

# Informational Brochure



# DUI

## *What does “DUI” mean?*

A person can violate the DUI (driving under the influence) law in three ways: 1) by driving while under the influence of alcohol or drugs (whether prescription drugs or illegal drugs); 2) by driving with .080 or more blood alcohol level; 3) providing a breath or blood sample within two hours of driving which shows a .080 or more blood alcohol level. It is a defense to #3 if a person shows that he/she drank after driving.

## *What if there is less than .080 percent alcohol concentration?*

A person with a blood alcohol level under .080 may be convicted of driving under the influence if it can be shown he or she was driving while influenced by alcohol, “to a degree which renders him/her incapable of safely driving or being in actual physical control.”

## *What are field sobriety tests?*

Field sobriety tests are conducted to test the coordination and concentration abilities of the DUI suspect. A person is not legally required to submit to field sobriety tests.

## *How is the DUI suspect tested for alcohol level?*

If a person is suspected of driving under the influence of alcohol, two tests are available: breathalyzer or blood. If a person is suspected of driving under the influence of drugs, two tests are available: blood or urine, in addition to the breath test.

## *Do you have to consent to the tests?*

Nevada law says that a DUI suspect must choose between tests if asked to take one by a police officer having reasonable grounds to believe that he or she is under the influence. If the DUI suspect refuses to take a test, an officer may use reasonable force to obtain a blood sample from the suspect.

## *What if the person is not driving the car but is asleep in the car when an officer arrives?*

It is illegal to be in actual physical control of a car while under the influence of alcohol or drugs. Many factors determine whether a person is in actual physical control, but some common ones are that the person is behind the wheel, has the keys in his or her possession, and must have driven the car to the location where the police officer sees the car. Being asleep is not a defense to being in actual physical control. The penalties for being in actual physical control are the same as for driving while under the influence.

## *What penalties are imposed for DUI?*

The first offense is a misdemeanor. Misdemeanors are punishable by up to six months in jail and a \$1,000 fine plus assessments. The minimum penalties for first offense are two days in jail or 48 to 96 hours of community service, a \$400 fine, a \$60 chemical test fee, and a DUI education course including mandatory attendance at a victim impact panel. If a person’s blood alcohol level was a 0.180 or more or the person is under the age of 21 he or she must also pay to have an alcohol evaluation done.

A second offense within seven years also constitutes a misdemeanor. The person must pay \$100 to have an alcohol evaluation done, pay a fine of from \$750 to \$1,000, and serve 10 days to six months of jail. A third offense within seven years is a felony. The person must be sentenced to one to six years in prison and pay a \$2,000 to \$5,000 fine. **Probation is available under certain circumstances. Consult an attorney.**

## *Does a driver need an attorney to handle a DUI?*

A DUI defendant must be given an opportunity to have an attorney. If the person cannot afford an attorney, an attorney will be appointed to assist him or her. A person who is charged with any DUI offense, including a DUI third offense or a DUI felony is not required to have an attorney, but it is extremely unwise to attempt to defend such a case without an attorney.



*Over for more* →

## ***What is a felony DUI?***

A felony DUI is a third DUI within seven years or any DUI which involves an accident which results in a death or substantial bodily harm to another person, whether that person is a passenger in the driver's car or someone not in the driver's car. Beginning in 2005, once a person has been convicted of a felony DUI, all subsequent DUI arrests will be charged as felonies, with an increased penalty of 2-15 years in prison.

## ***What are the penalties when a death or serious injury is involved?***

The person must be fined \$2,000 to \$5,000 and serve 2 to 20 years in prison for each injury or death. Probation is not available for this charge.

## ***Are DUI convictions from other jurisdictions counted by Nevada courts as prior convictions?***

Yes. A valid DUI conviction from any state within seven years of the current DUI case will usually count as a prior conviction in Nevada.

## ***Does a person go to jail when arrested for DUI?***

Yes. The officer will transport the arrestee to the nearest facility where the arrestee will be tested for alcohol level. The arrestee can be released from jail if he or she posts bail, or is granted an OR release.

## ***Does the person lose his or her driving privilege with a DUI?***

A person convicted of a DUI first offense will lose his or her license for 90 days. A person convicted of a DUI second offense will lose his or her license for one year. A person convicted of a DUI third offense or of a DUI where death or serious bodily injury occurs will lose his or her license for three years. A person whose blood alcohol test was .080 or more will lose his or her license for 90 days, even if not convicted of a DUI.

A driver may request a hearing on the revocation. A driver is required to notify DMV of his or her current address, so it is not a defense that the driver did not receive notice. A license to drive to work is available after half the revocation time has been served. Since 2005, depending on a driver's blood alcohol level, a court may require a driver to install a Breath Ignition Interlock device as a condition to reinstatement of a restricted or unrestricted driver's license.

A person convicted of driving while his or her license is revoked for DUI must serve 30 days in jail or 60 days house arrest and must pay a \$500 to a \$1000 fine. The driver's license will be revoked for an additional period of time. When a revocation period has been served, the driver must go to the DMV to get his or her license back. The driver must pay a reinstatement fee, take a test or tests to earn back the license and maintain an SR-22 for three consecutive years.

## ***How do I find an attorney with experience in DUI matters?***

You can contact the State Bar of Nevada's ***Lawyer Referral & Information Service*** at **702-382-0504** (toll-free in Nevada at **1-800-789-5747**) or look in the Yellow Pages of your telephone directory. You can also ask friends and/or relatives if they can recommend a good lawyer. The State Bar (see numbers listed below) can tell you whether or not an attorney is licensed in Nevada and in good standing.

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