CHAPTER 169A

DRIVING WHILE IMPAIRED

GENERAL PROVISIONS

169A.01 CITATION; APPLICATION.

Subdivision 1. **Citation.** This chapter may be cited as the Minnesota Impaired Driving Code.

Subd. 2. **Application.** Unless otherwise indicated, the provisions of this chapter apply to any person who drives, operates, or is in physical control of a motor vehicle within this state or on any boundary water of this state. The provisions of this chapter are applicable and uniform throughout the state and in all its political subdivisions and municipalities.

Subd. 3. **Local ordinances.** No local authority may enact or enforce any rule or regulation that conflicts with a provision of this chapter unless expressly authorized to do so in this chapter. Local authorities may adopt traffic regulations that do not conflict with the provisions of this chapter. However, if any local

ordinance regulating traffic covers the same subject for which a penalty is provided for in this chapter, the penalty provided for the violation of the local ordinance must be identical to the penalty provided for in this chapter for the same offense.

History: *2000 c 478 art 1 s 1*

169A.03 DEFINITIONS.

Subdivision 1. **Scope.** (a) As used in this chapter, unless the context clearly indicates otherwise, the terms defined in this section have the meanings given.

(b) If a term defined in section 169.011, but not defined in this chapter, is used in this chapter, the term has the meaning given in section 169.011, unless the context clearly indicates otherwise.

Subd. 2. **Alcohol concentration.** "Alcohol concentration" means:

(1) the number of grams of alcohol per 100 milliliters of blood;

(2) the number of grams of alcohol per 210 liters of breath; or

(3) the number of grams of alcohol per 67 milliliters of urine.

Subd. 3. **Aggravating factor.** "Aggravating factor" includes:

(1) a qualified prior impaired driving incident within the ten years immediately preceding the current offense;

(2) having an alcohol concentration of 0.16 or more as measured at the time, or within two hours of the time, of the offense; or

(3) having a child under the age of 16 in the motor vehicle at the time of the offense if the child is more than 36 months younger than the offender.

Subd. 4. **Commercial motor vehicle.** "Commercial motor vehicle" has the meaning given in section 169.011, subdivision 16.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of public safety or a designee.

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

Subd. 6. **Controlled substance.** "Controlled substance" has the meaning given in section 152.01, subdivision 4.

Subd. 7. **Driver.** "Driver" has the meaning given in section 169.011, subdivision 24.

Subd. 8. **Gross misdemeanor.** "Gross misdemeanor" means a crime for which a person may be sentenced to imprisonment for not more than one year, or to payment of a fine of not more than $3,000, or both.

Subd. 9. MS 2016 [Repealed, 2018 c 195 art 2 s 3]

Subd. 10. **Head Start bus.** "Head Start bus" has the meaning given in section 169.011, subdivision 34.

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

Subd. 11a. **Intoxicating substance.** "Intoxicating substance" means a drug or chemical, as those terms are defined in section 151.01, that when introduced into the human body impairs the central nervous system or impairs the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.

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

Subd. 13. **Motorboat.** "Motorboat" has the meaning given in section 86B.005, subdivision 9.

Subd. 14. **Motorboat in operation.** "Motorboat in operation" does not include a motorboat that is anchored, beached, or securely fastened to a dock or other permanent mooring or a motorboat that is being rowed or propelled by other than mechanical means.

Subd. 15. **Motor vehicle.** "Motor vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires. The term includes motorboats in operation and off-road recreational vehicles, but does not include a vehicle moved solely by human power.

Subd. 16. **Off-road recreational vehicle.** "Off-road recreational vehicle" means an off-highway motorcycle as defined in section 84.787, subdivision 7; off-road vehicle as defined in section 84.797, subdivision 7; snowmobile as defined in section 84.81, subdivision 3; and all-terrain vehicle as defined in section 84.92, subdivision 8.

Subd. 17. **Owner.** "Owner" has the meaning given in section 169.011, subdivision 51.

Subd. 18. **Peace officer.** "Peace officer" means:

(1) a State Patrol officer;

(2) University of Minnesota peace officer;

(3) police officer of any municipality, including towns having powers under section 368.01, or county; and

(4) for purposes of violations of this chapter in or on an off-road recreational vehicle or motorboat, or for violations of section 97B.065 or 97B.066, a state conservation officer.

Subd. 19. **Police officer.** "Police officer" has the meaning given in section 169.011, subdivision 56.

Subd. 20. **Prior impaired driving conviction.** "Prior impaired driving conviction" includes a prior conviction under:

(1) section 169A.20 (driving while impaired); 169A.31 (alcohol-related school bus or Head Start bus driving); or 360.0752 (impaired aircraft operation);

(2) Minnesota Statutes 2012, section 609.21 (criminal vehicular homicide and injury, substance-related offenses), subdivision 1, clauses (2) to (6);

(3) Minnesota Statutes 1998, section 169.121 (driver under influence of alcohol or controlled substance); 169.1211 (alcohol-related driving by commercial vehicle drivers); or 169.129 (aggravated DWI-related violations; penalty);

(4) Minnesota Statutes 1996, section 84.91, subdivision 1, paragraph (a) (operating snowmobile or all-terrain vehicle while impaired); or 86B.331, subdivision 1, paragraph (a) (operating motorboat while impaired);

(5) Minnesota Statutes 2006, section 609.21 (criminal vehicular homicide and injury, substance-related offenses), subdivision 1, clauses (2) to (6); subdivision 2, clauses (2) to (6); subdivision 2a, clauses (2) to (6); subdivision 2b, clauses (2) to (6); subdivision 3, clauses (2) to (6); or subdivision 4, clauses (2) to (6);

(6) section 609.2112, subdivision 1, clauses (2) to (6); 609.2113, subdivision 1, clauses (2) to (6), subdivision 2, clauses (2) to (6), or subdivision 3, clauses (2) to (6); or 609.2114, subdivision 1, clauses (2) to (6), or subdivision 2, clauses (2) to (6); or

(7) an ordinance from this state, or a statute or ordinance from another state, in conformity with any provision listed in clause (1), (2), (3), (4), (5), or (6).

A "prior impaired driving conviction" also includes a prior juvenile adjudication that would have been a prior impaired driving conviction if committed by an adult.

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

(1) section 169A.31 (alcohol-related school bus or Head Start bus driving); 169A.50 to 169A.53 (implied consent law); 169A.54 (impaired driving convictions and adjudications; administrative penalties); 171.04 (persons not eligible for drivers' licenses); 171.14 (cancellation); 171.16 (court may recommend suspension); 171.165 (commercial driver's license, disqualification); 171.17 (revocation); 171.177 (revocation; pursuant to search warrant); or 171.18 (suspension); because of an alcohol-related incident;

(2) Minnesota Statutes 2012, section 609.21 (criminal vehicular homicide and injury, substance-related offenses), subdivision 1, clauses (2) to (6);

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

(4) Minnesota Statutes 2006, section 609.21 (criminal vehicular homicide and injury, substance-related offenses), subdivision 1, clauses (2) to (6); subdivision 2, clauses (2) to (6); subdivision 2a, clauses (2) to (6); subdivision 2b, clauses (2) to (6); subdivision 3, clauses (2) to (6); or subdivision 4, clauses (2) to (6);

(5) section 609.2112, subdivision 1, clauses (2) to (6); 609.2113, subdivision 1, clauses (2) to (6), subdivision 2, clauses (2) to (6), or subdivision 3, clauses (2) to (6); or 609.2114, subdivision 1, clauses (2) to (6), or subdivision 2, clauses (2) to (6); or

(6) an ordinance from this state, or a statute or ordinance from another state, in conformity with any provision listed in clause (1), (2), (3), (4), or (5).

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

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

Subd. 22. **Qualified prior impaired driving incident.** "Qualified prior impaired driving incident" includes prior impaired driving convictions and prior impaired driving-related losses of license.

Subd. 23. **School bus.** "School bus" has the meaning given in section 169.011, subdivision 71. In addition, the term includes type III vehicles as defined in section 169.011, subdivision 71, when driven by employees or agents of school districts.

Subd. 24. **Street or highway.** "Street or highway" has the meaning given in section 169.011, subdivision 81.

Subd. 24a. **Twice the legal limit.** "Twice the legal limit" means an alcohol concentration of two times the limit specified in section 169A.20, subdivision 1, clause (5).

Subd. 25. **Vehicle.** "Vehicle" has the meaning given in section 169.011, subdivision 92.

History: *2000 c 478 art 1 s 2; 1Sp2001 c 8 art 8 s 4; 2002 c 323 s 18; 2003 c 96 s 1; 1Sp2003 c 2 art 9 s 1,2; 2005 c 10 art 2 s 4; 2007 c 54 art 3 s 14; 2008 c 271 s 2; 2008 c 350 art 1 s 96; 2009 c 96 art 8 s 8; 2010 c 366 s 1; 2012 c 222 s 1,2; 2014 c 180 s 1,2,9; 2015 c 65 art 6 s 5; 2017 c 83 art 2 s 1; 2018 c 195 art 2 s 1*

169A.05 PARENTHETICAL REFERENCES.

Words set forth in parentheses after references to sections or subdivisions in this chapter are mere catchwords included solely for convenience in reference. They are not substantive and may not be used to construe or limit the meaning of any statutory language.

History: *2000 c 478 art 1 s 3*

169A.07 MS 2017 Supp [Repealed, 2018 c 183 s 6]

169A.09 DETERMINING QUALIFIED PRIOR DWI INCIDENTS.

Prior impaired driving convictions and prior impaired driving-related losses of license must arise out of a separate course of conduct to be considered as multiple qualified prior impaired driving incidents under this chapter. When a person has a prior impaired driving conviction and a prior impaired driving-related loss of license based on the same course of conduct, either the conviction or the loss of license may be considered a qualified prior impaired driving incident, but not both.

History: *2000 c 478 art 1 s 5*

169A.095 DETERMINING NUMBER OF AGGRAVATING FACTORS.

When determining the number of aggravating factors present for purposes of this chapter, subject to section 169A.09 (sanctions for prior behavior to be based on separate courses of conduct), each qualified prior impaired driving incident within the ten years immediately preceding the current offense is counted as a separate aggravating factor.

History: *2000 c 478 art 1 s 6*

CRIMINAL PROVISIONS

169A.20 DRIVING WHILE IMPAIRED.

Subdivision 1. **Driving while impaired crime; motor vehicle.** It is a crime for any person to drive, operate, or be in physical control of any motor vehicle, as defined in section 169A.03, subdivision 15, except for motorboats in operation and off-road recreational vehicles, within this state or on any boundary water of this state when:

(1) the person is under the influence of alcohol;

(2) the person is under the influence of a controlled substance;

(3) the person is under the influence of an intoxicating substance and the person knows or has reason to know that the substance has the capacity to cause impairment;

(4) the person is under the influence of a combination of any two or more of the elements named in clauses (1) to (3);

(5) the person's alcohol concentration at the time, or as measured within two hours of the time, of driving, operating, or being in physical control of the motor vehicle is 0.08 or more;

(6) the vehicle is a commercial motor vehicle and the person's alcohol concentration at the time, or as measured within two hours of the time, of driving, operating, or being in physical control of the commercial motor vehicle is 0.04 or more; or

(7) the person's body contains any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols.

Subd. 1a. **Driving while impaired crime; motorboat in operation.** It is a crime for any person to operate or be in physical control of a motorboat in operation on any waters or boundary water of this state when:

(1) the person is under the influence of alcohol;

(2) the person is under the influence of a controlled substance;

(3) the person is under the influence of an intoxicating substance and the person knows or has reason to know that the substance has the capacity to cause impairment;

(4) the person is under the influence of a combination of any two or more of the elements named in clauses (1) to (3);

(5) the person's alcohol concentration at the time, or as measured within two hours of the time, of driving, operating, or being in physical control of the motorboat is 0.08 or more; or

(6) the person's body contains any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols.

Subd. 1b. **Driving while impaired crime; snowmobile and all-terrain vehicle.** It is a crime for any person to operate or be in physical control of a snowmobile as defined in section 84.81, subdivision 3, or all-terrain vehicle as defined in section 84.92, subdivision 8, anywhere in this state or on the ice of any boundary water of this state when:

(1) the person is under the influence of alcohol;

(2) the person is under the influence of a controlled substance;

(3) the person is under the influence of an intoxicating substance and the person knows or has reason to know that the substance has the capacity to cause impairment;

(4) the person is under the influence of a combination of any two or more of the elements named in clauses (1) to (3);

(5) the person's alcohol concentration at the time, or as measured within two hours of the time, of driving, operating, or being in physical control of the snowmobile or all-terrain vehicle is 0.08 or more; or

(6) the person's body contains any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols.

Subd. 1c. **Driving while impaired crime; off-highway motorcycle and off-road vehicle.** It is a crime for any person to operate or be in physical control of any off-highway motorcycle as defined in section 84.787, subdivision 7, or any off-road vehicle as defined in section 84.797, subdivision 7, anywhere in this state or on the ice of any boundary water of this state when:

(1) the person is under the influence of alcohol;

(2) the person is under the influence of a controlled substance;

(3) the person is under the influence of an intoxicating substance and the person knows or has reason to know that the substance has the capacity to cause impairment;

(4) the person is under the influence of a combination of any two or more of the elements named in clauses (1) to (3);

(5) the person's alcohol concentration at the time, or as measured within two hours of the time, of driving, operating, or being in physical control of the off-highway motorcycle or off-road vehicle is 0.08 or more; or

(6) the person's body contains any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols.

Subd. 2. **Refusal to submit to chemical test crime.** It is a crime for any person to refuse to submit to a chemical test:

(1) of the person's breath under section 169A.51 (chemical tests for intoxication), or 169A.52 (test refusal or failure; revocation of license); or

(2) of the person's blood or urine as required by a search warrant under sections 171.177 and 626.04 to 626.18.

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

History: *2000 c 478 art 1 s 7; 1Sp2001 c 8 art 11 s 2; 1Sp2001 c 9 art 19 s 3; 2002 c 379 art 1 s 113; 1Sp2003 c 2 art 9 s 3; 2004 c 283 s 3; 2006 c 260 art 2 s 2; 2009 c 83 art 2 s 9-12; 2017 c 83 art 2 s 2; 2018 c 195 art 2 s 2; art 3 s 2-4*

169A.24 FIRST-DEGREE DRIVING WHILE IMPAIRED.

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

(1) commits the violation within ten years of the first of three or more qualified prior impaired driving incidents;

(2) has previously been convicted of a felony under this section; or

(3) has previously been convicted of a felony under:

(i) Minnesota Statutes 2012, section 609.21 (criminal vehicular homicide and injury, substance-related offenses), subdivision 1, clauses (2) to (6);

(ii) Minnesota Statutes 2006, section 609.21 (criminal vehicular homicide and injury, substance-related offenses), subdivision 1, clauses (2) to (6); subdivision 2, clauses (2) to (6); subdivision 2a, clauses (2) to (6); subdivision 3, clauses (2) to (6); or subdivision 4, clauses (2) to (6);

(iii) section 609.2112, subdivision 1, clauses (2) to (6); 609.2113, subdivision 1, clauses (2) to (6), subdivision 2, clauses (2) to (6), or subdivision 3, clauses (2) to (6); or 609.2114, subdivision 1, clauses (2) to (6), or subdivision 2, clauses (2) to (6); or

(iv) a statute from this state or another state in conformity with any provision listed in item (i), (ii), or (iii).

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

History: *1Sp2001 c 8 art 11 s 3; 1Sp2001 c 9 art 19 s 4; 2002 c 379 art 1 s 113; 2006 c 260 art 2 s 3; 2007 c 54 art 3 s 14; 2012 c 222 s 3; 2014 c 180 s 3,9; 1Sp2019 c 5 art 6 s 3*

169A.25 SECOND-DEGREE DRIVING WHILE IMPAIRED.

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

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

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

History: *2000 c 478 art 1 s 8; 1Sp2001 c 8 art 11 s 4; 1Sp2001 c 9 art 19 s 5; 2002 c 379 art 1 s 113; 1Sp2003 c 2 art 9 s 4; 2009 c 83 art 2 s 13*

169A.26 THIRD-DEGREE DRIVING WHILE IMPAIRED.

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

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

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

History: *2000 c 478 art 1 s 9; 1Sp2001 c 8 art 11 s 5; 1Sp2001 c 9 art 19 s 6; 2002 c 379 art 1 s 113; 1Sp2003 c 2 art 9 s 5; 2009 c 83 art 2 s 14*

169A.27 FOURTH-DEGREE DRIVING WHILE IMPAIRED.

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

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

History: *2000 c 478 art 1 s 10; 1Sp2001 c 8 art 11 s 6; 1Sp2001 c 9 art 19 s 7; 2002 c 379 art 1 s 113; 1Sp2003 c 2 art 9 s 6; 2009 c 83 art 2 s 15*

169A.275 MANDATORY PENALTIES; NONFELONY VIOLATIONS.

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

(1) a minimum of 30 days of incarceration, at least 48 hours of which must be served in a local correctional facility; or

(2) eight hours of community work service for each day less than 30 days that the person is ordered to serve in a local correctional facility.

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

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

(c) The court may, on its own motion, sentence a defendant described in paragraph (a) without regard to the mandatory minimum sentence established by that paragraph if it finds that substantial mitigating factors exist and if its sentencing departure is accompanied by a statement on the record of the reasons for it. The court also may sentence the defendant without regard to the mandatory minimum sentence established

by paragraph (a) if the defendant is sentenced to probation and ordered to participate in a program established under section 169A.74 (pilot programs of intensive probation for repeat DWI offenders).

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

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

(1) a minimum of 90 days of incarceration, at least 30 days of which must be served consecutively in a local correctional facility; or

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

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

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

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

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

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

(3) a program of staggered sentencing involving a minimum of 180 days of incarceration, at least 30 days of which must be served consecutively in a local correctional facility.

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

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

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

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

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

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

Subd. 5. **Level of care recommended in chemical use assessment.** Unless the court commits the person to the custody of the commissioner of corrections as provided in section 169A.276 (mandatory penalties; felony violations), in addition to other penalties required under this section, the court shall order a person to submit to the level of care recommended in the chemical use assessment conducted under section 169A.70 (alcohol safety program; chemical use assessments) if the person is convicted of violating section 169A.20 (driving while impaired) while having an alcohol concentration of 0.16 or more as measured at the time, or within two hours of the time, of the offense or if the violation occurs within ten years of one or more qualified prior impaired driving incidents.

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

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

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

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

Subd. 7. **Exception.** A judge is not required to sentence a person as provided in subdivisions 1 to 4 if the judge requires the person as a condition of probation to drive only motor vehicles equipped with an ignition interlock device meeting the standards described in section 171.306.

History: *2000 c 478 art 1 s 11; 1Sp2001 c 8 art 11 s 7; 1Sp2001 c 9 art 19 s 8; 2002 c 379 art 1 s 113; 1Sp2003 c 2 art 9 s 7-9; 2005 c 136 art 18 s 2; 2007 c 54 art 3 s 1; 2009 c 29 s 1; 2010 c 366 s 2; 2015 c 65 art 6 s 7*

169A.276 MANDATORY PENALTIES; FELONY VIOLATIONS.

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

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

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

(d) Notwithstanding the statutory maximum sentence provided in section 169A.24 (first-degree driving while impaired), when the court commits a person to the custody of the commissioner of corrections under this subdivision, it shall provide that after the person has been released from prison the commissioner shall place the person on conditional release for five years. The commissioner shall impose any conditions of release that the commissioner deems appropriate including, but not limited to, successful completion of an intensive probation program as described in section 169A.74 (pilot programs of intensive probation for repeat DWI offenders). If the person fails to comply with any condition of release, the commissioner may revoke the person's conditional release and order the person to serve all or part of the remaining portion of the conditional release term in prison. The commissioner may not dismiss the person from supervision before the conditional release term expires. Except as otherwise provided in this section, conditional release is governed by provisions relating to supervised release. The failure of a court to direct the commissioner of corrections to place the person on conditional release, as required in this paragraph, does not affect the applicability of the conditional release provisions to the person.

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

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

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

History: *1Sp2001 c 8 art 11 s 8; 1Sp2001 c 9 art 19 s 9; 2002 c 379 art 1 s 113*

169A.277 LONG-TERM MONITORING.

Subdivision 1. **Applicability.** This section applies to a person convicted of:

(1) a violation of section 169A.20 (driving while impaired) within ten years of the first of two or more prior impaired driving convictions;

(2) a violation of section 169A.20, if the person is under the age of 19 years and has previously been convicted of violating section 169A.20 or Minnesota Statutes 1998, section 169.121 (driver under the influence of alcohol or controlled substance); or

(3) a violation of section 169A.20, while the person's driver's license or driving privileges have been canceled under section 171.04, subdivision 1, clause (10) (persons not eligible for drivers' licenses, inimical to public safety).

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

Subd. 3. **Reimbursement.** The court shall require partial or total reimbursement from the person for the cost of the electronic alcohol monitoring, to the extent the person is able to pay.

History: *2000 c 478 art 1 s 12; 1Sp2001 c 8 art 12 s 1*

169A.28 CONSECUTIVE SENTENCES.

Subdivision 1. **Mandatory consecutive sentences.** (a) The court shall impose consecutive sentences when it sentences a person for:

(1) violations of section 169A.20 (driving while impaired) arising out of separate courses of conduct;

(2) a violation of section 169A.20 when the person, at the time of sentencing, is on probation for, or serving, an executed sentence for a violation of section 169A.20 or Minnesota Statutes 1998, section 169.121 (driver under the influence of alcohol or controlled substance) or 169.129 (aggravated DWI-related violations; penalty), and the prior sentence involved a separate course of conduct; or

(3) a violation of section 169A.20 and another offense arising out of a single course of conduct that is listed in subdivision 2, paragraph (e), when the person has five or more qualified prior impaired driving incidents within the past ten years.

(b) The requirement for consecutive sentencing in paragraph (a) does not apply if the person is being sentenced to an executed prison term for a violation of section 169A.20 (driving while impaired) under circumstances described in section 169A.24 (first-degree driving while impaired).

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

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

(c) When a person is being sentenced for a violation of section 169.791 (failure to provide proof of insurance) or 169.797 (failure to provide vehicle insurance), the court may not impose a consecutive sentence for another violation of a provision of sections 169.79 to 169.7995.

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

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

(1) section 169A.20, subdivision 1, 1a, 1b, or 1c (driving while impaired; impaired driving offenses);

(2) section 169A.20, subdivision 2 (driving while impaired; test refusal offense);

(3) section 169.791;

(4) section 169.797;

(5) section 171.09 (violation of condition of restricted license);

(6) section 171.20, subdivision 2 (operation after revocation, suspension, cancellation, or disqualification);

(7) section 171.24; and

(8) section 171.30.

Subd. 3. **Permissive consecutive sentences; previous offenses.** The court may order that the sentence imposed for a violation of section 169A.20 (driving while impaired) run consecutively to a previously imposed misdemeanor, gross misdemeanor, or felony sentence for a violation other than section 169A.20.

History: *2000 c 478 art 1 s 13; 1Sp2001 c 8 art 12 s 2; 2006 c 260 art 2 s 4; 2009 c 83 art 2 s 16*

169A.283 STAY OF EXECUTION OF SENTENCE.

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

Subd. 2. **Manner and length of stay, required report.** A stay of execution must be in the manner provided in section 609.135 (stay of imposition or execution of sentence). The length of stay is governed by section 609.135, subdivision 2. The court shall report to the commissioner any stay of execution of sentence granted under this section.

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

History: *2000 c 478 art 1 s 14; 1Sp2001 c 8 art 11 s 9; 1Sp2001 c 9 art 19 s 10; 2002 c 379 art 1 s 113*

169A.284 CHEMICAL DEPENDENCY ASSESSMENT CHARGE; SURCHARGE.

Subdivision 1. **When required.** (a) When a court sentences a person convicted of an offense enumerated in section 169A.70, subdivision 2 (chemical use assessment; requirement; form), it shall order the person to pay the cost of the assessment directly to the entity conducting the assessment or providing the assessment services in an amount determined by the entity conducting or providing the service and shall impose a chemical dependency assessment charge of $25. The court may waive the $25 assessment charge, but may not waive the cost for the assessment paid directly to the entity conducting the assessment or providing assessment services. A person shall pay an additional surcharge of $5 if the person is convicted of a violation of section 169A.20 (driving while impaired) within five years of a prior impaired driving conviction or a prior conviction for an offense arising out of an arrest for a violation of section 169A.20 or Minnesota Statutes 1998, section 169.121 (driver under influence of alcohol or controlled substance) or 169.129 (aggravated DWI-related violations; penalty). This section applies when the sentence is executed, stayed, or suspended. The court may not waive payment or authorize payment of the assessment charge and surcharge in installments unless it makes written findings on the record that the convicted person is indigent or that the assessment charge and surcharge would create undue hardship for the convicted person or that person's immediate family.

(b) The chemical dependency assessment charge and surcharge required under this section are in addition to the surcharge required by section 357.021, subdivision 6 (surcharges on criminal and traffic offenders).

Subd. 2. **Distribution of money.** The court administrator shall collect and forward the chemical dependency assessment charge and the $5 surcharge, if any, to the commissioner of management and budget to be deposited in the state treasury and credited to the general fund.

History: *2000 c 478 art 1 s 15; 2009 c 83 art 2 s 17; 2009 c 101 art 2 s 109*

169A.285 PENALTY ASSESSMENT.

Subdivision 1. **Authority; amount.** When a court sentences a person who violates section 169A.20 (driving while impaired) while having an alcohol concentration of 0.16 or more as measured at the time, or within two hours of the time, of the violation, the court may impose a penalty assessment of up to $1,000. The court may impose this assessment in addition to any other penalties or charges authorized under law.

Subd. 2. **Assessment distribution.** Money collected under this section must be distributed as follows:

(1) if the arresting officer is an employee of a political subdivision, the assessment must be forwarded to the treasury of the political subdivision for use in enforcement, training, and education activities related to driving while impaired; or

(2) if the arresting officer is an employee of the state, the assessment must be forwarded to the state treasury and credited to the general fund.

History: *2000 c 478 art 1 s 16; 2015 c 65 art 6 s 8*

169A.31 ALCOHOL-RELATED SCHOOL BUS OR HEAD START BUS DRIVING.

Subdivision 1. **Crime described.** It is a crime for any person to drive, operate, or be in physical control of any class of school bus or Head Start bus within this state when there is physical evidence present in the person's body of the consumption of any alcohol.

Subd. 2. **Gross misdemeanor alcohol-related school bus or Head Start bus driving.** A person who violates subdivision 1 is guilty of gross misdemeanor alcohol-related school bus or Head Start bus driving if:

(1) the violation occurs while a child under the age of 16 is in the vehicle, if the child is more than 36 months younger than the violator; or

(2) the violation occurs within ten years of a qualified prior impaired driving incident.

Subd. 3. **Misdemeanor alcohol-related school bus or Head Start bus driving.** Except as provided in subdivision 2, a person who violates subdivision 1 is guilty of misdemeanor alcohol-related school bus or Head Start bus driving.

History: *2000 c 478 art 1 s 17*

169A.33 UNDERAGE DRINKING AND DRIVING.

Subdivision 1. MS 2016 [Repealed, 2018 c 183 s 6]

Subd. 2. **Crime described.** It is a crime for a person under the age of 21 years to drive, operate, or be in physical control of a motor vehicle while consuming alcoholic beverages, or after having consumed alcoholic beverages while there is physical evidence of the consumption present in the person's body.

Subd. 3. **Criminal penalty.** A person who violates subdivision 2 is guilty of a misdemeanor.

Subd. 4. **Administrative penalty.** When a person is found to have committed an offense under subdivision 2, the court shall notify the commissioner of its determination. Upon receipt of the court's determination, the commissioner shall suspend the person's driver's license or operating privileges for 30 days, or for 180 days if the person has previously been found to have violated subdivision 2 or a statute or ordinance in conformity with it.

Subd. 5. **Exception.** If the person's conduct violates section 169A.20 (driving while impaired) or 169A.31 (alcohol-related school bus or Head Start bus driving), the penalties and license sanctions in those laws or section 169A.54 (impaired driving convictions and adjudications; administrative penalties) apply instead of the license sanction in subdivision 4.

Subd. 6. **Jurisdiction.** An offense under subdivision 2 may be prosecuted either in the jurisdiction where consumption occurs or the jurisdiction where evidence of consumption is observed.

History: *2000 c 478 art 1 s 18*

169A.35 OPEN BOTTLE LAW.

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

(1) "alcoholic beverage" has the meaning given it in section 340A.101, subdivision 2;

(2) "distilled spirits" has the meaning given it in section 340A.101, subdivision 9;

(3) "motor vehicle" does not include motorboats in operation, or off-road recreational vehicles except when being operated on a roadway or shoulder of a roadway that is not part of a grant-in-aid trail or trail designated for that vehicle by the commissioner of natural resources;

(4) "possession" means either that the person had actual possession of the bottle or receptacle or that the person consciously exercised dominion and control over the bottle or receptacle; and

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

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

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

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

Subd. 2. **Drinking and consumption; crime described.** It is a crime for a person to drink or consume an alcoholic beverage, distilled spirit, or 3.2 percent malt liquor in a motor vehicle when the vehicle is upon a street or highway.

Subd. 3. **Possession; crime described.** It is a crime for a person to have in possession, while in a private motor vehicle upon a street or highway, any bottle or receptacle containing an alcoholic beverage, distilled spirit, or 3.2 percent malt liquor that has been opened, or the seal broken, or the contents of which have been partially removed.

Subd. 4. **Liability of nonpresent owner; crime described.** It is a crime for the owner of any private motor vehicle or the driver, if the owner is not present in the motor vehicle, to keep or allow to be kept in a motor vehicle when the vehicle is upon a street or highway any bottle or receptacle containing an alcoholic beverage, distilled spirit, or 3.2 percent malt liquor that has been opened, or the seal broken, or the contents of which have been partially removed.

Subd. 5. **Criminal penalty.** A person who violates subdivisions 2 to 4 is guilty of a misdemeanor.

Subd. 6. **Exceptions.** (a) This section does not prohibit the possession or consumption of alcoholic beverages by passengers in:

(1) a bus that is operated by a motor carrier of passengers, as defined in section 221.012, subdivision 26;

(2) a vehicle that is operated for commercial purposes in a manner similar to a bicycle as defined in section 169.011, subdivision 4, with five or more passengers who provide pedal power to the drive train of the vehicle; or

(3) a vehicle providing limousine service as defined in section 221.84, subdivision 1.

(b) Subdivisions 3 and 4 do not apply to a bottle or receptacle that is in the trunk of the vehicle if it is equipped with a trunk, or that is in another area of the vehicle not normally occupied by the driver and passengers if the vehicle is not equipped with a trunk. However, a utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

History: *2000 c 426 s 22-24; 2000 c 478 art 1 s 19; art 2 s 7; 1Sp2001 c 8 art 12 s 3,4; 2007 c 131 art 1 s 77; 2008 c 311 s 1*

169A.37 LICENSE PLATE IMPOUNDMENT VIOLATION CRIMES.

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

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

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

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

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

(5) who is subject to a plate impoundment order under section 169A.60, to drive, operate, or be in control of any motor vehicle during the impoundment period, unless the vehicle is employer-owned and is not required to be equipped with an ignition interlock device pursuant to section 171.306, subdivision 4, paragraph (b), or Laws 2013, chapter 127, section 70, or has specially coded plates issued pursuant to section 169A.60, subdivision 13, and the person is validly licensed to drive; or

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

Subd. 2. **Criminal penalty.** A person who violates subdivision 1 is guilty of a misdemeanor.

History: *2000 c 478 art 1 s 20; 1Sp2001 c 8 art 12 s 5; 2013 c 117 art 3 s 7*

PROCEDURAL PROVISIONS

169A.40 ARREST POWERS.

Subdivision 1. **Probable cause arrest.** A peace officer may lawfully arrest a person for violation of section 169A.20 (driving while impaired), 169A.31 (alcohol-related school bus or Head Start bus driving), or 169A.33 (underage drinking and driving), without a warrant upon probable cause, without regard to whether the violation was committed in the officer's presence.

Subd. 2. **Fresh pursuit.** When a peace officer has probable cause to believe that a person is driving or operating a motor vehicle in violation of section 169A.20 (driving while impaired), 169A.31 (alcohol-related school bus or Head Start bus driving), or 169A.33 (underage drinking and driving) and before a stop or arrest can be made the person escapes from the geographical limits of the officer's jurisdiction, the officer in fresh pursuit of the person may stop or arrest the person in another jurisdiction within this state and may exercise the powers and perform the duties of a peace officer under this chapter. An officer acting in fresh pursuit pursuant to this section is serving in the regular line of duty as fully as though within the officer's jurisdiction.

Subd. 3. **Certain DWI offenders; custodial arrest.** Notwithstanding rule 6.01 of the Rules of Criminal Procedure, a peace officer acting without a warrant who has decided to proceed with the prosecution of a person for violating section 169A.20 (driving while impaired), shall arrest and take the person into custody, and the person must be detained until the person's first court appearance, if the officer has reason to believe that the violation occurred:

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

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

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

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

Subd. 4. **Other arrest powers not limited.** The express grant of arrest powers in this section does not limit the arrest powers of peace officers pursuant to sections 626.65 to 626.70 (uniform law on fresh pursuit) or section 629.40 (allowing arrests anywhere in state) in cases of arrests for violation of section 169A.20 (driving while impaired), 169A.31 (alcohol-related school bus or Head Start bus driving), 169A.33 (underage drinking and driving), or any other provision of law.

History: *2000 c 478 art 1 s 21; 1Sp2001 c 8 art 11 s 10; 1Sp2001 c 9 art 19 s 11; 2002 c 379 art 1 s 113; 1Sp2003 c 2 art 9 s 10*

169A.41 PRELIMINARY SCREENING TEST.

Subdivision 1. **When authorized.** When a peace officer has reason to believe from the manner in which a person is driving, operating, controlling, or acting upon departure from a motor vehicle, or has driven, operated, or controlled a motor vehicle, that the driver may be violating or has violated section 169A.20 (driving while impaired), 169A.31 (alcohol-related school bus or Head Start bus driving), or 169A.33 (underage drinking and driving), the officer may require the driver to provide a sample of the driver's breath for a preliminary screening test using a device approved by the commissioner for this purpose.

Subd. 2. **Use of test results.** The results of this preliminary screening test must be used for the purpose of deciding whether an arrest should be made and whether to require the tests authorized in section 169A.51 (chemical tests for intoxication), but must not be used in any court action except the following:

(1) to prove that a test was properly required of a person pursuant to section 169A.51, subdivision 1;

(2) in a civil action arising out of the operation or use of the motor vehicle;

(3) in an action for license reinstatement under section 171.19;

(4) in a prosecution for a violation of section 169A.20, subdivision 2 (driving while impaired; test refusal);

(5) in a prosecution or juvenile court proceeding concerning a violation of section 169A.33 (underage drinking and driving), or 340A.503, subdivision 1, paragraph (a), clause (2) (underage alcohol consumption);

(6) in a prosecution under section 169A.31 (alcohol-related school or Head Start bus driving), or 171.30 (limited license); or

(7) in a prosecution for a violation of a restriction on a driver's license under section 171.09, which provides that the license holder may not use or consume any amount of alcohol or a controlled substance.

Subd. 3. **Additional tests.** Following the screening test additional tests may be required of the driver pursuant to the provisions of section 169A.51 (chemical tests for intoxication).

Subd. 4. [Repealed, 2006 c 260 art 2 s 20]

History: *2000 c 478 art 1 s 22; 1Sp2001 c 8 art 12 s 6*

169A.42 VEHICLE IMPOUNDMENT UNDER ORDINANCE; REDEMPTION.

Subdivision 1. **Definition.** As used in this section, "impoundment" means the removal of a motor vehicle to a storage facility or impound lot as authorized by a local ordinance.

Subd. 2. **Redemption; prerequisites.** If a motor vehicle is impounded by a peace officer following the arrest or taking into custody of a driver for a violation of section 169A.20 (driving while impaired), or an ordinance in conformity with it, the impounded vehicle must only be released from impoundment:

(1) to the registered owner, a person authorized by the registered owner, a lienholder of record, or a person who has purchased the vehicle from the registered owner, who provides proof of ownership of the vehicle, proof of valid Minnesota driving privileges, and proof of insurance required by law to cover the vehicle;

(2) if the vehicle is subject to a rental or lease agreement, to a renter or lessee with valid Minnesota driving privileges who provides a copy of the rental or lease agreement and proof of insurance required by law to cover the vehicle; or

(3) to an agent of a towing company authorized by a registered owner if the owner provides proof of ownership of the vehicle and proof of insurance required by law to cover the vehicle.

Subd. 3. **To whom information provided.** The proof of ownership and insurance or, if applicable, the copy of the rental or lease agreement required by subdivision 2 must be provided to the law enforcement agency impounding the vehicle or to a person or entity designated by the law enforcement agency to receive the information.

Subd. 4. **Liability for storage costs.** No law enforcement agency, local unit of government, or state agency is responsible or financially liable for any storage fees incurred due to an impoundment under this section.

History: *2000 c 478 art 1 s 23*

169A.43 PROSECUTORIAL RESPONSIBILITY; VENUE; CRIMINAL HISTORY.

Subdivision 1. **Definition.** As used in this section, "impaired driving offense" includes violations of sections 169A.20 to 169A.33.

Subd. 2. **Prosecution.** The attorney in the jurisdiction in which an impaired driving offense occurred who is responsible for prosecution of misdemeanor-level impaired driving offenses is also responsible for prosecution of gross misdemeanor-level impaired driving offenses.

Subd. 3. **Venue.** (a) A violation of section 169A.20, subdivision 2 (refusal to submit to chemical test) may be prosecuted either in the jurisdiction where the arresting officer observed the defendant driving, operating, or in control of the motor vehicle or in the jurisdiction where the refusal occurred.

(b) An underage drinking and driving offense may be prosecuted as provided in section 169A.33, subdivision 6 (underage drinking and driving).

Subd. 4. **Criminal history information.** When an attorney responsible for prosecuting impaired driving offenses requests criminal history information relating to prior impaired driving convictions from a court, the court shall furnish the information without charge.

History: *2000 c 478 art 1 s 24*

169A.44 CONDITIONAL RELEASE.

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

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

(1) abstain from alcohol; and

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

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

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

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

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

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

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

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

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

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

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

History: *2000 c 478 art 1 s 25; 1Sp2003 c 2 art 9 s 11*

169A.45 EVIDENCE.

Subdivision 1. **Alcohol concentration evidence.** Upon the trial of any prosecution arising out of acts alleged to have been committed by any person arrested for violating section 169A.20 (driving while impaired) or 169A.31 (alcohol-related school bus or Head Start bus driving), the court may admit evidence of the presence or amount of alcohol in the person's blood, breath, or urine as shown by an analysis of those items. In addition, in a prosecution for a violation of section 169A.20, the court may admit evidence of the presence or amount in the person's blood, breath, or urine, as shown by an analysis of those items, of:

(1) a controlled substance or its metabolite; or

(2) an intoxicating substance.

Subd. 2. **Relevant evidence of impairment.** For the purposes of section 169A.20 (driving while impaired), evidence that there was at the time an alcohol concentration of 0.04 or more is relevant evidence in indicating whether or not the person was under the influence of alcohol.

Subd. 3. **Evidence of refusal.** Evidence of the refusal to take a test is admissible into evidence in a prosecution under section 169A.20 (driving while impaired).

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

History: *2000 c 478 art 1 s 26; 2003 c 96 s 2; 2006 c 260 art 2 s 5; 2018 c 195 art 3 s 5*

169A.46 AFFIRMATIVE DEFENSES.

Subdivision 1. **Impairment occurred after driving ceased.** If proven by a preponderance of the evidence, it is an affirmative defense to a violation of section 169A.20, subdivision 1, clause (5); 1a, clause (5); 1b, clause (5); or 1c, clause (5) (driving while impaired, alcohol concentration within two hours of driving), or 169A.20 by a person having an alcohol concentration of 0.16 or more as measured at the time, or within two hours of the time, of the offense, that the defendant consumed a sufficient quantity of alcohol after the time of the violation and before the administration of the evidentiary test to cause the defendant's alcohol concentration to exceed the level specified in the applicable clause. Evidence that the defendant consumed alcohol after the time of the violation may not be admitted in defense to any alleged violation of section 169A.20, unless notice is given to the prosecution prior to the omnibus or pretrial hearing in the matter.

Subd. 2. **Impairment from prescription drug.** If proven by a preponderance of the evidence, it is an affirmative defense to a violation of section 169A.20, subdivision 1, clause (7) (presence of Schedule I or II controlled substance), that the defendant used the controlled substance according to the terms of a prescription issued for the defendant in accordance with sections 152.11 and 152.12.

History: *2000 c 478 art 1 s 27; 2009 c 83 art 2 s 18; 2015 c 65 art 6 s 9*

169A.47 NOTICE OF ENHANCED PENALTY.

When a court sentences a person for a violation of sections 169A.20 to 169A.31 (impaired driving offenses), it shall inform the defendant of the statutory provisions that provide for enhancement of criminal penalties for repeat violators, and the provisions that provide for administrative plate impoundment and forfeiture of motor vehicles used to commit an impaired driving offense. The notice must describe the conduct and the time periods within which the conduct must occur in order to result in increased penalties, plate impoundment, or forfeiture. The failure of a court to provide this information to a defendant does not affect the future applicability of these enhanced penalties to that defendant.

History: *2000 c 478 art 1 s 28*

169A.48 IMMUNITY FROM LIABILITY.

Subdivision 1. **Definition.** For purposes of this section, "political subdivision" means a county, statutory or home rule charter city, or town.

Subd. 2. **Immunity.** The state or political subdivision by which a peace officer making an arrest for violation of sections 169A.20 to 169A.33 (impaired driving offenses), is employed has immunity from any liability, civil or criminal, for the care or custody of the motor vehicle being driven by, operated by, or in the physical control of the person arrested if the peace officer acts in good faith and exercises due care.

History: *2000 c 478 art 1 s 29*

ADMINISTRATIVE PROVISIONS

169A.50 CITATION.

Sections 169A.50 to 169A.53 may be cited as the Implied Consent Law.

History: *2000 c 478 art 1 s 30*

169A.51 CHEMICAL TESTS FOR INTOXICATION.

Subdivision 1. **Implied consent; conditions; election of test.** (a) Any person who drives, operates, or is in physical control of a motor vehicle within this state or on any boundary water of this state consents, subject to the provisions of sections 169A.50 to 169A.53 (implied consent law), and section 169A.20 (driving while impaired), to a chemical test of that person's blood, breath, or urine for the purpose of determining the presence of alcohol, a controlled substance or its metabolite, or an intoxicating substance. The test must be administered at the direction of a peace officer.

(b) The test may be required of a person when an officer has probable cause to believe the person was driving, operating, or in physical control of a motor vehicle in violation of section 169A.20 (driving while impaired), and one of the following conditions exist:

(1) the person has been lawfully placed under arrest for violation of section 169A.20 or an ordinance in conformity with it;

(2) the person has been involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death;

(3) the person has refused to take the screening test provided for by section 169A.41 (preliminary screening test); or

(4) the screening test was administered and indicated an alcohol concentration of 0.08 or more.

(c) The test may also be required of a person when an officer has probable cause to believe the person was driving, operating, or in physical control of a commercial motor vehicle with the presence of any alcohol.

Subd. 2. **Breath test advisory.** At the time a breath test is requested, the person must be informed:

(1) that Minnesota law requires the person to take a test:

(i) to determine if the person is under the influence of alcohol; and

(ii) if the motor vehicle was a commercial motor vehicle, to determine the presence of alcohol;

(2) that refusal to submit to a breath test is a crime; and

(3) that the person has the right to consult with an attorney, but that this right is limited to the extent that it cannot unreasonably delay administration of the test.

Subd. 3. **Blood or urine tests; search warrant required.** (a) Notwithstanding any contrary provisions in sections 169A.51 to 169A.53, a blood or urine test may be conducted only pursuant to a search warrant under sections 626.04 to 626.18, or a judicially recognized exception to the search warrant requirement. In addition, blood and urine tests may be conducted only as provided in sections 169A.51 to 169A.53 and 171.177.

(b) When, under the provisions of section 169A.20, 169A.51, or 171.177, a search warrant is required for a blood or urine test, that requirement is met if a judicially recognized exception to the warrant requirement is applicable.

Subd. 4. **Requirement of urine or blood test.** A blood or urine test may be required pursuant to a search warrant under sections 626.04 to 626.18 even after a breath test has been administered if there is probable cause to believe that:

(1) there is impairment by a controlled substance or an intoxicating substance that is not subject to testing by a breath test;

(2) a controlled substance listed in Schedule I or II or its metabolite, other than marijuana or tetrahydrocannabinols, is present in the person's body; or

(3) the person is unconscious or incapacitated to the point that the peace officer providing a breath test advisory, administering a breath test, or serving the search warrant has a good-faith belief that the person is mentally or physically unable to comprehend the breath test advisory or otherwise voluntarily submit to chemical tests.

Action may be taken against a person who refuses to take a blood test under this subdivision only if a urine test was offered and action may be taken against a person who refuses to take a urine test only if a blood test was offered. This limitation does not apply to an unconscious person under the circumstances described in clause (3).

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

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

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

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

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

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

Subd. 6. **Consent of person incapable of refusal not withdrawn.** A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is deemed not to have withdrawn the consent provided by subdivision 1 and the test may be given.

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

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

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

(d) For purposes of this subdivision, "qualified person" means medical personnel trained in a licensed hospital or educational institution to withdraw blood.

History: *2000 c 478 art 1 s 31; 1Sp2001 c 8 art 12 s 7; 2003 c 96 s 3; 1Sp2003 c 2 art 9 s 12; 2004 c 283 s 4; 2006 c 260 art 2 s 6-9; 2007 c 54 art 3 s 2; 2010 c 225 s 1; 2013 c 117 art 3 s 8; 2014 c 180 s 9; 2017 c 83 art 2 s 3-5; 2018 c 195 art 3 s 6-8*

169A.52 TEST REFUSAL OR FAILURE; LICENSE REVOCATION.

Subdivision 1. **Test refusal.** If a person refuses to permit a test, then a test must not be given, but the peace officer shall report the refusal to the commissioner and the authority having responsibility for prosecution of impaired driving offenses for the jurisdiction in which the acts occurred. However, if a peace officer has probable cause to believe that the person has violated section 609.2112, 609.2113, 609.2114, or Minnesota Statutes 2012, section 609.21 (criminal vehicular homicide or injury), a test may be required and obtained despite the person's refusal. A refusal to submit to an alcohol concentration test does not constitute a violation of section 609.50 (obstructing legal process), unless the refusal was accompanied by force or violence or the threat of force or violence.

Subd. 2. **Reporting test failure.** (a) If a person submits to a test, the results of that test must be reported to the commissioner and to the authority having responsibility for prosecution of impaired driving offenses for the jurisdiction in which the acts occurred, if the test results indicate:

(1) an alcohol concentration of 0.08 or more;

(2) an alcohol concentration of 0.04 or more, if the person was driving, operating, or in physical control of a commercial motor vehicle at the time of the violation; or

(3) the presence of a controlled substance listed in Schedule I or II or its metabolite, other than marijuana or tetrahydrocannabinols.

(b) If a person submits to a test and the test results indicate the presence of an intoxicating substance, the results of that test must be reported to the authority having responsibility for prosecution of impaired driving offenses for the jurisdiction in which the acts occurred.

Subd. 3. **Test refusal; license revocation.** (a) Upon certification by the peace officer that there existed probable cause to believe the person had been driving, operating, or in physical control of a motor vehicle in violation of section 169A.20 (driving while impaired), and that the person refused to submit to a test, the commissioner shall revoke the person's license or permit to drive, or nonresident operating privilege, even if a test was obtained pursuant to this section after the person refused to submit to testing. The commissioner shall revoke the license, permit, or nonresident operating privilege:

(1) for a person with no qualified prior impaired driving incidents within the past ten years, for a period of not less than one year;

(2) for a person under the age of 21 years and with no qualified prior impaired driving incidents within the past ten years, for a period of not less than one year;

(3) for a person with one qualified prior impaired driving incident within the past ten years, or two qualified prior impaired driving incidents, for a period of not less than two years;

(4) for a person with two qualified prior impaired driving incidents within the past ten years, or three qualified prior impaired driving incidents, for a period of not less than three years;

(5) for a person with three qualified prior impaired driving incidents within the past ten years, for a period of not less than four years; or

(6) for a person with four or more qualified prior impaired driving incidents, for a period of not less than six years.

(b) Upon certification by the peace officer that there existed probable cause to believe the person had been driving, operating, or in physical control of a commercial motor vehicle with the presence of any alcohol in violation of section 169A.20 (driving while impaired), and that the person refused to submit to a test, the commissioner shall disqualify the person from operating a commercial motor vehicle and shall revoke the person's license or permit to drive or nonresident operating privilege according to the federal regulations adopted by reference in section 171.165, subdivision 2.

Subd. 4. **Test failure; license revocation.** (a) Upon certification by the peace officer that there existed probable cause to believe the person had been driving, operating, or in physical control of a motor vehicle in violation of section 169A.20 (driving while impaired) and that the person submitted to a test and the test results indicate an alcohol concentration of 0.08 or more or the presence of a controlled substance listed in Schedule I or II or its metabolite, other than marijuana or tetrahydrocannabinols, then the commissioner shall revoke the person's license or permit to drive, or nonresident operating privilege:

(1) for a period of 90 days, or, if the test results indicate an alcohol concentration of twice the legal limit or more, not less than one year;

(2) if the person is under the age of 21 years, for a period of not less than 180 days or, if the test results indicate an alcohol concentration of twice the legal limit or more, not less than one year;

(3) for a person with one qualified prior impaired driving incident within the past ten years, or two qualified prior impaired driving incidents, for a period of not less than one year, or if the test results indicate an alcohol concentration of twice the legal limit or more, not less than two years;

(4) for a person with two qualified prior impaired driving incidents within the past ten years, or three qualified prior impaired driving incidents, for a period of not less than three years;

(5) for a person with three qualified prior impaired driving incidents within the past ten years, for a period of not less than four years; or

(6) for a person with four or more qualified prior impaired driving incidents, for a period of not less than six years.

(b) On certification by the peace officer that there existed probable cause to believe the person had been driving, operating, or in physical control of a commercial motor vehicle with any presence of alcohol and that the person submitted to a test and the test results indicated an alcohol concentration of 0.04 or more, the commissioner shall disqualify the person from operating a commercial motor vehicle under section 171.165 (commercial driver's license disqualification).

(c) If the test is of a person's blood or urine by a laboratory operated by the Bureau of Criminal Apprehension, or authorized by the bureau to conduct the analysis of a blood or urine sample, the laboratory may directly certify to the commissioner the test results, and the peace officer shall certify to the commissioner that there existed probable cause to believe the person had been driving, operating, or in physical control of a motor vehicle in violation of section 169A.20 and that the person submitted to a test. Upon receipt of both certifications, the commissioner shall undertake the license actions described in paragraphs (a) and (b).

Subd. 5. **Unlicensed drivers; license issuance denial.** If the person is a resident without a license or permit to operate a motor vehicle in this state, the commissioner shall deny to the person the issuance of a license or permit after the date of the alleged violation for the same period as provided in this section for revocation, subject to review as provided in section 169A.53 (administrative and judicial review of license revocation).

Subd. 6. **Notice of revocation or disqualification; review.** A revocation under this section or a disqualification under section 171.165 (commercial driver's license disqualification) becomes effective at the time the commissioner or a peace officer acting on behalf of the commissioner notifies the person of the intention to revoke, disqualify, or both, and of revocation or disqualification. The notice must advise the person of the right to obtain administrative and judicial review as provided in section 169A.53 (administrative and judicial review of license revocation). If mailed, the notice and order of revocation or disqualification is deemed received three days after mailing to the last known address of the person.

Subd. 7. **Test refusal; driving privilege lost.** (a) On behalf of the commissioner, a peace officer requiring a test or directing the administration of a chemical test shall serve immediate notice of intention to revoke and of revocation on a person who refuses to permit a test or on a person who submits to a test the results of which indicate an alcohol concentration of 0.08 or more.

(b) On behalf of the commissioner, a peace officer requiring a test or directing the administration of a chemical test of a person driving, operating, or in physical control of a commercial motor vehicle shall serve immediate notice of intention to disqualify and of disqualification on a person who refuses to permit a test, or on a person who submits to a test the results of which indicate an alcohol concentration of 0.04 or more.

(c) The officer shall:

(1) invalidate the person's driver's license or permit card by clipping the upper corner of the card in such a way that no identifying information including the photo is destroyed, and immediately return the card to the person;

(2) issue the person a temporary license effective for only seven days; and

(3) send the notification of this action to the commissioner along with the certificate required by subdivision 3 or 4.

Subd. 8. **Notice of action to other states.** When a nonresident's privilege to operate a motor vehicle in this state has been revoked or denied, the commissioner shall give information in writing of the action taken to the official in charge of traffic control or public safety of the state of the person's residence and of any state in which the person has a license.

History: *2000 c 478 art 1 s 32; 2004 c 282 s 1; 2004 c 283 s 5-7; 2005 c 136 art 18 s 3; 1Sp2005 c 6 art 3 s 54; 2006 c 260 art 2 s 10,11; 2010 c 366 s 3,4; 2014 c 180 s 9; 2018 c 195 art 3 s 9*

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

Subdivision 1. **Administrative review.** (a) At any time during a period of revocation imposed under section 169A.52 (revocation of license for test failure or refusal) or a period of disqualification imposed under section 171.165 (commercial driver's license disqualification), a person may request in writing a review of the order of revocation or disqualification by the commissioner, unless the person is entitled to review under section 171.166 (review of disqualification). Upon receiving a request the commissioner or the commissioner's designee shall review the order, the evidence upon which the order was based, and any other material information brought to the attention of the commissioner, and determine whether sufficient cause exists to sustain the order. Within 15 days of receiving the request the commissioner shall report in writing the results of the review. The review provided in this subdivision is not subject to the contested case provisions of the Administrative Procedure Act in sections 14.001 to 14.69.

(b) The availability of administrative review for an order of revocation or disqualification has no effect upon the availability of judicial review under this section.

(c) Review under this subdivision must take place, if possible, at the same time as any administrative review of the person's impoundment order under section 169A.60, subdivision 9.

Subd. 2. **Petition for judicial review.** (a) Within 60 days following receipt of a notice and order of revocation or disqualification pursuant to section 169A.52 (revocation of license for test failure or refusal), a person may petition the court for review. The petition must be filed with the district court administrator in the county where the alleged offense occurred, together with proof of service of a copy on the commissioner, and accompanied by the standard filing fee for civil actions. Responsive pleading is not required of the commissioner, and court fees must not be charged for the appearance of the commissioner in the matter.

(b) The petition must:

(1) be captioned in the full name of the person making the petition as petitioner and the commissioner as respondent;

(2) include the petitioner's date of birth, driver's license number, and date of the offense; and

(3) state with specificity the grounds upon which the petitioner seeks rescission of the order of revocation, disqualification, or denial.

(c) The filing of the petition does not stay the revocation, disqualification, or denial. The reviewing court may order a stay of the balance of the revocation or disqualification if the hearing has not been conducted within 60 days after filing of the petition upon terms the court deems proper.

(d) Judicial reviews must be conducted according to the Rules of Civil Procedure, except that prehearing discovery is mandatory and is limited to:

(1) the notice of revocation;

(2) the test record or, in the case of blood or urine tests, the certificate of analysis;

(3) the peace officer's certificate and any accompanying documentation submitted by the arresting officer to the commissioner; and

(4) disclosure of potential witnesses, including experts, and the basis of their testimony.

Other types of discovery are available only upon order of the court.

Subd. 3. **Judicial hearing; issues, order, appeal.** (a) A judicial review hearing under this section must be before a district judge in any county in the judicial district where the alleged offense occurred. The hearing is to the court and may be conducted at the same time and in the same manner as hearings upon pretrial motions in the criminal prosecution under section 169A.20 (driving while impaired), if any. The hearing must be recorded. The commissioner shall appear and be represented by the attorney general or through the prosecuting authority for the jurisdiction involved. The hearing must be held at the earliest practicable date, and in any event no later than 60 days following the filing of the petition for review. The judicial district administrator shall establish procedures to ensure efficient compliance with this subdivision. To accomplish this, the administrator may, whenever possible, consolidate and transfer review hearings among the locations within the judicial district where terms of district court are held.

(b) The scope of the hearing is limited to the issues in clauses (1) to (12):

(1) Did the peace officer have probable cause to believe the person was driving, operating, or in physical control of a motor vehicle or commercial motor vehicle in violation of section 169A.20 (driving while impaired)?

(2) Was the person lawfully placed under arrest for violation of section 169A.20?

(3) Was the person involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death?

(4) Did the person refuse to take a screening test provided for by section 169A.41 (preliminary screening test)?

(5) If the screening test was administered, did the test indicate an alcohol concentration of 0.08 or more?

(6) At the time of the request for the test, did the peace officer inform the person of the person's rights and the consequences of taking or refusing the test as required by section 169A.51, subdivision 2?

(7) Did the person refuse to permit the test?

(8) If a test was taken by a person driving, operating, or in physical control of a motor vehicle, did the test results indicate at the time of testing:

(i) an alcohol concentration of 0.08 or more; or

(ii) the presence of a controlled substance listed in Schedule I or II or its metabolite, other than marijuana or tetrahydrocannabinols?

(9) If a test was taken by a person driving, operating, or in physical control of a commercial motor vehicle, did the test results indicate an alcohol concentration of 0.04 or more at the time of testing?

(10) Was the testing method used valid and reliable and were the test results accurately evaluated?

(11) Did the person prove the defense of necessity?

(12) Did the person prove the defense of controlled substance use in accordance with a prescription?

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

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

(e) The court shall order that the revocation or disqualification be either rescinded or sustained and forward the order to the commissioner. The court shall file its order within 14 days following the hearing. If the revocation or disqualification is sustained, the court shall also forward the person's driver's license or permit to the commissioner for further action by the commissioner if the license or permit is not already in the commissioner's possession.

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

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

(h) It is an affirmative defense for the petitioner to prove a necessity.

(i) It is an affirmative defense to the presence of a Schedule I or II controlled substance that the person used the controlled substance according to the terms of a prescription issued for the person according to sections 152.11 and 152.12, unless the court finds by a preponderance of the evidence that the use of the controlled substance impaired the person's ability to operate a motor vehicle.

History: *2000 c 478 art 1 s 33; 2002 c 314 s 1; 1Sp2003 c 2 art 9 s 13; 2004 c 283 s 8; 2005 c 136 art 18 s 4; 2006 c 260 art 2 s 12; 2015 c 65 art 6 s 10; 2017 c 83 art 2 s 6,7*

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

Subdivision 1. **Revocation periods for DWI convictions.** Except as provided in subdivision 7, the commissioner shall revoke the driver's license of a person convicted of violating section 169A.20 (driving while impaired) or an ordinance in conformity with it, as follows:

(1) not less than 30 days for an offense under section 169A.20, subdivision 1 (driving while impaired crime);

(2) not less than 90 days for an offense under section 169A.20, subdivision 2 (refusal to submit to chemical test crime);

(3) not less than one year for:

(i) an offense occurring within ten years of a qualified prior impaired driving incident;

(ii) an offense occurring after two qualified prior impaired driving incidents; or

(iii) an offense occurring when a person has an alcohol concentration of twice the legal limit or more as measured at the time or within two hours of the time of the offense and the person has no qualified prior impaired driving incident within ten years;

(4) not less than two years for an offense occurring under clause (3), item (i) or (ii), and where the test results indicate an alcohol concentration of twice the legal limit or more, and until the court has certified that treatment or rehabilitation has been successfully completed where prescribed in accordance with section 169A.70 (chemical use assessments);

(5) not less than three years for an offense occurring within ten years of the first of two qualified prior impaired driving incidents or occurring after three qualified prior impaired driving incidents and with denial under section 171.04, subdivision 1, clause (10), until rehabilitation is established according to standards established by the commissioner; and

(6) not less than four years for an offense occurring within ten years of the first of three qualified prior impaired driving incidents and with denial under section 171.04, subdivision 1, clause (10), until rehabilitation is established according to standards established by the commissioner; or

(7) not less than six years for an offense occurring after four or more qualified prior impaired driving incidents and with denial under section 171.04, subdivision 1, clause (10), until rehabilitation is established according to standards established by the commissioner.

Subd. 2. **Driving while impaired by person under age 21.** If the person convicted of violating section 169A.20 (driving while impaired) is under the age of 21 years at the time of the violation, the commissioner shall revoke the offender's driver's license or operating privileges for a period of not less than 180 days or for the appropriate period of time under subdivision 1, clauses (1) to (6), for the offense committed, whichever is the longer period.

Subd. 3. **Juvenile adjudications.** For purposes of this section, a juvenile adjudication under section 169A.20 (driving while impaired), an ordinance in conformity with it, or a statute or ordinance from another state in conformity with it is an offense.

Subd. 4. **Violations involving personal injury.** Whenever department records show that the violation involved personal injury or death to any person, at least 90 additional days must be added to the base periods provided in subdivisions 1 to 3.

Subd. 5. [Repealed, 2012 c 287 art 4 s 50]

Subd. 6. **Applicability of implied consent revocation.** (a) Any person whose license has been revoked pursuant to section 169A.52 (license revocation for test failure or refusal) or 171.177 (revocation; pursuant to a search warrant) as the result of the same incident, and who does not have a qualified prior impaired driving incident, is subject to the mandatory revocation provisions of subdivision 1, clause (1) or (2), in lieu of the mandatory revocation provisions of section 169A.52 or 171.177.

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

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

(2) a person whose driver's license has been revoked for, or who is charged with (i) an alcohol concentration of twice the legal limit or more as measured at the time or within two hours of the time of the offense; or (ii) a violation of section 169A.20 (driving while impaired) with an aggravating factor described in section 169A.03, subdivision 3, clause (3).

Subd. 7. **Alcohol-related commercial vehicle driving violations.** (a) The administrative penalties described in subdivision 1 do not apply to violations of section 169A.20, subdivision 1 (driving while impaired crime), by a person operating a commercial motor vehicle unless the person's alcohol concentration as measured at the time, or within two hours of the time, of the operation was 0.08 or more or the person violates section 169A.20, subdivision 1, clauses (1) to (4) or (7).

(b) The commissioner shall disqualify a person from operating a commercial motor vehicle as provided under section 171.165 (commercial driver's license, disqualification), on receipt of a record of conviction for a violation of section 169A.20.

(c) A person driving, operating, or in physical control of a commercial motor vehicle with any presence of alcohol is prohibited from operating a commercial motor vehicle for 24 hours from issuance of an out-of-service order.

Subd. 8. **Underage drinking and driving violations.** The administrative penalties described in section 169A.33, subdivision 3, apply to violations of section 169A.33 (underage drinking and driving).

Subd. 9. **Alcohol-related school bus driving violations.** The administrative penalties described in section 171.3215 (canceling school bus endorsements for certain offenses) apply to violations of section 169A.20 (driving while impaired) by a person driving, operating, or in physical control of a school bus or Head Start bus.

Subd. 10. **License revocation; court invalidation.** (a) Except as provided in subdivision 7, on behalf of the commissioner, a court shall serve notice of revocation or cancellation on a person convicted of a violation of section 169A.20 (driving while impaired) unless the commissioner has already revoked the person's driving privileges or served the person with a notice of revocation for a violation of section 169A.52

(license revocation for test failure or refusal) or 171.177 (revocation; search warrant) arising out of the same incident.

(b) The court shall invalidate the driver's license or permit in such a way that no identifying information is destroyed.

Subd. 11. MS 2010 [Repealed, 2010 c 366 s 17]

History: *2000 c 478 art 1 s 34; 1Sp2001 c 8 art 12 s 8; 1Sp2003 c 2 art 9 s 14; 2004 c 283 s 9; 2009 c 83 art 2 s 19; 2010 c 366 s 5-7; 2012 c 287 art 4 s 31,32; 2017 c 83 art 2 s 8; art 3 s 18*

169A.55 LICENSE REVOCATION TERMINATION; LICENSE REINSTATEMENT.

Subdivision 1. MS 2010 [Repealed, 2010 c 366 s 17]

Subd. 2. **Reinstatement of driving privileges; notice.** Upon expiration of a period of revocation under section 169A.52 (license revocation for test failure or refusal), 169A.54 (impaired driving convictions and adjudications; administrative penalties), or 171.177 (revocation; search warrant), the commissioner shall notify the person of the terms upon which driving privileges can be reinstated, and new registration plates issued, which terms are: (1) successful completion of an examination and proof of compliance with any terms of alcohol treatment or counseling previously prescribed, if any; and (2) any other requirements imposed by the commissioner and applicable to that particular case. The commissioner shall notify the owner of a motor vehicle subject to an impoundment order under section 169A.60 (administrative impoundment of plates) as a result of the violation of the procedures for obtaining new registration plates, if the owner is not the violator. The commissioner shall also notify the person that if driving is resumed without reinstatement of driving privileges or without valid registration plates and registration certificate, the person will be subject to criminal penalties.

Subd. 3. **Reinstatement or issuance of provisional license.** The commissioner shall not issue a provisional or regular driver's license to a person whose provisional driver's license was revoked for conviction as a juvenile of a violation of section 169A.20, 169A.33, or 169A.35; a violation of a provision of sections 169A.50 to 169A.53 or 171.177; or a crash-related moving violation; until the person, following the violation, reaches the age of 18 and satisfactorily:

(1) completes a formal course in driving instruction approved by the commissioner of public safety;

(2) completes an additional three months' experience operating a motor vehicle, as documented to the satisfaction of the commissioner;

(3) completes the written examination for a driver's license with a passing score; and

(4) complies with all other laws for reinstatement of a provisional or regular driver's license, as applicable.

Subd. 4. **Reinstatement of driving privileges; multiple incidents.** (a) A person whose driver's license has been canceled or denied as a result of three or more qualified impaired driving incidents shall not be eligible for reinstatement of driving privileges without an ignition interlock restriction until the person:

(1) has completed rehabilitation according to rules adopted by the commissioner or been granted a variance from the rules by the commissioner; and

(2) has submitted verification of abstinence from alcohol and controlled substances, as evidenced by the person's use of an ignition interlock device or other chemical monitoring device approved by the commissioner.

(b) The verification of abstinence must show that the person has abstained from the use of alcohol and controlled substances for a period of not less than:

(1) three years, for a person whose driver's license was canceled or denied for an offense occurring within ten years of the first of two qualified prior impaired driving incidents, or occurring after three qualified prior impaired driving incidents;

(2) four years, for a person whose driver's license was canceled or denied for an offense occurring within ten years of the first of three qualified prior impaired driving incidents; or

(3) six years, for a person whose driver's license was canceled or denied for an offense occurring after four or more qualified prior impaired driving incidents.

(c) The commissioner shall establish performance standards and a process for certifying chemical monitoring devices. The standards and procedures are not rules and are exempt from chapter 14, including section 14.386.

Subd. 5. **Reinstatement of driving privileges; certain criminal vehicular operation offenses.** A person whose driver's license has been revoked under section 171.17, subdivision 1, paragraph (a), clause (1) (revocation, criminal vehicular operation), or suspended under section 171.187 (suspension, criminal vehicular operation), for a violation of section 609.2113, subdivision 1, clause (2), item (i) or (iii), (3), or (4), subdivision 2, clause (2), item (i) or (iii), (3), or (4), or subdivision 3, clause (2), item (i) or (iii), (3), or (4); or section 609.2114, subdivision 2, clause (2), item (i) or (iii) (criminal vehicular operation, alcohol-related provisions), resulting in bodily harm, substantial bodily harm, or great bodily harm, shall not be eligible for reinstatement of driving privileges until the person has submitted to the commissioner verification of the use of ignition interlock for the applicable time period specified in those sections. To be eligible for reinstatement under this subdivision, a person shall utilize an ignition interlock device that meets the performance standards and certification requirements under subdivision 4, paragraph (c).

History: *2000 c 478 art 1 s 35; 2004 c 177 s 1; 2005 c 10 art 1 s 31; 2010 c 366 s 8; 2013 c 117 art 3 s 9; 2014 c 180 s 9; 2014 c 298 s 2; 2017 c 83 art 3 s 18*

169A.60 ADMINISTRATIVE IMPOUNDMENT OF PLATES.

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

(b) "Family or household member" has the meaning given in section 169A.63, subdivision 1.

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

(d) "Plate impoundment violation" includes:

(1) a violation of section 169A.20 (driving while impaired), 169A.52 (license revocation for test failure or refusal), or 171.177 (revocation; search warrant), or an ordinance from this state or a statute or ordinance from another state in conformity with any of those sections, that results in the revocation of a person's driver's license or driving privileges, within ten years of a qualified prior impaired driving incident;

(2) a license disqualification under section 171.165 (commercial driver's license disqualification) resulting from a violation of section 169A.52 or 171.177 within ten years of a qualified prior impaired driving incident;

(3) a violation of section 169A.20, 169A.52, or 171.177 while having an alcohol concentration of twice the legal limit or more as measured at the time, or within two hours of the time, of the offense;

(4) a violation of section 169A.20, 169A.52, or 171.177 while having a child under the age of 16 in the vehicle if the child is more than 36 months younger than the offender; or

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

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

Subd. 2. **Plate impoundment violation; impoundment order.** (a) The commissioner shall issue a registration plate impoundment order when:

(1) a person's driver's license or driving privileges are revoked for a plate impoundment violation; or

(2) a person is arrested for or charged with a plate impoundment violation described in subdivision 1, paragraph (d), clause (5).

(b) The order must require the impoundment of the registration plates of the motor vehicle involved in the plate impoundment violation and all motor vehicles owned by, registered, or leased in the name of the violator, including motor vehicles registered jointly or leased in the name of the violator and another. The commissioner shall not issue an impoundment order for the registration plates of a rental vehicle, as defined in section 168.041, subdivision 10, or a vehicle registered in another state.

Subd. 3. **Notice of impoundment.** An impoundment order is effective when the commissioner or a peace officer acting on behalf of the commissioner notifies the violator or the registered owner of the motor vehicle of the intent to impound and order of impoundment. The notice must advise the violator of the duties and obligations set forth in subdivision 6 (surrender of plates) and of the right to obtain administrative and judicial review. The notice to the registered owner who is not the violator must include the procedure to obtain new registration plates under subdivision 8. If mailed, the notice and order of impoundment is deemed received three days after mailing to the last known address of the violator or the registered owner.

Subd. 4. **Peace officer as agent for notice of impoundment.** On behalf of the commissioner, a peace officer issuing a notice of intent to revoke and of revocation for a plate impoundment violation shall also serve a notice of intent to impound and an order of impoundment. On behalf of the commissioner, a peace officer who is arresting a person for or charging a person with a plate impoundment violation described in subdivision 1, paragraph (d), clause (5), shall also serve a notice of intent to impound and an order of impoundment. If the vehicle involved in the plate impoundment violation is accessible to the officer at the time the impoundment order is issued, the officer shall seize the registration plates subject to the impoundment order. The officer shall destroy all plates seized or impounded under this section. The officer shall send to the commissioner copies of the notice of intent to impound and the order of impoundment and a notice that registration plates impounded and seized under this section have been destroyed.

Subd. 5. **Temporary permit.** If the motor vehicle is registered to the violator, the officer shall issue a temporary vehicle permit that is valid for seven days when the officer issues the notices under subdivision 4. If the motor vehicle is registered in the name of another, the officer shall issue a temporary vehicle permit that is valid for 45 days when the notices are issued under subdivision 3. The permit must be in a form determined by the registrar and whenever practicable must be posted on the left side of the inside rear window of the vehicle. A permit is valid only for the vehicle for which it is issued.

Subd. 6. **Surrender of plates.** Within seven days after issuance of the impoundment notice, a person who receives a notice of impoundment and impoundment order shall surrender all registration plates subject to the impoundment order that were not seized by a peace officer under subdivision 4. Registration plates required to be surrendered under this subdivision must be surrendered to a Minnesota police department, sheriff, or the State Patrol, along with a copy of the impoundment order. A law enforcement agency receiving registration plates under this subdivision shall destroy the plates and notify the commissioner that they have been destroyed. The notification to the commissioner shall also include a copy of the impoundment order.

Subd. 7. **Vehicle not owned by violator.** A violator may file a sworn statement with the commissioner within seven days of the issuance of an impoundment order stating any material information relating to the impoundment order, including that the vehicle has been sold or destroyed, and supplying the date, name, location, and address of the person or entity that purchased or destroyed the vehicle. The commissioner shall rescind the impoundment order if the violator shows that the impoundment order was not properly issued.

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

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

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

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

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

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

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

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

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

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

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

Subd. 9. **Administrative review.** (a) At any time during the effective period of an impoundment order, a person may request in writing a review of the impoundment order by the commissioner. On receiving a request, the commissioner or the commissioner's designee shall review the order, the evidence upon which the order was based, and any other material information brought to the attention of the commissioner, and determine whether sufficient cause exists to sustain the order. The commissioner shall report in writing the results of the review within 15 days of receiving the request. The review provided in this subdivision is not

subject to the contested case provisions of the Administrative Procedure Act in sections 14.001 to 14.69. As a result of this review, the commissioner may authorize the issuance at no cost of new registration plates to the registered owner of the vehicle if the registered owner's license or driving privileges were not revoked as a result of the plate impoundment violation.

(b) Review under this subdivision must take place, if possible, at the same time as any administrative review of the person's license revocation under section 169A.53 (administrative and judicial review of license revocation).

Subd. 10. **Petition for judicial review.** (a) Within 60 days following receipt of a notice and order of impoundment under this section, a person may petition the court for review. The petition must include proof of service of a copy of the petition on the commissioner. The petition must include the petitioner's date of birth, driver's license number, and date of the plate impoundment violation, as well as the name of the violator and the law enforcement agency that issued the plate impoundment order. The petition must state with specificity the grounds upon which the petitioner seeks rescission of the order for impoundment. The petition may be combined with any petition filed under section 169A.53 (administrative and judicial review of license revocation).

(b) Except as otherwise provided in this section, the judicial review and hearing are governed by section 169A.53 and must take place at the same time as any judicial review of the person's license revocation under section 169A.53. The filing of the petition does not stay the impoundment order. The reviewing court may order a stay of the balance of the impoundment period if the hearing has not been conducted within 60 days after filing of the petition upon terms the court deems proper. The court shall order either that the impoundment be rescinded or sustained, and forward the order to the commissioner. The court shall file its order within 14 days following the hearing.

(c) In addition to the issues described in section 169A.53, subdivision 3 (judicial review of license revocation), the scope of a hearing under this subdivision is limited to:

(1) if the impoundment is based on a plate impoundment violation described in subdivision 1, paragraph (d), clause (3) or (4), whether the peace officer had probable cause to believe the violator committed the plate impoundment violation and whether the evidence demonstrates that the plate impoundment violation occurred; and

(2) for all other cases, whether the peace officer had probable cause to believe the violator committed the plate impoundment violation.

(d) In a hearing under this subdivision, the following records are admissible in evidence:

(1) certified copies of the violator's driving record; and

(2) certified copies of vehicle registration records bearing the violator's name.

Subd. 11. **Rescission of revocation and dismissal or acquittal; new plates.** If:

(1) the driver's license revocation that is the basis for an impoundment order is rescinded; and

(2) the charges for the plate impoundment violation have been dismissed with prejudice or the violator has been acquitted of the plate impoundment violation;

then the registrar of motor vehicles shall issue new registration plates for the vehicle at no cost, when the registrar receives an application that includes a copy of the order rescinding the driver's license revocation and either the order dismissing the charges or the judgment of acquittal.

Subd. 12. **Charge for reinstatement of plates in certain situations.** When the registrar of motor vehicles reinstates a person's registration plates after impoundment for reasons other than those described in subdivision 11, the registrar shall charge the person $50 for each vehicle for which the registration plates are being reinstated.

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

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

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

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

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

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

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

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

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

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

(1) the impoundment order is rescinded;

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

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

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

(1) the sale is for a valid consideration;

(2) the transferee and the registered owner are not family or household members;

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

(i) the transferee and the violator are not family or household members;

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

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

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

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

Subd. 15. **Acquiring another vehicle.** If the violator applies to the commissioner for registration plates for any vehicle during the effective period of the plate impoundment, the commissioner shall not issue registration plates unless the violator qualifies for special registration plates under subdivision 13 and unless the plates issued are special plates as described in subdivision 13.

Subd. 16. **Fees credited.** Fees collected from the sale or reinstatement of license plates under this section must be paid into the state treasury and credited one-half to the vehicle services operating account in the special revenue fund specified in section 299A.705 and one-half to the general fund.

Subd. 17. **Plate impoundment; penalty.** Criminal penalties for violating this section are governed by section 169A.37.

Subd. 18. [Repealed, 2014 c 255 s 21]

History: *2000 c 478 art 1 s 36; 1Sp2001 c 8 art 12 s 9-11; 1Sp2003 c 2 art 9 s 15,16; 2004 c 235 s 1,2; 2005 c 136 art 18 s 5,6; 1Sp2005 c 6 art 2 s 36; 2006 c 260 art 2 s 13,14; 2010 c 366 s 9; 2017 c 83 art 2 s 9; art 3 s 18*

169A.63 VEHICLE FORFEITURE.

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

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

(c) "Claimant" means an owner of a motor vehicle or a person claiming a leasehold or security interest in a motor vehicle.

(d) "Designated license revocation" includes a license revocation under section 169A.52 (license revocation for test failure or refusal) or 171.177 (revocation; search warrant) or a license disqualification under section 171.165 (commercial driver's license disqualification) resulting from a violation of section 169A.52 or 171.177; within ten years of the first of two or more qualified prior impaired driving incidents.

(e) "Designated offense" includes:

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

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

(i) by a person whose driver's license or driving privileges have been canceled as inimical to public safety under section 171.04, subdivision 1, clause (10), and not reinstated; or

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

(f) "Family or household member" means:

(1) a parent, stepparent, or guardian;

(2) any of the following persons related by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; or

(3) persons residing together or persons who regularly associate and communicate with one another outside of a workplace setting.

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

(h) "Owner" means a person legally entitled to possession, use, and control of a motor vehicle, including a lessee of a motor vehicle if the lease agreement has a term of 180 days or more. There is a rebuttable presumption that a person registered as the owner of a motor vehicle according to the records of the Department of Public Safety is the legal owner. For purposes of this section, if a motor vehicle is owned jointly by two or more people, each owner's interest extends to the whole of the vehicle and is not subject to apportionment.

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

(j) "Security interest" means a bona fide security interest perfected according to section 168A.17, subdivision 2, based on a loan or other financing that, if a vehicle is required to be registered under chapter 168, is listed on the vehicle's title.

Subd. 2. **Seizure.** (a) A motor vehicle subject to forfeiture under this section may be seized by the appropriate agency upon process issued by any court having jurisdiction over the vehicle.

(b) Property may be seized without process if:

(1) the seizure is incident to a lawful arrest or a lawful search;

(2) the vehicle subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this section; or

(3) the appropriate agency has probable cause to believe that the delay occasioned by the necessity to obtain process would result in the removal or destruction of the vehicle. If property is seized without process under this clause, the prosecuting authority must institute a forfeiture action under this section as soon as is reasonably possible by serving a notice of seizure and intent to forfeit at the address of the owner as listed in the records of the Department of Public Safety.

(c) When a motor vehicle is seized, the officer must provide a receipt to the person found in possession of the motor vehicle; or in the absence of any person, the officer must leave a receipt in the place where the motor vehicle was found, if reasonably possible.

Subd. 3. **Right to possession vests immediately; custody.** All right, title, and interest in a vehicle subject to forfeiture under this section vests in the appropriate agency upon commission of the conduct resulting in the designated offense or designated license revocation giving rise to the forfeiture. Any vehicle seized under this section is not subject to replevin, but is deemed to be in the custody of the appropriate agency subject to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When a vehicle is seized under this section, the appropriate agency shall use reasonable diligence to secure the property and prevent waste and may do any of the following:

(1) place the vehicle under seal;

(2) remove the vehicle to a place designated by it; and

(3) place a disabling device on the vehicle.

Subd. 4. **Bond by owner for possession.** If the owner of a vehicle that has been seized under this section seeks possession of the vehicle before the forfeiture action is determined, the owner may give security or post bond payable to the appropriate agency in an amount equal to the retail value of the seized vehicle. On posting the security or bond, the seized vehicle may be returned to the owner only if a disabling device is attached to the vehicle. The forfeiture action must proceed against the security as if it were the seized vehicle. This subdivision does not apply to a vehicle being held for investigatory purposes.

Subd. 5. **Evidence.** Certified copies of court records and motor vehicle and driver's license records concerning qualified prior impaired driving incidents are admissible as substantive evidence where necessary to prove the commission of a designated offense or the occurrence of a designated license revocation.

Subd. 5a. **Petition for remission or mitigation.** Prior to the entry of a court order disposing with the forfeiture action, any person who has an interest in forfeited property may file with the prosecuting authority a petition for remission or mitigation of the forfeiture. The prosecuting authority may remit or mitigate the forfeiture upon terms and conditions the prosecuting authority deems reasonable if the prosecuting authority finds that: (1) the forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to violate the law; or (2) extenuating circumstances justify the remission or mitigation of the forfeiture.

Subd. 6. **Vehicle subject to forfeiture.** (a) A motor vehicle is subject to forfeiture under this section if it was used in the commission of a designated offense or was used in conduct resulting in a designated license revocation.

(b) Motorboats subject to seizure and forfeiture under this section also include their trailers.

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

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

(2) the driver fails to appear for a scheduled court appearance with respect to the designated offense charged and fails to voluntarily surrender within 48 hours after the time required for appearance; or

(3) the driver's conduct results in a designated license revocation and the driver fails to seek judicial review of the revocation in a timely manner as required by section 169A.53, subdivision 2, (petition for judicial review), or the license revocation is judicially reviewed and sustained under section 169A.53, subdivision 2.

(b) A vehicle encumbered by a security interest perfected according to section 168A.17, subdivision 2, or subject to a lease that has a term of 180 days or more, is subject to the interest of the secured party or lessor unless the party or lessor had knowledge of or consented to the act upon which the forfeiture is based. However, when the proceeds of the sale of a seized vehicle do not equal or exceed the outstanding loan balance, the appropriate agency shall remit all proceeds of the sale to the secured party after deducting the agency's costs for the seizure, tow, storage, forfeiture, and sale of the vehicle. If the sale of the vehicle is conducted in a commercially reasonable manner consistent with the provisions of section 336.9-610, the agency is not liable to the secured party for any amount owed on the loan in excess of the sale proceeds. The validity and amount of a nonperfected security interest must be established by its holder by clear and convincing evidence.

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

(d) A motor vehicle is not subject to forfeiture under this section if any of its owners who petition the court can demonstrate by clear and convincing evidence that the petitioning owner did not have actual or constructive knowledge that the vehicle would be used or operated in any manner contrary to law or that the petitioning owner took reasonable steps to prevent use of the vehicle by the offender. If the offender is a family or household member of any of the owners who petition the court and has three or more prior impaired driving convictions, the petitioning owner is presumed to know of any vehicle use by the offender that is contrary to law. "Vehicle use contrary to law" includes, but is not limited to, violations of the following statutes:

(1) section 171.24 (violations; driving without valid license);

(2) section 169.791 (criminal penalty for failure to produce proof of insurance);

(3) section 171.09 (driving restrictions; authority, violations);

(4) section 169A.20 (driving while impaired);

(5) section 169A.33 (underage drinking and driving); and

(6) section 169A.35 (open bottle law).

Subd. 8. **Administrative forfeiture procedure.** (a) A motor vehicle used to commit a designated offense or used in conduct resulting in a designated license revocation is subject to administrative forfeiture under this subdivision.

(b) Within 60 days from when a motor vehicle is seized under subdivision 2, or within a reasonable time after seizure, the appropriate agency shall serve the driver or operator of the vehicle with a notice of the seizure and intent to forfeit the vehicle. Additionally, when a motor vehicle is seized under subdivision 2, or within a reasonable time after that, all persons known to have an ownership, possessory, or security interest in the vehicle must be notified of the seizure and the intent to forfeit the vehicle. For those vehicles required to be registered under chapter 168, the notification to a person known to have a security interest in the vehicle is required only if the vehicle is registered under chapter 168 and the interest is listed on the vehicle's title. Upon motion by the appropriate agency or prosecuting authority, a court may extend the time period for sending notice for a period not to exceed 90 days for good cause shown. Notice mailed by certified mail to the address shown in Department of Public Safety records is sufficient notice to the registered owner of the vehicle. For motor vehicles not required to be registered under chapter 168, notice mailed by certified mail

to the address shown in the applicable filing or registration for the vehicle is sufficient notice to a person known to have an ownership, possessory, or security interest in the vehicle. Otherwise, notice may be given in the manner provided by law for service of a summons in a civil action.

(c) The notice must be in writing and contain:

(1) a description of the vehicle seized;

(2) the date of seizure; and

(3) notice of the right to obtain judicial review of the forfeiture and of the procedure for obtaining that judicial review, printed in English. This requirement does not preclude the appropriate agency from printing the notice in other languages in addition to English.

Substantially the following language must appear conspicuously in the notice:

"WARNING: You will automatically lose the above-described property and the right to be heard in court if you do not file a lawsuit and serve the prosecuting authority within 60 days. You may file your lawsuit in conciliation court if the property is worth $15,000 or less; otherwise, you must file in district court. You may not have to pay a filing fee for your lawsuit if you are unable to afford the fee. You do not have to pay a conciliation court fee if your property is worth less than $500."

(d) If notice is not sent in accordance with paragraph (b), and no time extension is granted or the extension period has expired, the appropriate agency shall return the property to the person from whom the property was seized, if known. An agency's return of property due to lack of proper notice does not restrict the agency's authority to commence a forfeiture proceeding at a later time. The agency shall not be required to return contraband or other property that the person from whom the property was seized may not legally possess.

(e) Within 60 days following service of a notice of seizure and forfeiture under this subdivision, a claimant may file a demand for a judicial determination of the forfeiture. The demand must be in the form of a civil complaint and must be filed with the court administrator in the county in which the seizure occurred, together with proof of service of a copy of the complaint on the prosecuting authority having jurisdiction over the forfeiture, including the standard filing fee for civil actions unless the petitioner has the right to sue in forma pauperis under section 563.01. The claimant may serve the complaint by any means permitted by court rules. If the value of the seized property is $15,000 or less, the claimant may file an action in conciliation court for recovery of the seized vehicle. A copy of the conciliation court statement of claim must be served personally or by mail on the prosecuting authority having jurisdiction over the forfeiture, as well as on the appropriate agency that initiated the forfeiture, within 60 days following service of the notice of seizure and forfeiture under this subdivision. If the value of the seized property is less than $500, the claimant does not have to pay the conciliation court filing fee.

No responsive pleading is required of the prosecuting authority and no court fees may be charged for the prosecuting authority's appearance in the matter. The prosecuting authority may appear for the appropriate agency. Pleadings, filings, and methods of service are governed by the Rules of Civil Procedure.

(f) The complaint must be captioned in the name of the claimant as plaintiff and the seized vehicle as defendant, and must state with specificity the grounds on which the claimant alleges the vehicle was improperly seized, the claimant's interest in the vehicle seized, and any affirmative defenses the claimant may have. Notwithstanding any law to the contrary, an action for the return of a vehicle seized under this section may not be maintained by or on behalf of any person who has been served with a notice of seizure and forfeiture unless the person has complied with this subdivision.

(g) If the claimant makes a timely demand for a judicial determination under this subdivision, the forfeiture proceedings must be conducted as provided under subdivision 9.

Subd. 9. **Judicial forfeiture procedure.** (a) This subdivision governs judicial determinations of the forfeiture of a motor vehicle used to commit a designated offense or used in conduct resulting in a designated license revocation. An action for forfeiture is a civil in rem action and is independent of any criminal prosecution. All proceedings are governed by the Rules of Civil Procedure.

(b) If no demand for judicial determination of the forfeiture is pending, the prosecuting authority may, in the name of the jurisdiction pursuing the forfeiture, file a separate complaint against the vehicle, describing it, specifying that it was used in the commission of a designated offense or was used in conduct resulting in a designated license revocation, and specifying the time and place of its unlawful use.

(c) The prosecuting authority may file an answer to a properly served demand for judicial determination, including an affirmative counterclaim for forfeiture. The prosecuting authority is not required to file an answer.

(d) A judicial determination under this subdivision must be held at the earliest practicable date, and in any event no later than 180 days following the filing of the demand by the claimant. If a related criminal proceeding is pending, the hearing shall not be held until the conclusion of the criminal proceedings. The district court administrator shall schedule the hearing as soon as practicable after the conclusion of the criminal prosecution. The district court administrator shall establish procedures to ensure efficient compliance with this subdivision. The hearing is to the court without a jury.

(e) There is a presumption that a vehicle seized under this section is subject to forfeiture if the prosecuting authority establishes that the vehicle was used in the commission of a designated offense or designated license revocation. A claimant bears the burden of proving any affirmative defense raised.

(f) If the forfeiture is based on the commission of a designated offense and the person charged with the designated offense appears in court as required and is not convicted of the offense, the court shall order the property returned to the person legally entitled to it upon that person's compliance with the redemption requirements of section 169A.42. If the forfeiture is based on a designated license revocation, and the license revocation is rescinded under section 169A.53, subdivision 3 (judicial review hearing, issues, order, appeal), the court shall order the property returned to the person legally entitled to it upon that person's compliance with the redemption requirements of section 169A.42.

(g) If the lawful ownership of the vehicle used in the commission of a designated offense or used in conduct resulting in a designated license revocation can be determined and the owner makes the demonstration required under subdivision 7, paragraph (d), the vehicle must be returned immediately upon the owner's compliance with the redemption requirements of section 169A.42.

(h) If the court orders the return of a seized vehicle under this subdivision it must order that filing fees be reimbursed to the person who filed the demand for judicial determination. In addition, the court may order sanctions under section 549.211 (sanctions in civil actions). Any reimbursement fees or sanctions must be paid from other forfeiture proceeds of the law enforcement agency and prosecuting authority involved and in the same proportion as distributed under subdivision 10, paragraph (b).

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

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

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

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

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

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

(c) If a vehicle is sold under paragraph (a), the appropriate agency shall not sell the vehicle to: (1) an officer or employee of the agency that seized the property or to a person related to the officer or employee by blood or marriage; or (2) the prosecuting authority or any individual working in the same office or a person related to the authority or individual by blood or marriage.

(d) Sales of forfeited vehicles under this section must be conducted in a commercially reasonable manner.

(e) If a vehicle is forfeited administratively under this section and no demand for judicial determination is made, the appropriate agency shall provide the prosecuting authority with a copy of the forfeiture or evidence receipt, the notice of seizure and intent to forfeit, a statement of probable cause for forfeiture of the property, and a description of the property and its estimated value. Upon review and certification by the prosecuting authority that (1) the appropriate agency provided a receipt in accordance with subdivision 2, paragraph (c), (2) the appropriate agency served notice in accordance with subdivision 8, and (3) probable cause for forfeiture exists based on the officer's statement, the appropriate agency may dispose of the property in any of the ways listed in this subdivision.

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

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

Subd. 12. **Reporting.** The appropriate agency and prosecuting authority shall report on forfeitures occurring under this section as described in section 609.5315, subdivision 6.

Subd. 13. **Exception.** (a) If the driver who committed a designated offense or whose conduct resulted in a designated license revocation becomes a program participant in the ignition interlock program under

section 171.306 at any time before the motor vehicle is forfeited, the forfeiture proceeding is stayed and the vehicle must be returned.

(b) Notwithstanding paragraph (a), the vehicle whose forfeiture was stayed in paragraph (a) may be seized and the forfeiture action may proceed under this section if the program participant described in paragraph (a):

(1) subsequently operates a motor vehicle:

(i) to commit a violation of section 169A.20 (driving while impaired);

(ii) in a manner that results in a license revocation under section 169A.52 (license revocation for test failure or refusal) or 171.177 (revocation; search warrant) or a license disqualification under section 171.165 (commercial driver's license disqualification) resulting from a violation of section 169A.52 or 171.177;

(iii) after tampering with, circumventing, or bypassing an ignition interlock device; or

(iv) without an ignition interlock device; or

(2) either voluntarily or involuntarily ceases to participate in the program for more than 30 days, or fails to successfully complete it as required by the Department of Public Safety due to:

(i) two or more occasions of the participant's driving privileges being withdrawn for violating the terms of the program, unless the withdrawal is determined to be caused by an error of the department or the interlock provider; or

(ii) violating the terms of the contract with the provider as determined by the provider.

(c) Paragraph (b) applies only if the described conduct occurs before the participant has been restored to full driving privileges or within three years of the original designated offense or designated license revocation, whichever occurs latest.

(d) The requirement in subdivision 2, paragraph (b), that device manufacturers provide a discounted rate to indigent program participants applies also to device installation under this subdivision.

(e) An impound or law enforcement storage lot operator must allow an ignition interlock manufacturer sufficient access to the lot to install an ignition interlock device under this subdivision.

(f) Notwithstanding paragraph (a), an entity in possession of the vehicle is not required to release it until the reasonable costs of the towing, seizure, and storage of the vehicle have been paid by the vehicle owner.

(g) At any time prior to the vehicle being forfeited, the appropriate agency may require that the owner or driver of the vehicle give security or post bond payable to the appropriate agency in an amount equal to the retail value of the seized vehicle. If this occurs, any future forfeiture action against the vehicle must instead proceed against the security as if it were the vehicle.

(h) The appropriate agency may require an owner or driver to give security or post bond payable to the agency in an amount equal to the retail value of the vehicle, prior to releasing the vehicle from the impound lot to install an ignition interlock device.

(i) If an event described in paragraph (b) occurs in a jurisdiction other than the one in which the original forfeitable event occurred, and the vehicle is subsequently forfeited, the proceeds shall be divided equally, after payment of seizure, towing, storage, forfeiture, and sale expenses and satisfaction of valid liens against the vehicle, among the appropriate agencies and prosecuting authorities in each jurisdiction.

(j) Upon successful completion of the program, the stayed forfeiture proceeding is terminated or dismissed and any vehicle, security, or bond held by an agency must be returned to the owner of the vehicle.

(k) A claimant of a vehicle for which a forfeiture action was stayed under paragraph (a) but which later proceeds under paragraph (b), may file a demand for judicial forfeiture as provided in subdivision 8, in which case the forfeiture proceedings must be conducted as provided in subdivision 9.

History: *2000 c 466 s 3,4; 2000 c 478 art 1 s 37; art 2 s 7; 2000 c 495 s 46; 2001 c 195 art 2 s 8,9; 1Sp2001 c 8 art 11 s 11; art 12 s 12,13; 1Sp2001 c 9 art 19 s 12; 2002 c 379 art 1 s 113; 2004 c 235 s 3-8; 2005 c 136 art 18 s 7; 1Sp2005 c 1 art 2 s 139; 2010 c 391 s 5; 2012 c 128 s 8-14; 2017 c 12 s 1; 2017 c 83 art 3 s 18; 1Sp2019 c 5 art 6 s 4*

MISCELLANEOUS PROVISIONS

169A.70 ALCOHOL SAFETY PROGRAMS; CHEMICAL USE ASSESSMENTS.

Subdivision 1. **Alcohol safety programs; establishment.** (a) The county board of every county shall establish an alcohol safety program designed to provide chemical use assessments of persons convicted of an offense enumerated in subdivision 2.

(b) County boards may enter into an agreement to establish a regional alcohol safety program. County boards may contract with other counties and agencies for alcohol problem screening and chemical use assessment services.

Subd. 2. **Chemical use assessment requirement.** A chemical use assessment must be conducted and an assessment report submitted to the court and to the Department of Public Safety by the county agency administering the alcohol safety program when:

(1) the defendant is convicted of an offense described in section 169A.20 (driving while impaired), 169A.31 (alcohol-related school bus and Head Start bus driving), or 360.0752 (impaired aircraft operation); or

(2) the defendant is arrested for committing an offense described in clause (1) but is convicted of another offense arising out of the circumstances surrounding the arrest.

Subd. 3. **Assessment report.** (a) The assessment report must be on a form prescribed by the commissioner and shall contain an evaluation of the convicted defendant concerning the defendant's prior traffic and criminal record, characteristics and history of alcohol and chemical use problems, and amenability to rehabilitation through the alcohol safety program. The report is classified as private data on individuals as defined in section 13.02, subdivision 12.

(b) The assessment report must include:

(1) a diagnosis of the nature of the offender's chemical and alcohol involvement;

(2) an assessment of the severity level of the involvement;

(3) a recommended level of care for the offender in accordance with the criteria contained in rules adopted by the commissioner of human services under section 254A.03, subdivision 3 (chemical dependency treatment rules);

(4) an assessment of the offender's placement needs;

(5) recommendations for other appropriate remedial action or care, including aftercare services in section 254B.01, subdivision 3, that may consist of educational programs, one-on-one counseling, a program or type of treatment that addresses mental health concerns, or a combination of them; and

(6) a specific explanation why no level of care or action was recommended, if applicable.

Subd. 4. **Assessor standards; rules; assessment time limits.** A chemical use assessment required by this section must be conducted by an assessor appointed by the court. The assessor must meet the training and qualification requirements of rules adopted by the commissioner of human services under section 254A.03, subdivision 3 (chemical dependency treatment rules). Notwithstanding section 13.82 (law enforcement data), the assessor shall have access to any police reports, laboratory test results, and other law enforcement data relating to the current offense or previous offenses that are necessary to complete the evaluation. An assessor providing an assessment under this section may not have any direct or shared financial interest or referral relationship resulting in shared financial gain with a treatment provider, except as authorized under section 254A.19, subdivision 3. If an independent assessor is not available, the court may use the services of an assessor authorized to perform assessments for the county social services agency under a variance granted under rules adopted by the commissioner of human services under section 254A.03, subdivision 3. An appointment for the defendant to undergo the assessment must be made by the court, a court services probation officer, or the court administrator as soon as possible but in no case more than one week after the defendant's court appearance. The assessment must be completed no later than three weeks after the defendant's court appearance. If the assessment is not performed within this time limit, the county where the defendant is to be sentenced shall perform the assessment. The county of financial responsibility must be determined under chapter 256G.

Subd. 5. **Applicability to nonresident.** This section does not apply to a person who is not a resident of the state of Minnesota at the time of the offense and at the time of the assessment.

Subd. 6. **Method of assessment.** (a) As used in this subdivision, "collateral contact" means an oral or written communication initiated by an assessor for the purpose of gathering information from an individual or agency, other than the offender, to verify or supplement information provided by the offender during an assessment under this section. The term includes contacts with family members and criminal justice agencies.

(b) An assessment conducted under this section must include at least one personal interview with the offender designed to make a determination about the extent of the offender's past and present chemical and alcohol use or abuse. It must also include collateral contacts and a review of relevant records or reports regarding the offender including, but not limited to, police reports, arrest reports, driving records, chemical testing records, and test refusal records. If the offender has a probation officer, the officer must be the subject of a collateral contact under this subdivision. If an assessor is unable to make collateral contacts, the assessor shall specify why collateral contacts were not made.

Subd. 7. **Preconviction assessment.** (a) The court may not accept a chemical use assessment conducted before conviction as a substitute for the assessment required by this section unless the court ensures that the preconviction assessment meets the standards described in this section.

(b) If the commissioner of public safety is making a decision regarding reinstating a person's driver's license based on a chemical use assessment, the commissioner shall ensure that the assessment meets the standards described in this section.

History: *2000 c 478 art 1 s 38; 2005 c 136 art 18 s 8-10; 2007 c 147 art 12 s 9*

169A.71 RESEARCH PROGRAMS.

No person is guilty of a violation of section 169A.20 (driving while impaired) committed while participating in a research or demonstration project conducted by the Minnesota Highway Safety Center. This section applies only to conduct occurring while operating a state-owned vehicle under the supervision of personnel of the center on the grounds of the center.

History: *2000 c 478 art 1 s 39*

169A.72 DRIVER EDUCATION PROGRAMS.

Driver training courses offered through the public schools and driver training courses offered by private or commercial schools or institutes shall include instruction which must encompass at least:

(1) information on the effects of consumption of beverage alcohol products and the use of illegal drugs, prescription drugs, and nonprescription drugs on the ability of a person to operate a motor vehicle;

(2) the hazards of driving while under the influence of alcohol or drugs; and

(3) the legal penalties and financial consequences resulting from violations of laws prohibiting the operation of a motor vehicle while under the influence of alcohol or drugs.

History: *2000 c 478 art 1 s 40*

169A.73 REMOTE ELECTRONIC ALCOHOL-MONITORING PROGRAM.

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

(1) "breath analyzer unit" means a device that performs breath alcohol testing and is connected to a remote electronic alcohol-monitoring system; and

(2) "remote electronic alcohol-monitoring system" means a system that electronically monitors the alcohol concentration of individuals in their homes or other locations to ensure compliance with conditions of pretrial release, supervised release, or probation.

Subd. 2. **Program established.** In cooperation with the Conference of Chief Judges, the state court administrator, and the commissioner of public safety, the commissioner of corrections shall establish a program to use breath analyzer units to monitor impaired driving offenders who are ordered to abstain from alcohol use as a condition of pretrial release, supervised release, or probation. The program must include procedures to ensure that violators of this condition of release receive swift consequences for the violation.

Subd. 3. **Cost of program.** Offenders who are ordered to participate in the program shall also be ordered to pay the per diem cost of the monitoring unless the offender is indigent. The commissioner of corrections shall reimburse the judicial districts in a manner proportional to their use of remote electronic alcohol monitoring for any costs the districts incur in participating in the program.

Subd. 4. **Report required.** By January 1, 2004, the commissioner of corrections shall evaluate the effectiveness of the program and report the results of this evaluation to the Conference of Chief Judges, the state court administrator, the commissioner of public safety, and the chairs and ranking minority members of the house of representatives and senate committees and divisions having jurisdiction over criminal justice policy and funding.

History: *2000 c 478 art 1 s 41*

169A.74 PILOT PROGRAMS OF INTENSIVE PROBATION.

Subdivision 1. **Grant application.** The commissioners of corrections and public safety, in cooperation with the commissioner of human services, shall jointly administer a program to provide grants to counties to establish and operate programs of intensive probation for repeat violators of the driving while impaired laws. The commissioners shall adopt an application form on which a county or a group of counties may apply for a grant to establish and operate an impaired driving repeat offender program.

Subd. 2. **Goals.** The goals of the impaired driving repeat offender program are to protect public safety and provide an appropriate sentencing alternative for persons convicted of repeat violations of section 169A.20 (driving while impaired), who are considered to be of high risk to the community.

Subd. 3. **Program elements.** To be considered for a grant under this section, a county program must contain the following elements:

(1) an initial assessment of the offender's chemical dependency, based on the results of a chemical use assessment conducted under section 169A.70, with recommended treatment and aftercare, and a requirement that the offender follow the recommended treatment and aftercare;

(2) several stages of probation supervision, including:

(i) a period of incarceration in a local or regional detention facility;

(ii) a period during which an offender is, at all times, either working, on home detention, being supervised at a program facility, or traveling between two of these locations;

(iii) a period of home detention; and

(iv) a period of gradually decreasing involvement with the program;

(3) decreasing levels of intensity and contact with probation officials based on the offender's successful participation in the program and compliance with its rules;

(4) a provision for increasing the severity of the program's requirements when an offender offends again or violates the program's rules;

(5) a provision for offenders to continue or seek employment during their period of intensive probation;

(6) a requirement that offenders abstain from alcohol and controlled substances during the probation period and be tested for such use on a routine basis; and

(7) a requirement that all or a substantial part of the costs of the program be paid by the offenders.

Subd. 4. **Training.** Counties participating in the program shall provide relevant training in intensive probation programs to affected officials.

History: *2000 c 478 art 1 s 42*

169A.75 IMPAIRED DRIVING-RELATED RULES.

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

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

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

History: *2000 c 478 art 1 s 43; 2003 c 96 s 4*

169A.76 CIVIL ACTION; PUNITIVE DAMAGES.

(a) In a civil action involving a motor vehicle accident, it is sufficient for the trier of fact to consider an award of punitive damages if there is evidence that the accident was caused by a driver:

(1) with an alcohol concentration of 0.08 or more;

(2) who was under the influence of a controlled substance;

(3) who was under the influence of alcohol and refused to take a test required under section 169A.51 (chemical tests for intoxication); or

(4) who was under the influence of an intoxicating substance and the person knows or has reason to know that the substance has the capacity to cause impairment.

(b) A criminal charge or conviction is not a prerequisite to consideration of punitive damages under this section. At the trial in an action where the trier of fact will consider an award of punitive damages, evidence that the driver has been convicted of violating section 169A.20 (driving while impaired), 609.2112, 609.2113, or 609.2114 (criminal vehicular homicide or injury) is admissible into evidence.

History: *2000 c 478 art 1 s 44; 2004 c 283 s 10; 2014 c 180 s 9; 2018 c 195 art 3 s 10*

169A.78 AIDING AND ABETTING.

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

History: *1Sp2003 c 2 art 9 s 17*