



DRIVING UNDER THE INFLUENCE OF DRUGS OR ALCOHOL

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This *issue brief* discusses the various offenses related to driving under the influence of drugs or alcohol in Colorado, and their associated criminal and administrative penalties.

Criminal Offenses

The two primary alcohol- and drug-related driving offenses in Colorado are driving while under the influence (DUI) or driving while ability impaired (DWAI). Except in certain circumstances, both of these offenses are misdemeanors. In 2015, Colorado enacted House Bill 15-1043 which establishes a felony offense for the fourth and subsequent offense of DUI, DUI *per se*, DWAI, or other serious vehicular crimes involving drugs and alcohol.

DUI and DWAI offenses. A DUI charge requires a person to be substantially incapable of safely operating a vehicle. A DWAI charge requires a person to be affected to the slightest degree, making him or her less able to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle. Generally if a driver has a blood or breath alcohol content (BAC) of at least 0.05 and less than 0.08, a DWAI is presumed (the legal term is permissible inference). The fact that a person is entitled to use one or more drugs under state law, including but not limited to marijuana, is not a valid defense against a charge of DUI or DWAI.

Per se offenses. A person with a BAC of 0.08 or more at the time of driving or within two hours of driving may be charged with a DUI *per se*. There is no equivalent per se charge for a DUI involving drugs. During a trial, a defendant may present evidence that alcohol was consumed between the time of driving and testing or that there is a disparity between a BAC test and other facts.

Marijuana offenses. In any prosecution for DUI, DWAI, vehicular homicide, or vehicular assault, if a driver's blood contains at least five nanograms of delta 9-tetrahydrocannabinol (THC) per milliliter in whole blood at the time of the offense or within a reasonable time thereafter, it may be presumed that the defendant was under the influence of one or more drugs. THC is the primary psychoactive component of marijuana.

Express Consent Law and Testing

Colorado has an express consent law, which presumes that every driver has consented to take a blood, breath, saliva and/or urine test when requested to do so by a peace officer who has probable cause to suspect the driver of a DUI or DWAI. Such express consent is a condition of having a Colorado driver's license, but all drivers are subject to the law while in Colorado.

Refusal to take the test is admissible in court and is a basis for the revocation of a driver's license. In certain other cases, involuntary blood tests may be required.

If reasonable suspicion exists, a peace officer may ask a driver to submit to a field sobriety test and a preliminary blood test. Field sobriety tests measure a driver's ability to perform certain tasks. Breath tests measure BAC and cannot be used to test for drugs, for which a blood test is required. These tests are both voluntary and the results of the preliminary breath test are not admissible in court. If the peace officer has probable cause, he or she may ask the driver to take a formal breath or blood test, the results of which are admissible in court. Drivers over the age of 21 may request a blood test rather than a breath test.

Criminal Penalties

Most DUI and DWAI offenses are charged as unclassified misdemeanors. Serious and repeat offenses may qualify as felonies. Table 1 describes the penalties for particular offenses.

Table 1.
DUI- and DWAI-Related Offenses and Penalties

| Offense | Penalties* |
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| DUI | Unclassified misdemeanor, increasing penalties between the first and third offense, ranging from five days to one year in county jail, a fine of between \$600 and \$1,500, or both. |
| DWAI | Unclassified misdemeanor, increasing penalties between the first and third offense, ranging from two days to one year in county jail, a fine of between \$200 and \$1,500, or both. |
| Aggravated driving with a revoked license based upon the commission of a DUI, DUI <i>per se</i> , or DWAI | Class 1 misdemeanor, punishable by a fine of \$500 to \$5,000, a mandatory term in county jail of at least 60 days and up to 18 months, or both. |
| Vehicular assault committed while under the influence that is the proximate cause of serious bodily injury | Class 4 felony, punishable by a sentence of two to six years in prison, a fine of \$2,000 to \$500,000, or both. |
| A fourth or subsequent offense of either DUI, DUI <i>per se</i> , DWAI, vehicular assault, and/or vehicular homicide | Class 4 felony as described above. |
| Vehicular homicide committed while under the influence | Class 3 felony, punishable by a sentence of 4 to 12 years in prison, a fine of \$3,000 to \$750,000, or both. |
| Underage drinking and driving | Class A traffic infraction, punishable by a fine of \$100. Second and subsequent offenses are class 2 traffic misdemeanors, punishable by 10 to 90 days in jail, a fine of between \$150 and \$300, or both. |

*Sentencing options also include probation; community service; and substance abuse assessment, education, and treatment plus associated administrative penalties, as applicable. Various surcharges are also applied.

Administrative Penalties

Upon conviction of a drug or alcohol driving offense, a driver is required to surrender his or her driver's license to the court, and the Department of Revenue (DOR)'s administrative process begins.

Administrative revocation. The DOR is required to revoke a person's license due to DUI *per se*, but the driver may appeal for restricted driving privileges prior to the end of the revocation period. The revocation period for a first offense is nine months. A second violation requires a one-year revocation period and for the third and subsequent violations, the revocation period is two years. Underage drunk drivers, whose offenses included a BAC of between 0.02 and 0.08, may have their driver's licenses revoked for a period of three months to one year, depending on the number of prior offenses.

Mandatory revocation. A second offense results in a mandatory revocation period of one year, as does the refusal to take a chemical test for a second offense. If the person has three or more offenses, his or her license is revoked for a minimum of two years and may be reissued only upon satisfactory completion of an alcohol and drug education and treatment program. Refusal to take a chemical test for a third or subsequent offense results in a revocation of three years.

Restricted driver's licenses. Upon completion of the revocation period, a driver is required to hold a restricted license for at least one year. Restrictions may include the requirement to install an approved interlock ignition device, which measures the BAC of the driver before allowing the driver to start the engine. If the BAC reading exceeds a set level, the vehicle will not start. For felony-level offenses, the driver is required to use an interlock ignition device for a minimum of two years and a maximum of five years. If an offender was incarcerated for a fourth or subsequent drug or alcohol offense, he or she is required to use an interlock ignition device for the entire parole period.

Persistent drunk driver (PDD). A BAC of 0.15, refusal of a chemical test at a traffic stop on or after January 1, 2014, two or more driver's license revocations for alcohol-related violations, or continuing to drive after a driver's license restraint has been imposed for one or more alcohol-related driving offenses classify an offender as a PDD. A PDD is required to complete an alcohol education program; pay additional surcharges; and use an interlock ignition device for one year after his or her driver's license has been reinstated.