

FUSCO & MACALUSO

DUI / DWI DEFENSE

WHAT is DUI?

DUI is shorthand for Driving Under the Influence. A person is guilty of DUI if he or she drives or is in actual physical control of a motor vehicle and is under the influence of alcoholic beverages or any chemical or controlled substance to the extent that his or her mental faculties are impaired or when his or her Blood Alcohol Content (BAC) is above the legal limit for the state.



- **Is there anyway to avoid a DUI?**
It sounds simple, but don't drink and drive. Take a taxi, designate a driver, walk, call a friend, but no matter what, do not drink and drive.
- **Can I still be in trouble for driving, even if my BAC is below the legal limit?**
Yes. It is also unlawful to drive with your normal faculties impaired. Normal faculties are those faculties of a person, such as the ability to walk, talk, judge distances, drive an automobile, make judgments, act in emergencies, etc.
- **Does the car have to be moving for me to be guilty of DUI?**
No. You can be arrested for DUI by driving while over the legal BAC in your state or while impaired. But, you need not actually operate the car in order to be arrested. You can still be found guilty if you had the capability and power to dominate, direct, or regulate the vehicle, regardless of whether you were exercising that capability or power at the time of the arrest. In other words, simply sitting behind the wheel with the keys in the ignition can lead to your arrest for DUI by being in actual physical control of the car.
- **Do I have to submit to a breath, blood, or urine test?**
No. However, refusing such tests is generally not a good idea. The laws of most states permit the motor vehicle department to suspend your privilege to drive. In addition, your refusal to submit to a test upon the request of a law enforcement officer is admissible in any criminal proceeding against you as evidence of your consciousness of guilt. By accepting the privilege extended by the laws of most states to drive, the courts have determined that you have given your consent to submit to an approved chemical or physical test of your breath for the purposes of determining your BAC, and to a urine test for the purposes of detecting the presence of drugs. Therefore, when you sign your name on your license, you are saying that if stopped for a possible DUI, you will accept to take the test.
- **Can I fight my DUI arrest?**
Yes. You may request a review of the driver's license suspension by the department of motor vehicles within a specified number of days following your arrest. At a formal review,

the hearing officer is authorized to administer oaths, examine witnesses and take testimony. If you request an informal review hearing, it shall consist solely of an examination by the department of the written materials submitted by the arresting officer, as well as anything you wish to submit. You generally cannot attend an informal hearing.

- **If I am arrested for a DUI, will I lose my license?**

Yes, the law enforcement officer will seize your license if you are arrested for DUI with an unlawful BAC or after you refused to submit to a chemical or physical test. Your license will be seized, and the officer will issue you a traffic ticket, which acts as both a temporary driver's license and as your notice of suspension.

- **How long will I lose my license?**

This will vary from state to state. However, if you have refused to submit to a chemical or physical test, your license will likely be suspended for a period of one year for a first refusal, or for eighteen months if you have previously refused to submit to such a test. If you have an unlawful BAC, your driving privilege will likely be suspended for six months for a first offense, and one year for a second offense.

- **What else will happen to me?**

Once again, this varies from state to state. But more than likely, you will be given a jail term. Most states require a mandatory one-night stay on the first offense. In addition, most second offenses within five years, results in a mandatory 30 day jail term and a third offense usually results in a sentence of no less than ninety days. Furthermore, your insurance company may discontinue its coverage or at the very least, assign you to a high-risk category, resulting in a substantial increase in your premiums.