

## **An Introduction to DUI Laws in Colorado**

The State of Colorado is one of the most aggressive states in the United States when it comes to driving under the influence (DUI) prosecutions and penalties—although penalties for 1st convictions are relatively light compared to subsequent convictions.

This introduction to DUI laws in Colorado will walk those arrested for a DUI through all of the administrative processes, possible criminal penalties, and trial options available to defendants.

Before we investigate the criminal process in detail, let's look at some basic definitions and types of DUI convictions in Colorado.

### **Driving Under the Influence**

A DUI is the standard criminal charge levied against drivers who are pulled over and tested with a blood alcohol content (BAC) above 0.08%. This is considered to be impaired driving by the State of Colorado and will result in an immediate misdemeanor charge.

Individuals charged with a DUI in Colorado will likely have their car impounded and will be taken to jail for the night to be processed. You will be released with an Express Consent Affidavit and Notice of Revocation—as well as a scheduled date for your criminal arraignment.

Drivers who are measured with a BAC between 0.05% and 0.08% will fall under the section below.

### **Driving While Ability Impaired**

A charge of driving while ability impaired (DWAI) is a lesser charge levied against drivers who blew a BAC between 0.05% and 0.08%. Drivers who blow below 0.05% will be released with a warning and allowed to drive home, as they are considered to not be impaired.

On the other hand, drivers who blow a BAC between 0.05% and 0.08% are considered to be ability impaired—although not at a level that rises to a full DUI.

A criminal DWAI charge will result in a misdemeanor charge, be taken to jail, and face significant criminal penalties. However, these penalties are much less severe than those faced by drivers charged with a full DUI—and a DWAI charge does not result in an immediate license suspension.

Learn more about the criminal consequences of a DWAI in Colorado in the First Offense DUI Penalties section below.

### **Cannabis-Related DUI**

In the State of Colorado, cannabis-related DUIs are treated the same as an alcohol DUI. Drivers are charged with a cannabis DUI when their blood delta-9 tetrahydrocannabinol (THC) level is

tested above 5 nanograms. Officers may mandate a THC test if they smell burned marijuana, have seen you driving erratically, or notice signs of cannabis intoxication.

An individual convicted of a cannabis DUI faces the same penalties levied against those convicted of an alcohol DUI.

### **Refusal to Take Breathalyzer or Blood Test**

Colorado laws governing refusal to consent to a breathalyzer are governed by Colorado's Express Consent law. This law says that by virtue of possessing and using a Colorado driver's license, you have automatically given your consent to alcohol and cannabis DUI testing.

Refusal to submit to a legally required test will result in criminal charges and driver's license revocation. However, these tests are limited to BAC and THC tests—field sobriety tests and preliminary breath tests are not covered under Express Consent and you do not have to comply with a demand to complete these tests.

If you refuse to comply with a roadside BAC test, the officer will take you to the local police station and ask you to submit to a chemical DUI test—also known as an evidentiary test. This may be either a breath or blood test.

Refusal to submit to an evidentiary test will result in the following criminal and administrative penalties:

- Suspension of your driver's license for one year
- Designation as a "persistent drunk driver"
- Mandatory alcohol or drug education classes
- Required ignition interlock device in your car for a year after your driver's license is restored
- Refusal to submit to a BAC test is seen as evidence of guilt in court

### **Drivers Under 21**

Colorado has several different charges and penalties associated with underage drinking and driving arrests. Drivers under the age of 21 who are recorded with a BAC above .02% will face criminal charges and possible loss of driving privileges.

Drivers under the age of 21 who are arrested in Colorado may face the following charges, based on their BAC at the time of arrest:

- Underage drinking and driving - BAC between 0.02% and 0.05%
- DWAI - BAC between 0.05% and 0.08%
- DUI - BAC above 0.08%

Under-21 drivers charged with either a DUI or DWAI will face the same consequences as adult drivers. Those charged with underage drinking and driving can receive up to 4 DMV points, a

three-month driver's license suspension, a \$100 fine, court costs, and mandatory alcohol education classes.

## **Criminal Process**

All DUI charges in the State of Colorado are handled through the criminal courts, with the exception of driving privileges—which are handled administratively.

Law enforcement will charge those driving under the influence with a misdemeanor for their first three offenses—with four or more violations resulting in a class 4 felony charge.

Let's look at the criminal process for DUI violations in more detail.

### *Colorado DUI Statute*

In Colorado, the primary DUI statute is 42-4-1301 C.R.S. This statute governs traditional alcohol-involved DUIs, as well as those involving cannabis, prescription drugs, and illicit substances.

According to the statute, a DUI is defined as “A person who drives a motor vehicle or vehicle under the influence of alcohol or one or more drugs, or a combination of both alcohol and one or more other drugs, commits driving under the influence.”

The first three DUI offenses are charged as varying levels of misdemeanors, while a fourth violation will result in a class 4 felony charge.

It is important to note that Colorado considers being under the influence of any “controlled substance” a DUI, so individuals under the influence of controlled prescription drugs, even if prescribed by a licensed physician, cannot drive if their mental state is impaired and the controlled substance is in their system. Examples of these types of prescription drugs include opiates, benzodiazepines, muscle relaxers, barbiturates, and more.

You can find the entire 42-4-3201 C.R.S. text [here](#).

### *First Offense DUI Penalties*

Colorado DUI penalties vary depending on whether this is your first, second, third, or fourth+ offense. Penalties and loss of driving privileges increase as the number of violations increases.

It is important to note that Colorado considers any prior DUI convictions, anywhere in the world, to be a prior offense. There is no time limit on previous DUIs.

This means that DUIs, or lesser charges of driving while impaired, from another state or country, possibly decades before the current offense, will be considered in court and will result in enhanced, second-violation charges. DUI charges that did not result in a conviction will not be considered a previous violation.

A first-time **DWAI** (a BAC of 0.07% or lower) conviction in Colorado may result in the following penalties:

- 2 to 180 days in jail
- A fine of up to \$500
- 8 administrative points levied against your driver's license
- up to 48 hours of community service

A first-time **DUI** (a BAC of 0.08% or higher) conviction in Colorado may result in the following penalties:

- 5 days to up to 1 year in jail
- A fine of up to \$1,000
- Driver's license suspension for 9 months
- Up to 96 hours of community service
- Court-mandated alcohol education classes

Colorado is also one of the few states to create a separate category for high BAC DUIs. In the State of Colorado, drivers with a **BAC of 0.15% or more** can be classified as a "persistent drunk driver," even if they have never been arrested for a DUI before. This classification results in enhanced penalties in addition to the first-time DUI penalties, such as:

- Court-mandated Level II alcohol education classes
- 6-12 months of therapy sessions
- Mandatory ignition interlock device
- 2 full years of monitored driving to regain an unrestricted driver's license

### *What to Expect at Your Arraignment Hearing*

The first step in the criminal justice process, after being charged with a DUI or related alcohol offense, is your preliminary arraignment. This date will be scheduled and listed on your paperwork before you are released from jail.

A pre-trial arraignment is an opportunity to learn more about the charges levied against you and secure legal counsel. Failure to attend your arraignment will result in a bench warrant for your arrest and, likely, an increase in your bail amount required to stay free during the trial. This is because failure to appear in court increases your flight risk.

Once the arraignment judge has read the charges levied against you, they will ask if you have already secured counsel or if you wish to request a public defender. Many defendants opt to work with a private attorney because of their lower caseload and personalized representation. However, private attorneys do come with a cost not associated with free public defenders.

Next, the judge will ask you to enter a plea of either guilty or not guilty. A plea of guilty admits responsibility and will result in immediate sentencing at the arraignment. A plea of not guilty

means the defendant does not admit responsibility. If you enter a plea of not guilty the judge will set a date for a jury trial to begin.

If you are being represented by an attorney, it is important to enter an initial plea of not guilty—regardless of the facts of the case. That’s because it gives your legal representative more time to prepare your case and negotiate a favorable plea deal.

### *Negotiated Plea Deal*

Perhaps the best possible outcome in a criminal DUI trial in Colorado, outside of a complete dismissal of charges, is a negotiated plea deal. This process requires your attorney to present your side of the case to the District Attorney in private negotiations—and argue that you have such a strong case, or can generate enough doubt, that it is not worth taking the case to trial.

If the prosecutor agrees to a negotiated plea deal, you will agree to plead guilty to a lesser offense in exchange for a lesser punishment compared to the maximum sentence that you face.

Oftentimes a negotiated plea deal results in a full DUI or DWAI charge but comes with little to no jail time and, possibly, a reduced fine amount.

A more desirable outcome is when the prosecutor allows the defendant to plead to a lesser charge than what they were originally arrested for. This can happen when a defendant is on the border of the DUI/DWAI BAC alcohol limit and the prosecutor allows the defendant to plead down to a DWAI charge—with less jail time, fines, and fewer hours of required community service.

It is important to note that some District Attorney offices have mandatory plea bargain guidelines which hamper your ability to negotiate a favorable plea bargain. In counties without plea bargain guidelines your defense attorney will have more leeway to negotiate a favorable settlement that minimizes jail time and expenses.

### *Take it to Trial*

DUI cases rarely make it to trial in Colorado, since most charges result in either a guilty plea or negotiated plea bargain. However, it is sometimes useful to work with an experienced trial attorney who can take your case to trial.

In the vast majority of cases, this is not necessary. However, if there is significant doubt associated with the circumstances of your arrest your defense attorney may want to take the case to trial. The most frequent reasons for taking a DUI criminal charge to trial are doubt about the accuracy of BACs, problems with field sobriety testing procedures, and a lack of proof that the defendant was actually driving the vehicle.

Speak to your defense attorney today if you believe that your DUI case has sufficient doubt to take it to trial.

### **Administrative Loss of Driving Privileges**

The [administrative process](#) for dealing with a DUI arrest in the State of Colorado is handled by the Division of Motor Vehicles. If you are arrested for a DUI in Colorado, you have just 7 short days to appeal a suspension of your license. This is true whether you blew over the allowable BAC limit or whether you refused a BAC test.

Read on to learn more about the license suspension rules for DUIs in Colorado, as well as options to appeal your suspension and gain an SR22 after reinstatement.

### *Driver's License Suspension*

If you are arrested for the lesser charge of a DWAI, you are in luck. The Division of Motor Vehicles currently does not have a mandatory driver's license suspension for those arrested with a 1st DUI and a BAC below 0.08%. However, such an arrest will result in an immediate 8 points being added to your driving record.

If you are arrested for a DUI with a BAC above 0.08%, the following administrative penalties will be levied depending on how many DUI convictions you have:

- 1st DUI: 9-month license suspension
- 2nd DUI: 12-month license suspension
- 3rd DUI: 24-month license suspension

Defendants who feel that they were charged with a DUI in error can appeal their driver's license suspension by writing the Division of Motor Vehicles within 7 days of their arrest.

### *SR22 & Unrestricted Driver's License*

After you satisfy the administrative sanctions levied for your DUI conviction and have completed your mandated driver's license suspension period, you may be eligible for a [restricted driver's license](#) with SR22 insurance.

Once you have verified that you have passed your eligibility date, the first step is to submit your DR 2870 Application for Reinstatement online or through the mail. This application must include a money order for \$95, evidence of valid SR22 insurance, and proof that you have completed your court-mandated alcohol education classes.

Please note that you may be required to take a new written and driving test to secure a new driver's license.

### **2nd+ DUIs**

The State of Colorado takes subsequent DUIs very seriously. This means that additional DUI arrests after a conviction will result in higher fines, greater jail time, reduced driving privileges, and a higher level of alcohol education classes.

If you are arrested for a 2nd DUI in Colorado, you can expect to receive much harsher penalties in comparison to your first conviction.

However, in many ways—a 2nd DUI is similar to the first. First of all, the criminal charge itself is a misdemeanor—just like a first DUI in Colorado. A 2nd DUI in Colorado also results in 12 points being added to your driving record, the same punishment as a 1st DUI.

Unlike a 1st DUI, a 2nd conviction will result in a 12-month suspension of your driver's license, as opposed to the 9-month suspension associated with a 1st DUI. A 2nd DUI conviction also doubles the maximum amount of jail time to 10 days, can double the amount of community service hours, and results in greater fines.

If you are convicted of 3 or more DUIs the criminal and civil penalties continue to increase. If you are arrested for a 4th DUI you will be charged as a felon—a much more serious criminal charge that can result in extensive jail time and loss of driving privileges. If you find yourself facing a 4th+ DUI charge you must contact an experienced attorney today to avoid dire consequences.

### **Consult an Attorney Today**

If you have been charged with a DUI in the State of Colorado, you must secure competent legal representation to fight these criminal charges. That's because a successful DUI conviction can result in thousands of dollars in court fees, a permanent criminal record, and suspension of your driving privileges—which may lead to a loss of employment and income.

### **Contact Yoast Law**

Adam Yoast has dedicated his career to representing marginalized people caught in the criminal justice system. As a former Colorado Public Defender and Federal Civil Rights Attorney, Mr. Yoast understands how confusing the legal process can be for defendants and he remains committed to helping his clients understand their rights and fight for their freedom.

You can contact Mr. Yoast for a free consultation at [adam@yoastlaw.com](mailto:adam@yoastlaw.com) or by filling out a [contact form](#).