

## DWI/BWI IN TEXAS

IF WE CAN ASSIST PLEASE CONTACT OUR OFFICE [817-335-9600](tel:817-335-9600) - [INFO@THEMAYNARDLAWFIRM.COM](mailto:INFO@THEMAYNARDLAWFIRM.COM)

In Texas, there's a difference between a DUI and a DWI. A DUI is reserved for minors under the age of 21 who are under the influence of any alcohol. The Texas DWI is for anyone who drives with a blood alcohol level above the legal limit. After you've been arrested for a Texas DWI, there are some important steps to remembered.

The purpose of laws against driving while intoxicated (DWI) is to discourage people from doing so. The penalties for this offense are severe and could have numerous adverse consequences on the lives of those who are convicted of the crime. A DWI conviction can result in long-term suspensions of your driver's license among other punishments. Despite any statements made to the contrary by the arresting officer or probation officers, not every case is unwinnable. With the laws often changing, it is important to note that this may change various parts of the following basic guidelines. There are no substitutes for detailed discussions with your attorney and their staff.

**If you have any questions, do not hesitate to call today and schedule a free consultation 817-335-9600.**

### **Texas DWI Law & Penalties:**

DWI law in Texas falls under penal code § 49.04. DRIVING WHILE INTOXICATED. A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place. The current legal limit in regards to (BAC) blood alcohol concentration in Texas while driving is 0.08%. Texas is considered a zero tolerance state pertaining to underage drinking; any detectable amount (.02% BAC or greater) of alcohol in drivers under 21 is considered a crime. Statutory punishments for DWI offenses in Texas:

- A. Texas DWI First Offense
  - Class B misdemeanor
  - Jail: 3-180 days
  - Fines: not to exceed \$2000
  - Drivers License Suspension: 90 days up to 1 year
  - Alcohol assessment /evaluation and treatment
- B. Texas DWI Second Offense
  - Class A misdemeanor
  - Jail: 30 days up to 1 year
  - Fines: not to exceed \$4000
  - Drivers License Suspension: 180 days up to 2 years
  - Alcohol assessment /evaluation and treatment
- C. Texas DWI Third Offense Considered a 3rd degree felony

- Jail: 2 to 10 years
- Fines: not to exceed \$10,000
- Drivers License Suspension: 180 days up to 2 years
- Alcohol assessment /evaluation and treatment

In addition to the above Texas DWI offenses there are additional “ ENHANCEMENTS” that can carry increased fines, suspensions, imprisonment, etc.

- A. First Offense Texas DWI With an Open Container
  - All First Offense Texas DWI penalties above
  - In addition to 1st offense penalties: add 6 day jail term and a fine of \$2000
- B. Texas DWI with Serious Bodily Injury due to Intoxication
  - Classified as a form of assault called intoxication assault which is a 3rd degree felony.
  - Jail: 2 to 10 years if convicted
  - Fines: not exceed \$10,000
- C. Texas DWI with a Death Due to Intoxication
  - Classified as manslaughter and called, “intoxication manslaughter” and considered a 2nd degree felony.
  - Fine: not to exceed \$10,000
  - Jail: 2-20 years depending on specifics
- D. Texas DWI with a Child Passenger
  - Child is considered to be any person age 15 years or younger
  - Jail: 180 days up to 2 years
  - Fine: not to exceed \$10,000

**Texas Boating While Intoxicated (BWI):**

A person commits an offense if the person is intoxicated while operating a watercraft which falls under penal code § 49.06 and is classified as a Class B misdemeanor, subject to enhancement of penalties and punishments, as set forth in the penal code.

**DWI or DUI Field Sobriety Tests:**

When you drink alcohol, it can slow down certain processes in your brain, making you lose coordination, balance, and rational thought. This can translate to weaving, running red lights, and other types of unsafe driving. If law enforcement officials spot you driving like this, you can be pulled over and subjected to a field sobriety test.

Frustratingly, these field sobriety tests are subjective, meaning that the police judge your performance and decide if you are above the legal blood alcohol limit. This can lead to DWI or DUI charges even if you do not have a blood alcohol content, or BAC, over the legal limit.

**Types of Field Sobriety Tests:**

There are several different field sobriety tests that are standard for law enforcement

officials. However, there are also some non-standardized tests that officers also use to estimate BAC. Conventional field sobriety tests include:

- A. Walk and turn – take several heel-to-toe steps forward, then turn and walk back the same way, all while counting your steps.
- B. One-legged stand – try to hold your balance while standing on one leg and counting, usually to 30.
- C. Horizontal gaze – also called the nystagmus test, you attempt to follow a moving object back and forth using only your eyes. Because there is no empirical data for these tests, law enforcement officials use their judgment to estimate BAC rather than measuring a person's actual BAC level.

Sometimes, law enforcement officials can make these field sobriety tests unreasonable for citizens. This can inhibit your ability to perform these tests. If you believe that you have been wrongfully charged with a DUI or DWI due to unreasonable field sobriety testing, you should contact a defense attorney.

#### **DWI No Refusal Weekends:**

When a police officer makes a stop for suspected drunk driving, a driver may be asked to submit to a field sobriety test. Many cooperate, unaware that it is within their legal rights to object. However, so-called “no refusal” policies allow the police to force sobriety tests on suspected drunk drivers at certain times. During these “no refusal weekends” a police officer can easily acquire a warrant allowing him or her to blood test a suspected drunk driver for alcohol or other impairing drugs.

If you are facing DWI charges, you will need an attorney committed to protecting your legal rights and interests.

#### **When No Refusal Checkpoints are Scheduled:**

No refusal weekends usually coincide with holidays where people are likely to drink and drive. During these weekends, if a police officer asks you to submit to a test, you can be forced to undergo it. Officers are now equipped with mobile blood sample collection capabilities which they can use to take a blood sample to later test for alcohol.

Officers are legally authorized to pin you down by force to draw your blood if you refuse to submit. Bear in mind, however, that the results of these type of blood tests are sometimes inconclusive or insufficient to convict a person of DUI or DWI. If you have been accused of driving while intoxicated, do not delay seeking legal representation.

#### **Police Station:**

At the police station, while being generally being video, you will be asked to submit to a chemical test to measure your blood alcohol concentration (BAC). In most cases you

will be asked to take a breath test, although in some cases the officer may request a blood test instead. If you refuse to provide a sample, or provide a sample with an alcohol concentration of .08% or greater (if you're 21 or over), the officer will issue you a Notice of Suspension and confiscate your drivers license.

**ADMINISTRATIVE REVOCATION (ALR) Program:**

The Administrative License Revocation (ALR) Program is a civil administrative process unrelated to criminal court proceedings. The ALR Program applies to individuals arrested for Driving While Intoxicated (DWI), Boating While Intoxicated (BWI) or Driving While Under the Influence of a controlled substance (DUI) and refuse to take or fail a blood or breath test.

Individuals who refuse or fail a blood or breath test following an arrest for DWI may have their driver license suspended from 90 days to 2 years. Refusal or failure of this test will also result in an automatic one-year disqualification for individuals with a commercial driver license.

A DWI, BWI or DUI charge can derail everything you have worked so hard to build. If you have been charged, you should talk to a defense lawyer about your legal options.

**ALR Process for DWI, BWI or DUI:**

If a law enforcement officer has reason to believe a driver is impaired, a set of field sobriety tests will be administered. If the driver performs poorly on the field sobriety tests then the driver will be arrested for DWI or BWI.

- A. The driver is asked to take a breath or blood test to measure his/her blood alcohol concentration (BAC) level.
  
- B. The driver is served a notice that his/her driver license will be suspended if he/she refuses to take or fails the field sobriety test. (Registering a 0.08 BAC or greater is considered failing.) The individual then has 15 days from the date the suspension notice is served to request a hearing.  
To Request a ALR Hearing –  
[https://www.txdps.state.tx.us/DriverLicense/customer\\_service/alr.aspx](https://www.txdps.state.tx.us/DriverLicense/customer_service/alr.aspx)
  - 1. If a hearing is not requested, the suspension goes into effect on the 40th day after the notice was served. (This is usually 40 days after the arrest.)
  
  - 2. For various reasons, including delayed or missing paperwork, the 40 days can be retroactive or back-dated from the date of notice.
  
- C. The law enforcement officer will take the individual's driver license and issue a temporary driving permit.

D. A \$125 Reinstatement fee is required prior to the renewal or issuance of a driver license.

**ALR Hearings:**

In certain circumstances, individuals may be eligible to request a hearing for an administrative license revocation (ALR) to contest the suspension of their driver license.

To Request a ALR Hearing –

[https://www.txdps.state.tx.us/DriverLicense/customer\\_service/alr.aspx](https://www.txdps.state.tx.us/DriverLicense/customer_service/alr.aspx)

If the request is submitted within the required 15 days, DPS will send a letter to the individual to the address on record. The letter will provide the date, time and location of the hearing. Please allow up to 120 days for the hearing to be scheduled. Requests made after the required 15 days will be denied and the individual will be notified by mail. Hearings are conducted by the State Office of Administrative Hearings.

**Texas Adult ALR Hearing Procedures:**

During the hearing, the individual is responsible for providing facts to the hearing officer who will determine if the reasons for the suspension are valid.

If you failed the breath or blood test, the Administrative Law Judge (ALJ) must determine whether:

- A. The accused person had an blood alcohol concentration (BAC) of 0.08% or greater while operating a motor vehicle in a public place; and
- B. If there was a reasonable suspicion to stop initially OR if probable cause to arrest the person actually existed.

If you refused to submit to a chemical test, the Administrative Law Judge (ALJ) must determine whether:

- A. Reasonable suspicion or probable cause existed to stop or arrest the person;
- B. Probable cause actually existed to believe that you were operating a motor vehicle in a public place while intoxicated;
- C. You were placed under arrest by the officer and were requested to submit to the taking of a sample; and
- D. You refused to submit to the taking of a sample on request of the officer.

DPS Mailing Address, Fax Number and Phone Number Information:

Required documents can be submitted by mail or fax. Individuals should write their name, date of birth and driver license number on all documents so their record can be properly identified.

Mailing Address:  
Texas Department of Public Safety  
Enforcement and Compliance Service  
P.O. Box 4040  
Austin, TX 78765-4040  
Phone No.: 800-394-9913 (ALR only)  
Fax No.: 512-424-2650

**NOTE:** If you have already been through the administrative hearing process and the decision resulted in the suspension of your driver license, you may be eligible to appeal that decision.

**Appeal an Administrative Hearing Decision:**

If you requested an administrative hearing which resulted in the suspension, disqualification or revocation of your driver license, you may be eligible to appeal that decision. To appeal a judge's decision, you must send a file-stamped copy of your appeal petition to the address below. The petition must be certified by the clerk of the court where the petition was filed.

Mailing Address:  
Texas Department of Public Safety  
Enforcement and Compliance  
P.O.Box 4087  
Austin, Texas 78773-0320

If the appeal request is not received within 30 days from the date of your suspension, disqualification or revocation letter, or if you do not provide the required information, your suspension will not be lifted.

If your appeal is approved, DPS will temporarily lift the enforcement action on your driver license for 90 days beginning on the date we receive the certified file-stamped petition. If the appellate court has not reached a final decision within 90 days, on the 91st day, DPS will reapply the suspension, disqualification or revocation on your driver license. You will not be eligible to drive unless you have an occupational license.

To learn more about obtaining an occupational license or to determine if you are eligible to apply, visit the Occupational License webpage  
<http://www.txdps.state.tx.us/DriverLicense/OccupationalLicense.htm>.

DPS will send you a letter notifying you of the decision and whether the suspension is lifted or not.

**Appellate Court Decision:**

Once the appellate court has reached a decision, you must mail a file-stamped copy of the judgment to DPS at the address above.

If the judges decision is reversed on appeal, the enforcement action will be lifted once DPS verifies the judgment. Your driver record will be updated and your driver eligibility status will change from not eligible to "eligible" on the License Eligibility website <https://txapps.texas.gov/txapp/txdps/dleligibility/login.do>.

If the judge's decision is not reversed, a new letter of suspension, disqualification or revocation will be mailed to you.

### **Periods of Suspension for Adults:**

An individual's driver license will be suspended under the following circumstances.

- A. The individual refused to provide a blood or breath specimen following an arrest for an offense prohibiting the operation of a motor vehicle or watercraft while intoxicated, while under the influence of alcohol, or while under the influence of a controlled substance. In essence if you refuse to submit a sample for blood alcohol content (BAC) testing, you can be considered guilty of violating the Texas implied consent law, which is section 724.011. Generally Officers cannot forcibly extract a sample unless they have acquire a warrant allowing your blood to be drawn and tested or you have caused a serious accident or death, but you can still face repercussions for refusing to give a sample.

These include:

1. 180 day license suspension for first offense.
  2. 2 year license suspension if you have previous DWI convictions.
- B. The individual provided a blood or breath specimen with an alcohol concentration of 0.08 or greater, following an arrest for an offense involving the operation of a motor vehicle or watercraft while intoxicated.
1. 90 day license suspension for first offense.
  2. 1 year license suspension if previously suspended for failing or refusing a blood or breath test OR previously suspended for a DWI, Intoxication Assault, or Intoxication Manslaughter conviction during the 10 years preceding the date of arrest.

### **Periods of Suspension for Minors (Under 21 Years of Age):**

A minor's driver license will be suspended under the following circumstances.

- A. The minor refused to provide a blood or breath specimen following an arrest for an offense prohibiting the operation of a motor vehicle or watercraft while intoxicated, while under the influence of alcohol, or while under the influence of a controlled substance.
1. 180 day license suspension for first offense.
  2. 2 year license suspension if previously suspended for failing or refusing

- a blood or breath test OR previously suspended for a DWI, Intoxication Assault, or Intoxication Manslaughter conviction during the 10 years preceding the date of arrest.
- B. The minor provided a blood or breath specimen or a detectable amount of alcohol was found following an arrest for an offense involving the operation of a motor vehicle while intoxicated.
1. 60 day license suspension for first offense.
  2. 120 days if previously convicted of an offense involving the operation of a motor vehicle while under the influence of alcohol.
  3. 180 days if previously convicted two or more times of an offense involving the operation of a motor vehicle while under the influence of alcohol.
- C. The minor was not requested to provide a blood or breath specimen following the arrest for an offense involving the operation of a motor vehicle because the presence of alcohol was detected or measured by other means.
1. 60 day license suspension for first offense.
  2. 120 days if previously convicted of an offense involving the operation of a motor vehicle while under the influence of alcohol.
  3. 180 days if previously convicted two or more times of an offense involving the operation of a motor vehicle while under the influence of alcohol.

**Periods of Disqualification for a Commercial Driver License (CDL):**

- A. A CDL will be disqualified for 1 year under the following circumstances.
1. The individual refused to provide a blood or breath specimen to determine the concentration of alcohol or the presence of a controlled substance while operating a commercial motor vehicle in a public place; or
  2. While operating a motor vehicle in a public place, the individual provided a blood or breath specimen that showed an alcohol concentration of: 0.04 or more (commercial vehicle only) 0.08 or more (any vehicle) 0.10 or more (any vehicle)
- B. A CDL will be disqualified for 3 years from transporting HAZARDOUS MATERIAL under the following circumstances.
1. The individual refused to provide a blood or breath specimen to determine the concentration of alcohol or the presence of a controlled substance while operating a commercial motor vehicle transporting a hazardous material required to be placarded (displayed).
  2. While transporting hazardous material required to be placarded (displayed), the individual provided a blood or breath specimen that showed an alcohol concentration of: 0.04 or more (commercial

vehicle only) 0.08 or more (any vehicle) 0.10 or more (any vehicle).

**Occupational License:**

Individuals may be eligible to apply for an occupational license while their driver license is suspended or revoked. To learn more about occupational licenses or to determine if you may be eligible to apply, please contact our office 817-335-9600 or visit the Occupational License webpage:  
<http://www.txdps.state.tx.us/DriverLicense/OccupationalLicense.htm>.

**Driver Eligibility Status:**

For individuals who are required to submit compliance documents (i.e. certificate of completion, SR-22, etc.) their driver eligibility status will change from “ineligible” to eligible” on the License Eligibility website once all documents have been processed and fees have been paid.

**Texas DWI or DUI Implied Consent Law:**

Implied consent means that you do not expressly consent to a particular treatment, but the facts and circumstances surrounding your actions, inaction, or silence allow law enforcement officials to take certain steps. In many cases, implied consent is utilized in drunk driving cases, where police subject suspected drunk drivers to sobriety tests.

In Texas, you do not necessarily have to give your express consent to have a field sobriety test or Breathalyzer test. This is because the law essentially regards it as more important to protect people on the road rather than protect your right against self-incrimination. However, you should still be treated with respect since you are innocent until proven guilty.

**Understanding Implied Consent:**

Under the doctrine of implied consent, your actions can be taken as your words. Thus, if you decide to drink or do drugs and then get in a car to begin driving, simply turning on the ignition can be taken as your consent to submit blood and breath samples to law enforcement officials.

**Antabuse, the Anti-Alcohol Drug:**

The penalties facing a person who is convicted of driving while intoxicated are substantial. DWI punishments often include fines and the potential for extended jail time. A DWI conviction can also go as far as to cause a person’s drivers license to be suspended or revoked and in some instances, a judge may order an individual to take the anti-alcoholic drug, Antabuse.

The prescription drug Antabuse (Disulfiram) is being used as a punishment for repeat DWI offenders. It causes the body to have a violently negative reaction to alcohol. If a person who is taking Antabuse drinks alcohol, they will experience numerous uncomfortable symptoms, including:

- Headaches.
- Nausea.
- Vomiting.
- Confusion.
- Shortness of Breath.

Antabuse is a drug used to treat long-term alcoholics alongside regular therapy. Judges try to force Antabuse on DWI offenders who they believe have problems with alcohol abuse. This medication is meant to complement therapy, not to discourage drinking. Working with a skilled attorney may help you to avoid having to face this overreaching punishment.

### **Consult with an attorney about your Texas DWI:**

One of the most important steps you can make is speaking with an attorney about your Texas DWI. The laws in Texas are very tough on DWI offenders, so you need to make sure you have someone on your side in the Texas DWI proceedings. It's crucial that you don't try to go it alone when you're facing a Texas DWI charge.

### **Dealing With Your Employer after a Texas DWI:**

Some companies will suspend or even terminate your employment after a Texas DWI arrest. One of the first steps you need to take after a Texas DWI arrest is to consult the policies and procedures for your company. Don't talk to your employer about your Texas DWI until you've spoken with an attorney. Because speaking with your employer can have such detrimental effects on your job and income, it's important to seek legal advice before you disclose your Texas DWI to anyone. Don't talk with employers, supervisors, or even friends about your Texas DWI until you've spoken with your lawyer. By following these first steps when you receive a Texas DWI charge, you'll be in a better position to fight it before you're convicted.

### **Insurance Considerations for a Texas DWI:**

SR-22 insurance is required in the state of Texas after a DWI or DUI conviction. This type of insurance is classified as 'high risk' meaning you are a higher risk to the insurance companies so consequently they will charge more for taking on more risk. This can get very expensive if you sign up for one of these policies with the wrong company.

Remember, the laws often changing, it is important to note that this may change various parts of the above basic guidelines. There are no substitutes for detailed discussions with your attorney and their staff.

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