



YOU and the LAW

DUI IN A NUTSHELL – BE CAREFUL!

by PETER L. KNECHT



latures to deal with the often tragic consequences of drunk driving. The usual 4th Amendment protections have been weakened by the courts when police are seeking to enforce the driving under the influence laws. The officer is allowed to make a traffic stop when he has reasonable suspicion that you have violated any traffic offense. Once stopped, the officer may then investigate whether you have been drinking. For no other offense are law enforcement officials permitted to set up check points to check all drivers for violations of the criminal law. For no other misdemeanor are the police able to make an arrest for an offense that does not occur in their presence. Officers can detain you on information provided by others.

DUI CONVICTION & PENALTIES

A conviction for your first DUI offense may result in severe penalties — jail time of 96 hours to six months; a suspension and restriction of your license for six months; probation for three years with strict terms which require, no alcohol when driving, you may not refuse any future request by officers for an alcohol test; a requirement that you do not violate any other criminal code; that you not drive without valid insurance; that you submit to search and seizure; that you pay for and participate in a driving under the influence program. The fine is expensive - \$390 to \$2000. You will find insurance higher. (Veh. Code, § 13353.3, 23536, 23538, 23600.) If the offense involved the use of drugs, probation will include the right of the police to search you and your vehicle at any future traffic stop. Once arrested, you face not only criminal penalties, but the instant suspension of the driving privilege. The suspension by the DMV can be challenged, by you or your attorney but you only 10 days after the arrest to seek a DMV administrative hearing.

A second offense within 10 years, you will serve jail time of 90 days to a year; pay an expensive fine; lose your license for two years; be required to attend and pay for a longer program; pay for and install a breath machine on your vehicle which will prevent you from starting the vehicle with any measurement of alcohol. (Veh. Code, § 23540, 13352(a)(3), 23542, 23600).

For a third offense within 10 years, you will spend time in county jail from 120 days to a year, pay the high fines and fees, and lose your license for three years. You will be designated a habitual traffic offender for three years and suffer increased penalties for subsequent driving offenses. (Veh. Code, 23546, 23548).

For a fourth offense in 10 years, the offense can be charged as a felony, for which you could serve up to three years. Your license will be revoked for four years. You will be designated as a habitual traffic offender, and be required to pay for and attend a longer program. (Veh. Code, § 23550, 23550.5, 23552).

Penalties for driving under the influence offenses which result in injury or death to others have more severe consequences. Penalties are more severe for drivers under 21. You will lose work time to attend court and the DUI program. You will find it difficult to get to work with a suspended license. You will be embarrassed by being treated like a criminal.

DINNER

and drinks tonight? The basic rule is you yourself cannot gage how much alcohol you can ingest to drive within the law. There are too many variables such as weight, height, gender, prior consumption and medications. When you go out for drinks in our city, you usually won't be pouring them. Most bartenders are very generous as they pour a martini for instance, which can easily contain one to two and a half ounces of 80 proof alcohol, so two martini's would put you at risk immediately. The general rule is that your blood alcohol increases at a .02 for every ounce of 80 proof alcohol and burns off at the same rate of .02 an hour.

California Vehicle Code, section 23152 makes it a crime to drive a vehicle under the influence of alcohol, drugs, or a combination. If the blood test reveals a .08 for the ordinary driver, or .04 for those with a commercial driver's license, the prosecution has the benefit of a presumption that you were under the influence. Driving under the influence of alcohol or drugs is a misdemeanor in California. But no other misdemeanor offense results in such harsh consequences, or allows law enforcement such broad powers to detect and arrest. These harsh laws are a result of MADD and political pressure on legis-

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IF YOU ARE ARRESTED

- At the scene of the detention do not cop an attitude. The officer has a lot of discretion in deciding who to arrest for what. You must provide your driver's license, registration, and proof of insurance.
- You may politely refuse the field sobriety tests, and portable breath test at the scene. However, you must submit to blood or breath tests at the station after your arrest, or suffer a longer suspension of your driving privilege.
- Remember everything you say to the officer before the arrest is admissible in evidence as your constitutional rights do not come into effect until you are in custody. So think before you speak and be careful what you say.
- If you are questioned at the station and given your Miranda rights, you must assert your right to counsel and the right to be silent. Simply say "I do not want to talk; I want an attorney now".
- Obtain an attorney, as soon as possible. If you cannot afford one, the court will appoint the public defender to represent you at your first court appearance. If you can afford an attorney, you need to retain that attorney within a couple days of your arrest.
- An attorney can challenge the initial stop, field sobriety tests, the chemical tests, and even refusals to take the chemical tests. As a last resort, your attorney can negotiate a plea which will result in a minimum impact on your life and pocketbook. There is life after a DUI arrest and conviction, but the negative effects will last years. Avoid it!

Peter Knecht is a seasoned criminal defense attorney among the busiest in Los Angeles County and represents high-profile cases keeping them low-profile whenever possible. He is credited with changing the search and seizure laws by taking adverse rulings to the Appellate and Supreme Courts of California and United States. His client roster includes David Crosby, Sly Stone, Andy Garcia, Peter Fonda, Jason Priestly, Ike Turner, Ryan & Tatum O'Neal, Rob Lowe, Heidi Fleiss, Robert Blake, Charles Bronson, Robert Downey Jr. and more. Mr. Knecht has appeared as an analyst/consultant to the criminal justice system on CNN, CBS, NBC, ABC, Fox Network, KCAL-Channel 9, KCOP Channel 13 and been featured on The Today Show, Good Morning America and Celebrity Justice.

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