

USLegal Pamphlet on DUI



INTRODUCTION

Drunk driving constitutes the most commonly committed crime in the United States. State laws, most of which define this crime as “driving while intoxicated” (DWI) or “driving under the influence” (DUI), have progressively become more unforgiving over the past 20 years. Several groups, such as Mothers Against Drunk Driving (MADD), have fought with considerable success to modify drunk driving laws.

All states have amended their statutes so that a person is considered under the influence or intoxicated when the person’s blood-alcohol concentration (BAC) is above .08 percent. Moreover, sentences for drunk driving have become progressive harsher, as state legislatures have sought to deter the practice of drunk driving. Although sentences and penalties vary among different states and different courts, a person convicted of driving drunk may face any of the following:

- A fine of \$1000 or more
- Probation
- Revocation or suspension of the offender’s driver’s license
- Impoundment of the offender’s car or the installation of special locks on the offender’s car

- Special classes regarding drunk driving or alcoholism
- Mandatory jail sentence

The yearly estimated costs of driving under the influence (DUI) accidents total many billions of dollars. Within the past decade, nationwide advertising campaigns by citizen activist groups have raised public awareness, and made the public less tolerant of the destruction created by drunk drivers. Public lobbying efforts, along with federal monetary incentives, have led state legislatures to enact new drunk driving laws that impose strict penalties on DUI offenders. Some of the laws passed are designed to punish the offender, and others are intended as remedial. Remedial civil sanctions are not characterized as punishment and can be imposed in addition to criminal penalties without invoking the Double Jeopardy Clause’s protection against multiple punishments. The distinction may become blurred, for instance, in the case of administrative license suspensions (ALS). While some argue ALS is punishment, others argue that statutory provisions intending to remove a possibly dangerous driver from the highway serve a remedial purpose of removing the evil of dangerous, intoxicated drivers. ALS statutes have been historically viewed as remedial, because they revoke a privilege voluntarily granted and not a constitutional right.

ELEMENTS OF THE OFFENSE

Most state laws define crimes of drunk driving as follows: driving a motor vehicle on a

road or highway while under the influence of alcohol. Newer statutes also provide for a per se offense, which a person commits when driving a motor vehicle on a road or highway with a blood-alcohol concentration of .08 percent.

FELONY DRINK DRIVING

Most states have expanded their drunk driving statutes to provide for harsher punishment when drunk driving has resulted in injury to another. Where a person causes injury to another while driving drunk, the person may be charged with a felony, punishable by a term in state prison. In an even more severe expansion of criminal laws, some states now incorporate their murder or manslaughter statutes with their DUI laws where drunk driving results in the death of another. Moreover, in some states, a person may be charged with assault with a deadly weapon for driving a car while intoxicated. In such an instance, the deadly weapon is the car.

All states treat first DUI offenses as misdemeanors. However, in the majority of states, a person’s third offense (or third “strike”) is treated as a felony.

DEFENSES

A person charged with drunk driving usually attacks the arresting officer’s observations or opinions. A defendant may also attack witnesses that tested the defendant’s BAC, or the defendant may call on someone who can testify that the defendant was sober.

In addition to these strategies, a defendant could rely on one of several defenses. These defenses include the following: (1) necessity, which applies when a person must drive to prevent a greater evil; (2) duress, which applies when the defendant drives in order to avoid serious injury or death; (3) entrapment, which applies when an officer requests that a person drive drunk; (4) mistake of fact, which applies when a person has an honest belief that his or her BAC is below the legal limit; and (5) involuntary intoxication, which applies when the person has ingested alcohol without his or her knowledge.

Individual states take different positions with respect to the availability of these defenses. In general, however, these defenses rely on specific sets of facts and are each very difficult to prove successfully.

SENTENCES

A person who is convicted of drunk driving most likely faces some or all of the following in terms of punishment: a fine; time in jail; suspension, restriction, or revocation of the defendant's driver's license; probation; enrollment and completion of a course in drunk driving or alcoholism.

In addition to these, states have also developed other penalties or requirements that drunk drivers must fulfill. One requirement that has become more common throughout the nation involves the use of an ignition-interlock device. Such a device captures a

driver's breath and analyzes the BAC of the driver. The device only allows the driver to start the vehicle when the breath analyzer reads below a certain level, such as .02 percent. Another form of punishment is the impoundment of a drunk driver's vehicle for a certain period of time. A more serious form of this punishment is the forfeiture of a vehicle, meaning that a court can order the sale of a person's car after the person has had multiple convictions for drunk driving.

States have also modified their statutes to provide for enhanced sentences under some circumstances. These sentence enhancements may apply when one of the following events occur: (1) the defendant's BAC is very high, such as above .20 percent; (2) the defendant refuses to submit to chemical testing; (3) the defendant greatly exceeds the speed limit or drives recklessly while drunk; (4) a child under the age of 14 is in the car when the defendant is driving drunk; (5) drunk driving is accompanied with an accident or injury to another person.