

American Prosecutors Research Institute NATIONAL TRAFFIC LAW CENTER

Subsequent Non-Injury DUI as Felony: State Statute Chart

Thirty-nine (39) states make it a felony if a person is convicted of subsequent DUI offenses. This chart lists the threshold point at which a DUI conviction becomes a felony. It also lists the statutory provision and the sanctions resulting from a felony DUI conviction.

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STATE	STATUTE	FELONY THRESHOLD	SANCTIONS
Alabama	§ 32-5A-191	Fourth or subsequent DUI conviction	<p>Sentence: 1 year and 1 day - 10 years</p> <p>Fine: \$4,100 - \$10,100</p>
Alaska	§ 28.35.030	Third or subsequent DUI conviction within 5 years	<p>Sentence: not more than 5 years</p> <p>Mandatory minimum term of incarceration: Third DUI conviction w/n 5 years: 120 Days Fourth DUI conviction w/n 5 years: 240 days Fifth and subs. DUI conviction w/n 5 years: 360 days</p> <p>Fine: \$5,000 - \$50,000</p> <p>Mandatory minimum fine: \$5,000</p>
Arizona	§ 28-1383	Third or subsequent DUI conviction within 5 years	<p>Sentence: 2 ½ years - 12 years</p> <p>Mandatory minimum term of incarceration: Third DUI conviction within 5 years: 4 months Fourth DUI conviction within 5 years: 8 months</p> <p>Fine: not more than \$150,000</p> <p>Special assessment fine of \$250 in addition to other fine imposed by the court.</p>

STATE	STATUTE	FELONY THRESHOLD	SANCTIONS
Arkansas	§§ 5-65-103, 5-65-111, 5-65-112	Fourth or subsequent DUI conviction within 3 years	<p>Sentence: 1 - 6 years</p> <p>Mandatory minimum term of incarceration: 1 year</p> <p>Fine: \$900 - \$5,000</p> <p>Mandatory minimum fine: \$900</p>
California	§§ 23152, 23175, 23206.5	Fourth or subsequent DUI conviction within 7 years and the driver is sentenced to the state prison (the DUI is not a felony if the driver is sentenced to a local jail)	<p>Sentence: 180 days - 1 year</p> <p>Mandatory minimum term of incarceration: 48 consecutive hours, or 10 days of community service</p> <p>Fine: \$390 - \$1,000</p> <p>Mandatory minimum fine: \$390</p>
Colorado	§ 18-1-105 & § 18-3-205	Injury related DUI offenses are class 4 felonies	
Connecticut	§ 14-227(a)(h)	Third or subsequent DUI conviction within 10 years	<p>Sentence:</p> <p>Third DUI conviction: not more than 2 years</p> <p>Mandatory minimum term of incarceration: 120 consecutive days</p> <p>Fourth or subsequent DUI conviction: not more than 3 years</p> <p>Mandatory minimum term of incarceration: 1 year</p> <p>Fine:</p> <p>Third DUI conviction within 10 years: \$1,000 - \$4,000</p> <p>Fourth or subs. DUI conviction within 10 years: \$2,000 - \$8,000</p>
Delaware	§ 4177	Third DUI conviction within 5 years = Class G Felony	<p>Sentence:</p>

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		Fourth or subsequent DUI convictions = Class E Felony	<p>Class G Felony: 1 - 2 years Mandatory minimum term of incarceration: First 3 consecutive months of the sentence</p> <p>Class E Felony: 2 - 5 years Mandatory minimum term of incarceration: First 6 consecutive months of the sentence</p> <p>Fine: Class G Felony: \$1,000 - \$3,000 Class E Felony: \$2,000 - \$6,000</p> <p>Mandatory minimum fines: Class G Felony: \$1,000 Class E Felony: \$2,000</p>
District of Columbia		DUI offenses are not classified	
Florida	§ 316.193	Fourth or subsequent DUI conviction	<p>Sentence: 30 days - 5 years</p> <p>Mandatory minimum term of incarceration: 48 consecutive hours</p> <p>Fine: \$1,000 - \$5,000</p>
Georgia	§ 40-6-391 (c) & (k)	1 st and 2 nd offenses are misdemeanors, 3 rd and subsequent offenses are high and aggravated misdemeanors	
Hawaii	§ 291-4.4	Fourth or subsequent DUI conviction within 10 years	<p>Sentence: maximum of 5 years</p> <p>Fine: maximum of \$5,000</p>

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Idaho	§ 18-8005	<p>Second or subsequent DUI conviction with a BAC/BrAc > 0.20 within 5 years</p> <p>Third or subsequent DUI conviction within 5 years</p> <p>Fourth or subsequent DUI conviction within 10 years</p>	<p>Sentence: maximum of 5 years</p> <p>Mandatory minimum term of incarceration: 30 days with the first 48 hours served consecutively</p> <p>Fine: not more than \$5,000</p>
Illinois	§ 5/11-501	Third or subsequent DUI conviction within 5 years	<p>Sentence: 1 - 3 years</p> <p>Mandatory minimum term of incarceration: 48 consecutive hours if probation or conditional discharge is granted</p> <p>Fine: not more than \$25,000</p>
Indiana	§ 9-30-5-1	Second or subsequent DUI conviction within 5 years	<p>Sentence: Fixed term of 1 ½ years</p> <p>Mandatory minimum term of incarceration: 5 days, unless 80 hours of community service is ordered. The 5 day sentence may be served in segments, but at least 48 hours of the sentence must be served consecutively</p> <p>Fine: not more than \$10,000</p> <p>At the court's discretion, the driver may be sentenced as a Class A misdemeanor if this is the driver's first felony conviction. Sentence: not more than 1 year</p> <p>Fine: not more than \$5,000</p>
Iowa	§ 321J,2	Third or subsequent DUI conviction within 12 years	<p>Sentence: 30 days - 5 years (30 days - 1 year if incarcerated in a county jail)</p> <p>Mandatory minimum term of incarceration: 30 consecutive days unless, the defendant can show an undue hardship or</p>

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			<p>there is insufficient jail space. If either of these factors are present the 30 days may be served in segments of 48 consecutive hours.</p> <p>Fine: \$2,500 - \$7,500</p> <p>Mandatory minimum fine: \$2,500</p>
Kansas	§ 8-1567	Third or subsequent DUI conviction within 5 years	<p>Sentence: 90 days - 1 year</p> <p>Mandatory minimum term of incarceration: 90 days. These 90 days may be served in a work release program only after the driver has served 48 consecutive hours imprisonment. In the alternate, the court can require the driver serve the 90 day minimum term under house arrest, but only after 48 consecutive hours of imprisonment have been served.</p> <p>Fine: \$1,000 - \$2,500</p>
Kentucky	§ 189A.010	<p>Third DUI conviction within 5 years if BAC 0.18 = Class D Felony</p> <p>Fourth or subsequent DUI conviction within 5 years = Class D Felony</p>	<p>Sentence: 1 - 5 years</p> <p>Mandatory minimum term of incarceration: Third DUI conviction within 5 years if BAC \geq 0.18 = 1 year imprisonment or community labor with at least 48 hours served consecutively.</p> <p>Mandatory minimum term of incarceration: Fourth or subsequent DUI conviction within 5 years = 120 days imprisonment with at least 48 hours served consecutively.</p> <p>Fine: \$1,000 - \$10,000</p>
Louisiana	§ 14:98	<p>Third DUI conviction within 10 years. * Only if the sentence is imprisonment <u>with</u> hard labor.</p> <p>Fourth or subsequent DUI conviction within 10 years.*</p>	<p>Sentence: 1-5 years with hard labor</p> <p>Mandatory minimum term of incarceration: Six months</p> <p>Fine: \$2,000</p> <p>Sentence: 10 - 30 years (with hard labor)</p>

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			<p>Mandatory minimum term of incarceration: 2 years 3 years if the defendant has participated in either a substance abuse or driver improvement program for the 3rd offense</p> <p>Fine: maximum of \$5,000</p>
Maine	1717-A MRSA §1252, and 29-A MRSA §§ 2411(1) & (5)(D)	1 st , 2 nd and 3 rd offenses are class D crime, 4 th or subsequent offenses are class C crime	
Maryland	Trans. §§21-902, 27-101 et seq., & 27-102	All DUI offenses are misdemeanors	
Massachusetts	§ 90-24	Third and subsequent DUI convictions within 10 years	<p>Sentence: 3rd DUI offense within 10 years: 180 days to 2 ½ years (or 2 ½ - 5 years in State prison)</p> <p>Mandatory minimum term of incarceration: 150 days. Work release is available for this period</p> <p>4th DUI offense with 10 years: 2 - 2 ½ years (or 2 ½ - 5 years in State prison)</p> <p>Mandatory minimum term of incarceration: 12 months . Work release is available for this period</p> <p>5th and subsequent DUI offense within 10 years: 2 ½ years (or 2 ½ - 5 years in State prison)</p> <p>Mandatory minimum term of incarceration: 24 months. Work release is available for this period</p> <p>Fine: 3rd offense: \$1,000 - \$15,000 4th offense: \$15,000 - \$25,000</p>

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			5th and subsequent offense: \$2,000 - \$50,000
Michigan	§ 257.625	Third or subsequent DUI conviction within 10 years	<p>Sentence: 1 - 5 years (if imprisoned under the jurisdiction of the Department of Corrections)</p> <p>30 days - 1 year (if sentenced to probation with imprisonment in the county jail)</p> <p>Mandatory minimum term of incarceration: 48 consecutive hours</p> <p>Fine: \$500 - \$5,000</p>
Minnesota	§§169.121 subd 3(d) et seq.	driving with BAC \geq .10 but $<$.20 is a misdemeanor, 2 nd offense within 5 years or \leq .20 is a gross misdemeanor, 2 or more offenses within 10 years is an enhanced gross misdemeanor	
Mississippi	§ 63-11-30	Third or subsequent DUI conviction within 5 years	<p>Sentence: 1 - 5 years</p> <p>Fine: \$2,000 - \$5,000</p> <p>Mandatory minimum fine: \$2,000</p>
Missouri	§ 577.023	Third or subsequent DUI conviction within 10 years	<p>Sentence: not more than 5 years</p> <p>Mandatory minimum term of incarceration: 48 consecutive hours, unless a condition of the parole or probation is that the driver will perform 10 days of community service.</p> <p>Fine: not more than \$5,000</p>
Montana	§ 61-8-731	Fourth or subsequent DUI	Sentence: 6 - 13 months

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		conviction	<p>Mandatory minimum term of incarceration: 6 months</p> <p>Fine: \$1,000 - \$10,000</p>
Nebraska	§ 28-106	Fourth or subsequent DUI conviction within 12 years	<p>Sentence: not more than 5 years</p> <p>Fine: \$1,000 - \$10,000</p> <p>Mandatory minimum fines: If probation is not granted: none If probation is granted: \$1,000</p>
Nevada	§ 484.3792	Third or subsequent DUI conviction within 7 years	<p>Sentence: 1 - 6 years</p> <p>Mandatory minimum term of incarceration: 1 year and at least 48 hours must be served consecutively</p> <p>Fine: \$2,000 - \$5,000</p> <p>Mandatory minimum fine: \$2,000</p>
New Hampshire	§§265:9 IV(A) & 265:82 et.seq.	<p>non-injury DUI offenses are misdemeanors,</p> <p>However, DUI with serious bodily injury is a class B felony</p>	
New Jersey		<i>State v Hamm</i> , 577 A.2d 1259 (NJ 1990)- drunk driving is not a "crime"	
New Mexico	§ 66-8-102	Fourth DUI conviction	<p>Sentence: 6 - 18 months</p> <p>Mandatory minimum term of incarceration: 6 months</p>

STATE	STATUTE	FELONY THRESHOLD	SANCTIONS
			Fine: not more than \$5,000
New York	§ 1193(1)(b)	Second DUI conviction within 10 years = Class E Felony Third and subsequent DUI conviction within 10 years = Class D Felony	Sentence: Class E Felony: not more than 4 years Class D Felony: not more than 7 years Fine: Class E Felony: \$1,000 - \$5,000 Class D Felony: \$2,000 - \$10,000
North Carolina	§ 20-138.5	Fourth or subsequent DUI conviction within 7 years	Sentence: maximum of 59 months Fine: authorized but not specified by the statute
North Dakota	§ 39-08-01	Fifth or subsequent DUI conviction within 7 years	Sentence: not more than 5 years Mandatory minimum term of incarceration: 180 days (48 hours must be served consecutively) Fine: \$1,000 - \$5,000 Mandatory minimum fine: \$1,000
Ohio	§ 4511.99	Fourth or subsequent DUI conviction within 6 years	Sentence: 60 consecutive days - 18 months Mandatory minimum term of incarceration: 60 consecutive days Fine: \$750 - \$10,000 Mandatory minimum fine: \$750
Oklahoma	§ 11-902	Second or subsequent DUI conviction within 10 years	Sentence: 1 month - 2 years or up to 1 year community service. (sentencing is done according to the “intoxicant crimes involving vehicle matrix” which takes into account various factors such as the number of prior DUI offenses, whether the victim was older than 62 or less than 12 years old and/or whether a victim was maimed due to the DUI offense)

STATE	STATUTE	FELONY THRESHOLD	SANCTIONS
			Fine: Second conviction: not more than \$2,500 Third or subsequent conviction: not more than \$5,000
Oregon	§813.020(2)	Any DUI offense is a class A misdemeanor	
Pennsylvania	18 § 1104(1) & (2) & 75 §3731(e)(1)	1 st or 2 nd offenses are 2 nd degree misdemeanors, 3 rd or subsequent offenses are 1 st degree misdemeanors	
Rhode Island	§§11-1-2 & 31-27-2.6	Non-injury DUI offenses are misdemeanors, However , DUI with serious bodily injuries are felonies	
South Carolina	§ 56-5-2930	Fourth or subsequent DUI conviction within 10 years	Sentence: 1 - 5 years Mandatory minimum term of incarceration: 1 year Fine: none stated in statute
South Dakota	§ 32-23-1	Third DUI conviction within 5 years = Class 6 Felony Fourth and subsequent DUI conviction within 5 years = Class 5 Felony	Sentence: Class 6 Felony: maximum of 2 years Class 5 Felony: maximum of 5 years. Fine: Class 6 Felony: maximum of \$2,000 Class 5 Felony: maximum of \$5,000
Tennessee	§ 55-10-403	Fourth or subsequent DUI	Sentence: 1 - 6 years

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		conviction within 10 years	<p>Mandatory minimum term of incarceration: 150 consecutive days</p> <p>Fine: \$3,000 - \$15,000</p> <p>Mandatory minimum Fine: \$1,100</p>
Texas	§ 49.04	Third or subsequent DUI conviction within 10 years	<p>Sentence: 2 -10 years</p> <p>Mandatory minimum term of incarceration: Not less than 10 days of continuous confinement if community supervision is granted</p> <p>Fine: Maximum of \$10,000</p>
Utah	§ 41-6-44	Fourth or subsequent DUI conviction after 4/23/90 or two prior DUI convictions after 7/1/96	<p>Sentence: 1000 hours - 5 years</p> <p>Mandatory minimum term of incarceration: 1000 hours (in jail not prison)</p> <p>Fine: \$1,500 - 5,000</p> <p>Mandatory minimum fine: \$1,500 (if the court suspends the execution of a prison sentence)</p>
Vermont	23 VSA § 1201	Third or subsequent DUI conviction	<p>Sentence: Maximum of 5 years</p> <p>Fine: Maximum of \$2,500</p>
Virginia	§§ 18.2-266, 18.2-270, 18.2-10	Third or subsequent DUI conviction within 10 years	<p>Sentence: 1-5 years in prison (or up to 12 months in jail)</p> <p>Fine: not more than \$2,500</p> <p>Mandatory minimum term of incarceration: 1 year if conviction is a fourth offense</p>

STATE	STATUTE	FELONY THRESHOLD	SANCTIONS
Washington	§§46.61.502(5) & 504(5)	all DUI offenses are gross misdemeanors	
West Virginia	§ 17C-5-2	Third and subsequent DUI convictions	Sentence: 1 - 3 years Mandatory minimum term of incarceration: 1 year Fine: \$3,000 - \$5,000 Mandatory minimum fine: \$3,000
Wisconsin	§ 346.65	5 th or subsequent conviction	Sentence: 6 months - 5 years Fine: \$600 - \$2,000
Wyoming	§§6-10-101 & 31-5-233(e), (g) & (h)	non-injury DUI offenses are misdemeanors, 1 st injury-related DUI offense is a misdemeanor, 2 nd or subsequent offenses are felonies	<u>2nd Offense</u> Sentence: 7 days – 6 months Fine: \$200 - \$750 <u>3rd or Subsequent Offense:</u> Sentence: 30 days – 6 months Mandatory minimum term of incarceration: 30 days Fine: \$750 - \$3,000

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For future updates, please contact the National Traffic Law Center, 99 Canal Center Plaza, Suite 510, Alexandria, Virginia, 22314
Phone:(703) 549-4253, Fax: 703-836-3195