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COLORADO LAWS RELATED TO DRUNK DRIVING

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The Colorado State Patrol reports that crashes involving alcohol or drugs result in more than twice the number of injuries and deaths as those without alcohol or drug involvement. The National Highway Traffic Safety Administration reports that approximately one-third of drunk drivers are repeat offenders. In light of such statistics, the Colorado General Assembly has sought to create appropriate penalties for drunk driving as a deterrent to this behavior.

This issue brief discusses the various offenses related to driving under the influence of alcohol or drugs in Colorado and the administrative and criminal penalties associated with those offenses.

Drunk Driving Offenses

Misdemeanor offenses. The two primary drunk driving offenses in Colorado are driving while ability impaired by alcohol or drugs (DWAI) and driving under the influence of alcohol or drugs (DUI). The difference is that a DWAI simply requires that a person be affected to the slightest degree, making him or her less able than usual to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle. For a DUI, a person must be substantially incapable of safely operating a vehicle.

A person with a blood or breath alcohol content (BAC) of 0.08 or more at the time of driving or within two hours of driving may be charged with a

DUI *per se*. Colorado has an expressed consent law, under which any driver must submit to a chemical test if a police officer has reasonable grounds to believe the driver is driving under the influence or with ability impaired. Such expressed consent is a condition of having a Colorado driver's license. As a result, even if the person's ability to drive is not impaired and he or she shows no signs of intoxication, the person may be charged with a DUI *per se* on the basis of a BAC that is above the legal limit.

A habitual user of controlled substances who operates a motor vehicle commits a misdemeanor.

Finally, a driver under the age of 21 with a BAC between 0.02 and 0.05 within two hours of driving (known as underage drinking and driving or UDD) may be charged with a class A traffic infraction.

Felony offenses. Under Colorado law, only the following DUI-related offenses may be charged as felonies:

- aggravated driving with a revoked license while under the influence is a class 6 felony;
- vehicular assault committed while under the influence that is the proximate cause of serious bodily injury to another is a class 4 felony; and
- vehicular homicide committed while under the influence is a class 3 felony.

Drunk Driving Penalties

License revocation. Upon conviction, a DUI offender is required to surrender his or her driver's license to the court, and the Department of Revenue (DOR) subsequently issues one of two types of license revocation.

Under *mandatory revocation*, the DOR is required to revoke the offender's license for nine months for a first offense and the offender's driving privileges cannot be reinstated before the time period has expired. If the offender has past DUI, DWAI, or habitual user offenses, his or her license is revoked for a minimum of two years and may be reissued only upon satisfactory completion of an alcohol and drug education and treatment program certified by the state.

Under *administrative revocation*, the DOR is required to revoke a person's license due to DUI *per se*, but the offender can appeal for restricted driving privileges prior to the end of the revocation period. Revocations for first and subsequent offenses are:

- nine months for a first violation;
- one year for a second violation; and
- two years for a third or subsequent violation.

Restricted license. Upon completion of license revocation periods resulting from a DUI conviction, a driver is required to hold a restricted license for at least one year. Such restrictions may include the requirement to install an approved interlock ignition device, which measures the BAC of the driver before allowing the driver to start the engine. If the BAC reading exceeds a set level, the vehicle will not start.

Criminal penalties. Sentences for drunk driving offenders vary according to past record, BAC, and age. They may include jail time, fines, and public service, or some combination of the three. In some cases, a portion of the mandatory minimum jail sentence may be suspended if the offender agrees to complete an alcohol evaluation and treatment program. Table 1 provides the range of sentences for misdemeanor drunk driving offenses.

Table 1
Criminal Penalties for Drunk Driving in Colorado

Offense	Jail	Fine	Public Service
First DWAI	2 to 180 days	\$200 to \$500	24 to 48 hours
First DUI or habitual user	5 days to 1 year	\$600 to \$1,000	48 to 96 hours
Second DWAI, DUI, or habitual user	10 days to 1 year	\$600 to \$1,500	48 to 120 hours
Third or subsequent DWAI, DUI, or habitual user	60 days to 1 year	\$600 to \$1,500	48 to 120 hours
Underage Drinking and Driving (UDD)	None	\$100	Up to 24 hours

Second or subsequent offenders are required to serve a period of probation of at least two years and a one year suspended sentence of imprisonment in county jail, during which any court-ordered education and treatment programs must be completed.

Penalties for felony drunk driving offenses vary according to the class of felony and the circumstance of the crime, and may range from 1 to 12 years in prison, a fine of \$1,000 to \$750,000, or both. However, it is important to note that not all felony offenders receive a prison sentence.

Surcharges. Persons with DUI convictions are subject to the following surcharges:

- \$20 surcharge deposited to the Traumatic Brain Injury Trust Fund;
- \$50 to \$500 surcharge to support a number of persistent drunk driver programs; and
- relevant surcharges, dependent upon the violation, deposited to the Crime Victim Compensation Fund.