

# LAW SUMMARY

*Office of Legislative Legal Services*



## ***COLORADO DRUNK DRIVING LAWS<sup>1</sup>***

Colorado law prohibits a person from driving a vehicle while under the influence of alcohol or drugs or while the person's ability to drive is impaired by alcohol or drugs.<sup>2</sup> These offenses are often abbreviated as "DUI" and "DWAI", respectively.

Blood tests and breath tests play a prominent role in the enforcement of drunk driving laws, although DUI or DWAI can be proved by other means. If at the time of the commission of an alleged offense, or within a reasonable time thereafter, a defendant's BAC exceeds 0.05 but is less than 0.08, there is a permissible inference that the defendant's ability to operate a vehicle was *impaired* by the consumption of alcohol. If at such time the defendant's BAC is 0.08 or more, there is a permissible inference that the defendant was *under the influence* of alcohol.<sup>3</sup>

Similarly, if at the time of an offense, or within a reasonable time thereafter, a defendant's blood contains 5 nanograms or more of delta-9 THC (the active substance in marijuana) per milliliter in whole blood, there is a permissible inference that the defendant was under the influence of one or more drugs.<sup>4</sup>

A person may be classified as a persistent drunk driver and subject to greater penalties if the

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<sup>1</sup> **This summary contains information commonly requested from the Office of Legislative Legal Services. It does not represent an official legal opinion of the General Assembly or the state of Colorado and does not bind the members of the General Assembly. It is intended to provide a general overview of Colorado law as of the date of its preparation. Any person needing legal advice should consult his or her own lawyer and should not rely on the information in this memorandum.**

<sup>2</sup> "Driving under the influence" means driving a vehicle when a person has consumed alcohol or one or more drugs, or a combination of alcohol and one or more drugs, that affects the person to a degree that he or she is substantially incapable, mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle. Section 42-4-1301(1) (f), C.R.S. "Driving while ability impaired" is similar, except that a person need only be affected to the slightest degree so that he or she is less able to drive than he or she ordinarily would have been. Section 42-4-1301(1) (g), C.R.S.

<sup>3</sup> Section 42-4-1301 (6), C.R.S.

<sup>4</sup> Section 42-4-1301 (6), C.R.S.

test shows a blood alcohol level of at least 0.15.

The law presumes that every driver has consented to take a blood, breath, saliva, or urine test when requested to do so by a law enforcement officer who has probable cause to believe that the person is DUI or DWAI<sup>5</sup>. Refusal to take the test is both admissible in court and a basis for revocation of a driver's license.

There are both criminal penalties (fines, imprisonment, and required public service) and administrative penalties for drunk driving. Courts impose criminal penalties, and the Colorado Department of Revenue (the Department) imposes the administrative penalties. Administrative penalties include the suspension or revocation of a license due to the commission of certain offenses or the accumulation of sufficient points assessed for violations.

Sometimes a driver may reduce his or her criminal penalties through a plea bargain in court or by undergoing alcohol or drug treatment, but he or she must still face administrative penalties enforced by the Department. In most cases, the Department does not have the authority to reduce or bargain away these penalties.

The following tables summarize the administrative and criminal penalties<sup>6</sup> for DUI and DWAI as they appear in sections 42-2-125, 42-2-126, 42-2-127, and 42-4-1307, Colorado Revised Statutes:

<b>ADMINISTRATIVE PENALTIES</b>		
<b>Violation</b>	<b>License Suspension</b>	<b>Points</b>
BAC test of at least 0.08	9 months	
2nd BAC test of at least 0.08	1 year	
3rd or subsequent BAC test of at least 0.08	2 years	
DWAI	None	8 points
1st DUI	9 months	12 points

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<sup>5</sup>Section 42-4-1301.1, C.R.S.

<sup>6</sup>Administrative penalties for the same incident are not consecutive. For example, if a person whose license was suspended for a BAC test of at least 0.08 is subsequently convicted of DUI arising out of the same incident, the person's license is only suspended once.

<b>ADMINISTRATIVE PENALTIES</b>		
2nd DUI or DWAI	12 months	DWAI 8 points DUI 12 points
3rd DUI or DWAI	24 months	DWAI 8 points DUI 12 points
1st Under 21 drinking and driving (BAC of at least 0.02 but less than 0.05)	3 months - 1st offense 6 months - 2nd offense 1 year - 3rd or subsequent offense	4 points

<b>CRIMINAL PENALTIES</b>			
<b>Offense</b>	<b>Jail</b>	<b>Fine</b>	<b>Public Service</b>
1st DWAI	2 days - 180 days	\$200-\$500	24 hrs - 48 hrs
1st DUI	5 days - 1 year	\$600-\$1000	48 hrs - 96 hrs
DWAI or DUI with one previous DWAI or DUI	10 days - 1 year	\$600-\$1500	48 hrs - 120 hrs
DWAI or DUI with two or more previous DWAI or DUI	60 days - 1 year	\$600-\$1500	48 hrs - 120 hrs
1st Under 21 drinking and driving (BAC or at least 0.02 but less than 0.05)	None	\$100	Up to 24 hrs

In some cases, a portion of the minimum mandatory jail sentence can be suspended if the person agrees to undergo an alcohol treatment program.

In addition, persons who violate the state's drunk driving laws may have to pay court costs, penalty surcharges of up to \$500 to help pay for programs to address persistent drunk drivers, surcharges to benefit the crime victim compensation fund, fees to reinstate a driver's license after suspension or revocation, and other fees, charges, and penalties.

Still other consequences may follow. If alcohol or drugs are involved in an accident causing injury or death, the penalties for vehicular assault or vehicular homicide are more stringent.

Persons convicted of a third DUI or DWAI offense within seven years also face a mandatory five-year license revocation under the "habitual traffic offender" statute, section 42-2-202, Colorado Revised Statutes.

This summary does not include all the details contained in state law and regulations. For more information, contact your local Driver's License Office or visit a public library and ask for title 42 of the Colorado Revised Statutes to review sections 42-2-125 to 42-2-208 (administrative point system and revocation procedures), 42-4-1301 (general DUI statute), and 42-4-1307 (penalties for traffic offenses involving alcohol and drugs).

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