

# Consequences of DUI

## At Home and in the Workplace



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**CONSEQUENCES AT HOME** Frequently, clients and family members of those who are arrested for driving under the influence, as well as their employers, will want to know what the maximum penalties<sup>1</sup> are for a first, second, third, or subsequent DUI conviction. While these are important questions, at home and in the workplace, far more immediate and certain consequences tend to impact DUI clients and their families from the very first moment of arrest, and these consequences continue well after a conviction. The purpose of this article is to focus on the immediate impact of a DUI arrest, as well as a conviction.

**Driver's License Suspension/Revocation.** Many people are unaware of the operation of Alabama statute 32-5A-303, which requires the arresting officer to take physical possession of the driver's license of an individual who has either registered a .08% or more alcohol result on a breathalyzer test, or has refused to take such a test. When this happens, the officer will physically take possession of the laminated driver's license card and will issue what is known as an "AST 60," which is a yellow form that will serve as both the notice of intended suspension of an individual's driver's license, as well as the actual "temporary" driver's license for that individual, until the effective date of the suspension period begins.

It is important to realize that this procedure will happen or be triggered by one of two relatively simple events. First, the person registered a .08 or higher result on a breathalyzer, or, second, the person refused the test.

There is no requirement whatsoever that the individual driver be convicted or that any sort of further determination be made as to the probable cause for the initial stop.

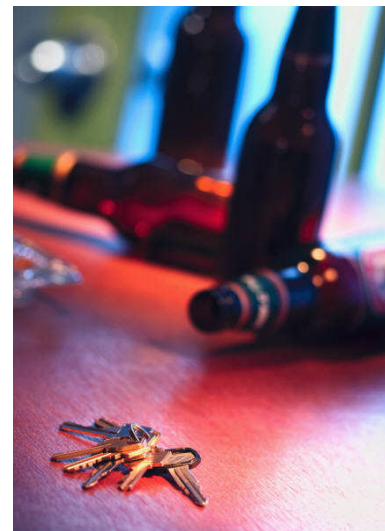
This action will take place at the time the person is arrested and/or booked on the DUI charge.

It is very difficult to persuade the Department of Public Safety not to go forward with a suspension in this situation, although sometimes it can be done, based upon a technical defect in the AST 60 paperwork, or as a result of seeking judicial relief (a lawsuit) under 32-5A-308 (Ala. Code). The period of time for which the arrested driver's license will be suspended is as follows:

1. Ninety days if a driver has had no "prior alcohol or drug related enforcement contacts" during the immediately preceding five years.
2. One year if the driving record shows one prior alcohol or drug related enforcement contact during the immediately preceding five years.
3. Three years if the driving record shows two or three alcohol or drug related enforcement contacts during the previous five years.
4. Five years if the driving record of a person shows four or more alcohol or drug related enforcement contacts during the immediately preceding five years.

The previous "enforcement contact" does not need to be a DUI conviction, or even an arrest. Rather, it can be any type of suspension having to do with alcohol or drugs: most significantly, unlawful possession of any amount of marijuana, however small, or a violation of 28-3A-25(a)(19), being a minor in possession of alcohol.<sup>2</sup>

Another critical and sometimes confusing concept which should be understood is that the driver's license suspension will go forward as an administrative proceeding, which is totally separate from and independent of the scheduling and the outcome of the criminal case. The criminal case can, however, impact the driver's license suspension, if, for some reason, the administrative suspension is terminated, for example, due to a defect in the notice procedures under the



<sup>1</sup>Maximum penalties for DUI are imprisonment for not more than one year and a fine of between \$600 and \$2,100 (first conviction); imprisonment for not less than five days and one year, and a fine of between \$1,100 and \$5,100 (second conviction); imprisonment for not less than 60 days or more than one year, and a fine of not less than \$2,100 or more than \$10,000 (third conviction); and, upon a fourth conviction, which is a felony, imprisonment for not less than one year and one day or more than 10 years, and a fine of not less than \$4,100 or more than \$10,000. The minimum jail times for a second and third conviction are mandatory; ironically, probation is an option for a fourth or subsequent felony DUI.

Form AST 60. This is because Section 32-5A-304(c), Alabama Code, directs that, upon conviction, an individual's driver's license will be suspended or revoked if the administrative suspension has not been imposed.

Frequently, clients will ask if there is not some "exception" that can be made in obtaining some sort of special permission to drive a vehicle, when the ability to

drive is vital to a person's economic livelihood: for

example, when the client has a commercial driver's license, or the client has to drive in order to get to work, or the client is an important business, governmental, or educational official or officer. The short answer is that there are no exceptions to the Alabama driver's license statutes requiring suspension as



**"...there are no exceptions to the Alabama driver's license statutes requiring suspension upon someone either being above the legal limit or refusing to take**

described above. The only way to contest the suspension is through the available administrative procedures, or through judicial review once administrative remedies have been exhausted.

**Other Costs.** In addition to the devastating impact that losing one's driver's license will generally have on his personal and economic well-being, there are substantial other costs associated with a DUI arrest:

\*Attorney's Fees. Attorney's fees for defending a DUI case will generally run between \$1,500 and \$3,500. Higher fees are likely if the case is appealed to Circuit Court for a jury trial. Additional fees will also be incurred if the client decides to contest the suspension or revocation of his driver's license in an administrative proceeding or lawsuit.

\*Treatment Costs. These fees will generally run anywhere from no cost up to the tens of thousands of dollars, depending upon what kind of treatment facility the person chooses to attend. Treatment may not be required in all cases; however, some sort of alcohol counseling will be required by virtually every court, either as a condition of a deferred prosecution agreement (where the case is

basically dismissed at the conclusion of a designated period of time, once the client has completed certain requirements), or upon a conviction or plea. If someone contests a DUI, takes it to trial, and is acquitted, or if the case is dismissed on legal grounds, such as a lack of probable cause for the initial stop, then no treatment will be required.

\*Bail. Bail costs will generally run around \$2,000.

\*Insurance Premiums. Insurance premiums for your automobile will increase dramatically for a number of years.

\*Civil Lawsuit. The costs of a DUI arrest can include the time and expense of having to defend against civil claims, should anyone be injured or any property be damaged as a result of the alleged driving under the influence.

## CONSEQUENCES IN THE WORKPLACE

In addition to the potential jail time, cost, and inconvenience, as set forth above, an employee who is arrested for and/or convicted of DUI will see an immediate impact in the workplace. Issues that often arise include following:

1. Alabama does not provide a work permit in the event a license is suspended or revoked as a result of a DUI. How does your employee get to and from work? Will that employee be dependable or will there be absentee/tardiness problems?
2. An employee who needs to drive to the workplace or drive on the job may not legally drive with a suspended or revoked license. This consequence will impact any job requiring a commercial driver's license, an outside sales person, delivery person, a lawyer who needs to go to work, a doctor who needs to go between his office and the hospital, an accountant who needs to meet with clients, or any other profession where driving is an essential function of the job.
3. If an employee's license is suspended and/or revoked as a result of the DUI, will there be insurance coverage? Insurance coverage can be provided by the company, for company cars, or by the individual when they use their individual car for work. If an employee's license is suspended or revoked, there is a good possibility that there will be no insurance coverage if the employee is



*(Continued on page 4)*

<sup>2</sup>There is an additional minor in possession statute which can be charged at the discretion of the officer/prosecution. That is Alabama Code 28-1-5. 28-1-5 does not carry an automatic driver's license suspension. However, 28-3A-25(a)(19) includes a driver's license suspension as mandatory punishment for a violation of that statute. Thus, if a client has been convicted of being a minor in possession under 28-3A-25(a)(19), a conviction will result in an automatic suspension, and would form the basis for an enhanced suspension period, should that person later be arrested for DUI.

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involved in an accident. An employee driving with a suspended or revoked license while working for an employer or driving a company vehicle could subject the employer to financial responsibility. Claims could be made against the employer for recklessness, wantonness, *respondeat superior*, negligent hiring, negligent retention, and negligent entrustment, which could result in compensatory and punitive damages being assessed against the employer.

4. Is an employee, with a DUI arrest and/or conviction, a good employee? An individual who is arrested and/or convicted for DUI may have just been unlucky, by getting stopped after a dinner while consuming a number of drinks, or it could be indicative of an underlying drug or alcohol problem. If an individual has an underlying drug or alcohol problem, it can lead to serious problems at work, including absenteeism, tardiness, poor work product and, occasionally, the potential for violence.

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## PRACTICAL TIPS

There are a number of policies that can be implemented to help your company avoid problems with employees who are arrested for and/or convicted of DUI. These include the following:

1. Implement to policy that requires your employees immediately advise you of any arrest and/or conviction, for any crime, including DUI and other driving violations.
2. Adopt a drug and alcohol policy that complies with state and federal law.
3. If an employee is driving a personal car for work purposes, you should consider having the company named as an additional insured on the individual's insurance policy, as well as carry an umbrella policy through the company.
4. If an employee has absentee problems, tardiness problems, work product problems or a potential for violence, one possible underlying reason could be alcohol and/or drug abuse. If your company has an Employee Assistance Program (EAP), and the employee has a drug and/or alcohol problem, the EAP may be able to address the problem.
5. Maintain the maximum amount of uninsured/underinsured insurance coverage available from your insurance company. It is relatively inexpensive and it will provide financial protection up to policy limits, if you or your employee is injured in an accident involving a driver who is under the influence.

DUI's are very expensive, with long-lasting consequences for the individual who is arrested and/or convicted of DUI, as well as for that person's employer. Hopefully this article will help you understand the consequences of being arrested and/or convicted of DUI, and the problems employers have with employees who are arrested and/or convicted of DUI.