



COLORADO DUI AND DUID LAW

WHAT YOU NEED TO KNOW WHEN CHARGED

A White Paper Presented By



SHAZAM KIANPOUR
& ASSOCIATES, P.C.

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WHAT YOU NEED TO
KNOW WHEN CHARGED



*A Guide To Understanding
The Penalties And Legal Processes
Associated With DUI And DUID
Charges In Colorado*



Even though most Coloradans are aware that it is illegal to drive while impaired by alcohol or drugs, many are unable to recognize the distinctions between the various alcohol and drug-related driving offenses — let alone the punishment associated with each.

This is not particularly surprising, especially since most individuals have little interest in poring over complex statutes when they have no reason to do so.

Things can quickly change when you find yourself facing your own allegations of impaired driving. Regardless of whether you are dealing with your first offense or third, there are many essential facts you need to know, including information pertaining to possible penalties and the legal process itself.

THE FIRST STEP: UNDERSTANDING THE CHARGES AGAINST YOU

Before you can fully comprehend the implications of a Colorado drunk driving or drugged driving conviction, you must first be able to identify the actual offense the state is charging you with, and how this offense differs from others. This can be quite difficult given that Colorado has several similar yet distinct charges including those highlighted on the next page.

COLORADO'S DRUNK OR DRUGGED DRIVING CHARGES¹



DRIVING WHILE ABILITY IMPAIRED (DWAI): Which is when you drive a vehicle after consuming alcohol or drugs, and such consumption has impacted you to the slightest degree so that you are less able to exercise sufficient control or proper care when operating your vehicle.



DRIVING UNDER THE INFLUENCE (DUI): Which is when you drive a vehicle after consuming alcohol, and such consumption has impacted you to the degree that you are substantially incapable of safely operating your vehicle or exercising sufficient control.



DRIVING UNDER THE INFLUENCE PER SE (DUI PER SE): Which is when you submit to a chemical test, such as a Breathalyzer, and it indicates you have a blood alcohol content (BAC) of .08 percent at the time you were driving, or within two hours of driving.



DRIVING UNDER THE INFLUENCE OF DRUGS (DUID): Which is when you operate a vehicle after consuming drugs, and such consumption makes you significantly incapable of driving your vehicle in a safe manner. In the case of marijuana use, police will infer that you are under the influence of drugs if blood testing indicates your blood contains five nanograms or more of THC -- the active ingredient in marijuana -- per milliliter.

Prosecutors will likely charge you with two different offenses — DUI and DUI per se — even though police only arrested you once. In fact, Colorado law clearly permits this legal practice.² However, it is crucial not to panic in such situations because even if a judge or jury ultimately convicts you of both offenses, any sentences imposed will run concurrently, meaning you will face only one set of penalties.

WITH MARIJUANA NOW LEGAL, ARE COLORADO DUID LAWS DIFFERENT?

Ever since recreational marijuana use became legal in Colorado, there has been much confusion among the public regarding the state's DUID laws. Indeed, many people mistakenly believe that this monumental law change now means they can smoke marijuana and then get behind the wheel — a misconception that could not be further from the truth.

If anything, DUID laws are now stricter than they were before the legalization of recreational marijuana. For instance, just a few short years ago, the five-nanogram THC limit for drivers did not exist.³ Prior to that time, there was no presumed limit for what was considered under the influence of marijuana.



A nanogram is one-billionth of a gram.

This five-nanogram DUID threshold has been particularly controversial due to the fact that it may not accurately measure an individual's level of impairment. For instance, given how THC is absorbed into a person's system, testing can still detect its presence long after the effects have worn off. Frequent marijuana users may need weeks before THC is completely out of their systems.

Consequently, if you legally use marijuana on a regular basis, you may never be under the five-nanogram limit — meaning you risk DUID charges every time you drive, even if you are completely sober and no longer impaired by the drug.

It is also wrong to believe that a medical marijuana card will save you from criminal charges. In fact, Colorado law expressly states that a medical marijuana prescription is not a defense to DUID.⁴ No marijuana user is entirely safe.

However, if you have been charged with DUID after a failed blood test, you should not be afraid to fight back, particularly if you were not actually impaired at the time. While police and prosecutors can permissibly infer that you are under the influence of marijuana if testing indicates your blood is above the five-nanogram limit, you can, and must, challenge this inference in court. You should not have to face criminal charges simply because a blood test mistakenly shows you are under the influence.

IF CONVICTED, DUI AND DUID PENALTIES ARE HARSH, ESPECIALLY FOR REPEAT OFFENDERS

In Colorado, DUI, DUI per se and DUID charges are considered misdemeanor offenses.⁵ However, as the number of convictions rise, so does the severity of the penalties.

For instance, while you may only face five days in jail as a first-time drunk driving or DUID offender — or none at all if you complete an alcohol evaluation and education classes — you will have to spend at least 10 days in county jail, and up to one year,

for a second offense. This increases to a mandatory 60-day jail sentence for a third drunk driving or DUID offense.⁶

Fines, license suspensions and community service hours also dramatically grow with each subsequent conviction, and you will be forced to install an ignition interlock device (IID) on your vehicle.

An IID is a piece of equipment that prevents you from starting your car if you are unable to provide a breath sample that proves you are not impaired by alcohol.



If, within seven years, you are convicted three times of DWAI, DUI, DUI per se or DUID, you will be labeled as a *habitual offender* and possibly punished more severely, including a five-year license revocation.⁷

In the case of drunk driving, you need to worry if the state attempts to classify you as a *persistent drunk driver*, as it means you will face significantly harsher penalties, larger fines and mandatory IID installation for at least two years.

SPECIFICALLY, COLORADO LAW CONSIDERS YOU A PERSISTENT DRUNK DRIVER IF:



You have been convicted, or have had your license revoked, for more than one alcohol-related driving offense.



You drive a vehicle with a BAC of .15 percent or more, measured at the time you were behind the wheel or within two hours of driving.



You wrongfully refuse to take an alcohol test, including tests that examine your breath, blood, urine or saliva.



You are caught driving after a restraint has been imposed upon your license due to an alcohol-related driving offense.⁸

While these penalties are already particularly harsh, some Colorado lawmakers are pushing for even more severe consequences when it comes to DWAI, DUI, DUI per se and DUID charges. Specifically, a bill introduced earlier this year— Colorado House Bill 1043 — seeks to increase these charges from misdemeanors to Class 4 felonies when the alleged offender has multiple prior convictions.⁹ It remains to be seen whether this legislation will ever pass, but lawmakers seem determined as this bill is very similar to another one introduced just last year.



Colorado law makers are seeking to increase charges when the offender has multiple prior convictions.



PENALTIES FOR COLORADO DWAI, DUI, ¹⁵⁻¹⁸ DUI PER SE AND DUID CONVICTIONS



FIRST DWAI CONVICTION

Jail time of two days to 180 days, which the court can suspend if the offender submits to an alcohol evaluation and satisfactorily completes an alcohol education program

Jail time of at least 10 days, but no more than one year, if the offender registers a BAC of .2 percent

Fine ranging from **\$200 to \$500**

Community service of **24 to 48 hours**

Up to **two years** of probation



FIRST DUI, DUI PER SE OR DUID CONVICTION

Jail time of **five days to one year**, which the court can suspend if the offender submits to an alcohol evaluation and satisfactorily completes an alcohol education program

Jail time of **at least 10 days, but no more than one year**, if the offender registers a BAC of .2 percent

Fine ranging from **\$600 to \$1,000**

License revocation of **nine months**, although the offender may apply for a restricted license after one month

Community service of **48 to 96 hours**

Up to **two years** of probation

Possible installation of ignition interlock device in the offender's vehicles



PENALTIES FOR COLORADO DWAI, DUI,¹⁵⁻¹⁸ DUI PER SE AND DUID CONVICTIONS (CONTINUED)



SECOND DWAI, DUI, DUI PER SE OR DUID CONVICTION

Jail time of at least **10 days** but no more than one year

Fine ranging from **\$600 to \$1,500**

License revocation of **one year**

Community service of **48 to 120 hours**

Two years of probation and participation in alcohol education/treatment program

Installation of ignition interlock device in the offender's vehicles



THIRD OR SUBSEQUENT DWAI, DUI, DUI PER SE OR DUID CONVICTION

Jail time of at least **60 days** but no more than one year

Fine ranging from **\$600 to \$1,500**

License revocation of **at least two years**, which increases to five years if all convictions occurred within seven years

Community service of **48 to 120 hours**

Two years of probation and participation in alcohol education/treatment program

Installation of ignition interlock device in the offender's vehicles

ADDITIONAL FEES/COSTS YOU MAY ALSO NEED TO CONSIDER

- Driver's license reinstatement fees
- Bail and towing fees
- Insurance costs (SR-22 insurance)
- Alcohol education program fees
- IID installation, maintenance and administration fees

SOMETHING TO CONSIDER IF YOU ARE STOPPED BY THE POLICE IN THE FUTURE

If a police officer pulls you over and thinks you have been drinking or consuming drugs, he or she will likely ask you to perform roadside sobriety tests.



Many people believe that their licenses will be revoked if they refuse these tests, but that is simply not the case; roadside sobriety tests are voluntary, meaning you can and should refuse them.

When an officer asks you to perform roadside sobriety tests, he or she is simply attempting to gain as much evidence of intoxication and impairment as possible. The officer likely already knows whether he or she is going to arrest you, so all you are doing by

volunteering is helping the officer build his or her case.

Similarly, the officer may ask you to take a preliminary breath test (PBT), which he or she will use to establish probable cause for your arrest. This test is also voluntary, so you have the option to refuse.¹⁰

WHAT ABOUT A BREATHALYZER OR A BLOOD TEST - CAN I REFUSE THOSE?

Unlike roadside tests, however, you may face a potential penalty if you refuse to submit to chemical testing after being arrested — such as an official Breathalyzer or blood test. Specifically, the DMV can revoke your license under the authority of Colorado's expressed consent law, which states that a person is "deemed to have expressed [his or her] consent" to chemical testing by merely driving within the borders of Colorado.¹¹

Therefore, if police have probable cause to believe you are driving while impaired and you refuse a breath or blood test, the DMV can revoke your license. If you submit to testing and register a BAC of .08 percent or more, the DMV will also revoke your license.



LICENSE REVOCATION PERIODS¹²



TEST REFUSAL

.08

BAC OF .08 OR MORE

First Violation – One Year

First Violation – Nine Months

Second Violation – Two Years

Second Violation – One Year

Third Violation – Three Years

Third Violation – Two Years

Given that there are negative consequences associated with either choice, you will have to make a very difficult decision. However, before you decide whether to refuse testing, it is vital to weigh all of your options.

For instance, you will limit the potential evidence against you if you refuse, but you will lose your license in the process and may face drunk driving charges anyway. Alternatively, if you agree to submit to testing in the hopes that you will pass, but instead fail, a drunk driving conviction is all but certain — not to mention a test indicating a BAC of .15 percent may result in a persistent drunk driver designation.

Regardless of what you decide, you do have an opportunity to challenge a DMV revocation at an administrative hearing.

You have only 7 days to request such a hearing after receiving notice of your license revocation from the DMV.

It is important to keep in mind that this particular hearing is entirely independent from any DUI prosecution you may be facing. Even if you manage to successfully get your drunk driving charges dismissed, it will not impact a license revocation imposed by the DMV.¹³



COLORADO'S DUI & DUID PROCESS IN 8 SIMPLE STEPS

1		A police officer will pull you over — find a safe place to stop as soon as you see flashing lights.
2		The police officer will likely ask you questions about what you have been doing and whether you have had anything to drink. It is crucial to keep in mind that you do have the right to remain silent and thus do not have to answer any questions.
3		If the police officer suspects you have been drinking or consuming drugs, he or she will normally ask you to leave your vehicle in order to perform roadside sobriety tests. These roadside sobriety tests are voluntary, so you should absolutely refuse to participate.
4		The police officer may also ask you to take a preliminary breath test (PBT). This test is also voluntary, so you should refuse.
5		If the police officer thinks there is probable cause to believe you were drinking or consuming drugs, he or she will arrest you and ask you to submit to a chemical test of your breath or blood. Unlike the previous tests, this test is not optional; a refusal will be met with a penalty, and the refusal can be used against you.
6		If you refuse, you deprive the state of the test results to use against you, but the DMV will revoke your license for one year. Conversely, if you take the test and fail, a DUI conviction is quite likely — and the DMV will revoke your license.
7		You can request a hearing regarding your DMV conviction, but you only have a few days to do so.
8		After being released from custody, you and your attorney will have the opportunity to explore your legal options, including whether a plea agreement is advisable or if you should proceed to trial to fight for your rights.

YOU NEED EXPERIENCED LEGAL GUIDANCE WHEN DEALING WITH DUI AND DUID CHARGES

While this paper contains a great deal of information regarding Colorado drunk driving and DUID laws, it simply cannot cover every potential situation and intricate detail. Indeed, there are several additional Colorado drug- and alcohol-related driving offenses not discussed here, and state law is constantly changing. No matter your particular situation, always make sure you have all of the information you need to make informed legal decisions.



SOURCES

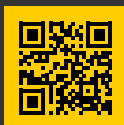
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