc. Art. 42.12, §13(f)

Other:

Tran. Code §§521.251, 521.242, 521.245, 521.251, and 724.045

If a driver is acquitted of a DWI offense associated with a license suspension based on a refusal, such suspension must not be imposed or must be rescinded. Tran. Code §724.048(c)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

See Footnote No. <sup>1141</sup>.

Imprisonment:

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

First offense (Class B Misdemeanor) – **72 hours to 180 days**; second offense (Class A Misdemeanor) – **30 days to 1 year**; second offense where there has been a prior Intoxication Manslaughter offense or third offense (third degree felony) – **2 to 10 years** Penal Code §§12.21, 12.22, 12.34, 49.04 and 49.09. Penal Code §12.42 provides for increased imprisonment sanctions for repeat felony offenses.

Persons Under 21 Years Old (BAC >.00) – first offense – **None**; subsequent offense – Not more than **180 days** Alcoholic Beverage Code §106.041(b) and (c)

Mandatory Minimum Term:

First offense (Class B Misdemeanor) – **72 hours**<sup>1142</sup> (It appears the court may allow a DWI offender to participate in community supervision without first having to complete a mandatory period of confinement); second offense (Class A Misdemeanor) – **30 days** (if community supervision is granted, either (1) not less than 3 days of confinement in the county jail or (2) not less than 5 days of confinement in the county jail if “ignition interlock” usage is required); second offense where there has been a prior Intoxication Manslaughter offense or third offense - third degree felony – **2 years** (not less than 10 days of continuous confinement if community supervision is granted). Penal Code §§49.04(b) and 49-09 and Code of Criminal Procedure Art. 42.12, §13(a). Note: Under Penal Code §12.44, a third degree felony offender may receive the imprisonment sanction of a Class A Misdemeanor.

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<sup>1141</sup> A person commits Intoxication Assault, a third degree felony, by causing "serious bodily injury" while DWI. The sanctions for this offense are incarceration from 2 to 10 years and/or a fine of not more than \$10,000. If community supervision is granted, the defendant must serve 30 days of continuous confinement. Penal Code §§12.34 and 49.07 and Code of Criminal Procedure Art. 42.12, §13(a). There is no deferred adjudication for this offense. Code of Criminal Procedure Art. 42.12, §5(d). Note: In cases involving intoxicated assault, an offender can be found to have used a “deadly weapon” (a motor vehicle) in the offense. (See the definition of a “deadly weapon” in Penal Code §1.07(a)(17)B). Such a finding may impact on the types of sanctions that can be imposed (e.g., community service cannot be imposed (Code of Crim. Procedure Art. 42.12, §§3 and 3g)) and on the duration of an offender’s incarceration period before eligible for parole. *Rachuig v. State*, 972 S.W.2d 170 (Tex.App.- Waco 1998)

<sup>1142</sup> If a first offender had in immediate possession an open container of an alcoholic beverage, the minimum term of confinement is 6 days. Penal Code §49.04(c)

<p>Fine: Amount (\$ Range):</p>	<p><u>Persons Under 21 Years Old (BAC &gt;.00) – first offense – N/A; subsequent offense – None</u> Alcoholic Beverage Code §106.041(b) and (c)</p>
<p>Mandatory Min. Fine (\$):</p>	<p><u>First offense (Class B Misdemeanor) – Not more than \$2,000; second offense (Class A Misdemeanor) – Not more than \$4,000; second offense</u> where there has been a prior Intoxication Manslaughter offense or <u>third offense (third degree felony) – Not more than \$10,000</u> Penal Code §§12.21, 12.22, 12.34, 49.04 and 49.09 <u>Persons Under 21 Years Old (BAC &gt;.00) – first offense (Class C Misdemeanor) – Not more than \$500; subsequent offense – \$500 to \$2,000</u> Alcoholic Beverage Code §106.041(b) and (c) and Penal Code §12.23 <b>None</b></p>
<p>Other Penalties: Community Service:</p>	<p><b>Yes.</b> A person convicted of a criminal offense may be required to perform community service according to the schedule listed below. This sanction is in addition to and not in lieu of other sanctions. <u>Second Class felony- 240 to 800 hours; Third Class felony- 160 to 600 hours; Class A Misdemeanor- 80 to 200 hours;</u> and, <u>Class B Misdemeanor- 24 to 100 hours.</u> Code of Criminal Procedure Art. 42.12, §16 and <i>Mills v. State</i>, 799 S.W.2d 447 (Tex. App. – Corpus Christi 1990) <u>Persons Under 21 Years Old (BAC &gt;.00) – first offense (Class C Misdemeanor) – 20 to 40 hours; subsequent offense – 40 to 60 hours</u> Alcoholic Beverage Code §106.041(d)</p>
<p>Restitution (e.g., Victim's Fund)</p>	<p><b>Yes.</b> I. As a condition of community supervision.- Code of Criminal Procedure Art. 42.12, §11. II. A victim of a DWI offense can receive payments from a State victims' compensation fund via the State attorney general. Code of Crim. Procedure Art. 56.31 et seq.</p>
<p>Other:</p>	<p><b>Ignition Interlock – 2nd or subsequent offenses or &gt;.15 B.A.C.:</b> The court must order these offenders to install ignition interlock devices on all of the motor vehicles they own for 1 year following a period of license suspension. If there is a conflict between this requirement and the one related to community supervision, this provision “controls”. Penal Code §49.09(g) <b>Costs Attendant to Intoxication Convictions:</b> DWI offenders shall pay the following costs: (1) \$15 if a video camera was used in the arrest; (2) costs of evaluation; and (3) the cost of any emergency accident response necessitated by the DWI not to exceed \$1,000. Code of Crim. Proc. Art. 102.018.</p>

**Treatment Alternative to Incarceration:** An alcohol/drug treatment program may be established as an alternative to jail. Screening and assessment must be a part of this program when a person has been arrested for an offense in which use or possession of alcohol/drugs is an element. Govt. Code §76.017

**Ignition Interlock:** I. Ignition Interlock (community supervision): For a first DWI, Intoxicated Assault and Intoxication Manslaughter, in situations where a defendant has been placed on community supervision, the court may require that the offender install an "ignition interlock" device on the vehicle. For second and subsequent DUI, or if the defendant had a B.A.C. of .15 or more, Intoxicated Assault and Intoxication Manslaughter in situations where a defendant has been placed on community supervision, the court must require that the offender install an "ignition interlock" device. An offender may obtain an exemption from using an ignition interlock device if the person is required to operate a motor vehicle as part of employment and if the vehicle to be used is owned by the employer. Code of Criminal Procedure Art. 42.12, §13(i) and Tran. Code §521.246.

II. Ignition Interlock (occupational license based on essential need): §521.241 et seq. When applying for an occupational license, the court may require a first offender and must require subsequent offenders within 10 years to only operate vehicles that are equipped with ignition interlock devices. An offender may obtain an exemption from using an ignition interlock device if required to operate a motor vehicle as part of employment and if the vehicle to be used is owned by the employer. However, such exemption does not apply in the situations where the offender is self-employed and owns the vehicle. The ignition interlock device must be used for half of the license suspension period. For subsequent offenders within five years who are subject to the ignition interlock requirement, the time period of device usage is 1 year. Tran. Code §521.246. An offender who does not have a prior record of an implied consent refusal, an admin per se violation, or DWI conviction can receive an occupational license without delay. However, an offender who has had a previous refusal or admin per se violation (within 5 years) must wait 90 days to obtain such a license. Likewise, an offender who has had a prior DWI offense conviction (within 5 years) must wait 180 days before obtaining occupational driving privileges. §521.251.

III. Ignition Interlock (via magistrate after release): Unless the interests of justice indicate otherwise, a magistrate shall require an offender (Intoxicated Assault, Intoxicated Manslaughter or a subsequent

DWI offense), after release from confinement, to only operate vehicles that are equipped with ignition interlock devices. Code of Criminal Procedure Art. 17.441

Administrative Licensing Actions:  
Pre-DWI Conviction Licensing Action:  
 Administrative Per Se Law:

≥.08 BAC/BrAC/UrAC.<sup>1143</sup>

I. Admin Per Se Action– **Suspension – 90 days**<sup>1144</sup> II. Admin Per Se Action where there has been a previous DWI offense conviction – **Suspension – 1 year**

**Occupational License:** If a person has not had a prior “alcohol-related or drug-related enforcement contact”<sup>1145</sup>, an occupational license may be issued based on essential need. If a person has had a prior “alcohol-related or drug-related enforcement contact” within five years, such a license is not available until the person’s license has been suspended for 90 days. An occupational license is only available once in a 10-year period; and a court order granting an occupational license must order the driver to submit to alcohol and drug counseling and rehabilitation. Tran. Code §§521.241, 521.242, 521.245, 521.251, 524.011, 524.012 and 524.022(a)

Persons Under 21 Years Old→.00 BAC<sup>1146</sup> – first Admin. Per Se Action – **Suspension 60 days** (30 days mand); second Admin. Per Se Action– **Suspension 120 days** (90 days mand); subsequent Admin. Per Se Action– **Suspension 180 days** (mand). A person is eligible for an occupational license after the mandatory suspension period. Note: A prior drunk-driving offense conviction is considered a prior action for license sanctions enhancement purposes. Tran. Code §§524.001, 524.012 and 524.022(b) and (c)

Post DWI Conviction Licensing Action:  
 Type of Licensing Action  
 (Susp/Rev):  
 Term of License Withdrawal  
 (Days, Months, Years, etc.):

**Suspension** Tran. Code §521.344

I. The following suspensions must be based on a conviction that resulted from the introduction of

<sup>1143</sup> See the definition of "alcohol concentration" in Penal Code §49.01. Tran. Code §524.001(1)

I. An admin per se suspension is either not imposed or rescinded if a driver is acquitted of the drunk-driving offense (including offenses committed by persons <21 years old who are driving with any detectable amount of alcohol in his/her systems) associated with such suspension. Tran. Code §524.015(b)

II. An admin per se suspension is credited towards a suspension imposed for a DWI offense conviction. Tran. Code §524.023

<sup>1144</sup> The law specifically provides that a suspension based on an admin per se action cannot be "probated." Tran. Code §524.021(b)

<sup>1145</sup> “Alcohol-related or drug-related enforcement contact” means a driver license suspension, revocation or disqualification based on a drunk-driving offense, refusal to submit to a test under the implied consent law or administrative per se. Tran. Code§524.001(3).

<sup>1146</sup> The law provides that license suspension is based on operating a motor vehicle with any detectable amount of alcohol in the system. Tran. Code §524.012(b)(2)

alcohol into the body. First offense – 90 days to 1 year (365 days)<sup>1147and1148</sup>; subsequent offense – 180 days to 2 years; subsequent offense (within five years) – 1 to 2 years<sup>1149</sup> Tran. Code §521.344(a) and Code of Crim. Proc. Art. 42.12, §13(k)

II. Intoxicated Assault- first offense – 90 days to 1 year; subsequent offense (within five years) – 1 year Tran. Code §§521.344(a).

Mandatory Minimum Term of  
Withdrawal:

DWI Offenses: first offense – None; subsequent offense with required ignition interlock usage- 1 year. Intoxicated Assault: first offense – None; subsequent offense – 1 year.

I. After the mandatory suspension period, offenders may be issued an occupational license based on "essential need". However, a person cannot be issued such a license if issued an occupational license within the past 10 years for a prior DWI offense conviction. Tran. Code §§521.242(b)(2) and (d) and 521.244

II. First offenders 21 years old or older placed on probation are not subject to license suspension if they attend an alcohol education program. Tran. Code §521.344(d) and Code of Criminal Procedure §13(h) and (j)

Rehabilitation:  
Alcohol Education:

**Yes.** For any DWI offense, including Intoxication Assault and Intoxication Manslaughter as a condition of community supervision, an offender is required to complete an alcohol education program. This

<sup>1147</sup> **DWI Offenders Under 21 Years Old:** License suspension for 1 year. Except as noted, the licensing agency must suspend the offender's license regardless of whether the offender has been placed on probation and ordered to complete an alcohol education program. A person's license is not subject to suspension if that person is placed under community supervision and required to operate only motor vehicles equipped with **ignition interlock** devices. Tran. Code §521.342. An occupational license is available. Tran. Code §§521.241 et seq. and 521.342(c) Notwithstanding other provisions of law, offenders who are placed on community supervision must have their licenses suspended for 90 days, which must begin at the time the offenders are placed on such supervision, and they can only operate motor vehicles that are equipped with ignition interlock devices. Code of Criminal Procedure Art. 42.12, §13(n)

**DWI Offenders Under 17 Years Old:** A suspension until the person reaches 19 or for 365 days whichever is the longer suspension period. An occupational license is available if the person is eligible for a provisional license. Tran. Code §521.241 et seq. and Family Code §§51.02(2) and 54.042(a)(1), (c) and (d)

<sup>1148</sup> I. Except for subsequent DWI offenders (within 5 years) who are subject to required ignition interlock usage, a license cannot be suspended if a jury recommends community supervision and against such suspension. Tran. Code §521.344(d) and Code of Criminal Procedure Art. 42.12, §§4 and 13(g). II. Except for subsequent DWI offenders (within 5 years) who are subject to required ignition interlock usage, an offender's license cannot be suspended if that person is required to attend an alcohol education program as part of probation. However, if a person has been previously convicted of a DWI offense, regardless of the time period between offenses, if that person has previously attended an alcohol education program as part of probation, that person's license must be suspended. The suspension periods, including any mandatory suspension period, are the same as for DWI. Tran. Code §521.344(d), Code of Criminal Procedure Art. 42.12, §13(k), and *Texas Dept. of Public Safety v. Duarte*, 809 S.W.2d 611 (Tex.App. -Corpus Christi 1991).

<sup>1149</sup> Under separate provisions of law, a person who has been convicted of a DWI offense based on driving while intoxicated by a "controlled substance" is also subject to a suspension for 180 days. Tran. Code §§521.371 and 521.372. A person is eligible for occupational driving privileges based on an essential need to drive. Tran. Code. §§521.241 et seq. and 521.377(b).

Alcohol Treatment:

requirement may be waived upon a showing of good cause by the offender. Code of Criminal Procedure Art. 42.12, §13(h) and (j)  
Persons Under 21 Years Old (BAC->.00) – first offense – An offender **must** attend an alcohol awareness course; subsequent offense – An offender **may** be required to attend an alcohol awareness course. Alcoholic Beverage Code §§106.041(d) and 106.115  
**Yes.** Felony offenders (third or subsequent DWI offenses, Intoxication Assault and Intoxication Manslaughter) may be confined in a substance abuse treatment facility in lieu of imprisonment from 6 months to 1 year. Code of Criminal Procedure Art. 42.12, §14(a).

Vehicle Impoundment/Confiscation:  
 Authorized by Specific  
 Statutory Authority:

**Forfeiture (Not Mandatory):** A vehicle owned and operated by an offender during a drunk-driving offense may be subject to forfeiture by the State following three or more DWI convictions. Tran. Code §704.001

Miscellaneous Sanctions  
 Not Included Elsewhere:

**Work Release:** For misdemeanor and felony offenses (where imprisonment is in a county jail), the court may allow an offender to participate in a work release program. Code of Criminal Procedure Art. 42.034.

**Intermittent Sentence:** A sentence may be served intermittently including confinement as a condition of community supervision. Code of Criminal Procedure Art. 42.033

**Electronic Monitoring:** An offender may serve a county jail sentence via electronic monitored "house arrest". Code of Criminal Procedure Art. 42.035

**Incarceration Costs:** Persons who are convicted of a misdemeanor offense may be required to pay the cost, at a rate of \$25 per day, for any incarceration time that they serve in a county jail. Indigent defendants may not be required to pay this cost. Code of Criminal Procedure Art. 42.038(a) and (c)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
 State Has Such a Law:

**Yes.**<sup>1150</sup> **Intoxication Manslaughter**<sup>1151</sup> (DWI-related death) second degree felony Penal Code §49.08

Sanctions:  
 Criminal Sanction:  
 Imprisonment (Term):

Second Degree Felony- 2 to 20 years Penal Code §12.33

<sup>1150</sup> A person who has killed another while driving a vehicle in a reckless or negligent manner while intoxicated may also be convicted of involuntary manslaughter with the use of "deadly weapon." Penal Code §1.07(a)(17)(B), *Ray v. State*, 880 S.W.2d 795 (Tex. App.- Houston [1st Dist.] 1994), *Martinez v. State*, 883 S.W.2d 771 (Tex. App.- Fort Worth 1994), *Tyra v. State*, 897 S.W.2d 796 (Tex. Cr. App. 1995), and *Hall v. State*, 935 S.W.2d 852 (Tex. App. – San Antonio 1996)

<sup>1151</sup> There is no deferred adjudication for this offense. Code of Criminal Procedure Art. 42.12, §5(d)

Mandatory Minimum Term: **120 days** if community supervision is granted. Art. 42.12, §13(b) Code of Criminal Procedure

Fine (\$ Range): Second Degree Felony- Not more than **\$10,000**. Penal Code §12.33

Mandatory Minimum Fine: **None**

Administrative Licensing Action: **Suspension** Tran. Code §521.344(b)  
 Licensing Authorized and Type of Action:  
 Length of Term of

Licensing Withdrawal: First offense – **180 days to 2 years**; second or subsequent offense (within 10 years) – **1 to 2 years**. Tran. Code §521.344(b). For persons under 21 years old – **Suspension 1 year** (appears to be mand) Tran. Code §521.342(b).

Mandatory Action--Minimum Length of License Withdrawal: First offense – **None**; second or subsequent offense (within 10 years) – **1 year**. Tran. Code §521.344(b). For persons under 21 years old, for either a first, second or subsequent offense, 1-year suspension appears to be mandatory. Tran. Code §521.342(b). But an offender may be issued an occupational (restricted) license with an ignition interlock requirement based on "essential need".<sup>1152</sup> Tran. Code §521.241 et seq. .

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

There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked. Tran. Code §521.457.

Sanction: Criminal: Imprisonment (Term): First offense – not less than **72 hours** nor more than **6 months**; second and subsequent offense (Class A Misdemeanor) – not more than **1 year** Tran. Code §521.457 and Penal Code §12.21

Mandatory Minimum Term of Imprisonment: **None**

Fine (\$ Range): First offense – not less than **\$100** nor more than **\$500**; second and subsequent offense – not more than **\$4,000** Tran. Code §521.457 and Penal Code §12.21.

Mandatory Minimum Fine: **None**  
 Administrative Licensing Actions: **Suspension** Tran. Code §521.292(a)(1)  
 Type of Licensing Action (Susp/Rev):

<sup>1152</sup> **Offenders Under 21 Years Old:** The court may place these offenders on community supervision. If the court takes this action, it must suspend their driving privileges for 90 days and require that such offenders only operate motor vehicles equipped with ignition interlock devices. Code of Criminal Procedure Art. 42.12, §13(m)

Length of Term of License

Withdrawal Action:

The regular suspension period is the lesser of either an additional period that is equal to the original period or for 1 year.

Mandatory Term of License

Withdrawal Action

**None.** An occupational license may be issued based on essential need. Tran. Code §521.241 et seq. {There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.}

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

Grounds for Being Declared an

Habitual Offender:

**Yes** Tran. Code §521.292(b)

"Any person with 4 or more convictions arising out of different actions in a consecutive period of 12 months, or 7 or more convictions arising out of different actions within a period of 24 months...." Tran. Code §521.292(b)

Term of License Rev While

Under Habitual Offender Status:

**Suspension** for not more than **1 year** Tran. Code §521.292(a)(3).

An occupational license may be issued on a showing of "essential need". Tran. Code §521.241 et seq.

Sanctions Following a Conviction of

Driving While on Habitual Offender

Status:

Imprisonment (Term):

**None**

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

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):

**Limited**

BAC Chemical Test Is Given to the

Following Persons:

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A 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) has an alcohol concentration  $\geq .04$  (Standards: Grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 67 milliliters of urine), (2) is under the influence of alcohol or a controlled substance or (3) refuses to submit to a chemical test for either alcohol concentrations or the presence of a controlled substance or drugs. 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 (10 years mand). In addition, a CMV operator who has any "measurable" or "detectable" amount of alcohol in his/her system must be placed "out-of-service" for 24 hours. Tran. Code §§522.003(1), (2), (5), (9) and (23), 522.081, 522.082, 522.085, 522.086, 522.101 and 522.102.

Driver:	<b>Discretionary</b>
Vehicle Passengers:	<b>No</b>
Pedestrian:	<b>No</b>

Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** Alcoholic Beverage Code §§106.01, 106.02 and 106.03<sup>1153</sup>

Minimum Age (Years) Possession: **21** Alcoholic Beverage Code §§106.01 and 106.05. Exemptions for employment or while in the presence of a parent or guardian.

Minimum Age (Years) Consumption: **21** Alcoholic Beverage Code §§106.01 and 106.04. Exemption for a minors' consumption of alcoholic beverages when they are in the "visible presence" of a parent or guardian.

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

**Yes.**<sup>1154 and 1155</sup> Alcoholic Beverage Code §2.01 et seq. Under §2.02(b)(1), in order for a licensee to be liable, it must be proven that the patron was "obviously intoxicated to the extent that he presented a clear danger to himself and others" at the time he was sold/served alcoholic beverages. Also, under §2.03, these code provisions provide the exclusive remedy in situations where the patron is 18 years old or older. See *F.F.P. Operating Ptnrs, L.P. v. Duenez*, 69 S.W.3d 800 (Tex. App. – Corpus Christi, 2002) review granted 2002 TEX.LEXIS 210 (Tex. 2002).

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record (Case Citation):  
Dram Shop Actions-Social Hosts:

**Yes.**  
**Yes-Limited.** *Graff v. Beard*, 858 S.W.2d 918 (Tex. – San Antonio 1995)<sup>1156</sup>, *Smith v. Merritt*, 940 S.W.2d

<sup>1153</sup> A justice of the peace may order that a blood specimen be taken from a deceased person if there is evidence to indicate that such person was driving while intoxicated. Code of Criminal Procedure Art. 49.10(j)

<sup>1154</sup> I. Under §106.14 of the Alcoholic Beverage Code, actions of employees in serving alcoholic beverages to either minors or intoxicated persons are not attributable to employers if (1) the employer has required its employees to take alcoholic beverage seller training, (2) the employees have completed this training and (3) the employer has not encouraged employees to sell alcoholic beverages to either minors or intoxicated persons. See "The Safe Harbor Defense" in *Perseus, Inc. v. Canody*, 995 S.W.2d 202 (Tex. App. – San Antonio 1999), and *Cianci v. M. Till, Inc.*, 34 S.W.3d 327 (Tex. App. – Eastland 2000). II. A licensee may not be liable for the damages resulting from the death of a person caused by the criminal acts of an intoxicated patron. Such act may be a superseding cause which negates any dram shop cause of action. *Phan Son Vau v. Pena*, 990 S.W.2d 751 (Tex. Parents brought a wrongful death negligence action against a licensee for the death of their son caused by the criminal conduct of an intoxicated patron. Since the criminal act was not foreseeable, the licensee was not liable for such death. *Boggs v. Bottomless Pit* 1999)

<sup>1155</sup> *Cooking Team*, 25 S.W.3d 818 (Tex. App. – Houston [14th Dist.] 2000)

<sup>1156</sup> In the *Smith* case, the court held that a social host owed no common law duty of care to avoid serving alcoholic beverages to a minor and thus there was no liability under general common law for injuries caused by such a minor. Likewise, the court held that there was no negligence per se cause of action against a social host for damages resulting from a violation of the alcoholic beverage control law which prohibits the service of alcoholic beverages to persons <21 years old. Note: This decision by the Texas Supreme Court reversed, in part, the Texas Court of Appeals in *Smith v. Merritt*, 929 S.W.2d 456 (Tex. App. – Tyler 1995)

Other:

602 (Tex. 1997)<sup>1157</sup> *Kovar v. Krampitz*, 941 S.W.2d 249 (Tex. App. – Houston [14 Dist.] 1996) and *Dorris v. Price*, 22 S.W.3d 42 (Tex. App. – Eastland 2000) Under the Dram Shop Law, a licensee may be held liable for injuries sustained by an intoxicated patron subject to comparative negligence theories that may apply. *Smith v. Sewell*, 858 S.W.2d 350 (Tex. 1993) Under common law negligence, an employer may be liable for injuries sustained by an intoxicated employee where such intoxication occurred at an “after work hours” event sponsored by the employer. The extent of the employer’s control over the employee will determine whether there is a duty of care to protect the employee from harm. *Spruiell v. Schlumberger Ltd.*, 809 S.W.2d 935 (Tex. App.- Texarkana 1991) (possible liability), and *Whitney Corp. v. George Distributors*, 950 S.W.2d 82 (Tex. App. – Amarillo 1997) (no liability). See also *D. Houston, Inc. v. Love*, 92 S.W.3d 450 (Tex. 2002) where the plaintiff-exotic dancer was required to drink by her employer-licensee, became intoxicated and was injured driving home.

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic

Beverages to Intoxicated Patrons:

Type of Criminal Action:

Term of Imprisonment:

Fine (\$ Range):

**Misdemeanor** Alcoholic Beverage Code §101.63

First offense – Not more than **1 year**; second offense – Not more than **1 year** Alcoholic Beverage Code §§101.63(b) and 101.63(c)

First offense – Not less than **\$100 nor more than \$500**; subsequent offense – Not < **\$500** nor >**\$1,000**.

Administrative Actions Against Owners of Establishments that Serve Alcoholic

Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

**Yes**<sup>1158</sup>

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intoxicated adult guest was injured in a vehicle accident after consuming alcoholic beverages at a party. However, in *Ryan v. Friesenhahn*, 911 S.W.2d 113 (Tex. App. – San Antonio 1995) (affirmed on procedural grounds by the State Supreme Court. *Friesenhahn v. Ryan*, 960 S.W. 2d 656 (Tex. 1995)), a social host was found liable for the death of a minor guest (a person <21 years old per Alcoholic Beverage Code §106.01) who had consumed alcoholic beverages at a party given by the host.

<sup>1157</sup> In *Kovar*, the court held that since a social host did not provide alcoholic beverages to a minor guest he was not liable for the minor's death resulting from intoxication. The minor was killed in an automobile accident while driving in an intoxicated condition. See also *Daniel v. Reeder*, 16 S.W.3d 491 (Tex. App.- Beaumont 2000), where the court held that social hosts who serve alcoholic beverages to minor guests in violation of Alcoholic Beverage Code §106.06 could be held liable for the injuries sustained by such minors via negligence as “as a matter of law.” This case was reversed in *Reeder v. Daniels*, 61 S.W.3d 359 (Tex. 2001) in which such liability was disallowed by legislation and the court rejected social host liability via a negligence theory. In *Dorris*, the court held that a social host could not be held liable, under either common law negligence or negligence per se, for the injuries caused to third parties by the host’s intoxicated minor guests.

<sup>1158</sup> In lieu of a suspension, the licensee may be allowed to pay a civil fine of not less than \$150 for each day of the proposed suspension.

Length of Term of License Withdrawal:	<b>Suspended</b> – not more than <b>60 days</b> , revoked, or cancelled Alcoholic Beverage Code §§11.61, 32.17 and 61.71
<u>Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Persons Under the Minimum Legal Drinking Age:</u> Type of Criminal Action: Term of Imprisonment:	<b>Class A Misdemeanor</b> <sup>1159</sup> Not more than <b>1 year</b> . <sup>1160</sup> Alcoholic Beverage Code §§106.01 and 106.03
Fine (\$ Range):	<u>First offense</u> – Not less than <b>\$100 nor more than \$500</b> ; <u>subsequent offense</u> – <b>\$500 to \$1,000</b> Alcoholic Beverage Code §106.03
<u>Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Persons Under the Minimum Legal Drinking Age:</u> License to Serve Alcoholic Beverages Withdrawn (Yes/No):	<b>Yes.</b> <sup>1161</sup> Alcoholic Beverage Code §§106.13 and 61.71(a)(5)
Length of Term License Withdrawal:	<u>First offense</u> – cancel or suspend for not more than <b>90 days</b> ; <u>second offense</u> – cancel or suspend for not more than <b>6 months</b> ; <u>third offense</u> – cancel or suspend for not more than <b>12 months</b> .
<u>Anti-Happy Hour Laws/Regulations:</u>	<b>Yes.</b> Rule 06.09.04.001 (regulation)
<u>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:</u> Open Container Law:	<b>Yes, driver and passenger</b> <sup>1162</sup> Penal Code §49.031
Anti-Consumption Law:	<b>No</b>

<sup>1159</sup> The sale to a minor must be with criminal negligence. §106.03(a) of the Alcoholic Beverage Code

<sup>1160</sup> Applies to both a first and subsequent offense.

<sup>1161</sup> In lieu of a suspension, the licensee may be allowed to pay a civil fine of not less than \$150 for each day of the proposed suspension.

<sup>1162</sup> Under separate provisions, the law prohibits the possession of an open container of or the consumption of an alcoholic beverage on a street, alley or sidewalk within 1,000 feet of a public, private or parochial school that provides education from pre-kindergarten through 12th grade. Alcoholic Beverage Code §101.75(a).