

## **Legal consequences of DUI/DWI**

As of August 2005, all 50 states had adopted the 0.08 percent as the level of *per se* intoxication. This means that if an individual tests at that level or higher, no further proof of intoxication is required. The presumption is said to be rebuttable because an individual may challenge the equipment calibration or operator certification during the court proceeding.

Even though a properly calibrated machine used by a certified operator is reliable to one hundredth of one percent, “false positives” are possible. Some mouth washes or breath fresheners have been shown to elevate readings into the prohibited zone. South Dakota has chosen the extreme measure of barring the admission of breathalyzer tests from evidence, relying instead only on blood tests to confirm the level of impairment.

Upon conviction of a DUI / DWI offense, a driver’s license will be suspended. The duration of the suspension varies by state. For first time offenders, the period may range 30 days (Kansas, Kentucky, Michigan, Missouri, Oklahoma and South Dakota) to one year (Colorado, North Carolina, Pennsylvania and Tennessee). Third time offender suspensions range from 90 days (Maryland, Massachusetts, Nevada and Wyoming) to 10 years (New Jersey).

Many states have enacted additional thresholds to deter impaired operation of a motor vehicle. For example, every state has a “zero tolerance” threshold for youthful motorists under the age of 21. Since those individuals cannot legally purchase or consume alcoholic beverages, a minimal BAC will implicate charges. Thirty-seven states have set their respective “zero tolerance” levels at 0.02 percent. California’s and New Jersey’s thresholds are 0.01 percent. The true “zero tolerance” standard applies in Alaska, Arizona, the District of Columbia, Illinois, Maine, Maryland, Minnesota, North Carolina, Oklahoma, Oregon, Texas and Utah.

The majority of states have also enacted enhanced penalties for especially elevated BAC. Nine states trigger the enhancement at 0.15 percent. Ten states have chosen 0.20 percent as the threshold. Twenty states impose no enhanced penalty. Consequences include greater fines, longer periods of license suspension and jail time.

The cost of impaired driving is immediate in some states. Kentucky, Oregon and Pennsylvania laws provide for vehicle confiscation on the first offense. Twenty-four others provide for vehicular seizure under limited circumstances.

Twenty-two states require mandatory education and alcohol / substance abuse assessment / treatment upon conviction of impaired or drunk driving. Seven others impose similar penalties in limited circumstances.

State governments and private sector corporations are working together to make the nation’s highways safer. Thirty-two states have laws which provide for the installation of ignition breath testing locks on vehicles belonging to individuals convicted of a DUI /

DWI offense. If the driver is unable to register a BAC reading lower than 0.02 percent, the vehicle will not operate. The offender bears the cost of installation, equipment rental and maintenance. Last month, London's *Sunday Times* newspaper reported the first commercial availability of a cell phone with breathalyzer feature. Manufactured by LG Electronics, the device will display animation of a car swerving into traffic cones. Over 200,000 units have already sold in South Korea at a cost of approximately US\$255 as this article goes to press. In Nassau County, New York, police are working with local bar owners to install talking urinals. After positioning themselves in front of the receptacle, restroom visitors are subjected to a 15-second message challenging the individual to consider his ability to drive and recommending taxi service. The product, known as the Wizmark Urinal Communicator, is subsidized through the payment of DWI offender fines.

Labor Day Weekend marks the end of Summer. Nationally, the holiday is also one of the deadliest dates on the calendar. In 2004, 159 people died in alcohol-related auto accidents. This figure compares to New Year's (227), Thanksgiving (179), Fourth of July (177) and Memorial Day (174).

What steps can be taken to protect yourself from a drunk driving incident?

1. Drink responsibly. Know your tolerance limits and stay within them.
2. If you know you will be drinking, designate a driver or arrange for taxi service home.
3. If you are stopped by a police officer, do not act in a belligerent manner.
4. If the officer directs you to submit to a BAC test such as a breathalyzer, decide whether to comply with the directive.
5. Contact an attorney to counsel you through court proceedings.

Drunk driving is an activity which each of us can avoid. The next time your favorite bartender asks, "One for the road?," remember that not all bills are settled at the bar.

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