

# LAW SUMMARY

*Office of Legislative Legal Services*



## ***COLORADO DRUNK DRIVING LAWS***<sup>1</sup>

Colorado law prohibits a person from driving a vehicle while under the influence of alcohol or drugs or while the person's ability to drive is impaired by alcohol or drugs.<sup>2</sup> These offenses are often abbreviated as "DUI" and "DWAI," respectively. Colorado law also prohibits a person under 21 years of age from driving when the person's breath alcohol content is at least 0.02 but not more than 0.05 at the time of driving or within two hours after driving, which is referred to as underage drinking and driving ("UDD").<sup>3</sup>

Blood tests and breath tests play a prominent role in the enforcement of drunk driving laws, although DUI or DWAI can be proved by other means, such as saliva or urine. If at the time of the commission of an alleged offense, or within a reasonable time thereafter, a person's blood alcohol content or breath alcohol content (collectively, "BAC") exceeds 0.05 but is less than 0.08, there is a permissible inference that the person's ability to operate a vehicle was impaired. If the person's BAC is 0.08 or more, there is a permissible inference that the person was under the influence of alcohol.<sup>4</sup> A person whose BAC is 0.08 or more at the time of driving or within two hours after driving commits DUI per se.<sup>5</sup>

Also, if at the time of an offense, or within a reasonable time thereafter, a person's blood contains five nanograms or more of delta-9 THC (the active substance in marijuana) per

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<sup>1</sup> This summary contains information commonly requested from the Office of Legislative Legal Services. It does not represent an official legal opinion of the General Assembly or the state of Colorado and does not bind the members of the General Assembly. It is intended to provide a general overview of Colorado law as of the date of its preparation. Any person needing legal advice should consult their own lawyer and should not rely on the information in this memorandum.

<sup>2</sup> "Driving under the influence" (DUI) means driving a vehicle when a person has consumed alcohol or one or more drugs, or a combination of alcohol and one or more drugs, that affects the person to a degree that the person is substantially incapable, mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle. § 42-4-1301 (1) (f), C.R.S. "Driving while ability impaired" (DWAI) is similar, except that a person need only be affected to the slightest degree so that the person is less able to drive than the person ordinarily would have been. § 42-4-1301 (1) (g), C.R.S.

<sup>3</sup> § 42-4-1301 (2)(d), C.R.S.

<sup>4</sup> § 42-4-1301 (6), C.R.S.

<sup>5</sup> § 42-4-1301 (2)(a), C.R.S.

milliliter in whole blood, there is a permissible inference that the person was under the influence of one or more drugs.<sup>6</sup>

A person may be classified as a persistent drunk driver and subject to greater penalties if the person has a BAC of 0.15 or more for a single offense; has been convicted of or had a driver's license revoked for two or more alcohol-related driving violations; continues to drive after a driver's license or driving privilege restraint has been imposed for one or more alcohol-related driving offenses; or refuses to take, complete, or cooperate in the completing of, a blood, breath, saliva, or urine test required by law.

The law requires drivers to take a blood, breath, saliva, or urine test when requested to do so by a law enforcement officer who has probable cause to believe that the person is DUI or DWAI.<sup>7</sup> Refusal to take the test is both admissible in court and a basis for revocation of a driver's license.

There are both criminal penalties and administrative penalties for drunk driving (see tables below). Courts impose criminal penalties, and the Colorado Department of Revenue (the department) imposes administrative penalties. Administrative penalties can include suspension or revocation of a driver's license and the assessment of points against the driver's license.

Sometimes a person may reduce their criminal penalties for impaired driving through a plea bargain or by undergoing alcohol or drug treatment but must still face administrative penalties. In most cases, the department does not have the authority to reduce or bargain away administrative penalties. However, in many cases, a person whose driver's license has been revoked may apply for early reinstatement with an interlock-restricted license, which limits a person's driving privileges to vehicles equipped with a device that prevents operation without a breath sample from the driver.<sup>8</sup>

The following tables summarize the administrative and criminal penalties<sup>9</sup> for DUI and DWAI as they appear in sections 42-2-125, 42-2-126, 42-2-127, and 42-4-1307, Colorado Revised Statutes:

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<sup>6</sup> § 42-4-1301 (6), C.R.S.

<sup>7</sup> § 42-4-1301.1, C.R.S. The law presumes that every driver has consented to test for drug or alcohol content. *Id.*

<sup>8</sup> § 42-2-132.5 (4), C.R.S.

<sup>9</sup> Administrative penalties for the same incident are not consecutive. For example, if a person whose license was suspended for a BAC test of at least 0.08 is subsequently convicted of DUI arising out of the same incident, the person's license is only suspended once.

<b>ADMINISTRATIVE PENALTIES</b>		
<b>Violation</b>	<b>License Revocation</b>	<b>Points</b>
BAC test of at least 0.08 while driving	9 months	
2 <sup>nd</sup> BAC test of at least 0.08 while driving	12 months	
3 <sup>rd</sup> or subsequent BAC test of at least 0.08 while driving	24 months	
DWAI	None	8 points
1 <sup>st</sup> DUI	9 months	12 points
2 <sup>nd</sup> DUI or DWAI	12 months	DWAI 8 points DUI 12 points
3 <sup>rd</sup> DUI or DWAI	24 months	DWAI 8 points DUI 12 points
1 <sup>st</sup> UDD (BAC 0.02 < 0.05)	3 months – 1 <sup>st</sup> offense 6 months – 2 <sup>nd</sup> offense 1 year – 3 <sup>rd</sup> or subsequent offense	4 points

<b>CRIMINAL PENALTIES</b>				
<b>Offense</b>	<b>Classification</b>	<b>Jail/Imprisonment</b>	<b>Fine/Parole</b>	<b>Public Service</b>
1 <sup>st</sup> DWAI	Misdemeanor	2 - 180 days jail	\$200-\$500	24 - 48 hrs.
1 <sup>st</sup> DUI or DUI per se	Misdemeanor	5 days - 1 year jail	\$600-\$1,000	48 - 96 hrs.
DWAI or DUI with 1 previous DWAI or DUI	Misdemeanor	10 days - 1 year jail	\$600-\$1,500	48 - 120 hrs.
DWAI or DUI with 2 previous DWAI or DUI	Misdemeanor	60 days - 1 year jail	\$600-\$1,500	48 - 120 hrs.
DWAI or DUI with 3 or more previous DWAI or DUI	Class 4 felony	2 - 6 years imprisonment	3 years parole	48 - 120 hrs. <sup>10</sup>
1 <sup>st</sup> UDD offense (BAC 0.02 < 0.05)	Class A traffic infraction	None	\$15 - \$100	Up to 24 hrs.
2 <sup>nd</sup> or subsequent UDD offense (BAC 0.02 < 0.05)	Class 2 traffic misdemeanor	10 - 90 days jail	\$150 - \$300	

<sup>10</sup> Public service is required for a felony DUI or DWAI only if the court sentences the offender to probation.  
§ 42-4-1307 (6.5), C.R.S.

In some cases, a portion of the minimum mandatory jail sentence can be suspended if the person agrees to undergo an alcohol treatment program. A person sentenced to probation following a third or subsequent offense or a felony offense for DUI, DUI per se, or DWAI must submit to at least 90 days of continuous alcohol monitoring, unless the court finds that ordering monitoring would not be in the interest of justice or if the person lives in an area where the person cannot reasonably acquire a monitoring device.<sup>11</sup>

In addition, a person who violates the state's drunk driving laws may also have to pay court costs, penalty surcharges of up to \$500 to help pay for programs to address persistent drunk drivers, surcharges to benefit the crime victim compensation fund, fees to reinstate their driver's license after suspension or revocation, and other fees, charges, and penalties.

The penalties for vehicular assault or vehicular homicide are more stringent. If alcohol or drugs are involved in an accident causing injury or death, the driver is subject to criminal penalties for committing a felony.<sup>12</sup> Further, a person convicted of a third DUI or DWAI offense within seven years also faces a mandatory five-year license revocation under the "habitual traffic offender" statute, section 42-2-202, Colorado Revised Statutes.

This summary does not include all the details contained in state law and regulations. To view the law in its entirety, please review [title 42](#) of the Colorado Revised Statutes, specifically sections 42-2-125 to 42-2-208 (administrative point system and revocation procedures), 42-4-1301 (general DUI statute), and 42-4-1307 (penalties for traffic offenses involving alcohol and drugs).

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LAST REVISED: 10/25/23

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<sup>11</sup> § 42-4-1307, C.R.S.

<sup>12</sup> § 18-3-106, C.R.S. (Vehicular homicide while DUI is a class 3 felony; while DWAI is a class 4 felony);  
§ 18-3-205, C.R.S. (Vehicular assault while DUI is a class 4 felony; while DWAI is a class 5 felony);  
§ 18-1.3-401, C.R.S. (felony penalties)