



PREVENTIVE LAW SERIES
CALIFORNIA DUI LAWS



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WHAT IS DRIVING UNDER THE INFLUENCE?

Driving Under the Influence (DUI) laws punish offenders for operating a motor vehicle while under the influence of alcohol and/or other drugs. Under California law, a DUI offense potentially has both criminal and civil consequences. California has two criminal statutes that punish driving under the influence. A person can be guilty of DUI for either (1) being impaired by alcohol (or drugs) while driving, or (2) by having a blood-alcohol content (BAC) over the legal limit of .08%. That means that a person can be convicted of DUI even if their BAC is below the legal limit, if they are impaired by the alcohol. Conversely, a person can “feel fine” due to a high tolerance but still be convicted of DUI because their BAC was over the legal limit. Furthermore, the law is more strict if the driver is under 21 years old. The legal BAC limit for drivers under 21 is .01%; that level can be reached by drinking less than one regular drink. There are also increased penalties for drivers under 21 whose BAC is greater than .05%. Bottom line: DO NOT DRINK AND DRIVE.

FIELD SOBRIETY TESTS/BREATHALYZERS

According to California's Implied Consent law, drivers who have been arrested for a DUI are *required* to submit to and complete a chemical test when requested to do so by a law enforcement officer. A driver has the choice of blood or breath testing. A driver has a right to refuse field sobriety tests and a preliminary alcohol screening (a portable breath test) that may be requested *prior* to arrest. A law enforcement officer requires “probable cause” to believe a driver is DUI in order to make an arrest; this low standard does not require the officer to have a measured BAC before placing someone under arrest.

PUNISHMENT

The court-imposed penalties will vary depending on whether the DUI is a misdemeanor or felony offense, and vary by state. Misdemeanor DUI offenses usually do not involve injuries, whereas felony DUI offenses typically do. In a felony DUI, someone other than the driver was injured or killed as a result of the offense, or the offender has three prior misdemeanor DUI convictions. The maximum punishment for a misdemeanor, first-time DUI in California is 6 months in jail and a \$1,000 fine; the fines are significantly higher if placed on probation. There are mandatory increased punishments for persons with multiple DUI convictions. Offenders convicted of a felony can be sentenced to prison and fined more than \$1,000. A person can also be charged with manslaughter if someone dies as a result of DUI, and murder if someone dies and the offender has a prior DUI conviction, both of which carry steep prison sentences. Although judges typically have discretion in considering the facts of each specific case, the current standard sentence for a driver convicted of a misdemeanor, first-time DUI is generally: (1) probation for a period of 5 years, during which time the offender must obey all laws and must never drive with ANY measurable amount of alcohol in his/her system; (2) a \$2,133 fine, penalty assessment and restitution, usually resulting in more than \$4,000 payable to the court; (3) restitution to the victim for the amount of damages caused, if any; (4) drinking and driving treatment (cost of class paid by the offender); and (5) license restriction, suspension or revocation. Depending on the level of BAC, a court may also order: (1) public work service or volunteer work; (2) vehicle impoundment or forfeiture; and (3) an ignition interlock device requirement. There are also increased penalties, including mandatory jail time for: (1) child endangerment (child was in the car at the time of the DUI); (2) reckless driving; (3) breath/blood test refusal after arrest.

ADMINISTRATIVE CONSEQUENCES

In addition to sanctions imposed as a result of a court conviction, DUI offenders face administrative license actions (suspensions and revocations) by the DMV. These actions are mandatory. The administrative license suspension process begins when a driver is cited for DUI. The driver's license is taken on the spot by the arresting law enforcement officer if the driver: (1) has a BAC of .08% or more or (2) refuses a chemical test requested by an officer. Licensed offenders are then served with a DMV order of suspension or revocation which serves as a 30-day license. Within 10 days from the citation date, drivers can request a DMV hearing to fight the suspension of their license, which will otherwise automatically take effect in 30 days. In California, the first offense often results in a 3 month license suspension. Subsequent violations within 7 years typically lead to a 1 year suspension.

There are other costs associated with even a "simple" DUI in addition to criminal fines. The California DMV website estimates that the total long-term cost of a DUI is \$45,435, which includes but is not limited to criminal fines, court assessments and penalties, attorney's fees, DMV fees, vehicle towing and impound fees, and increased insurance costs.

LEGAL ASSISTANCE SERVICES

Legal assistance attorneys generally cannot provide advice with regard to civilian criminal, military justice, or military administrative proceedings. The proper contacts are listed below.

RESOURCES

California Department of Motor Vehicles: (800) 777-0133; www.dmv.ca.gov

Defense Service Office West, Building 56, 32nd Street Naval Station, San Diego, CA: (619) 556-7539

Office of the Public Defender – County of San Diego: (619) 338-4700

American Bar Association Lawyer Referral Directory: <http://apps.americanbar.org/legalservices/iris/directory/>

California Vehicle Code §§ 13352 et. seq., § 23103–23154, 23612 (2015)

California Penal Code §§ 191.5, 192(c)

California Superior Court: Standard Sentencing Guidelines for Infractions and Misdemeanors