

# Got a DUI Charge?

## If So, Call Us Immediately!

This incident, we know, can be very difficult and stressful, but the steps **YOU** take **NOW** can minimize the impact. We can help you effectively and discreetly negotiate your D.U.I. charge with both the Court and DMV!

Call us to discuss legal obligations, ramifications and options. Protect your rights and give yourself a fighting chance!

This is a time sensitive matter!

Call us today. The consultation is free!

### The "Big Three!"

There are three immediate things you should be aware of...

- 1.) **Call DMV.** If you have been arrested on a driving under the influence charge, you must contact the California Department of Motor Vehicles' Driver's Safety Office **within 10 days** of your arrest to request an Administrative Per Se hearing. If you do not request an Administrative Per Se hearing within ten days, your license will automatically be suspended 30 days from the date of notice of suspension (arrest or when you are released from jail). By securing an "APS" hearing, you allow yourself the opportunity to contest the DMV suspension. If the review of the facts at that hearing indicates that there is no basis for a suspension or revocation, any action the DMV might take pursuant to suspension or revocation will be set aside. Winning at DMV will also assist in the matter with the court. We can handle all aspects of the DMV's "APS" process, so please call!
- 2.) **Calendar the Date of Your First Appearance or Arraignment with the Court.** Your citation should have an appearance date indicating when and where you are required to appear for court. Write this date down and keep it somewhere that it won't be missed. On a misdemeanor D.U.I., your attorney can appear for you at your arraignment. You won't have to miss work or any other obligation. We can save you time and keep you from publicly appearing in court.
- 3.) **Call an Attorney.** Calling an experienced, dedicated and trusted attorney affords you the best possible chance at minimizing the impact of your D.U.I. It's always better to know where you stand and what options are available to you. The D.U.I. process in both the court system and with DMV can be complicated and overwhelming. Let us assist. We know the law and how to navigate you through the process. Call us today - the consultation is FREE!

## **CALIFORNIA DUI - FREQUENTLY ASKED QUESTIONS (FAQ's):**

### **DUI BASICS:**

#### **Step One:**

##### **“Why Was I Stopped?”**

#### **Probable Cause:**

In any case where a person is stopped on suspicion of Driving Under the Influence, the contacting enforcement agency must have what's referred to as, “probable cause” to effect a stop of that vehicle. Probable cause means that a police officer must have a rational, reasonable belief based on some evidence, that the person driving the vehicle, or some function on the car itself, was in violation of the California Vehicle Code. Common examples of such violations include, but are not limited to: Excessive Speed, Weaving, Illegal Lane Change, Failure to Stop, Broken or Non-Functioning Headlamp or Tail Lights, even Tinted Windows. An officer is allowed to pull over a vehicle if the officer believes that person or the person's vehicle is in violation and there exists evidence to later prove that suspicion.

If there exists evidence that the arresting officer did not have demonstrable probable cause at the time of the stop, an attorney can bring a suppression motion, pursuant to Penal Code Section, 1538.5. If the defendant prevails on the motion, all the evidence seized after and as a result of the stop (Field Sobriety Tests, officer observations, statements by the accused and Blood Alcohol Screening tests, among others) cannot be used in a court trial as evidence of driving under the influence of alcohol or a controlled chemical substance. Essentially, one would take away all the evidence from the prosecution's case, severely limiting a district attorney's ability to prosecute the matter. Generally, if the defendant wins the motion, the prosecutor dismisses its case against that person.

#### **Step Two:**

##### **“The Officer Requested I Perform a Series of Tests.”**

#### **Field Sobriety Tests:**

**Law enforcement officers may try to subject you to any variation of a vast number of field sobriety tests. Some common tests are:**

- Finger to Nose
- Hand Pat
- Recite Alphabet without singing
- Recite Alphabet backward
- Count backwards
- Pick up coin
- Stand at attention, close eyes, head back and estimate 30 seconds – looking for body sway / imbalance
- Touch tips of your fingers back and forth counting 1,2,3,4 4,3,2,1;
- **Walk and Turn**

- **One Leg Stand**
- **Horizontal and Vertical Gaze Nystagmus**

An important element to know is: If you are over 21 years of age, you do not have to submit to any Field Sobriety Tests. These tests are used by law enforcement to determine a general level of intoxication and WILL BE USED AGAINST YOU! The less evidence the investigating law enforcement agency has, the less they will be able to include in their police report which ultimately gets submitted to that county's district attorney's office. A lack of evidence may influence the district attorney's office not to levy charges against you at all.

Additionally, you will not be subjected to a refusal for purposes of license suspension. You must take a chemical (breath or blood) test once you are booked, but you may refuse any testing requested of you prior to that time.

Another important thing to know about Field Sobriety Tests is *there are no scientific studies validating any Field Sobriety Test **with the exception of the last three listed.***

The National Highway Traffic Safety Administration ([NHTSA](#)) has created a battery of three tests that have been subjected to some scientific study and which the administration recommends for the purpose of DUI investigation. Any agency receiving Government Money in the form of a grant for DUI investigation is required to have their officers trained to perform the Standardized Field Sobriety Tests (SFST's). The International Association of Chiefs of Police (IACP) has adopted that recommendation.

In order to have any validity the SFST's must be administered according to strict requirements. Failure to administer the test according to NHTSA standards renders the test unreliable. Even if administered correctly the level of scientific reliability adopted by NHTSA still leaves reasonable doubt as to the conclusion that someone failing to perform the tests as required is under the influence.

A skilled and experienced DUI attorney will take advantage of the fact that SFST were not required by the officer and will take advantage of the fact that the officer failed to administer the SFST's correctly. After cross-examination of the officer under almost any circumstances the field sobriety testing should leave doubt and the conclusions to be drawn from the test should be negated or work in the client's favor.

#### **P.A.S. (Preliminary Alcohol Screening) Devices:**

One of the issues that often arise in a California DUI case is the use of a portable breath testing machine known as a **Preliminary Alcohol Screening device or commonly referred to as a P.A.S. device**. Under California law you have no obligation to provide a breath sample using the P.A.S. device (unless you are on probation and it is a term of your probation and often in the case of minors)

The officer is required by law to advise you that you may refuse to provide a P.A.S. sample. This is probably the most abused circumstance during a DUI investigation. Officers often will require you to provide a P.A.S. sample without advising you of your right to refuse. Despite the officer violating the law the evidence will often come in against you. The P.A.S. sample is not the sample you are required by law to provide. You will still have to give a breath or blood sample. There is no legitimate reason for providing this additional sample. The machines used are inferior and even when you believe providing the sample will allow the officer to let you go, you will be surprised more times than not that the sample

provided exceeds your expectations.

***The P.A.S. machines are unreliable and cannot be used as evidence against you in court. You may want to have a plan in place if you are in this situation, to submit only to the evidentiary breath test, or provide a blood sample once you are taken to the police station or jail.***

### **STEP THREE:**

#### **“I’ve Just Been Arrested for DUI. What happens now?”**

Your car will likely be impounded and you will either be booked (taken to jail) on the charge or cited (ticketed) and released. In addition, your driver’s license will be confiscated by law enforcement and you will be issued a temporary license.

The arresting officer is required by law to immediately forward a copy of the completed notice of suspension or revocation form and any driver license taken into possession, along with a sworn report, to the DMV. The DMV automatically conducts an administrative review that includes an examination of the officer’s report, the suspension or revocation order, and any test results. If the suspension or revocation is upheld during the administrative review, you may request a hearing to contest the suspension or revocation.

Additionally, the arresting agency will forward a copy of their police report to their county’s district attorney for proper charging of the violation. The district attorney’s office (D.A.) will have charging deputies who will review the recommended charges from the arresting law enforcements report and if there exists enough evidence to move forward, the D.A. will charge the case and notify the court. Most Driving Under the Influence reports contain enough information (evidence) in them to warrant a charge from the D.A.

#### **“Why Was I Charged with Two Offenses?”**

California and most other states have enlarged the original DUI ("Driving Under the Influence") offense into two separate offenses: (1) driving while impaired by alcohol and/or other drugs (Vehicle Code §23152(a); OR (2) driving with a **blood alcohol concentration (BAC)** greater than .08% (Vehicle Code §23152(b)). That is, in California, an adult is "per se" DUI if his or her BAC is .08% or greater, regardless of whether the person exhibits any sign of impaired driving ability.

These two separate offenses are usually charged in a DUI case. You may be convicted of both; but, in most circumstances, you will be sentenced for only one. So, generally, the main effect is just to give the prosecution two chances at conviction.

Contacting an experienced and trusted attorney just after your arrest is a smart decision. That attorney can navigate you through an otherwise tough circumstance and importantly, will point out your rights and options so you may make an informed decision on how to proceed.

### **STEP FOUR:**

#### **“Should I Request the DMV Administrative Per Se Hearing?”**

## License Suspension:

Yes. You have the right to request an Administrative Per Se hearing with the DMV. This must be requested within 10 days of receipt of the suspension or revocation order (at the time of arrest or more specifically, on the date you were released from custody). If you do not request an Administrative Per Se hearing within ten days, your license will automatically be suspended 30 days from the date of notice of suspension (arrest or when you are released from jail). This will result in a “hard” suspension of 30 days, wherein you are not afforded any allowance for driving – you cannot drive at all. If you secure an “APS” hearing date and the review indicates there is no basis for the suspension or revocation, the action pursuant to suspension or revocation will be set aside. You will be notified by the DMV in writing only if the suspension or revocation is set aside following the administrative review.

*There are little used, but effective strategies we can employ to avoid that “hard” suspension altogether, if we devise a sound plan early. Call us and we can identify those procedures for you!*

### **“Does My Age Matter?”**

Yes, certainly. If the driver is under 21 years of age, the driver is considered *per se* DUI if his/her BAC is .05% or greater. A driver under 21 is not allowed any refusal of the field sobriety tests, (conducted at the place and time of the stop) including the often fallible and inaccurate PAS breathalyzer test. Additionally, DUI drivers under 21 will also realize other enhanced hurdles, such as an automatic suspension of your license even if your blood alcohol concentration was just .01% which they should discuss with their attorney. Please refer to

### **STEP FIVE:**

#### **“At the Time of My Arrest, the Officer Confiscated my Driver License.**

##### **How Do I Get It Back?”**

Your driver license will be returned to you at the end of the suspension or revocation, provided you pay a \$125 reissue fee to the DMV and you file proof of financial responsibility (aka, proof of insurance, DMV’s “SR-22” form). The reissue fee remains at \$100 if you were under age 21 and were suspended under the Zero Tolerance Law pursuant to Vehicle Code §§23136, 13353.1, 13388, 13392. If you prevail and your case is “set aside” with DMV at the hearing or if it is determined that there is not a basis for the suspension or revocation prior to that hearing, your driver license will be re-issued or returned to you.

#### **“The officer issued me an Order of Suspension and Temporary License.**

##### **What am I supposed to do with this document?”**

You may drive for 30 days from the date the order of suspension or revocation was issued, provided you have been issued a California driver license and your driver license is not expired, or your driving privilege is not suspended or revoked for some other reason. If you request your APS hearing within the ten day window, DMV will maintain your driving privileges and allow you to drive until there is a finding and consequent disposition from your APS hearing.

#### **“The Notice of Suspension that the officer gave me at the time of my arrest states I have ten days to request an administrative hearing. What is the purpose of this hearing and what can it do for me?”**

A hearing is your opportunity to show that the suspension or revocation is not justified. Even if you

cannot prove this at the hearing, there are potent strategies that can minimize your time (if not avoid it altogether) on a “hard” suspension. If you fail to make the request within the ten day time period after arrest, however the stay of suspension will be forfeit and you will not only lose your opportunity to contest the administrative suspension of your license, but your license will be suspended automatically for 30 days.

**“For how long will my driving privilege be suspended if I took the chemical test?”**

If you are 21 years of age or older, took a blood or breath test, or (if applicable) a urine test, and the results showed 0.08% BAC or more:

- A first offense will result in a 4-6 month suspension.
- A second or subsequent offense within 10 years will result in a 1-year suspension.

If you are under 21 year of age, took a preliminary alcohol screening (PAS) test or other chemical test and results showed 0.01% BAC or more, your driving privilege will be automatically suspended for 1 year.

**“Do I need a hearing to get a restricted license to go to and from work?”**

No. A request for a restricted license cannot be considered at the DMV hearing. You may apply for a restricted license to drive to and from work at any DMV field office.

**“The officer stated I refused to take a chemical test. What does this mean?”**

You are required by law to [submit to a chemical test the alcohol and/or drug content of your blood](#). You did not submit to or complete a blood or breath test after being requested to do so by a peace officer.

As of January 1999, a urine test is no longer available unless:

- The officer suspects you were driving under the influence of drugs or a combination of drugs and alcohol, or
- Both the blood or breath tests are not available, or
- You are a hemophiliac, or
- You are taking anticoagulant medication in conjunction with a heart condition.

**“For how long will my driving privilege be suspended if I refused to take the chemical test?”**

If you were 21 years of older at the time of arrest and you refused or failed to complete a blood or breath test, or (if applicable) a urine test:

- A [first offense](#) will result in a 1-year suspension.
- A [second offense](#) within 10 years will result in a 2-year revocation.
- A [third or subsequent offense](#) within 10 years will result in a 3-year revocation.

*If you were under 21 years of age at the time of being detained or arrested and you refused or failed to complete a PAS test or other chemical test:*

- A first offense will result in a 1-year suspension.
- A second offense within 10 years will result in a 2-year revocation.
- A third or subsequent offense within 10 years will result in a 3-year revocation.

**“How is the DMV suspension or revocation for the DUI arrest different from the suspension or revocation following my conviction in criminal court?”**

The DMV suspension or revocation is an administrative action taken against your driving privilege only. The suspension or revocation following a conviction in court is a mandatory action for which jail, fine, or other criminal penalty can be imposed.

Source: California Department of Motor Vehicles

## **CONTESTING A DUI:**

### **BLOOD / BREATH / ADDITIONAL ISSUES TO CONTEST A CHARGE.**

#### **Some Issues Common to DUI BLOOD Cases Include:**

- Timing of blood draw relative to driving – generally a substantial delay
- Fermentation: formation of alcohol in blood tube after draw and before analysis (e.g. insufficient sodium fluoride preservative/critical delay between draw and analysis).
- Failure to properly store the blood sample prior to analyzing;
- Hospital blood draw vs. law enforcement blood draw;
- Clotting or coagulating.
- Contamination (e.g. swabbing skin with Zephiran containing 2% ethyl alcohol).
- Chain of custody or wrong blood specimen.
- Improper draw or improper administration of blood test.
- Failure to comply with Title 17 (e.g. failure to mix blood sample with anticoagulant and preservative).
- Poor laboratory procedures for analyzing blood samples for alcohol
- Unqualified blood test analyst.
- Failure of proper prosecution expert to appear at trial.
- Blood test record not made at or near time of analysis or blood test report not trustworthy.
- Unauthorized blood technician draws blood.

There are some factors that can affect the results of your test. According to an article posted on [Yahoo! Health](#), if rubbing alcohol was used to clean the skin before the needle was inserted, the results may not be useful. If you have high blood ketones, which can result from diabetic ketoacidosis, the test may not accurately reflect your blood alcohol content. Also, if you have taken cough medicines or herbal supplements that contain alcohol, such as kava or ginseng, you may have an inaccurate BAC reading.

#### **Issues Related to DUI BREATH Test Cases:**

There are a number of different manufacturers of breath test machines and a skilled and experienced DUI attorney should have some experience with the machine the arresting agency employs during the course of your DUI investigation.

The breath machine measures a very minute sampling of the alcohol contained in your breath. The theory is that the breath sample being measured is made up of what is called Alveolar Breath. This is breath from the deepest part of your lungs. The machine cannot identify specifically that the

breath sample is Alveolar Breath. The machine assumes that the sample is Alveolar based on a mathematical formula or algorithm. In reality many, if not most breath samples are tainted with a breath sample not exclusively consisting of Alveolar Breath. The result of this is that the breath sample is contaminated with a sample containing what is commonly called "mouth alcohol" that will contain a higher concentration of alcohol than the Alveolar Breath and result in a false high reading of your true Breath/Blood Alcohol Concentration.

In addition to the problem of contamination of the Alveolar breath sample the concentration in your breath may be higher than your true blood alcohol concentration while your body is still absorbing alcohol.

Also you are commonly tested sometime after you have been driving and your breath/blood alcohol concentration will likely have risen since you were driving. The prosecution will bring in an expert to limit the timeframe when your body absorbs alcohol in order to try to avoid this inherent problem with breath testing. A skilled and experienced DUI lawyer will know how to cross-examine the prosecutions expert to ultimately provide evidence in your favor on this issue.

**Additional Issues and Considerations Related to Breath Testing:**

- No continuous observation for entire 15 minutes before first breath sample (e.g. Officer attempts to include transportation time as part of required observation period or you were left alone at anytime prior to taking the test -e.g. used restroom or telephone or placed in holding cell/room).
- During those 15 minutes before the test, you burp, belch or have slight regurgitation of gas that is relatively quiet.
- Vomiting, belching within 15 minutes of test - no rinsing of mouth, or inadequate deprivation period before retest.
- You may not be a proper subject for breath testing.
- You have a physical problem or health limitation:
  - gastric reflux
  - hiatal hernia
- intestinal problem (e.g. Gastro Esophageal Reflux Disease Irritated Bowel Syndrome, or Acid Reflux Syndrome) diagnosed and treated before date of arrest or otherwise confirmed to have existed prior to arrest;
- Dental condition (e.g. gum disease/gingivitis/pockets around roots, dentures, crowns or bridgework, which may trap mouth alcohol and contaminate a breath machine sample);
- Diabetes related symptoms;
- Respiratory problem (e.g. asthma, bronchitis, emphysema or chronic obstructive pulmonary disease).
- The breath test room or circuitry has a problem (e.g. Radio Frequency Interference from a cell phone, officer's radio, copy machine or other equipment with surge capabilities) which may cause machine to give artificially high reading; smoking in or near machine; shared



power supply with heater or other appliance - must be dedicated "clean" electrical source; or recently painted walls or trim).

- You have had recent environmental exposure to volatile fumes (lacquer, gasoline, paint, dry cleaning fluids or even 409) which have cumulative reading, causing chemical interference/falsely elevated result.
- Air bag defenses - "the Tyndall effect" - diffusion of light; propellant exposure; cut lips; lung and airway irritation & fluid build-up from caustic gas propellant.
- High test result, yet you never urinate for 3 to 4 hours or more - physiological impossibility.
- Unintentional alcohol (e.g. from Nyquil, Vicks Formula 44, lip balms, toothache drops).
- Something in mouth containing alcohol (e.g. Breath Drops with SD alcohol).
- Something in your mouth that contains or stores small quantities of alcohol, food, bread, chewing tobacco;
- Something in mouth that contains interfering or contaminating substance (e.g. "Skoal," snuff – "Wintergreen;" "Altoids").
- Improper or out of agreement tests, without follow-up tests to correct [both results must be within 0.02% of each other].
- Officer refuses to permit your request for a second, independent test;
- Denial of blood test;
- Officer not trained or marginally trained in accordance with the standards of Title 17 of the California Code of Regulations (e.g. not trained in theory of operation of machine).
- Officer fails to follow manual or training protocol.
- Inadequate inspections by machine inspectors (e.g. no linearity proven).
- Police report supports sobriety, or lack of investigation of alternative causes.
- Rising blood alcohol level showing time of driving BAC would have been lower than time of testing.
- Elevated breath temperature (e.g. caused by fever, hot tub, sauna, detention in hot sun or back of patrol car in summer, dancing, menstrual cycle, etc.)
- Built in margin of error based on presumptions regarding breath temperature;
- Cumulative Margin of error related to regulatory testing procedures;
- Breath/blood ratio (2100:1) not proven to be your ratio; show how minor error gets multiplied 2100 times;  $0.12 = 17/10,000,000$ th of an ounce. Show you have abnormally low blood/breath conversion ratio through testing and expert.
- Difficulty blowing into the machine;
- Officer requiring you to blow into the machine with strain causing false high reading;
- You have blowing pattern irregularity (e.g. blubbering and crying causing artificially high water vapor problem).
- You have been on strict high protein diet and then introduce carbohydrates, thereby triggering auto-generated alcohol production when ketones are converted to isopropyl alcohol (or the "auto-brewery" syndrome).
- You have diabetes, are borderline diabetic or are hypoglycemic and consume alcohol in any amount, causing conversion of high acetone levels into isopropyl alcohol.
- Breath test operator gets first BAC results, which will not support a .08% per se case, then waits a few more minutes and retests, obtaining a reading above the per se limit.

- Officer gives chemical test admonition, but then goes too far by threatening dire warnings for which there is no factual basis or misstates consequences regarding possible license suspension.
- Testing occurred more than 3 hours after driving;
- Consumption of alcohol after driving;

## **DUI Chemical Tests – The Timing of the Test:**

### **How the timing of the DUI chemical test may influence your case.**

In each DUI case a series of events will occur, from the time you are initially contacted, until the time you are eventually arrested and then processed through the system. The timing and order of these events will naturally depend upon the individual circumstances and facts surrounding your case.

Some DUI investigations are temporally short (taking just minutes), while others could take hours.

**Several factors could prolong your DUI investigation.** Such factors include:

- If you are involved in an accident, an accident investigation will slow things down, especially if there are other vehicles or people involved.
- If you submit to physical sobriety exercises, these will take anywhere from about 5 minutes to upwards of 30 minutes.
- If the officer that stopped you waits for other officers to arrive as backup or to assist.

The longer your investigation takes, the more time there will be between your driving and the chemical test of your blood, breath, or urine.

**“Does is really matter when you take the DUI chemical test?”** The answer is yes. It does matter and can have a significant impact on the result of the alcohol test, and therefore your case.

Without getting into the detailed science of how our bodies digest and break down alcohol, let's start with the basic truism that each person feels affects of alcohol differently and at different times. Each absorbs and eliminates alcohol at a unique rate.

The amount and type of alcohol you consumed, whether and when you last had a meal, what medications you are taking, your height, weight, age, gender, health history, etc. are all relevant factors. Many people mistakenly believe they will pass a breath test if a few hours have passed since their last drink. This may or may not be the case, depending on where you are in the alcohol curve. It takes some people up to four hours to fully absorb their alcohol before they even start exclusively eliminating alcohol from their system.

**“Why does timing of the chemical test matter from a legal standpoint?”** In the past, prosecutors were required to prove beyond a reasonable doubt that your blood alcohol content (BAC) was above the legal limit, and that it was so *at the time you were driving*. One way to prove BAC is to use the results of your breath, blood, and/or urine sample. But because these samples are always collected at some point *after* you have already been pulled over (sometimes hours later), all they really show is what your BAC level was at the time you took the test, not when you were actually driving. Thus prosecutors had to prove their case with complex math - using your chemical test result and "retrograde extrapolation," a term that really just means estimating backwards to determine BAC at time of driving. Though in most states the prosecution is no longer required to prove retrograde extrapolation, some states will allow defense attorneys to refer to it to help prove your innocence. The best DUI lawyers use mathematics and scientific principles to attack the validity, accuracy and admissibility of your result.

While each state is different, today every state does still require its prosecutors to meet a minimum level of criteria for the admissibility of chemical tests, including strict adherence to any time constraints. Some states require a set maximum time in which a chemical test can be offered to you, such as within two or three hours of your stop. Others states determine admissibility on a case by case basis depending on the circumstances and the reasonableness of the testing. The longer it is between stop and test, the more unreasonable and unreliable the results will be. Be sure to check your local laws to determine your jurisdiction's time limit. Failure of the police to follow the time procedures may be challengeable in court. Note, however, that even if your test was given outside the allotted time period, it does not necessarily mean your result will be not be admitted into evidence against you. Contact an experienced DUI attorney in your state for more information.

## **Special DUI Breath Test Timing Issues**

### **Observation or deprivation periods in DUI Breath test cases.**

Not only are there time limits on when a chemical test may be administered after your stop, but there are also limits on how the test is to be conducted. If you submitted to a breath test, then more than likely you were taken into a special room where the breath machine (called the "intoxilizer," "datamaster" "breathalyzer") is located. What you probably did not notice, however, is that prior to taking the test, while or before you are taken into the room, a certain amount of time passed. This is because the police are required to observe you for a certain period of time (typically 15 to 20 minutes, depending on the state) before collecting your breath sample. At least one officer must be watching you at all times for the entire duration of the observation period.

The observation or deprivation period is required to ensure that vomiting, smoking, and consumption of food or beverage did not occur prior to testing. Such consumption could skew your results. During this time you should not have been allowed to put anything in your mouth, including gum, candy, or other foreign objects. The time the observation began will be noted

(typically on your breath card or in the police report). Double-check the times on your reports, and be sure to point out any discrepancies or unusual circumstances that may have occurred to your DUI attorney.

In addition to the observation period, some states have limits on the duration of the test itself. Remember that prosecutors have the burden of proving you were DUI, and do so using your chemical test results. For a chemical test to be admissible, it must be shown to be somewhat reliable. Depending on where you are, you may have been asked to blow into the breath machine more than once. States that admit more than one sample require that the results of each sample be within a certain time or each other, and for the results to agree within a certain percentage or decimal range of each other. The validity and reliability of your results can then be bolstered or negated by comparing the two breathalyzer results.

Failure of the breath test operator to follow the time limits may help your DUI defense. Again, however, please note that such an error will not necessarily render your results inadmissible against you. As some states only require one sample, be sure to check the local laws of your jurisdiction and consult an experienced attorney for more information.

## **Minors with DUI Suspensions:**

### **The “Critical Need” Restricted Drivers License.**

If you are under age 21 and lost your license due to a first DUI or zero tolerance case, then you may wish to consider applying for a critical need license to drive in Sonoma County if you believe you can adequately show the Sacramento DMV that public transportation in your area of Sonoma County is not sufficient to accomplish your transport to and from work or school or you are the primary means of transporting a family member to medical appointments.

It is often extremely helpful to ask a local Sonoma County lawyer to provide and review this application so that eligible minors may minimize the possibility of denial of application. A Santa Rosa lawyer will be sure that the entire application is completed, including all required signatures from parents, school officials, employers and/or doctors.

DUI Attorneys review applications to ensure there is adequate supporting information which we know the DMV Sacramento office looks for, such as bus schedules, supplemental explanations, and additional documentation of any kind which may support the application.

### **Improve Your Chances of Being Approved**

Make no mistake: the DMV only grants under-21 restricted licenses for truly critical needs. So getting a job and/or enrolling in school typically increases chances of getting this limited license. The number and severity of Sonoma County transportation hardships involving conflicts between school and employment increase the chances of being approved, particularly when coupled with inadequate or completely impractical family/public transportation alternatives.

Click here to browse local college classes at [Sonoma State University](#), and [Santa Rosa Junior College](#), and [Empire College](#), and click here for comprehensive list of available [California Apprenticeship Programs](#), including contact information. Some Apprenticeship Programs are available in Santa Rosa and surrounding Napa and Sonoma counties, such as cement masons, electricians, operating engineers, plumbers & refer mechanics, and sound & communication; click here for the [Building Trades Apprenticeship Website](#), or here for the [California Tooling and Machining Apprenticeship Association](#). Another viable option may be Santa Rosa's [Redwood Empire Beauty College](#), or click here for information on the [Culinary Institute of America](#) St. Helena campus.

Sonoma County transit is adequate in many areas so click here for [Sonoma County Transit Schedules](#) to determine if alternatives exist. If not, then it may be advisable to print out nearby routes and schedules to attach to the application so that the DMV can readily see the lack of alternatives in a given situation.

### **Application Form**

The critical need application can be filled out online, and printed, to complete with supporting materials, and sent to a Santa Rosa lawyer for comments, reprinted if necessary, and obtain signatures and mail to Sacramento with additional documentation.

The form usually takes at least two weeks for you to prepare and complete, plus attorney review time, and at least a week or two for the Sacramento DMV to consider, so it is important to start this process as soon after determining the one-year DMV suspension is likely. Even if the application is approved, one must still suffer the mandatory first 30 days suspension, so this would be the best time to complete the application process. Click here for the under age 21 form: [Application for Critical Need License](#).

### **More Tips for a Successful Application**

*Understand the application before starting.* Study the application carefully to understand how it is laid out and what is expected in each Section. Complete it fully or else you risk delay when the DMV returns it for incompleteness. Sonoma County lawyers typically advise clients that certain sections on page one must be fully completed, including all boxes, dollar and hours blanks, etc. We often advise to use extra paper to fully explain answers if needed, rather than providing short, half-hearted explanations.

*Write it to impress those who will read it.* Santa Rosa lawyers often advise to be mindful of who will read the submitted application and thus be mindful of the eligibility requirements at all times. This is not an application to avoid substantial, or perhaps even severe, inconvenience to the applicant and/or family in Sonoma County, but rather a sworn statement under penalty of perjury that the applicant has a truly critical need to drive for which the applicant's family depends upon the applicant financially or medically, or for which the applicant depends to attend school in Santa Rosa, Sonoma County or elsewhere.

Inadequate public transportation and inadequate alternate family transportation are a required part of each area of need for which one may qualify. Therefore it is very, very important to be sure to fully address this fundamental requirement. Review the Tips above under "Improve The Chances."

If an applicant lives by him/herself in Santa Rosa, Sonoma County, or elsewhere, and his/her income is essential to support him/herself (rent, food, energy and phone bill, repairs, etc) then typically the DMV will treat the applicant as his/her own family unit to qualify on page one of the application. The financial information in such cases would be the applicant's rather than the parent(s).

*The license is not for driving during work.* Note that the DMV typically does not allow this type of restricted license for driving during the course of employment, just to and from employment. Therefore it is likely that the DMV will automatically reject an application which includes an assertion that driving is required during a job.

*Be sure to get all required signatures.* The application indicates a place where the applicant and parent must sign at the end of Section I (on page two just above Section II) and either physician, principal and/or employer must complete their applicable Section(s) on page 2 and then sign in Section V. Missing signatures are likely to result in delay due to a returned application and further effort on the part of the Sonoma County applicant.

*Consult with a lawyer first about your individual circumstances.* These Tips are almost always given to clients, but they are not legal advice because they are necessarily generalized for this discussion. Your individual circumstances may vary and actual legal advice which is tailored to your specific life situation may be different for you. Therefore it is always best to hire a Santa Rosa DUI lawyer for a reasonable fee, such as Jake, to review your entire situation and give you the best advice to confirm your eligibility and maximize your chances of obtaining driving privileges from the DMV during a suspension due to a pending or recent Sonoma County DUI.

## **COMMERCIAL DRIVER'S LICENSE:**

### **How a DUI Affects Your Commercial Drivers License.**

If you have been arrested for a DUI and hold a Commercial Driver's License you need to act immediately and retain counsel to assist you with your DUI. The penalties to a commercial driver's license holder are severe.

According to the provisions of the [Federal Motor Carrier Safety Administration](#) a commercial driver's license will be disqualified for one year if:

- 1) the driver's license is suspended in an administrative hearing;
- 2) the driver refuses to take a breath alcohol test or a blood alcohol test;
- 3) the driver is convicted of a DUI. This is true even if the Commercial Driver is driving his/her family vehicle for personal matters totally unrelated to any commercial enterprise.

**YOU DO NOT HAVE TO BE DRIVING A COMMERCIAL VEHICLE** to become disqualified.

If you have a prior offense and have a subsequent refusal (either suspension or conviction), you will become disallowed the privilege of holding a Commercial Driver's License *for life*.

A highly trained and qualified DUI attorney can assist you in taking the necessary steps in an attempt to avoid disqualification to your Commercial Driver's License. You will need to call immediately, upon arrest or citation for any alleged DUI.

If your license was previously disqualified under FMCSA § 383.51, there is a provision for becoming eligible after serving 10 years of the lifetime disqualification and voluntarily entering and completing state authorized rehabilitation. Federal and state regulations are complex, and you need a qualified attorney who will fight for your reinstatement.

If a driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CDL holder must be disqualified from operating a CMV for:	For a first conviction or refusal to be tested while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for:	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F), a person required to have a CDL and CDL holder must be disqualified from operating a CMV for:	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for:	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for:
(1) Being under the influence of alcohol as prescribed by State law.	1 year	1 year	3 years	Life	Life
(2) Being under the influence of a controlled substance.	1 year	1 year	3 years	Life	Life
(3) Having an alcohol concentration of 0.04 or greater while operating a CMV	1 year	Not applicable	3 years	Life	Not applicable
(4) Refusing to take an alcohol test as required by a State or jurisdiction under its implied consent laws or	1 year	1 year	3 years	Life	Life

regulations as defined in §383.72 of this part.					
(5) Leaving the scene of an accident.	1 year	1 year	3 years	Life	Life
(6) Using the vehicle to commit a felony other than a felony described in paragraph (b)(9) of this table.	1 year	1 year	3 years	Life	Life
(7) Driving a CMV when, as a result of prior violations committed operating a CMV, the driver's CDL is revoked, suspended, or canceled, or the driver is disqualified from operating a CMV.	1 year	Not applicable	3 years	Life	Not applicable
(8) Causing a fatality through the negligent operation of a CMV, including but not limited to the crimes of motor vehicle manslaughter, homicide by motor vehicle and negligent homicide.	1 year	Not applicable	3 years	Life	Not applicable
(9) Using the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance.	Life – not eligible for 10-year reinstatement.				

(b) Disqualification for major offenses. Table 1 to §383.51 contains a list of the offenses and periods for which a driver must be disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

**CUSTODY and It's ALTERNATIVES:**

**Custody:**

**County Jail:**

**City Jail:** Also known as “private jail” or “weekend jail.” Many local police departments operate a City Jail program. Participants check themselves in to the police station, and usually spend the night there, to be released sometime the following day.

**Alternatives to Custody – “Jail Alternatives”**

Even in the case of a conviction, it is possible for a knowledgeable and experienced DUI attorney to obtain alternatives to jail for their clients. Alternatives to jail include Electronic Monitoring, Work Release or Work Furlough, Alcohol or Drug Rehabilitation, or Sober Living, Sheriff's Work



Alternative, and other potential solutions. Each of these options should be fully explored, and the solution be tailored to your individual circumstances as much as possible. Each county has different rules regarding alternative sentencing. Some counties cooperate with other counties for out of county defendants and some counties will not cooperate. Some counties require some mandatory jail time, particularly on multiple offenses.

**Electronic Monitoring:** This is also known as “House Arrest,” and involves wearing an ankle bracelet that electronically monitors the whereabouts of the wearer. Usually, arrangements can be made for the wearer to go to work or school, so long as they are home by an appointed time.

**Work Release/Work Alternative:** This involves working at a site determined by the Probation Department. The participant works there during the day, and gets to go home at night to sleep.

**Work Furlough:** This option allows the participant to keep their own job; however, they return to a dormitory-style facility to sleep at night. They are released to go to work during the day.

**Alcohol or Drug Rehabilitation:** Sometimes a DUI or drug-related arrest is merely the unfortunate symptom of an underlying addiction issue. While this is certainly not the case in every instance, some people who are arrested for these types of cases can best address this as an alternative to jail. An experienced and skilled DUI defense attorney will know how to obtain this type of relief for their clients, and prevail upon a judge to allow this as an alternative to custody and fines.

**Sober Living:** For those that are multiple offenders, or have a drug or alcohol problem that has not responded to past attempts at treatment, sober living is sometimes the best alternative. These are houses, both for men and women, where all of the residents are sober. The structure of each house will vary, but residents are usually required to attend a 12-Step meeting daily, participate in house groups and functions, and perform a household chore. In addition to allowing the participant to avoid a lengthy jail stay, sober living environments have helped many improve the quality of their lives.

Other alternatives may be available and should be explored in each case.

## **DUI PENALTIES:**

### **FIRST OFFENSE:**

#### California DUI Penalties:

> First DUI Offense |

<b>Administrative Per Se License Suspensions</b>		
<b>First Offense</b>	.08 or greater	4 month suspension
	Refusal	1 year suspension
<b>Second Offense within 10 years</b>	.08 or greater	1 year suspension
	Refusal	2 year revocation
<b>Third Offense within 10 years</b>	.08 or greater	3 year revocation
	Refusal	3 year revocation
<b>Fourth Offense within 10 years</b>	.08 or greater	4 year revocation
	Refusal	4 year revocation

## FIRST DUI OFFENSE VEHICLE CODE § 23152

### VC § 23536 WITHOUT PROBATION

**Jail:** 96 hours to 6 months (48 hours are continuous unless it interferes with work)

**Fine:** \$390 to \$1,000 plus assessment.

**Treatment:** None required; however, DMV will not reinstate license until proof of completion of a treatment program is received at its headquarters. VC§ 13352(a)(1).

**License:** DMV will impose a 6-month suspension. CVC § 13352(a)(1). Defendant must surrender license to court.

**NOTE:** The defendant may seek a restricted license from the DMV if certain requirements are met, including submitting proof of enrollment or completion of a treatment program, proof of financial responsibility, and payment of specified fees. VC §13352.4. However, if the court determines that the person would present a traffic safety or public safety risk if authorized to drive during the suspension period, the court may disallow the issuance of a restricted license. VC 23536(d).

### VC § 23538 WITH PROBATION - (See also, VC § 23600)

**Jail:** May impose 48 hours to 6 months. VC § 23538(a)(1).

**Fine:** \$390 to \$1,000 plus assessment.

**Treatment:** Completion of a 3-month treatment program. However, if the defendant has a blood-alcohol content of .20 percent or more, or refused a chemical test at arrest, a 9-month treatment program is required. The court must advise the defendant that the driving privilege will not be restored until proof of successful completion of a program is received at the DMV's headquarters. . VC § 23538(b)(2).

**License:** DMV will impose a 6-month suspension. VC § 13352(a)(1). Defendant must surrender license to court.

**NOTE:** The defendant may seek a restricted license from the DMV if he submits proof of enrollment or completion of a treatment program, proof of financial responsibility, and payment of specified fees. VC §13352.4. However, if the court determines that the person would present a traffic safety or public safety risk if authorized to drive during the suspension period, the court may disallow the issuance of a restricted license, VC § 23538(a)(3).

VC § 23578: In addition to any other provision of this code, if a person is convicted of a violation of Section 23152 or 23153, the court shall consider a concentration of alcohol in the person's blood of 0.15 percent or more, by weight, or the refusal of the person to take a chemical test, as a special factor that may justify enhancing the penalties in sentencing, in determining whether to grant probation, and, if probation is granted, in determining additional or enhanced terms and conditions of probation.

### Miscellaneous Penalties

**Restitution:** Restitution fine of \$100 - \$1,000 and restitution to victim(s) or Restitution Fund. PC § 1202.4.

**Impound:** May order vehicle impounded for up to 30 days. (Defendant must be the registered owner of the vehicle used in the offense.) VC § 23594.

**Ignition Lock Device:** May require that the defendant install an ignition interlock device for a period not to exceed 3 years. The court must give heightened consideration to an IID order if the defendant's BAC was .20 % or more, if the defendant refused a chemical test at arrest, or if he or she has two or more prior moving traffic violations. VC § 23575.

### Enhancements

**Refusal:** 48 hours in county jail is mandatory, if probation is imposed. VC §23577. In addition, the DMV will prohibit a driver of a commercial vehicle from operating a commercial vehicle for one year upon a first refusal, or ever again for a second or subsequent refusal. VC § 15300(a)(9), 15302(1).

**Commercial Vehicle:** The DMV will prohibit a driver of a commercial vehicle from operating a commercial vehicle for one year. VC § 15300(a)(1) and (2).

**Defendant (13-21 yrs):** The court shall order an additional 1-year suspension or delay in issuance of license. Exception based on critical need to drive. VC §13202.5.

**Defendant (under 18 yrs):** DMV shall revoke license (a) until person turns 18, (b) for one year, or (c) for the duration of any restriction, suspension, or revocation as specified in VC § 13352(a), whichever is longer. VC § 13352.3.

**Minor Passenger:** 48 continuous hours in county jail, whether or not probation is imposed. VC § 23572.

**Excessive Speed:** Additional and consecutive 60 days in jail if defendant's speed exceeds the posted speed limit by 30 or more miles per hour on a freeway, or 20 or more miles per hour on any other street or highway and the driving is reckless under VC § 23103. Treatment program is required if probation is not granted. VC § 23582.

**Prior Felony Conviction(s):** Driver's license will be revoked by the DMV for four years pursuant to VC § 23550,5 if any prior felony convictions are for a violation of VC §23152, 23153 or PC § 191.5 or 192(c)(1) or (3) within 10 years.

#### Prior DUI Conviction

**More than 10 Years Ago, or PC § 647(t) Conviction** Defendant must be ordered into an alcohol or drug problem assessment program. If the program assessment recommends additional treatment, the court may order 18-month or 30-month program. VC § 23646(b)(3).

#### FIRST DUI OFFENSE WITH INJURIES IN 10 YEARS VEHICLE CODE § 23153

#### VC § 23554 WITHOUT PROBATION

**Felony:** 16 months or 2 or 3 years in state prison. PC§ 18.

**Misdemeanor:** 90 days to 1 year in county jail.

**Fine:** \$390 to \$1,000 plus assessment.

**Treatment:** None required; however, DMV will not reinstate license until proof of completion of a treatment program is received at its headquarters. VC § 13352(a)(3).

**License:** DMV will impose a 1-year suspension. VC § 13352(a)(2).  
Defendant must surrender license to court.

#### VC § 23556 WITH PROBATION (See also, VC § 23600)

**Jail:** 5 days to 1 year.

**Fine:** \$390 to \$1,000 plus assessment.

**Treatment:** Completion of a 3-month treatment program. However, if the defendant has a blood-alcohol content of .20 percent or more, or refused a chemical test at arrest, a 9-month treatment program is required. The court must advise the defendant that the driving privilege will not be restored until proof of successful completion of a program is received at the DMV's headquarters.

**License:** DMV will impose a 1-year suspension. VC § 13352(a)(2).  
Defendant must surrender license to court.

**NOTE:** VC §23578: In addition to any other provision of this code, if a person is convicted of a violation of Section 23152 or 23153, the court shall consider a concentration of alcohol in the person's blood of 0.15 percent or more, by weight, or the refusal of the person to take a chemical test, as a special factor that may justify enhancing the penalties in sentencing, in determining whether to grant probation, and, if probation is granted, in determining additional or enhanced terms and conditions of probation.

#### Miscellaneous Penalties

**Restitution:** Restitution fine of \$100 to \$1,000 for misdemeanors; \$200 to \$10,000 for felonies; and restitution to victim(s) or Restitution Fund. PC § 1202.4.

**Impound:** Must order the vehicle impounded for up to 30 days if the offense occurred within 5 years of a prior Dill conviction, unless "interests of justice" exception is found. (Defendant must be the registered owner of the vehicle used in the offense.) VC § 23594.

**Ignition Lock Device:** May require that the defendant install an ignition interlock device for a period not to exceed 3 years. The court must give heightened consideration to an IID order if the defendant's BAC was .20 % or more, if the defendant refused a chemical test at arrest, or if he or she has two or more prior moving traffic violations. VC § 23575.

## Enhancements

**Refusal:** 48 continuous hours in county jail, whether or not probation is granted. VC § 23577. In addition, the DMV will prohibit a driver of a commercial vehicle from operating a commercial vehicle for one year upon a first refusal, or ever again for a second or subsequent refusal. VC § 15300(a)(9), 15302(i).

**Commercial Vehicle:** The DMV will prohibit a driver of a commercial vehicle from operating a commercial vehicle for one year if convicted of a first DUI violation. VC § 15300(a)(3) & (4).

**Multiple Victims:** On felony conviction, 1 year in state prison per additional victim, 3-year maximum.  
Victim = bodily injury or death. VC § 23558 or PC § 12022.7 GBI allegation

**Defendant (13-21 yrs):** The court shall order an additional 1-year suspension or delay in issuance of license. Exception based on critical need to drive. VC §13202.5.

**Defendant (under 18 yrs):** DMV shall revoke license (a) until person turns 18, (b) for one year, or (c) for the duration of any restriction, suspension, or revocation as specified in VC § 13352(a), whichever is longer. VC § 13352.3.

**Excessive Speed:** Additional and consecutive 60 days in jail if defendant's speed exceeds the posted speed limit by 30 or more miles per hour on a freeway, or 20 or more miles per hour on any other street or highway and the driving is reckless under VC § 23103. Treatment program is required if probation is not granted. VC § 23582.

**Prior Felony Conviction(s):** Driver's license will be revoked by the DMV for four years pursuant to VC § 23550,5 if any prior felony convictions are for a violation of VC §23152, 23153 or PC § 191.5 or 192(c)(1) or (3) within 10 years.

## Prior DILL Conviction

**More than 10 Years Ago, or PC § 647(f) Conviction** Defendant must be ordered into an alcohol or drug problem assessment program. If the program assessment recommends additional treatment, the court may order an 18-month or 30-month program. VC § 23646(b)(3).

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## Ignition Interlock Device (IID)

The court has discretion in whether to attach an ignition interlock device to the defendant's car. The legislature highly encourages, but does not require, the court to do so in cases where the driver's blood alcohol content was over .20. Courts may order that this system be attached for up to three years from date of conviction. The California Department of Motor Vehicles is now requiring an IID be installed in any car being driven by individuals who have prior convictions within 10 years of the current plea / conviction.

### SECOND OFFENSE:

#### SECOND DUI OFFENSE IN 10 YEARS VEHICLE CODE § 23152

##### VC § 23540 WITHOUT PROBATION

**Jail:** 90 days to 1 year.

**Fine:** \$390 to \$1,000 plus assessment.

**Treatment:** None required; however, DMV will not reinstate license until proof of completion of a treatment program is received at its headquarters. VC § 13352(a)(3).

**License:** DMV will impose a 2-year suspension. VC § 13352(a)(3).  
Defendant must surrender license to court.

**NOTE:** The defendant may seek a restricted license from the DMV if certain requirements are met, including completion of at least 12 months of the suspension period, submitting proof of enrollment or completion of a treatment program, proof of financial responsibility, and payment of specified fees. VC § 13352.5. However, if the court determines that the person would present a traffic safety or public safety risk if authorized to drive during the suspension period, the court may disallow the issuance of a restricted license. VC § 23540(b).

VC §23578; In addition to any other provision of this code, if a person is



convicted of a violation of Section 23152 or 23153, the court shall consider a concentration of alcohol in the person's blood of 0.15 percent or more, by weight, or the refusal of the person to take a chemical test, as a special factor that may justify enhancing the penalties in sentencing, in determining whether to grant probation, and, if probation is granted, in determining additional or enhanced terms and conditions of probation.

#### VC § 23540 WITH PROBATION (See also, VC § 23600)

**Jail:** 10 days to 1 year, or 96 hours to 1 year (96-hour term must be served in two continuous 48-hour periods; 96 hours required if refusal to submit to test VC § 23577).

**Fine:** \$390 to \$1,000 plus assessment.

**Treatment:** Completion of an 18 (or 30) month treatment program. The court must advise the defendant that the driving privilege will not be restored until proof of successful completion of a program is received at the DMV's headquarters.

**License:** DMV will impose a 2-year suspension. VC § 13352(a)(3).  
Defendant must surrender license to court.

**NOTE:** The defendant may seek a restricted license from the DMV if certain requirements are met, including completion of at least 12 months of the SB 38 Program, proof of financial responsibility, and payment of specified fees. VC § 13352.5. However, if the court determines that the person would present a traffic safety or public safety risk if authorized to drive during the suspension period, the court may disallow the issuance of a restricted license. VC § 23540(b).

#### Miscellaneous Penalties

**Restitution:** Restitution fine of \$100 - \$1,000 and restitution to victim(s) or Restitution Fund. PC § 1202.4.

**Impound:** Must order the vehicle impounded for up to 30 days if the offense occurred within 5 years of a prior Dill conviction, unless "interests of justice" exception is found. (Defendant must be the registered owner of the vehicle used in the offense.) VC § 23594.

**Ignition Lock Device:** May order installation of an ignition interlock device as a condition of probation. VC § 23575(1). (Note - DMV will notify the defendant of the possibility of requesting an IID to get a restricted license after 12 months of the suspension period. See VC § 13352(a)(3).)

## Enhancements

**Refusal:** 96 hours in county jail, whether or not probation is imposed. VC §23577. In addition, the DMV will prohibit a driver of a commercial vehicle from operating a commercial vehicle for one year upon a first refusal, or ever again for a second or subsequent refusal. VC § §15300(a)(9), 15302(i).

**Commercial Vehicle:** The DMV will prohibit a driver of a commercial vehicle from operating a commercial vehicle ever again if he or she is convicted of a second or subsequent DUI violation. VC § 15302(a) and (b).

**Defendant (13-21 yrs):** The court shall order an additional 1-year suspension or delay in issuance of license. Exception based on critical need to drive. VC §13202.5.

**Defendant (under 18 yrs):** DMV shall revoke license (a) until person turns 18, (b) for one year, or (c) for the duration of any restriction, suspension, or revocation as specified in VC § 13352(a), whichever is longer. VC § 13352.3.

**Minor Passenger (under 14 yrs):** 10 days in county jail, whether or not probation is imposed. VC §23572.

**Excessive Speed:** Additional and consecutive 60 days in jail if defendant's speed exceeds the posted speed limit by 30 or more miles per hour on a freeway, or 20 or more miles per hour on any other street or highway and the driving is reckless under VC § 23103. Treatment program is required if probation is not granted. VC § 23582.

**Prior Felony Conviction(s):** Driver's license will be revoked by the DMV for four years pursuant to VC § 23550.5 if any prior felony convictions are for a violation of VC §23152, 23153 or PC § 191.5 or 192(c)(1) or (3) within 10 years.

## Prior DUI Conviction

More than 10 Years Ago, or Conviction  
Defendant must be ordered into an alcohol or drug problem assessment program. VC § 23646(b)(3)(A).  
PC § 647(f)

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## SECOND DUI OFFENSE WITH INJURIES IN 10 YEARS VEHICLE CODE § 23153

## VC § 23560 WITHOUT PROBATION

**Felony:** 16 months or 2 or 3 years in state prison. PC§ 18.

**Misdemeanor:** 120 days to 1 year in county jail.

**Fine:** \$390 to \$5,000 plus assessment.

**Treatment:** None required; however, DMV will not reinstate license until proof of completion of a treatment program is received at its headquarters. VC § 13352(a)(3).

**License:** DMV will impose a 3-year suspension. VC § 13352(a)(4).  
Defendant must surrender license to court.

#### VC § 23562 WITH PROBATION (See also, VC § 23600)

##### OPTION A:

**Jail:** A minimum of 120 days.

**Fine:** \$390 to \$5,000 plus assessment.

**Treatment:** None required; however, DMV will not reinstate license until proof of completion of a treatment program is received at its headquarters. VC §13352(a)(4).

**License:** DMV will impose a 3-year revocation. VC § 13352(a)(4).  
Defendant must surrender license to court.

##### OPTION B:

**Jail:** 30 days to 1 year.

**Fine:** \$390 to \$1,000 plus assessment.

**Treatment:** Completion of an 18 (or 30)-month treatment program. The court must advise the defendant that the driving privilege will not be restored until proof of successful completion of a program is received at the DMV's headquarters.

**License:** DMV will impose a 3-year revocation. VC § 13352(a)(4).  
Defendant must surrender license to court.

**NOTE:** VC §23578: In addition to any other provision of this code, if a person is convicted of a violation of Section 23152 or 23153, the court shall consider a concentration of alcohol in the person's blood of 0.15 percent or more, by weight, or the refusal of the person to take a chemical test, as a special factor that may justify enhancing the penalties in sentencing, in determining whether to grant probation, and, if probation is granted, in determining additional or enhanced terms and conditions of probation.

## Miscellaneous Penalties

**Restitution:** Restitution fine of \$100 to \$1,000 for misdemeanors; \$200 to \$10,000 for felonies; and restitution to victim(s) or Restitution Fund. PC § 12024.

**Impound:** Must order the vehicle impounded for up to 30 days if the offense occurred within 5 years of a prior Dill conviction, unless “interests of justice” exception is found. (Defendant must be the registered owner of the vehicle used in the offense.) VC § 23594.

**Ignition Lock Device:** May order installation of an ignition interlock device as a condition of probation. VC § 23575(1). (Note - DMV will notify the defendant of the possibility of requesting an IID to get a restricted license after 18 months of the suspension period. See VC § 13352(a)(3).)

## Enhancements

**Refusal:** 96 hours in county jail, whether or not probation is imposed. VC §23577. In addition, the DMV will prohibit a driver of a commercial vehicle from operating a commercial vehicle for one year upon a first refusal, or ever again for a second or subsequent refusal. VC § §15300(a)(9), 15302(i).

**Commercial Vehicle:** The DMV will prohibit a driver of a commercial vehicle from operating a commercial vehicle ever again if he or she is convicted of a second or subsequent DUI violation. VC § 15302(c) and (d).

**Multiple Victims:** On felony conviction, 1 year in state prison per additional victim, 3- year maximum.  
Victim = bodily injury or death. VC § 23558.

**Defendant (13-21 yrs):** The court shall order an additional 1-year suspension or delay in issuance of license. Exception based on critical need to drive. VC §13202.5.

**Defendant (under 18 yrs):** DMV shall revoke license (a) until person turns 18, (b) for one year, or (c) for the duration of any restriction, suspension, or revocation as specified in VC § 13352(a), whichever is longer. VC § 13352.3.

**Excessive Speed:** Additional and consecutive 60 days in jail if defendant’s speed exceeds the posted speed limit by 30 or more miles per hour on a freeway, or 20 or more miles per hour on any other street or highway and the driving is reckless under VC § 23103. Treatment program is required if probation is not granted. VC § 23582.

**Prior Felony Conviction(s):** Driver’s license will be revoked by the DMV for four years pursuant to VC § 23550,5 if any prior felony convictions are for a violation of VC §23152, 23153 or PC § 191.5 or 192(c)(1) or (3) within 10 years.

### Prior DiLL Conviction

**More than 10 Years Ago, or PC § 647(f) Conviction** Defendant must be ordered into an alcohol or drug problem assessment program. VC § 23646(b)(3)(A).

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## THIRD OFFENSE:

### THIRD DUI OFFENSE IN 10 YEARS VEHICLE CODE § 23152

#### VC § 23546 WITHOUT PROBATION

**Jail:** 120 days to 1 year.

**Fine:** \$390 to \$1,000 plus assessment.

**Treatment:** None required; however, DMV will not reinstate license until proof of completion of a treatment program is received at its headquarters. VC § 13352(a)(5).

**License:** DMV will impose a 3-year revocation. VC § 13352(a)(5).  
Defendant must surrender license to the court.

**NOTE:** VC §23578: In addition to any other provision of this code, if a person is convicted of a violation of Section 23152 or 23153, the court shall consider a concentration of alcohol in the person's blood of 0.15 percent or more, by weight, or the refusal of the person to take a chemical test, as a special factor that may justify enhancing the penalties in sentencing, in determining whether to grant probation, and, if probation is granted, in determining additional or enhanced terms and conditions of probation.

#### VC § 23548 WITH PROBATION (See also, VC § 23600)

**Jail:** 120 days to 1 year.

**Fine:** \$390 to \$1,000 plus assessment.

**Treatment:** Must order completion of an 18-month program if one was not previously completed and if a 30-month program is not ordered. May order a 30-month program, which will result in a 30-day to 1-year jail term instead of the jail term specified above. The court must advise the defendant that the driving privilege will not be restored until proof of successful completion of a program is received at DMV in Sacramento.

**License:** DMV will impose a 3-year revocation. VC § 13352(a)(5).  
Defendant must surrender license to court.

### Miscellaneous Penalties

**Restitution:** Restitution fine of \$100 - \$1,000 and restitution to victim(s) or Restitution Fund. PC § 1202.4.

**Impound:** Must order the vehicle impounded for up to 90 days if offense is within 5 years of 2 or more prior DUI convictions, unless “interest of justice” exception applies. VC §23594. May order forfeiture of vehicle. VC § 23596. (Defendant must be the registered owner of the vehicle used in the offense.)

**Ignition Lock Device:** May order installation of an ignition interlock device as a condition of probation. VC § 23575(1). (Note - DMV will notify the defendant of the possibility of requesting an IID to get a restricted license after 18 months of the suspension period. See VC § 13352(a)(5).)

**Habitual Traffic Offender:** Must designate defendant as an habitual traffic offender for 3 years. VC § 13350(b), 14601.3(e)(3).

### Enhancements

**Refusal:** 10 days in county jail, whether or not probation is imposed. VC §23577, In addition, the DMV will prohibit a driver of a commercial vehicle from operating a commercial vehicle for one year upon a first refusal, or ever again for a second or subsequent refusal. VC§15300(s)(9), 15302(i).

**Commercial Vehicle:** The DMV will prohibit a driver of a commercial vehicle from operating a commercial vehicle ever again if he or she is convicted of a second or subsequent DUI violation. VC § 15302(a) and (b).

**Defendant (13-21 yrs):** The court shall order an additional 1-year suspension or delay in issuance of license. Exception based on critical need to drive. VC §13202.5.

**Defendant (under 18 yrs):** DMV shall revoke license (a) until person turns 18, (b) for one year, or (c) for the duration of any restriction, suspension, or revocation as specified in VC § 13352(a), whichever is longer. VC § 13352.3.

**Minor Passenger (under 14 yrs):** 30 days in county jail, whether or not probation is imposed. VC §23572.

**Excessive Speed:** Additional and consecutive 60 days in jail if defendant’s speed exceeds the posted speed limit by 30 or more miles per hour on a freeway, or 20 or

more miles per hour on any other street or highway and the driving is reckless under VC § 23103. Treatment program is required if probation is not granted. VC § 23582.

**Prior Felony Conviction(s):** Driver's license will be revoked by the DMV for four years pursuant to VC § 23550,5 if any prior felony convictions are for a violation of VC § 23152, 23153 or PC § 191.5 or 192(c)(1) or (3) within 10 years.

#### Prior DUI Conviction

**More than 10 Years Ago, or PC § 647(o) Conviction** Defendant must be ordered into an alcohol or drug problem assessment program. VC § 23646(b)(3)(A).

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### THIRD OR SUBSEQUENT DUI OFFENSE WITH INJURIES IN 10 YEARS VEHICLE CODE § 23153

#### VC § 23556 WITHOUT PROBATION

**Prison:** 2, 3, or 4 years in state prison. An additional and consecutive 3 years in state prison if offense results in a fifth or subsequent VC §§ 23152/23153 conviction and offense caused great bodily injury to another person.

**Fine:** \$1,015 to \$5,000 plus assessment.

**Treatment:** None required; however, DMV will not reinstate license until proof of completion of a treatment program is received at its headquarters. VC § 13352(a)(6).

**License:** DMV will impose a 5-year revocation, VC § 13352(a)(6). Defendant must surrender license to court.

#### VC § 23568 WITH PROBATION (See also, VC § 23600)

**Jail:** A minimum of 1 year in jail (or a minimum of 30 days if a 30-month program ordered). See VC § 23568(a) and (b).

**Fine:** \$390 to \$5,000 plus assessment.

**Treatment:** Completion of an 18-month (or 30-month) program. The court must advise the defendant that the driving privilege will not be restored until proof of successful completion of a program is received at the DMV's headquarters.

**License:** DMV will impose a 5-year revocation. VC § 13352(a)(6). Defendant must surrender license to court.

**NOTE:** VC §23578: In addition to any other provision of this code, if a person is convicted of a violation of Section 23152 or 23153, the court shall consider a concentration of alcohol in the person's blood of 0.15 percent or more, by weight, or the refusal of the person to take a chemical test, as a special factor that may justify enhancing the penalties in sentencing, in determining whether to grant probation, and, if probation is granted, in determining additional or enhanced terms and conditions of probation.

### Miscellaneous Penalties

**Restitution:** Restitution fine of \$200 to \$10,000 and restitution to victim(s) or Restitution Fund. PS § 1202.4.

**Impound:** Must order the vehicle impounded for up to 90 days if offense is within 5 years of 2 or more prior DUI convictions, unless "interest of justice" exception applies. VC §23594. May order forfeiture of vehicle. VC § 23596. (Defendant must be the registered owner of the vehicle used in the offense.)

**Ignition Lock Device:** May order installation of an ignition interlock device as a condition of probation. VC § 23575(1). (CAVEAT - DMV will notify the defendant of the possibility of requesting an IID to get a restricted license after 30 months of the revocation period. See VC § 13352(a)(6).)

**Habitual Traffic Offender:** Must designate defendant as an habitual traffic offender for 3 years. VC § 13350(b), 14601.3(e)(3).

### Enhancements

**Refusal:** None specified. VC § 23577, However, the DMV will prohibit a driver of a commercial vehicle from operating a commercial vehicle for one year upon a first refusal, or ever again for a second or subsequent refusal, VC § § 15300(a)(9), 15302(i).

**Commercial Vehicle:** The DMV will prohibit a driver of a commercial vehicle from operating a commercial vehicle ever again if he or she is convicted of a second or subsequent Dill violation. VC § 15302(c) and (d).

**Multiple Victims:** On felony conviction, 1 year in state prison per additional victim; 3-year maximum.  
Victim = bodily injury or death. VC § 23558.

**Defendant (13-21 yrs):** The court shall order an additional 1-year suspension or delay in issuance of license. Exception based on critical need to drive. VC §13202.5.



**Defendant (under 18 yrs):** DMV shall revoke license (a) until person turns 18, (b) for one year, or (c) for the duration of any restriction, suspension, or revocation as specified in VC § 13352(a), whichever is longer. VC § 13352.3.

**Minor Passenger (under 14 yrs):** 30 days in county jail, whether or not probation is imposed. VC §23572.

**Excessive Speed:** Additional and consecutive 60 days in jail if defendant's speed exceeds the posted speed limit by 30 or more miles per hour on a freeway, or 20 or more miles per hour on any other street or highway and the driving is reckless under VC § 23103. Treatment program is required if probation is not granted. VC § 23582.

**Prior Felony Conviction(s):** Driver's license will be revoked by the DMV for four years pursuant to VC § 23550,5 if any prior felony convictions are for a violation of VC §23152, 23153 or PC § 191.5 or 192(c)(1) or (3) within 10 years.

#### Prior DUI Conviction

**More than 10 Years Ago, or PC § 647(f) Conviction** Defendant must be ordered into an alcohol or drug problem assessment program. VC § 23646(b)(3)(A).