

## DRIVING WHILE INTOXICATED/UNDERAGE DRIVING WHILE INTOXICATED

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### THE “IMPLIED CONSENT” LAW

The offense of Driving While Intoxicated is a criminal offense, as it is a violation of the Louisiana Criminal Code (Title 14). This means that all DWI offenders are exposed to the **possibility** of **jail** time if convicted of that offense. DWI is also considered an “enhanceable offense”, which means that, each time the offense is committed, it exposes the offender to increasingly harsher penalties. In the State of Louisiana, “First” and “Second” offense DWI are criminal **misdemeanors**; “Third” and subsequent offenses are **felonies**. DWI offenses are heard in state courts that have **criminal** jurisdiction in the parish where the offender was arrested. Procedures are governed by the Louisiana Code of **Criminal** Procedure.

The “Implied Consent” Law is the law that authorizes law enforcement agencies to administer certain chemical tests to suspected drunk drivers. It also provides **civil** penalties for drivers who either **refuse** such a test or who **submit** to an approved test and obtain a test result above the limit allowed by law. That civil penalty is a **suspension of driving privileges**. The suspension times vary depending on the motorist’s age at time of the offense, type of vehicle being driven, *refusal* or *failure* of the chemical test, type of license held by the motorist, the specific test result, and the number of the offense (1<sup>st</sup> or subsequent offense within 5 years). These suspensions can be challenged via an administrative hearing process, **if** the driver timely exercises his right to request a hearing. Procedures in these hearings are governed by the Louisiana Administrative Procedure Act (Title 49) and rules and regulations promulgated and published in the Louisiana Administrative Code.

Attorney’s fees in these cases can vary, depending on the jurisdiction in which the case is prosecuted, the underlying facts of the case, whether it is a first or subsequent offense, etc. **Remember: Regardless of the fee charged, no reputable attorney should ever guarantee a particular outcome in a DWI case.**

Because the potential penalties can be very onerous, anyone who is subject to the provisions of these laws should act quickly to seek and obtain competent legal counsel, to increase the likelihood of success in the legal proceedings ahead.

### IMPORTANT TIPS FOR ALL MOTORISTS: ON THE STREET

- **Anyone** who operates a motor vehicle is at risk for being charged with a DWI and also risks the suspension of driving privileges under the Implied Consent law.
- Police officers generally need “probable cause” to initiate contact with drivers.
  - That probable cause could be something as innocent as a burned out tail light, or failure to use a turn signal before making a lane change.
  - **However**, Louisiana law also allows law enforcement agencies to set up “roadblocks” to apprehend impaired drivers. In these cases, even if you have committed no underlying

offense, if you are detained in a DWI checkpoint and the officer detects the odor of alcohol on your breath and/or other signs of impairment, you can still be arrested for DWI!

- Whenever you encounter a law enforcement officer, remember that he has the “power of the pen”. Much will be determined by the report he writes of the encounter, so it’s best to conduct yourself with this in mind.
- Remain in your vehicle until the officer instructs you to step out.
- Be courteous.
- Follow the officer’s instructions carefully, to the best of your ability and without complaint, particularly in providing him with your –
  - ✓ Driver’s License
  - ✓ Registration Certificate
  - ✓ Proof of Insurance
- Speak as little as possible – incriminating statements can be used against you both criminally and civilly.
- If you possess a Concealed Handgun permit and are carrying a weapon, be sure to immediately notify the officer of this fact. He is authorized to remove the weapon and secure it, for his safety.
- Remember that everything you say and do during your encounter with the police may be used against you in both criminal and civil proceedings. This includes such things as:
  - ✓ Incriminating statements
  - ✓ Field sobriety test performance
  - ✓ Threatening or hostile statements or actions
  - ✓ Your refusal of the chemical test
  - ✓ Your chemical test result, if you submit to such a test(s)
- In some instances, your encounter with the officer may be recorded via a video camera that is installed in the police unit. These devices also record audio of everything you say, either to the officer or while inside the police unit, even if the officer is out of earshot of your remarks.
- Remember that a police officer can seize any evidence he finds “in plain view” on your person or in your vehicle. This includes such things as:
  - ✓ Open containers of alcohol
  - ✓ Contraband
  - ✓ Weapons
- Generally, the less you say or do while under investigation, the better.

### **IMPORTANT TIPS:AFTER ARREST**

- Once you are released from jail, keep **all documents** provided to you by law enforcement personnel.
- Mark all pending court appearances on a calendar and be sure to promptly attend all assigned court dates.
- Contact an attorney(s) and schedule an appointment to discuss the charges and your legal obligations and options.

- If you surrendered a valid driver's license at the time of arrest, you will be provided with a temporary driving permit. It is valid for **only 30 days** from date of arrest.
- To exercise your right to an administrative hearing, the hearing request **must be postmarked** and properly filed within that 30-day period.
- If the administrative hearing is not timely requested, your driving privileges will be suspended for a minimum period of 90 days up to a maximum period of 4 years!
- It is advisable to have an experienced attorney represent you during this process as well.

### **OTHER ISSUES TO CONSIDER**

The following issues may also apply to your particular case and may either impact the final outcome, add to your expenses, and/or complicate your life down the road:

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| ➤ CDL license?                     | Disqualification Period?     |
| ➤ Out of State License?            | Hardship License?            |
| ➤ Prior Suspensions?               | SR-22 (High-Risk) Insurance? |
| ➤ Accident?                        | Interlock Device?            |
| ➤ Insurance?                       | SCRAM bracelet?              |
| ➤ Child <12 y.o.a. in vehicle?     | "894" eligibility?           |
| ➤ Probationary Requirements?       | Fines & Court Costs?         |
| ➤ Professional Licenses/Reporting? | Employer Notification?       |

Remember that a DWI is not like a "regular" traffic ticket: it is a much more serious offense and can have serious repercussions on your employment as well as your personal and financial life. So it is vitally important that you give such charges the attention they deserve. As a former Administrative Law Judge and Public Defender in Municipal and Traffic Courts, I am well-versed in both the criminal and administrative sides of DWI defense.