

Media Alert

Colorado Judicial Branch
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Mandatory sentencing: Alcohol-related traffic cases

DUI/DWEAC (DUI PER SE)/DWAI*: For many years alcohol-related driving charges, such as driving under the influence of alcohol, drugs or both (DUI), driving with excessive alcohol content (DWEAC), and driving while ability was impaired by alcohol, drugs or both (DWAI) have required a mandatory jail sentence. However, on a first offense the mandatory sentence could be suspended if the defendant completed alcohol education and treatment as ordered by the court. As of Sept. 25, 2001, changes resulted in the sentencing structure summarized in the following table. Currently a blood alcohol level of .08 can result in a charge of driving with excessive alcohol content, often referred to as DUI per se, and a blood alcohol level of .05 can result in a charge of driving while ability impaired.

DUI, DWEAC, and DWAI sentencing from and after 9/25/01 Note: DWEAC treated the same as DUI

Offense	Jail	Suspendable jail (days)	Fine (\$)	UPS (hours)
DUI	5 days – 1 year	All	300 – 1,000	48 – 96
DUI or DWAI with greater than .20 BAC	90 days – 1 year	80	500 – 1,500	60 – 120
DUI after conviction for driving under restraint of any kind	90 days – 1 year	80	500 – 1,500	60 – 120
DUI after conviction for vehicular homicide or vehicular assault while under the influence	90 days – 1 year	80	500 – 1,500	60 – 120
2nd or subsequent DUI	90 days – 1 year	80	500 – 1,500	60 – 120
DUI after DWAI	70 days – 1 year	63	450 – 1,500	56 – 112
DWAI	2 days – 6 months	All	100 – 500	24-48
DWAI with greater than .20 BAC	90 days – 1 year	80	500 – 1,500	60 – 120
DWAI after conviction for driving under restraint of any	60 days – 1 year	54	400 – 1,200	52- 104
DWAI after conviction for vehicular homicide or vehicular assault while under the influence	60 days – 1 year	54	400 – 1,200	52- 104
2nd or subsequent DWAI	45 days – 1 year	40	300 – 1,000	48-96
DWAI after conviction for DUI or DWEAC	60 days – 1 year	54	400 – 1,200	52- 104

When a person is convicted of multiple offenses, extensive in-patient treatment may be ordered. Most programs currently available are about two weeks long. The most successful programs generally require about two years, but it can be difficult to encourage a person to spend two years getting well when the most (s)he can be given as a jail sentence is one year. Sentences in second offenses typically require a minimum of 24 hours of educational training and 68 hours of therapy.

DUR: The jail time for driving under restraint (suspension, revocation or denial) has been mandatory for more than 15 years. The amount of jail time depends upon the reason for the restraint. If the restraint was not the result of a previous alcohol related driving conviction, i.e. DUI, DWEAC, DWAI, the mandatory minimum jail sentence is five days and the maximum is six months. In addition to the jail time the court can impose a \$50-\$500 fine or both a fine and jail can be imposed. The motor vehicle department will impose an added restraint of one year to the driver's license on a first offense.

If the restraint was a result of a previous alcohol related driving conviction; because a person refused to take a blood/breath test when asked by an officer with probable cause to believe the person was driving under the influence, with excessive alcohol content, or while ability was impaired; or the person took the test and had a result above the statutory limit, the mandatory minimum jail sentence is 30 days and the maximum is one year. In addition to the jail time the court can impose a \$500-\$1,000 fine or both the fine and jail. The motor vehicle department will also tack on an added restraint of one year to the person's license.

On a second alcohol related driving under restraint conviction, the mandatory minimum jail sentence is 90 days and the maximum time possible is two years. In addition to the jail time the court can impose a \$500-\$3,000 fine or both the fine and jail time. The motor vehicle department will place an added restraint of four years to the person's license with this second conviction. The court must also initially impose a minimum \$10,000 cash, property or surety bond until a hearing is held.

Driving as a habitual traffic offender: A habitual traffic offender is a person who has had three or more major traffic offenses (e.g. DUI, reckless driving, driving under suspension, vehicular assault, making false affidavit, leaving the scene of an accident involving injury/death) within a seven-year period. One can also be a habitual offender by accumulating 10 or more convictions of four points or more in a five- year period, or 18 or more convictions of three points or less in a five-year period.

Driving after a habitual traffic offender judgment is received was, up until a few years ago, a Class 5 and then a Class 6 felony. A person can now be charged with misdemeanor driving as a habitual traffic offender, an offense that previously was a felony. However if the person is intoxicated and drives as a habitual traffic offender the offense is a Class 6 felony.

As a result of these changes and the mandatory sentencing involved with the DUR statutes -- driving as a habitual traffic offender is now a Class 1 misdemeanor. Class 1 misdemeanors are generally punishable by six-18 months in jail and/or a \$500-\$5,000 fine. However, in the case of this particular traffic charge the defendant must only be sentenced to a minimum of 30 days in jail, a fine of \$3,000, or both, and the court can suspend all of the mandatory minimum sentence if the defendant is sentenced to and performs 40-300 hours of useful public service.

Further, there is no mandatory minimum bond for being a habitual traffic offender as there is for driving under restraint. The result is that a person who has had three driving under alcohol restraint convictions and thus has been declared an habitual traffic offender could receive a lesser sentence than the person who is arrested on his second DUR, and the judge is not required to set a mandatory minimum bond for the felon.

No insurance – after Jan. 1, 2005 – Since Jan. 1, 2005, the penalty for driving without insurance, or allowing an uninsured person to drive your uninsured vehicle is a mandatory minimum \$500 fine and a possible maximum fine of \$1,000. Jail from 10 days to one year can be imposed and 40 hours of useful public service can be required.

In addition, the motor vehicle division suspends the licenses of those convicted of this offense if they were the owners of the vehicles until they show proof of having purchased SR22 insurance, which is more expensive than regular insurance. If a person continues to drive without insurance, and now without a license, they can become a habitual traffic offender.

*DUI /DWAEC - Driving under the influence of alcohol (or drugs or both) so that one is substantially incapable, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle, driving with a BAC of .08 or greater at the time of driving, as shown by chemical analysis of blood or breath; DWAI - Driving while ability impaired by alcohol (or drugs or both) so that one is impaired to the slightest degree so that one is less able than ordinarily, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle; DUR - Driving while one's license or privilege to do so has been revoked, denied, suspended, or cancelled by the department of motor vehicles (Dept. of Revenue).

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