

Anti-Plea Bargaining Laws and Other Laws Related to Impaired Driving

State	Anti-Plea Bargaining Statute	Other Laws Related to Deferred Prosecution, Probation and Pleas in DUI Cases
Alabama		
Alaska		
Arizona	<p>A.R.S. §28-1387. Prior Convictions; Alcohol or Other Drug Screening; Education and Treatment; License Suspension; Supervised Probation; Civil Liability; Procedures</p> <p>(I) The state shall not dismiss a charge unless there is an insufficient legal or factual basis to pursue that charge.</p>	<p>A.R.S. §28-1383. Aggravated Driving or Actual Physical Control While Under the Influence; Violation; Classification; Definition</p> <p>(D) A person is not eligible for probation, pardon, commutation, or suspension of a sentence or release until the person has served no less than four months in prison.</p> <p>(E) A person who is convicted of a third or subsequent violation with an 84-month period is not eligible for probation, pardon, commutation, or suspension of a sentence or release until the person has served no less than eight months in prison.</p>
Arkansas	<p>A.C.A. §5-65-107. Persons Arrested to be Tried on Charges; No Charges Reduced; Filing Citations</p> <p>(a) A person arrested for driving while intoxicated shall be tried on the charge of driving while intoxicated and the charge shall not be reduced or dismissed.</p>	<p>A.C.A. §5-65-108. No Probation Prior to Adjudication of Guilt</p> <p>(a) A circuit or district court judge may not utilize the first-time offender probation provisions when the defendant is charged with driving while intoxicated.</p>
		<p>A.C.A. §5-4-301. Crimes for which Suspension or Probation Prohibited; Criteria for Suspension or Probations in Other Cases</p> <p>(a)(1)(d) A court shall not suspend the imposition of a sentence as to a term of imprisonment or place a defendant on probation for driving while intoxicated.</p>
California	<p>West's Ann. Cal. Penal Code §1192.07. Legislative Intent Regarding Prosecution of Violent Sex Crimes and Certain Other Serious Felonies; Restriction Upon Plea Bargaining</p>	<p>West's Ann. Cal. Vehicle Code §23635. Dismissal of Allegation of Driving Under the Influence; Substitution of Lesser Offense; Dismissal or Striking of Allegation of Separate Conviction</p>

	<p>(a)(2) Plea bargaining in any case in which the indictment or information charges any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance is prohibited, unless: There is insufficient evidence to prove the people's case, testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.</p>	<p>When an allegation of driving under the influence is dismissed by the court, an allegation of a different or lesser offense is substituted for an allegation of driving under the influence, or an allegation of a separate conviction is dismissed or stricken, the court shall specify on the record its reason or reasons for the order.</p> <p>West's Ann. Cal. Vehicle Code §23640. Participation in Driver Improvement or Treatment Programs; No Suspension or Stay of Proceedings Prior to Acquittal or Conviction of Driving Under the Influence (a) In any case in which a person is charged with a violation of driving under the influence, before acquittal or conviction, the court shall neither suspend nor stay the proceedings for the purpose of allowing the accused person to attend or participate, nor shall the court consider dismissal of or entertain a motion to dismiss the proceedings because the accused person attends or participates during suspension, in any one or more education, training, or treatment programs, including but not limited to: a driver improvement program, a treatment program for people who are habitual users of alcohol, a program designed to offer alcohol services to problem drinkers, an alcohol or drug education program, or a treatment program for people who are habitual users of drugs.</p>
<p>Colorado</p>	<p>C.R.S.A. §42-4-1301. Driving Under the Influence; Driving While Impaired; Driving with Excess Alcohol Content; Penalties (4) No court shall accept a plea of guilty to a non-alcohol or non-drug related traffic offense or guilty to the offense of underage drinking and driving from a person charged with DUI or DUI per se; except, that the court may accept a plea of guilty to a non-alcohol or non-drug related traffic offense or to underage drinking and driving upon</p>	<p>C.R.S.A. §18-1.3-101. Pretrial Diversion (3) Each district attorney that uses state money for a diversion program shall adopt policies and guidelines delineating eligibility criteria for pretrial diversion and may agree to diversion in any case in which there exists sufficient admissible evidence to support a conviction.</p> <p>C.R.S.A. §18-1.3-102. Deferred Sentencing of Defendant</p>

	<p>a good faith representation by the prosecuting attorney that the attorney could not establish a prima facie case if the defendant were brought to trial on the original alcohol-related or drug-related offense.</p>	<p>(1)(a) In any case in which the defendant has entered a plea of guilty, the court accepting the plea has the power, with the written consent of the defendant, defendant's attorney, and the district attorney to continue the case for the purpose of entering judgment and sentencing upon the plea of guilty for a period not to exceed four years for a felony or two years for a misdemeanor, petty offense, or traffic offense.</p>
<p>Connecticut</p>		<p>C.G.S.A. §14-227a. Operation While Under the Influence of Liquor or Drug or While Having an Elevated Blood Alcohol Content (f) <u>Reduction, Nolle, or Dismissal Prohibited</u>. If a person is charged with operation while under the influence, the charge may not be reduced, <i>nolle prossed</i>, or dismissed unless the prosecuting authority states in open court the reasons for the reduction, <i>nolle</i>, or dismissal.</p> <p>C.G.S.A. §54-56g. Pretrial Alcohol Education Programs (a)(1) There shall be a pretrial alcohol education program for people charged with driving under the influence.</p> <p>C.G.S.A. §54-56e. Accelerated Pretrial Rehabilitation (a) There shall be a pretrial program for accelerated rehabilitation of people accused of a crime or a motor vehicle violation (for which a sentence of imprisonment may be imposed) that are not of a serious nature.</p>
<p>Delaware</p>		<p>21 Del.C. §4177B. First Offenders; Election in Lieu of Trial (e)(1) <u>Prior or Previous Conviction or Offense</u>. A first offense election shall not be applicable for the following prior or previous convictions or offenses:</p>

		<p>(a) A conviction, other adjudication of guilt, or delinquency while driving a vehicle under the influence;</p> <p>(b) A conviction, other adjudication of guilt, or delinquency under a criminal statute encompassing death or injury caused to another person by the defendant's driving where driving under the influence or with a prohibited alcohol concentration was an element of the offense;</p> <p>(c) Participation in a course of instruction or program of rehabilitation or education for driving under the influence; or</p> <p>(d) A conditional adjudication of guilt, any court order, or any agreement sanctioned by a court requiring or permitting a person to apply for, enroll in, or otherwise accept first offender treatment or any other diversionary program.</p>
		<p>11 Del.C. §4218. Probation Before Judgment (b)(4) This section may not be substituted for an election in lieu of trial for first offenders of driving while under the influence (pursuant to 21 Del.C. §4177B).</p>
		<p>21 Del. C. §4177D. Courses of Instruction; Rehabilitation Programs The secretary of Safety and Homeland Security shall establish courses of instruction and programs of rehabilitation for people whose driver's licenses have been revoked for operating a vehicle while under the influence of intoxicating liquor or drugs.</p>
<p>District of Columbia</p>		
<p>Florida</p>	<p>West's F.S.A. §316.656. Mandatory Adjudication; Prohibition Against Accepting Plea to Lesser Included Offense (1) No court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for driving under the influence resulting in</p>	

	<p>manslaughter from the operation of a motor vehicle or for vehicular homicide.</p> <p>(2)(a) No trial judge may accept a plea of guilty to a lesser offense from a person who has been given a breath or blood test, the results of which show a blood or breath alcohol content by weight of 0.15% or more.</p>	
Georgia		<p>Ga. Code Ann. §40-6-391. Drivers with Ability Impaired by Alcohol, Drugs, or Toxic Vapor</p> <p>(k)(3) No plea of <i>nolo contendere</i> shall be accepted for any person under the age of 21 charged with driving with his or her ability impaired by alcohol, drugs or toxic vapor.</p>
		<p>Ga. Code. Ann. §40-6-391.1. Plea of Nolo Contendere by Persons Charged with Driving Under the Influence of Alcohol or Drugs</p> <p>(a) No plea of <i>nolo contendere</i> shall be accepted if the person charged with driving under the influence had an alcohol concentration of more than 0.15 at any time within three hours after driving or being in control of a moving vehicle.</p>
Hawaii		
Idaho		
Illinois		
Indiana		
Iowa		<p>I.C.A. §321J.2. Operating While Under the Influence of Alcohol or a Drug or While Having an Alcohol Concentration of .08 or More (“OWI”)</p> <p>(3)(b)(1) With the consent of the defendant, the court may defer judgment (pursuant to I.C.A. §907.3) and may place the defendant on probation upon conditions as it may require.</p>
		<p>I.C.A. §907.3. Deferred Judgment; Deferred Sentence; Suspended Sentence</p> <p>(1)(a) The court shall not defer judgment if any of the following is true:</p>

		<p>(6) The offense is driving while under the influence and the person has been convicted or the person's driver's license has been revoked and any of the following apply:</p> <p>(a) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine exceeds .15;</p> <p>(b) If the defendant has previously been convicted of driving while under the influence;</p> <p>(c) If the defendant has previously received a deferred judgment or sentence for driving while under the influence;</p> <p>(d) If the defendant refused to consent to testing requested; or</p> <p>(e) If the offense of driving while under the influence results in bodily injury to a person other than the defendant.</p>
Kansas	<p>K.S.A. §8-1567. Driving Under the Influence; Penalties</p> <p>(m) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement for the purpose of permitting a person charged with driving under the influence to avoid the mandatory penalties established. Entering into a diversion agreement shall not constitute plea bargaining.</p>	<p>K.S.A. §22-2909. Diversion Agreements; Provisions; Waiver of Certain Rights; Stipulation of Facts</p> <p>(e) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging driving under the influence, the diversion agreement may include a stipulation, agreed to by the defendant, the defendant's attorney (if represented), and the attorney general or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including appeal, shall be conducted on the record based on the stipulation of facts relating to the complaint.</p>
Kentucky	<p>K.R.S. §189A.120. Prosecutor's Duties with Regard to Amendment of Charges; Amendment of Blood Alcohol Concentration; Record of Charges and Amendments</p>	

	<p>(1) When an alcohol concentration for a person 21 years of age or older in a prosecution for driving while under the influence is: 0.08 or above, 0.02 or above for a person under the age of 21, or when the defendant (regardless of age) has refused to take an alcohol concentration or substance test, a prosecuting attorney shall not agree to an amendment of the charge to a lesser offense and shall oppose an amendment of the charge at trial, unless all prosecution witnesses are, and it is expected they will continue to be, unavailable for trial.</p> <p>(3) The record of charges and disposition thereof, including reasons for amending the charges, shall be transmitted by the court to the Justice and Public Safety Cabinet for inclusion in the centralized criminal history record information system.</p>	
Louisiana		
Maine		
Maryland		
Massachusetts		<p>M.G.L.A. 90 §24. Driving While Under the Influence of Intoxicating Liquor; Second and Subsequent Offenses; Punishment; Treatment Programs (1)(h)(3) The prosecution of any person for driving under the influence (if a subsequent offense) shall not, unless the interests of justice require such disposition, be placed on file or otherwise disposed of except by trial, judgment and sentencing according to the regular course of criminal proceedings and such a prosecution shall be otherwise disposed only by written motion stating specifically the reasons therefor and verified by affidavits of facts relied upon.</p>

		<p>M.G.L.A. 90 §24D. Probation of Persons Convicted of Driving Under the Influence; Driver Alcohol Education Program; Alcohol Treatment and Rehabilitation Programs</p> <p>Any person convicted of or charged with operating a motor vehicle with a percentage, by weight, of alcohol in their blood of .08 or greater, or while under the influence of intoxicating liquor, controlled substance, or the vapors of glue, may (if such person consents) be placed on probation for no more than two years and shall, as a condition of probation, be assigned to a driver alcohol education program and, if deemed necessary by the court, to an alcohol or controlled substance abuse treatment, rehabilitation program, or to both and such person's license or right to operate a motor vehicle shall be suspended for a period of no less than 45 and no more than 90 days.</p> <p>This section shall apply to any person who has never been convicted of operating a motor vehicle while under the influence of intoxicating liquor or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program because of a similar offense. This section shall also apply to any person convicted of or charged with operating a motor vehicle while under the influence of intoxicating liquor who has been convicted of such offense or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program because of a single similar offense 10 years or more before the date of the commission of the offense for which he is to be sentenced, once in his lifetime.</p> <p>This section shall not apply to any person who caused serious personal injury to or the death of</p>
--	--	---

		another person during the events that gave rise to the complaint or indictment for operating under the influence of alcohol.
Michigan	<p>M.C.L.A. §257.625. Operating a Vehicle While Intoxicated or Impaired or With the Presence of a Controlled Substance</p> <p>(16) If a person is charged with driving while under the influence, driving while visibly impaired, or other illegal per se offense, the court shall not permit the defendant to enter a plea of guilty or <i>nolo contendere</i> to driving with “any bodily alcohol content” in exchange for dismissal of the original charge.</p> <p>This subsection does not prohibit the court from dismissing the charge upon the prosecuting attorney's motion.</p>	
Minnesota		
Mississippi	<p>Miss. Code Ann. §63-11-30. Operation Under Influence of Alcohol or Other Impairing Substance</p> <p>(2)(b) <u>Second Offense DUI</u>. Upon a second conviction of any person for driving while under the influence, the minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain.</p> <p>(2)(c) <u>Third and Subsequent Offense DUI</u>. For the third conviction of any person for driving while under the influence, the minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain.</p>	<p>Miss. Code Ann. §99-15-26. Release After Successful Completion of Conditions</p> <p>(1) The court shall not be empowered, upon the entry of a guilty plea by a defendant for crimes of violence (including <u>aggravated DUI</u>), to withhold acceptance of the plea and sentencing pending successful completion of such conditions as may be imposed by the court.</p>
	Miss. Code Ann. §63-11-39. Reduction of Charges Prohibited	

	The court or the prosecutor shall not reduce any charge of driving under the influence to a lesser charge.	
Missouri		
Montana		M.C.A. §46-16-130. Pretrial Diversion (4) A prosecution for driving while under the influence may not be deferred.
Nebraska		Neb. Rev. St. §29-3604. Driving While Intoxicated; Implied Consent Refusal; Not Eligible for Pretrial Diversion No person charged with driving while under the influence shall be eligible for pretrial diversion program.
Nevada	N.R.S. §484C.420. Probation Prohibited; Suspension of Sentence and Plea Bargaining; Mandatory Orders When Person is Nonresident (1) A person convicted of driving while under the influence must not be released on probation, and a sentence imposed must not be suspended. A prosecuting attorney shall not dismiss a charge of driving while under the influence in exchange for a plea of guilty, guilty but mentally ill, or <i>nolo contendere</i> to a lesser charge or for any other reason unless the attorney knows or it is obvious that the charge is not supported by probable cause or cannot be proved at the time of trial.	
New Hampshire		N.H. Rev. Stat. §265-A:21. Annulment; Plea Bargaining (I) No court shall order an annulment of any conviction of driving or attempting to drive a vehicle while under the influence of intoxicating liquor, any controlled drug, prescription drug, over-the-counter drug, any other chemical substance (natural or synthetic) that impairs a person's ability to drive, while having an alcohol concentration of 0.08 or more, or of aggravated drunken driving until 10 years after the date of conviction. Any record

		<p>thus annulled shall be retained in a permanent file, to be opened only for purposes of sentencing in the case of an offense.</p> <p>(II) In any case in which a person is charged with the offense of driving or attempting to drive a vehicle while under the influence of intoxicating liquor or drugs or while having an alcohol concentration of 0.08 or more and that charge is reduced from a second or subsequent offense to a first offense or the original charge is reduced to or substituted with another charge, a <i>nolle prosequi</i> entered in exchange for an agreement to plead guilty, or <i>nolo contendere</i> to another charge, the prosecutor shall submit to the attorney general a written report describing such agreement.</p>
New Jersey		<p>N.J.S.A. §39:4-50.12. Consultation with Prosecutor Prior to Dismissal or Plea Negotiation</p> <p>A victim shall be provided with an opportunity to consult with the prosecutor before dismissal of a driving while under the influence case or the filing of a proposed plea negotiation with the court, if the victim sustained bodily injury or serious bodily injury.</p>
New Mexico	<p>N.M.S.A. §66-8-102.1. Guilty Pleas; Limitations</p> <p>Where the complaint alleges driving while under the influence, any guilty plea entered in satisfaction of the charges shall include at least a plea of guilty to driving while under the influence and no other disposition to any other charge be authorized if the results of a blood or breath alcohol-content test performed disclose that the blood or breath of the defendant contains an alcohol concentration of:</p> <p>(a) 0.08 or more; or</p> <p>(b) 0.04 or more if the defendant is driving a commercial vehicle.</p>	

<p>New York</p>	<p>McKinney’s Vehicle and Traffic Law §1192. Operating a Motor Vehicle While Under the Influence of Alcohol or Drugs (10)(a)(i) <u>Plea Bargain Limitations</u>. In a case where the charge laid before the court alleges driving while under the influence, any guilty plea entered must include at least a plea of guilty to driving while under the influence and no other disposition to any other charge shall be authorized; provided, however, that the district attorney, upon reviewing the available evidence, determines that the charge is not warranted, such district attorney may consent, and the court may allow a disposition by plea of guilty to another charge. In all such cases, the court shall set forth upon the record the basis for such disposition.</p>	<p>McKinney’s Vehicle and Traffic Law §1193. Sanctions (1)(e) <u>Certain Sentences Prohibited</u>. No judge or magistrate shall impose a sentence of unconditional discharge for driving while under the influence nor shall a judge or magistrate impose a sentence of conditional discharge or probation unless such conditional discharge or probation is accompanied by a sentence of a fine.</p> <p>(1)(f) The court may require the defendant, as a part of or as a condition of a sentence, to attend a single session conducted by a victims impact program.</p>
<p>North Carolina</p>		<p>N.C.G.S.A. §20-138.4. Requirement that Prosecutor Explain Reduction or Dismissal of Charge in Implied-Consent Case (a) Any prosecutor shall enter detailed facts in the record of any case subject to the implied-consent law or involving driving while license revoked for impaired driving explaining orally in open court and in writing the reasons for his action if he or she: (1) Enters a voluntary dismissal; (2) Accepts a plea of guilty or no contest to a lesser included offense; (3) Substitutes another charge, if the substitute charge carries a lesser mandatory minimum punishment or is not subject to the implied-consent law; or (4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge.</p> <p>General explanations such as “interests of justice” or “insufficient evidence” are not sufficiently detailed to meet the requirements of this section.</p>

North Dakota		
Ohio		
Oklahoma		
Oregon	O.R.S. §813.170. Prohibition of Plea Agreements (1) A person charged with the offense of driving under the influence of intoxicants shall not be allowed to plead guilty or no contest to any other offense in exchange for a dismissal of the offense charged.	
Pennsylvania	75 Pa.C.S.A. §3812. Preliminary Hearing or Arraignment The presiding judicial officer at the preliminary hearing or preliminary arraignment relating to a charge of driving while under the influence shall not reduce or modify the original charges without the consent of the prosecuting attorney for the Commonwealth.	75 Pa.C.S.A. §3807. Accelerated Rehabilitative Disposition A defendant charged with driving while under the influence may be considered by the prosecuting attorney for the Commonwealth for participation in an Accelerated Rehabilitative Disposition program in a county.
Puerto Rico		
Rhode Island		
South Carolina		
South Dakota		SDCL §32-23-1.3. Arrested Person to Be Charged; Requirements for Reduction or Dismissal Any person arrested for driving or being in actual physical control of a vehicle while the weight of alcohol in the blood of the arrested person is 0.08 percent or greater, shall be charged with driving while under the influence. The charge may be reduced or dismissed only if the prosecuting attorney states the reasons for reduction or dismissal in writing and on the record and files the reasons with the clerk of courts.
Tennessee		
Texas		
Utah	U.C.A. 1953 §41-6a-513. Acceptance of Plea of Guilty to DUI; Restrictions; Verification of Prior	

	<p>Violations; Prosecutor to Examine Defendant's Record</p> <p>(1) A court may not accept a plea of guilty or no contest to a charge of driving while under the influence unless:</p> <p>(a) The prosecutor agrees to the plea:</p> <p>(i) In open court;</p> <p>(ii) In writing; or</p> <p>(iii) By another means of communication which the court finds adequate to record the prosecutor's agreement;</p> <p>(b) The charge is filed;</p> <p>(c) The court receives verification from a law enforcement agency that the defendant's driver license record contains no record of a conviction, arrest, or charge for:</p> <p>(i) More than one prior violation within the previous 10 years that, if the defendant were convicted, would qualify as a conviction;</p> <p>(ii) Felonious driving while under the influence; or</p> <p>(iii) Automobile homicide.</p>	
Vermont		
Virginia		
Washington		<p>West's RCWA §10.05.010. Petition – Eligibility</p> <p>(2) A person charged with a traffic infraction, misdemeanor, or gross misdemeanor shall not be eligible for a deferred prosecution program unless the court makes specific findings. Such person shall not be eligible for a deferred prosecution program more than once.</p>
West Virginia		
Wisconsin		<p>W.S.A. §967.055. Prosecution of Offense; Operation of a Motor Vehicle or Motorboat; Intoxicant or Drug</p> <p>(2) <u>Dismissing or Amending Charge</u>. If the prosecutor seeks to dismiss or amend a charge for driving while under the influence, the application shall state the</p>

		<p>reasons for the proposed amendment or dismissal. The court may approve the application only if the court finds that the proposed amendment or dismissal is consistent with the public's interest in deterring the operation of motor vehicles by people who are under the influence.</p> <p>(3) No Deferred Prosecution. A prosecutor may not place a person in a deferred prosecution program if the person is accused of or charged with driving while under the influence.</p>
Wyoming	<p>W.S.1977 §31-5-233. Driving or Having Control of Vehicle While Under the Influence of Intoxicating or Controlled Substances; Penalties</p> <p>(j) Any person charged under this section shall be prosecuted and not under a reduced charge or dismissed unless the prosecuting attorney in open court moves or files a statement to reduce or dismiss the charge, with supporting facts, stating that there is insufficient evidence to sustain the charge.</p>	

Source: NHTSA Digest of Impaired Driving and Selected Beverage Control Laws (current as of Dec. 21, 2013); NCSL 2015