

Alcohol and Texas Laws

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Contents

5-A

Alcohol and the Driving Task

5-B

Alcohol and Minors

5-C

Zero Tolerance

5-D

Alcohol and the Law

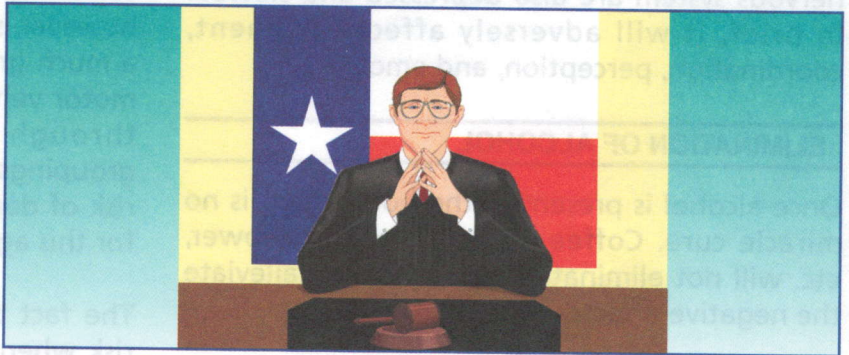
5-E

Implied Consent and ALRs

The use and abuse of drugs, whether alcohol or any other drug, has a profound effect on the human neuromuscular system. The driving task requires full concentration and ideal physical and mental capacity. Any effect that reduces the driver's capabilities is not acceptable.

Society as a whole has re-evaluated its position with respect to the use of alcohol and the driving environment. Much stiffer fines and penalties have been enacted in an attempt to deter individuals from drinking and driving.

Minors (under the age of 21) are not permitted to consume, to possess, or to purchase alcohol. As such, a wide variety of laws have been enacted in Texas to deter underage use of alcohol or drugs, and to penalize any violations of these statutes.



AFTER COMPLETING THIS CHAPTER, THE STUDENT MUST BE ABLE TO DEMONSTRATE A BASIC UNDERSTANDING OF :

- the misconceptions about the use of alcohol and other drugs.
- the rules, regulations, and penalties for Minor in Possession violations.
- the regulations and penalties for Driving While Intoxicated violations.
- the regulations and penalties for ALR and Implied Consent violations.

5-A

Alcohol and the Driving Task

Alcohol is a depressant drug. Unlike food which must be digested to enter the bloodstream, alcohol is absorbed directly into the bloodstream from the digestive tract. It then circulates to all of the parts of the body and accumulates in all of the fluids of the body tissues. Therefore, all of the negative

consequences of drinking alcohol begin with the first drink.

Any amount of alcohol affects each person differently and may not affect the same person the same way every time. A person's emotions, tiredness, sex, age, weight, amount of food



ALCOHOL AND TEXAS LAWS

consumed prior to drinking, etc. can all aggravate the negative consequences.

EFFECTS OF ALCOHOL

Depressants in general produce side effects that include irritability, confusion, drowsiness, dizziness, and poor eye-hand coordination.

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Alcohol, in particular, produces more pervasive effects on the operation of the body, since it is present in all of the fluids in all of the body tissues.

Alcohol has a relaxing effect on all of the muscles of the body, from those that control movement to the fine muscles of the eye that control vision. The activity of the brain and the nervous system are also depressed and slowed. In brief, it will adversely affect judgment, coordination, perception, and emotions.

ELIMINATION OF ALCOHOL

Once alcohol is present in the body, there is no miracle cure. Coffee, exercise, a cold shower, etc. will not eliminate the alcohol nor alleviate the negative effects.

Time is the only solution. The body eliminates 90% of the alcohol through the activity of the liver. It converts the alcohol into water and carbon dioxide in a process called oxidation. This process occurs at a specific steady rhythm, oxidizing approximately 3/4 of an alcoholic serving per hour. (The other 10% of the alcohol is eliminated in sweat, urine, and breath.)

Any amount of alcohol that is consumed in excess of the amount being eliminated will accumulate in the body.

BLOOD ALCOHOL CONCENTRATION (BAC)

The amount of alcohol in a person's bloodstream increases as more alcohol is consumed. It can be measured by a chemical analysis of the blood, urine, or breath (the most

commonly used test using a device called an intoxilyzer).

The amount of alcohol present (grams of alcohol per two hundred and ten liters of breath - intoxilyzer test) is expressed as a decimal and is commonly referred to as **Blood Alcohol Concentration** or **BAC**.

CRASH RISK

Studies have shown that driving ability decreases as Blood Alcohol Concentration (**BAC**) increases. As you would expect, the chance of being involved in a crash and, more specifically, in a fatal collision increases as the **BAC** increases.

When specific age analysis is conducted however, studies show that young drivers are at a much greater risk of being involved in a fatal motor vehicle crash. The risk for drivers age 16 through 19 is higher than all other age groupings at any **BAC** level studied. In addition, risk of death rises faster, as BAC levels increase, for this age group (see chart below).

The fact that young drivers are at such a high risk when they drink and drive was one of the prime reasons for legislators in Texas (as well as in other states) enacting the **Zero Tolerance For Minors Law** and raising the legal drinking age to 21 years of age. **You must decide never to drink and drive.**

It should be noted that in Texas, the average **BAC** at arrest is .16%.

% OF BAC	AGE - SPECIFIC	INCREASED RISK OF DEATH
.015 to .049	24 and older	MINIMAL
	Teens 15 to 19	2,5 times
.05 to .079	24 and older	2 times
	Teens 15 to 19	9 times
.08 to .099	24 and older	7 times
	Teens 15 to 19	40 times
.10 to .149	24 and older	13 times
	Teens 15 to 19	90 times
.15 and over	24 and older	110 times
	Teens 15 to 19	420 times





SAFETY TIPS

In Texas in 2013, 46% of traffic fatalities were related to alcohol. Texas is third in the nation in this statistic. Texans should NOT be proud about this fact! Every person in Texas must act to correct this unacceptable situation.



Alcohol and Minors

Most persons, young and old, have a very limited and often incorrect understanding of laws related to drinking and driving. This is compounded by many new laws, or modifications of existing laws, that have been enacted in recent years. This is especially true for specific alcohol laws related to young people.

The number one killer of teenagers is driving under the influence. More than 4,000 teens are killed and another 110,000 are seriously injured each year in car crashes involving alcohol. Not all have been drinking, but some are passengers or innocent victims of people who drink and drive. These statistics mean that from a high school of 475 students, two are likely to be killed or injured in drunk driving crashes. One of these students could be your best friend. One of them could just as likely be you.

ZERO TOLERANCE FOR MINORS

In Texas, a minor is defined as someone under 21 years of age. Generally speaking, a minor may not purchase, attempt to purchase, consume, or even possess an alcoholic beverage.

Since a minor should not even possess an alcoholic beverage, the 1997 Texas Legislature adopted **Bill 35**, which established **zero tolerance for minors** who commit offenses under the non-driving alcohol-related laws, as well as for minors who drive under the influence. While a **Minor in Possession (MIP)** charge is not a direct driving offense, it is closely related under the law. There are actually five possible charges associated with minors and alcoholic beverages.

Minor Attempting to Purchase Alcohol: It is illegal for a person under 21 to try to buy alcohol, even if the sale is not actually made (ABC §106.025).

Minor's Purchase of Alcohol: It is illegal for a person under 21 to actually buy alcohol (ABC §106.02).

Minor's Consumption of Alcohol: It is illegal for a person under 21 to drink alcohol, regardless of how the alcohol was obtained (ABC §106.04).

The exception to this law is if a person under age 21 is in the visible presence of his/her adult parent, guardian, or spouse. Thus a minor could drink with his/her father or a husband/wife who is over 21, if that person is visible (ABC §106.04(b)).

Minor In Possession (of Alcohol): This offense may be variously interpreted because possession is defined as "actual care, custody, control, or management" (ABC §106.05).

Thus it is important for minors to understand that they may be charged with an MIP offense by merely being in the presence of alcohol, without actually buying, drinking, or even holding an alcoholic beverage.

The exception to this law is in the scope of legally authorized employment or in the presence of their adult parent, guardian, spouse, or other adult to whom the minor has been committed by a court (ABC §106.05(b)).

Misrepresentation of Age: A minor may not claim that he/she is 21 or older in order to



purchase an alcoholic beverage from a retail or wholesale supplier (ABC §106.07).

PENALTIES

First Offense:

- Class C misdemeanor,
- \$0 to \$500 fine,
- Alcohol Awareness Course,
- 8 to 12 hours community service relating to alcohol education, and
- 30 day license suspension or denial.

Second Offense:

- Class C misdemeanor,
- \$0 to \$500 fine,
- Alcohol Awareness Course (at the judge's option),
- 20 to 40 hours community service relating to alcohol education, and
- 60 day license suspension or denial.

Third Offense (under 17):

- Not eligible for deferred adjudication,
- 180 day license suspension or denial, and
- Juvenile Court - Child in Need of Supervision, or
- Criminal Court - Adjudicated as an adult.

Third Offense (17 and over):

- Class B misdemeanor,

- Not eligible for deferred adjudication,
- 180 days in jail,
- Alcohol Awareness Course (at the judge's option), and
- 180 day license suspension or denial.

ILLEGAL USE OF LICENSE

Misrepresentation of age is an **MIP** related violation (1999). The following six uses of a Texas Driver License are illegal (TRC §521.451):

- False name to get a license.
- Possess more than one license.
- Use a cancelled or revoked license.
- Use another person's license.
- Lend your license to someone else.
- Display or possess a false license.

The penalties are:

- Class B misdemeanor,
- Up to \$2,000 fine, and/or
- Up to 180 days in jail.

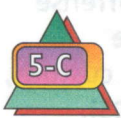
There are a variety of penalties provided for in the law that are possible with respect to producing or using fake or counterfeit identification. The *Texas Transportation Code* (TRC), the *Texas Penal Code* (TPC), and the *Alcoholic Beverage Code* (ABC) have sections dealing with this offense.

- Up to \$500 fine,
- From 20 to 40 hours of community service,
- 60 day license suspension or denial,
- 30 days not eligible for occupational license, and
- Attendance in an Alcohol Awareness Program (if under 18, the parent may be required to attend, as well).

Second offense (from 17 to 21 yrs. old):

- Class C misdemeanor,
- Up to \$500 fine,
- From 40 to 60 hours of community service,
- 120 day license suspension or denial,

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Zero Tolerance

Zero tolerance means just that! Even if a minor is not intoxicated as defined in the statute, (a minor can be charged with DWI), if the minor has any detectable amount of alcohol in his/her system while he/she is operating a motor vehicle in a public place, as far as the law is concerned, the minor has committed the criminal offense of **Driving Under the Influence of Alcohol by a Minor (DUIA by a Minor)**.

DUIA BY A MINOR

First offense (from 17 to 21 yrs. old):

- Class C misdemeanor,



- 90 days not eligible for occupational license, and
- Attendance in an Alcohol Awareness Program, if under 18, the parent may be required to attend, as well (Judge's Option).

Third offense (from 17 to 21 yrs. old):

- Class B misdemeanor,
- \$500 to \$2,000 fine,
- From 40 to 60 hours of community service,
- 180 day license suspension or denial,
- Not eligible for occupational license for entire suspension period,
- Not eligible for deferred adjudication,
- Cannot be lesser included offense of DWI, and
- Up to 180 days in jail.

Any offense (from 10 to 17 yrs. old):

- "Delinquent Conduct" under the *Family*



Code (Juvenile Court), or **Criminal Court** as an adult,

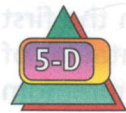
- Up to \$500 fine,
- From 40 to 60 hours of community service, and
- License suspension or denial until the minor is 19 years of age, or 365 days, whichever is longer.

Statistics



The **National Highway Traffic Safety Administration (NHTSA)** estimates that 21 year-old minimum drinking age laws have reduced traffic fatalities involving drivers 18 to 20 years old by 13 percent, and have saved an estimated 29,832 lives from 1975 to 2013.

In 2013, an estimated 504 lives were saved by these laws. DOT HS 812 137



Alcohol and the Law

Intoxication is defined in medical journals as poisoning or becoming poisoned. Regulated drugs have a minimum dosage, an effective dosage, and a lethal dosage. Many intoxicating drugs require larger and larger doses to produce the same effect on the body as the drug is used more commonly. This is due to the body's ability to respond to the introduction of a poison by producing a substance to detoxify the drug.

Texas has specific laws designed to reduce the use of alcohol and other drugs in public places.

PUBLIC INTOXICATION

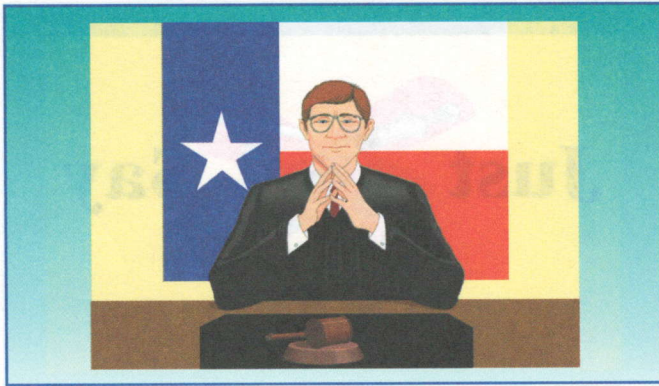
Three major points in this PI law:

- Danger to self or others.
- In a public place.
- Intoxicated (legal definition).

A fine of up to \$500 is the penalty, unless by a minor, then MIP sanctions prevail.

Texas also has specific laws designed to reduce the use of alcohol and other drugs while operating a motorized vehicle.



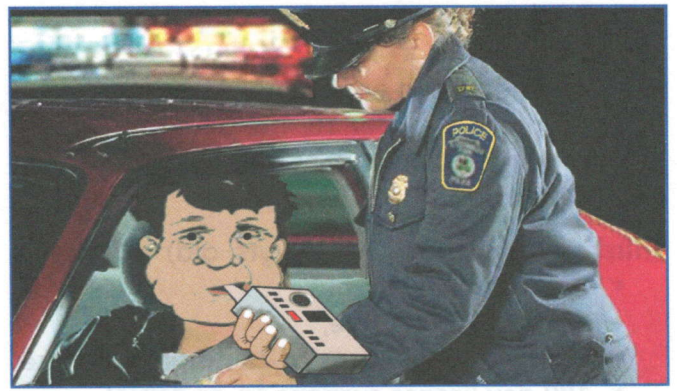
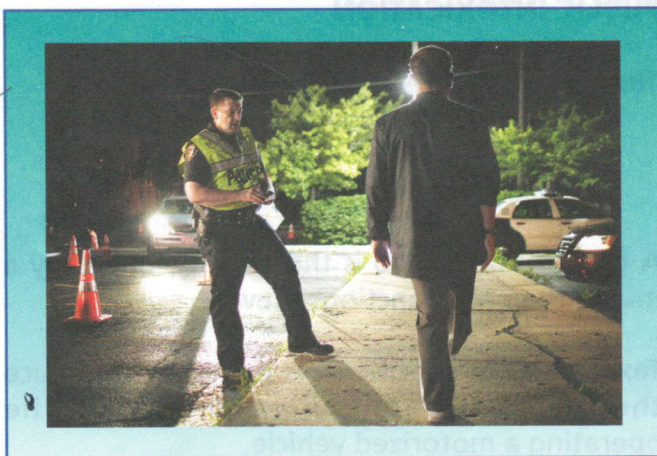


Intoxication is defined by Texas law. The definition is based on two standards.

They are:

- a) **Not having the normal use of mental or physical faculties** by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, or a combination of two or more of these substances or any other substance into the body; or
- b) **Having an alcohol concentration of .08 or more** (PC §49.01(2)(A) &(B)).

The loss of faculties portion of the law relies on the judgment of the police officer that the person has been affected by alcohol or another drug. Physical “**field sobriety**” tests may be used to determine this, in combination with unsafe driving actions that have been observed by the officer prior to stopping the driver. The police officer will testify in court as to what he/she observed, as well as the results of the field sobriety test.



The alcohol concentration portion of the definition is more clinical (it does not rely on a person’s judgment). It is determined through chemical analysis of a person’s breath (an intoxilyzer machine) or blood (a blood test performed by a qualified technician).

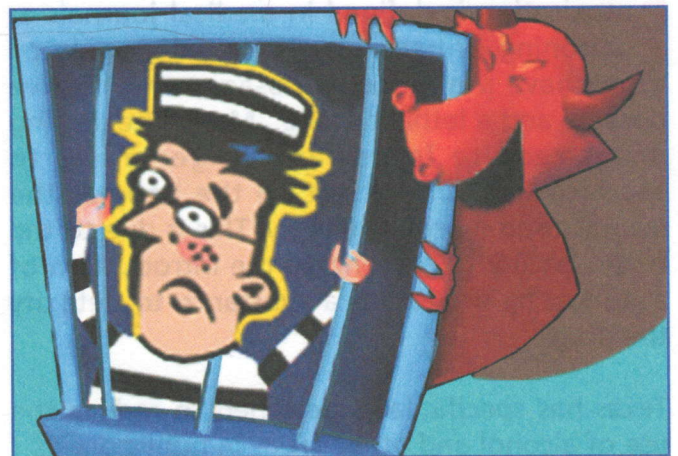
DRIVING WHILE INTOXICATED (DWI)

DWI is a problem that affects all Texans. To make Texas safer for all, laws have been enacted to deter people from drinking and driving or to punish those who choose to drink and drive. The penalties are not age specific; however, minors are subject to additional penalties.

First offense:

- Class B misdemeanor,
- Up to \$2,000 fine,
- 72 hours to 180 days in jail, and
- 90 to 365 day license suspension.

The court may probate the jail sentence and waive the driver’s license suspension on the first offense only. Possession of an open container of an alcoholic beverage increases the minimum confinement by 3 to 6 days.





Statistics

Approximately 1.17 million drivers were arrested in 2013 for DUI-alcohol or narcotics. (FBI's Uniform Crime Report, 2013). This is an arrest rate of **1 out of every 181 licensed drivers in the USA.** DOT HS 812 169

Second offense:

- Class A misdemeanor,
- Up to \$4,000 fine,
- 30 days to 1 year in jail, and
- 180 day to 2 year license suspension.

The court may not probate or waive any of the penalties on a second offense.

Third or subsequent offense:

- Third Degree Felony,
- Up to \$10,000 fine,
- Confinement in a penitentiary for 2 to 10 years, and
- 180 day to 2 year license suspension.

INTOXICATION ASSAULT

(an injury results from the crash)

- Felony of the Third Degree,
- Up to \$10,000 fine,

- Confinement in a penitentiary for 2 to 10 years, and
- 180 day to 2 year license suspension.

INTOXICATION MANSLAUGHTER

(a fatality results from the crash)

- Felony of the Second Degree,
- Up to \$10,000 fine,
- Confinement in a penitentiary for 2 to 20 years, and
- 180 day to 2 year license suspension.

CONSUMPTION LAW

A person commits an offense if the person consumes an alcoholic beverage while operating a motor vehicle in a public place and is observed by a police officer.

This is a **Class C misdemeanor** and a fine up to \$500.

SAFETY TIPS



Don't become part of the problem!

Be part of the solution! Just say NO!



Implied Consent and ALRs

Texas, like most other states, has enacted legislation which stipulates that any person who operates a motor vehicle within the state is deemed to have given his/her consent to be tested (breath and/or blood) for the purpose of determining the alcohol/drug content of his/her blood - **Implied Consent**, Chapter 724 of the *Transportation Code*.

When stopped, the police officer must have **reasonable grounds** to believe the person is in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug. (The normal type of test is a breath test, if available; the officer may also request a blood test if evidence suggests drug usage.)



IMPLIED CONSENT

This law relates to a **person refusing to take a legally requested breath or blood test**. This is a civil action separate from other alcohol, DUIA, or DWI criminal offenses.

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For a minor, this applies if he/she has any detectable amount of alcohol (**Zero Tolerance Law**).

PENALTIES FOR REFUSAL

The penalty is a suspension of the driver's license.

- **First offense** - 90 days (180 days under 21 years of age) (longer loss to driver education students).
- **Second offense** - 2 years (240 days under 21 years of age).
- **Previous DWI conviction** - 2 years (third offense - 2 years under 21 years of age).

The offender is entitled to a hearing, if no later than the 15th day after the notice of suspension or denial is received, the department receives at its head-quarters in Austin (in writing including a fax transmission) a request for a hearing.

This hearing will examine the legality of the action and whether the police officer acted according to regulation. The chance of it being overturned is highly unlikely.

A fee of \$125 will be required for the re-instatement of the license at the end of the suspension.

ALRs

The **Administrative License Revocation (ALR)** Law became effective January 1, 1995 (ALR - Chapter 524 of the *Transportation Code*). It relates to the suspension of a driver's license when the driver fails (.08 BAC or greater for a driver over 21 years of age, but any amount of detectable alcohol for a driver under 21) a breath or blood test. It is also a civil action, apart from any possible criminal case.

PENALTIES FOR FAILURE

The penalty is a suspension of the driver's license.

- **First offense** - 60 days (60 days under 21 years of age, 30 days loss of essential need license).
- **Previous refusal/failure offense** - 120 days (120 days under 21 years of age, 90 days loss of essential need license).
- **Previous DWI license suspension** - 180 days (180 days under 21 years of age, 180 days loss of essential need license).

The offender is, once again, entitled to a hearing under the same regulations as for implied consent. However, the chance of it being overturned is also highly unlikely.

A fee of \$125 will be required for the re-instatement of the license at the end of the suspension.

SAFETY TIPS

The concept behind these laws is to quickly remove the licenses of offenders and prevent them from re-offending prior to their trial whether criminal or civil. The Implied Consent (refuse the test) [TRC §724.011] and ALR (fail the test) [TRC §524] Laws are both designed for this purpose.

