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Minnesota DWI Handbook

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INTRODUCTION

Compare the following two statements:

> The trail of broken lives, bodies, and property left by drunk drivers is a holocaust on our highways. In response, our legislature enacted a very strict implied consent law to remove drunk drivers from the road.

Szczech v. Commissioner of Pub. Safety, 343 N.W.2d 305, 306 (Minn. App. 1984).

> No driver has a constitutional right to drive impaired, not even to a slight degree. Yet, once you drive impaired, are lawfully arrested and lawfully charged with a crime, then the array of federal and state constitutional rights for the accused is set in motion. These guarantees, in all cases, to some degree, impede prosecution, and in some cases prevent a successful one. Better to attack the problem by separating drunken drivers from their vehicles rather than sitting back until there has been an arrest and a criminal complaint, and then attempt to carve out exceptions to the Bill of Rights because of "carnage on the highways" caused by drunks. Carnage on the highways, and all other crimes, are subservient to the carnage at Valley Forge, Yorktown, and Gettysburg where the civil liberties now hanging in the balance were carefully shaped and hammered into rights so clean and so pure that they stand the test of time and resist encroachment.

McDonnell v. Commissioner of Pub. Safety, 460 N.W.2d 363, 392 (Minn. App. 1990) (Randall, J. Dissenting).

Balancing public safety concerns with the civil liberties of the individual in the modern drinking-driving arena has been a difficult challenge for all branches of government—legislative, executive and judicial. The two concepts are increasingly at odds with each other, and the divide seems to widen with each legislative session. As noted by the Wisconsin Supreme Court over four decades ago:

> The traffic laws . . . are the citizen's primary exposure to law enforcement; for many citizens traffic law is the only

> area in which they have direct contact with law enforcement officers. Therefore, it is particularly important in the enforcement of traffic laws that the public perceive a policy of even-handed and just law enforcement. If citizens are expected to deal fairly with the state and respect the laws, the state must deal fairly with its citizens and show respect for its citizens.

State v. Brown, 18 N.W.2d 370, 376 (Wis. 1982).

For more than 40 years, legislatures and lobbying groups have adopted aggressive public policy measures designed to tackle the drinking-driving issue. Drunk driving is the number one crime committed by "non-criminals"—that is, persons who have had no previous experience in dealing with the criminal justice system.

According to the Minnesota Department of Public Safety, most impaired driving arrests involve first-time offenders. In 2022, approximately 58 percent of all 25,872 DWI violators had no prior alcohol incidents on record. Among recidivists, half who incur a second DWI incident will statistically incur a third. About half who incur a third are expected to incur a fourth, and so on.

Unless either impaired or at or above the prohibited statutory alcohol level, it is not illegal for adults 21 years of age or older to drink and drive. However, two recent anti-DWI/DUI messages promoted by both public safety organizations and private special interest groups in a recent campaign warn: "Drive Sober or get Pulled Over" and "Drink, Drive, go to Jail."

Statistically:

- During 2023 in Minnesota there were 101 "alcohol-related" traffic deaths accounting for one-quarter of all 402 traffic fatalities. Of these, 54 were "known drunk driving-related," defined as when the driver had an alcohol concentration of .08 or more, with the average level being .15. "Estimated drunk driving related" fatalities double this number to 100.
- In 2023, there were 26,909 DWI arrests made in Minnesota. The average alcohol concentration for all drivers arrested for DWI in 2023 was .15 with subsequent offenders averaging .17.
- Of all Minnesota residents, approximately 671,000 have an impaired-driving offense on record Thus, approximately one in seven persons in Minnesota with a driving history (including those with licenses revoked, cancelled, etc.) have one or more impaired driving incidents on record.

(Source: 2023 Minnesota Motor Vehicle Crash Facts, Minnesota Department of Public Safety, Office of Traffic Safety, August, 2025)

DWI statistics can be misleading and confusing even with a thorough understanding of the terminology involved. For example, the Minnesota Department of Public Safety defines an "alcohol-related crash" as one where any driver, pedestrian, or bicyclist is shown by a chemical test to be positive for alcohol.

As a result, any fatality that occurs in any crash involving any alcohol by anyone involved will likely be compiled in Minnesota DPS statistics to be "alcohol-related." Thus, the total number of "alcohol-related" fatalities in 2023 was 100 or approximately 24 percent or one-quarter of all traffic fatalities. But substitute "known drunk driving-related" for "alcohol-related" and the number drops to 54 fatalities representing just 13.3 percent of total deaths on Minnesota roadways (speeding and distracted driving are the top two behaviors contributing to traffic fatalities, resulting in 130 deaths and 87 deaths respectively; drunk driving is third).

In the past, NHTSA has defined a nonfatal crash as "alcohol-related" or "alcohol-involved" if police indicate on the accident report that there is evidence of alcohol present. However, this does not necessarily mean that a driver or non-occupant was tested for alcohol. So, contrary to public perception, the term "alcohol-related" (or "alcohol-involved" or even "alcohol-impaired") does not indicate that a crash or fatality was caused by the presence of alcohol. For example, if a pedestrian with a BAC of 0.01 is hit and killed by a sober driver, this fatality may be added to the statistical total of "alcohol-related fatalities."

Anyone with even a passing knowledge of statistics might be alarmed to learn that NHTSA will also estimate (guess) the extent of alcohol involvement in the crash if the alcohol test results are not reported or are otherwise unknown and include these figures in its reports: Estimates of alcohol-impaired driving are generated using BAC values reported to NHTSA's Fatality Analysis Reporting System (FARS) and imputed BAC values when they are not reported. Again, according to NHTSA, the term "alcohol-impaired" does not indicate that a crash or fatality was caused by alcohol impairment.

Confusing terminology notwithstanding, NHTSA has reported that the percentage of "alcohol-related" fatalities reported declined an impressive 19 percent nationwide from 60 percent in

1982 to 41 percent in 2006.

But NHTSA also tracks alcohol-impaired driving fatalities (defined by as fatalities that occur in motor vehicle traffic crashes that involve at least one driver or motorcycle rider (operator) with a BAC of .08 grams per deciliter or above). In 2024, the number of alcohol-impaired fatalities in the United States was 11,904 representing 30 percent of all motor vehicle traffic fatalities.

(Source: NHTSA State Alcohol-Impaired Driving Estimates: 2024 Data. (Traffic Safety Facts. DOT HS 813 813)

In 2023, 101 persons died in crashes on Minnesota roads classified by the DPS as alcohol-related, accounting for 25 percent of all crash fatalities. In total, there were 3,979 alcohol-related crashes and 2,246 persons reported injured. 54 (53%) of those 101 fatalities were themselves the people whose drinking was a main factor which led to the crash to be classified as alcohol related. The remaining 47 persons who died were non-drinking drivers, pedestrians or bicyclists, or were drinking or non-drinking vehicle passengers.

So contrary to widespread public perception drinking drivers, pedestrians and bicyclists mostly kill and injure themselves–and by a wide margin.

Of the 279 Minnesota drivers who perished in fatal crashes, the Department of Public Safety was able to obtain post-mortem alcohol concentration test results for 165. Of the 165 tested, 110 (66.7%) tested at .00, 12 (7.3%) tested between .01 and .07, 1 (0.6%) tested between .08 and .09 and 42 (25.5%) tested .10 or higher.

(Source: 2023 Minnesota Motor Vehicle Crash Facts, Minnesota Department of Public Safety, Office of Traffic Safety, August 2025)

Thus, a public perception that DWI is the "number one" killer on the nation's highways is simply not borne out by both state and federal government statistics, which show that more than two-thirds of all traffic fatalities are caused by factors other than drunk driving - most notably speeding and inattentive driving:

Related Factors for Drivers Involved in Fatal Crashes Occurring in 2024

Factors	Number	Percent

Driving too fast for conditions, in excess of posted speed limit, or racing	10,446	18.8
Under the influence of alcohol, drugs, or medication	5,477	9.8
Failure to yield right of way	4,656	7.9
Operating vehicle in a careless manner	4,210	7.6
Improper Lane Usage	2,877	5.2
Distracted (phone, talking, eating, object, etc.)	3,026	5.4
Failure to obey traffic signs, signals, or officer	2,610	4.7
Operating vehicle in erratic, reckless, or negligent manner	2,386	4.3
Overcorrecting/oversteering	1,479	2.7
Vision obscured (rain, snow, glare, lights, building, trees, etc.)	1,406	2.5
Driving wrong way on one-way trafficway or wrong side of road	1,280	2.3
Swerving or avoiding due to wind, slippery surface, vehicle, object, non-motorist in roadway, etc	1,245	2.2
Drowsy, asleep, fatigued, ill, or blackout	1,175	2.1
Making improper turn	427	0.8
Other factors	5,850	10.5
None reported	7,260	13.1
Unknown	19,446	35.0
Total Drivers	**55,620**	**100.0**

Note: The sum of the numbers and percentages is greater than total drivers as more than one factor may be present for the same driver.

(Source: NHTSA FARS/GES 2024; National Highway Traffic Safety Administration's Traffic Safety Facts Annual Report, Table 64 generated online 07/15/2026)

Legislation and public pressure aimed at eliminating drunk driving has unquestionably influenced American attitudes towards the problem as well as on driving conduct.

Perhaps no entity has had a greater effect on the issue of drinking and driving as the organization, Mothers Against Drunk Driving (MADD). MADD was established in 1980 by Candy Lightner, a California woman whose 13-year-old daughter was killed by a drunk driver. At that time, according to NHTSA estimates, 60 percent of all driving deaths were alcohol related. However, relaxed attitudes about drinking and driving meant that the offense was not treated as a serious crime. By the end of 1984, MADD had established 330 chapters in 47 states and created a potent grassroots lobbying organization. Ultimately,

MADD helped persuade Congress and President Ronald Reagan to sign the Uniform Drinking Age Act, which denied federal highway funding to any states that did not raise their legal drinking age to 21.

MADD's most prolonged campaign involved lobbying state legislatures to lower the per se level of intoxication, from .10 to .08. According to MADD, the "average" 170-pound man who has four drinks in an hour on an empty stomach would have a blood alcohol concentration of 0.08 percent.

Under pressure from the beverage and hospitality industries, states were slow to adopt the new MADD-approved standard. Only six states had changed the law by 1990. In 2000, President Bill Clinton adopted the new standard nationwide: Similar to the Uniform Drinking Age Act, states had to comply with the new level or risk losing certain highway funding. By 2005, all states had adopted the 0.08 standard, with Minnesota being one of the final "holdout" states. In 2017 the Utah state legislature became the first state to lower its 'per se' level from .08 to .05.

A recent lobbying push among anti- DWI/DUI advocates has been for the expanded use of ignition interlock devices as described in Chapter 23, which are now in use in all 50 states with a majority mandating or highly incentivizing their use among those arrested for drunk driving.

The Minnesota legislature has mandated ignition interlock use for all repeat DWI offenders and all first-time offenders who test at a BAC of 0.16 or higher. For drivers with at least three or more offenses on record whose licenses are 'canceled' as 'inimical to public safety,' a period of ignition interlock use is required by the Department of Public Safety as part of the licensing process before the driver is deemed 'rehabilitated' and able to drive without using the device.

In 2021, Congress passed the Infrastructure Investment and Jobs Act which contained an Advanced Impaired Driving Technology (AIDT) provision requiring the National Highway Traffic Safety Administration (NHTSA) to develop a process to establish rules and set a standard for impaired driving safety systems. Once this standard is established, automakers will be required to incorporate the technology on all new vehicles. NHTSA is in the process of evaluating the Driver Alcohol Detection System for Safety (DADSS). DADSS engineers are developing two different types of technology to comply with the AIDT provision.

The first captures a driver's breath sample and pulls it into a sensor, where a beam of infrared light then calculates the precise

blood alcohol concentration.

The second features a touch-based system built into a car's ignition button or gear shift employing tiny lasers which shine a beam of light onto the driver's finger, which gives a reading of the driver's alcohol level subdermally – below the skin's surface.

Unlike an ignition interlock system, the DADSS does not require a driver to take specific actions. The system is designed to quietly and unobtrusively collect measurements – the full purposes of which have yet to be determined.

Inherent in the ongoing drunk driving debate is the balance between public safety and individual liberty. While nobody opposes reducing the number of deaths caused by drunken driving, some have suggested that the exceptions that are being increasingly carved out of the United States and Minnesota constitutions by courts and legislature, indicate that the means by which this noble goal is being achieved may portent a rot to the roots of Liberty's tree.

To paraphrase Benjamin Franklin, the degree to which Minnesota citizens will continue to trade their essential liberties for temporary safety, deserving neither while losing both is an ongoing issue.

All of the topics covered in the previous edition have been reviewed, revised and fully updated for this 2026-2027 edition—including the extensive appendix which has also been thoroughly updated and improved.

ABOUT THE AUTHOR

Since 1993, Douglas V. Hazelton has practiced exclusively in the area of criminal defense, specializing in alcohol-related traffic offenses (DWI/DUI). He has successfully handled thousands of DWI cases, implied consent (driver's license) hearings and other criminal cases across Minnesota, Wisconsin and Virginia.

His credentials include being one of only two Minnesota defense attorneys to successfully complete the Indiana University Robert F. Borkenstein Course on Alcohol and Highway Safety: Testing, Research and Litigation in Bloomington, Indiana, and has received extensive training in operating the Intoxilyzer and DataMaster breath machines and administration of NHTSA field sobriety exercises.

Mr. Hazelton has been named one of "Best Lawyers in America" as published in Minnesota Monthly Magazine including 2016 Lawyer of the Year for DUI/DWI Defense and has been placed on the list of "SuperLawyers" in Minneapolis-St. Paul Magazine/ Minnesota Journal of Law and Politics each year from 2008 through 2023.

Mr. Hazelton is a graduate of the *National College for DUI Defense* conducted at Harvard Law School and was named a Regent of the College in 2024. He has lectured at College seminars in San Antonio, Texas, Orlando, Florida, Las Vegas, Nevada, Denver, Colorado, New Orleans, Louisiana, Austin, Texas and Nashville, Tennessee.

Mr. Hazelton is also an emeritus member and past president of the *Minnesota Society for Criminal Justice* and a member of the *National Association of Criminal Defense Lawyers*, the *Minnesota Association of Criminal Defense Lawyers*, the *Wisconsin Association of Criminal Defense Lawyers* and the *Virginia Association of Criminal Defense Lawyers*.

In addition to lecturing on DUI/DWI-related topics across the United States, Mr. Hazelton's articles have been widely published in numerous books and journals including *Criminal Defense Techniques* (Matthew Bender/Lexis), *Criminal Constitutional Law* (Matthew Bender/Lexis), the *Police Misconduct and Civil Rights Law Reporter* (Clark Boardman) and the *Hennepin Lawyer*. He

has also served as a contributing author and editor for the *Minnesota DWI Deskbook*, published by Minnesota State Bar Association Continuing Legal Education (Minnesota CLE).

PREFACE

The purpose of this book is to provide a comprehensive reference to the statutes, case law and administrative rules and regulations pertaining to handling a DWI case in Minnesota. This book is aimed solely on Minnesota law and practice with references to other state and Federal cases included only when relevant to Minnesota practice. The intent of the author is to provide a specific guide to defense lawyers, judges and prosecutors engaged in handling DWI cases.

The author has sought and received the help of many attorneys, judges, police officers and the Minnesota Department of Public Safety personnel. While any errors and omissions in content are mine and mine alone, much of the credit for this book belongs to the people within the Criminal Justice System who handle DWI cases on a daily basis.

I am most thankful for the support of my family, friends, and colleagues — all of whom contributed in some way to the writing of this book. Specific thanks must be paid to F.E., D.H., L.B., M.H., P.H., P.G., J.R., F.S., T.J., J.W., J.L., S.J., J.S., V.C., E.F., fellow members of the MSCJ and the NCDD and the Halberg Criminal Defense team.

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