

# Informational Brochure



# DRIVING UNDER THE INFLUENCE (DUI)

## What does "DUI" mean?

A DUI (driving under the influence) can be committed in three ways:

- 1) Driving or being in actual physical control of a motor vehicle while impaired by alcohol and/or drugs (whether prescription drugs or illegal drugs) to a degree that renders the person incapable of safely driving;
- 2) Driving/actual physical control with a 0.08 level or more of alcohol in the blood or breath;
- 3) A breath or blood sample, obtained within two hours after driving/actual physical control, having a concentration of alcohol of 0.08 or more. A person may offer a defense to #3 if the person shows that he or she consumed a substantial amount of alcohol after driving.

## How is the DUI suspect tested for alcohol or drugs?

A person has the choice of two testing procedures: providing a breath sample or having blood drawn. If drugs are suspected, the person can submit to blood or urine testing, in addition to the breath test.

## Do you have to submit to the tests?

No! A person now (as of June 9, 2015) has the right to refuse alcohol/drug testing. However a refusal to submit will result in a one-year revocation of the person's license, permit or privilege to drive, and the refusal can be used against the person at trial. The police are allowed to request a search warrant to obtain blood. A magistrate can authorize up to three blood draws within five hours after the arrest. A magistrate can authorize the police to use reasonable force to obtain the blood.

## What if there is less than 0.08 level of alcohol?

A person with a breath or blood alcohol level under 0.08 may be convicted of DUI if it can be proven by the prosecutor that he or she was "impaired to a degree that renders a person incapable of safely driving or exercising actual physical control of a vehicle."

## What are field sobriety tests?

Field sobriety tests are roadside exercises administered by the police to test the coordination and concentration abilities of a DUI suspect to allow a police officer to form an opinion whether a DUI suspect has a blood alcohol level of 0.08 or more. A person is not legally required to submit to field sobriety tests.

## Is a prescription for medication (drugs) a defense to a DUI charge?

No. If the medication causes "impair[ment] to a degree that renders a person incapable of safely driving or exercising actual physical control," the person has violated the DUI law.

## What is a "prohibited substance?"

Generally, "prohibited substances" are illegal street drugs that are listed in the DUI law. These drugs are referred to as "per se" DUI violations. It is illegal to drive/actual physical control with the prohibited level of these drugs in the blood. A person need not be impaired to violate the DUI "prohibited substance" law. Marijuana and marijuana metabolites are listed as "prohibited substances."

## Since marijuana is now legal in Nevada, can a person be convicted for DUI after using marijuana?

Yes! There are three ways that a person can be convicted for DUI after using marijuana: (1) impairment by the use of alcohol and marijuana; (2) impairment by marijuana; (3) driving/physical control with two nanograms (NG) of marijuana or five NG of marijuana metabolites in the blood. Daily users or marijuana use a couple of hours before driving/actual physical control makes the user a likely candidate for a DUI!

## What if a person decides not to drive and pulls off the roadway to sleep or wait?

It is illegal to be in actual physical control of a vehicle while under the influence of alcohol or drugs. Many factors determine whether a person is in actual physical control, but some of the common factors are: (1) is the person behind the wheel; (2) is the engine running; (3) are the keys in his or her possession; and (4) did the person drive the vehicle to the location after consuming alcohol or drugs? Operability of the vehicle is also a factor that can be considered. Merely stopping the vehicle to the side or off the roadway to sleep it off is not a defense. The penalties for being in actual physical control are the same as for driving under the influence.

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<http://www.nvbar.org>



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### What penalties are imposed for DUI?

A *first offense* misdemeanor is punishable by up to six months in jail and a \$1,000 fine plus assessments. The minimum penalties for a first offense are two days in jail or 48-96 hours of community service wearing DUI "distinctive garb," a \$400 fine, a \$60 chemical fee and a DUI education course including mandatory attendance at a victim impact panel (fees to be paid by the DUI offender). If a person's breath or blood alcohol level was 0.18 or more or the person is under the age of 21, he or she must also pay to have an alcohol evaluation done. A conviction for a first-offense misdemeanor results in a 90-day driver's license revocation.

A *second offense* within seven years is punishable by 10 days to six months in jail, payment of a fine from \$750 to \$1,000 or performance of an equivalent number of hours of community service while dressed in "distinctive garb," and attendance in a treatment program for the abuse of alcohol or drugs (paid by the offender). A second-offense conviction results in a one-year driver's license revocation.

A *third offense* within seven years is a felony punishable by one to six years in prison and a fine of \$2,000 to \$5,000 plus court assessments. This offense is nonprobationable. The conviction results in a three-year driver's license revocation.

Before a conviction of a first, second or third offense, a person can request alcohol or drug treatment to minimize the DUI penalties. For example, if a person applies for and is accepted into the Serious Offender Program, the person avoids prison and upon completion is found guilty of only a second-offense misdemeanor.

### Does a person arrested for DUI need a lawyer?

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. The defendant can waive (give up) his or her right to an attorney but this is EXTREMELY unwise.

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

Yes. The officer is required to transport the arrestee to jail where the arrestee will be tested for alcohol and/or drugs. The arrestee can be released from jail if bail is posted or if granted an OR (own recognizance) release. However, before he or she can be released from jail, the arrestee must serve at least 12 hours in jail and provide a breath sample that registers an alcohol level under 0.04.

A person convicted of driving while his or her license, permit or privilege is revoked for DUI is punished by serving a minimum of 30 days in jail to a maximum of six months or by serving a term of residential confinement for not less than 60 days nor more than six months, and fined \$500 - \$1,000. Additionally, the privilege to drive will be revoked for an additional year.

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

Yes. A person convicted of a DUI will lose his or her license, permit or privilege to drive as follows: (1) 90 days for a first offense; (2) one year for a second offense; and (3) three years for a third offense. A person may apply to the DMV for a restricted license (usually limited to work, medical care or school) after one half (1/2) of the revocation period has been served on a first or third offense. Any time that a person's license, permit or privilege has been revoked for a DUI, the person is entitled to a hearing at the Department of Motor Vehicles (DMV) to challenge the revocation. The DMV rules against the person 97 percent of the time. To challenge the revocation, the person must contact the DMV and make the request.

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