
About D.U.I.

(Driving Under the Influence)

Published by The Alaska Court System

PUB-11

(2/17)(green)

Introduction

This pamphlet summarizes the penalties for violating several Alaska statutes relating to the operation of motor vehicles and commercial motor vehicles while under the influence of an alcoholic beverage, inhalant, or controlled substance. It is not a complete statement of the law and is not binding legal authority. An attorney should be consulted for comprehensive legal advice. The following Alaska statutes are discussed:

DUI	Operating a vehicle, aircraft or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance.	AS 28.35.030
DUI-CMV	Operating a commercial motor vehicle while under the influence of an alcoholic beverage, inhalant, or controlled substance.	AS 28.33.030
Refusal	Refusal to submit to a chemical test.	AS 28.35.032
Refusal-CMV	Implied consent for operators of commercial motor vehicles.	AS 28.33.031
DWLR	Driving while license revoked, cancelled, suspended, or in violation of a limitation.	AS 28.15.291
DWLR - Commercial	Driving a commercial motor vehicle without being lawfully licensed.	AS 28.33.150

DUI and Refusal charges may be either misdemeanors or felonies, depending on the defendant's prior record. For a defendant with no prior convictions, first and second offenses are misdemeanors, charged by complaint and tried before a six-person jury in district court. For a defendant with two or more prior convictions for DUI, Refusal, or DUI-CMV (in any combination, within ten years and since January 1, 1996) a third DUI or Refusal is a felony, charged by grand jury indictment and tried in superior court by a jury of twelve.

DUI, Refusal, and DUI-CMV have mandatory minimum penalties that increase according to the number of times the defendant has been convicted of DUI, Refusal, or DUI-CMV. Convictions from other jurisdictions may be counted as prior convictions for sentencing under Alaska state law.

(Convictions for DUI, Refusal, and DUI-CMV that arise out of one incident are counted as one prior conviction when determining the number of prior convictions.)

Penalties for Misdemeanor Offenses

For every DUI, DUI-CMV, or Refusal conviction, the court will impose a combination of mandatory and discretionary penalties. The jail sentence, the fine, the period of license revocation, and the cost of imprisonment all increase according to the number of prior convictions.

A MISDEMEANOR SENTENCE **MUST** INCLUDE:

- A jail or monitoring sentence ranging from a mandatory minimum of 72 hours (first offense) to a mandatory minimum of 360 days (sixth or subsequent non-felony offense).
 - **For first DUI or first Refusal**, the time must be served by electronic monitoring (EM) at a private residence. If EM is unavailable, the sentence must be served by other means. DOC probation office staff will decide whether time will be served on an EM or “house arrest.” The monitoring requirement applies to sentences imposed on or after January 1, 2017, for conduct that occurred before, on, or after January 1, 2017. It does not apply to first CMV DUI or CMV Refusal.
 - **For DWLR**, the maximum is 10 days with 10 days suspended if the revocation was for a first DUI or Refusal. The maximum is 10 days if the revocation was for a second or subsequent DUI or Refusal. DWLR is an infraction if the revocation was for anything other than a DUI or Refusal.
- A fine ranging from a mandatory minimum of \$1,500 (first offense) to a mandatory minimum of \$7,000 (sixth or subsequent offense);
- Revocation of the driver’s license or privilege to obtain a license for 90 days or more unless the offense occurred in a watercraft (for some offenses, a limited license may be available during part of the revocation if certain criteria are met);
- For violations involving alcohol or intoxicating liquor, an order requiring use of an ignition interlock device after the privilege to drive is regained (except in certain communities not on the state road system);
- Disqualification (prohibition from operating a commercial vehicle, no limited license allowed) if the offense was committed in a commercial vehicle;
- An order to submit to drug and alcohol evaluation and complete any treatment program required by the evaluating agency;
- An order to pay certain surcharges, and the cost of emergency response services if any were required following a motor vehicle accident related to the offense; and
- An order to pay the cost of imprisonment. For first DUI or first Refusal, the cost will be \$66 for the first three days plus \$14 per day for any additional days ordered.

A MISDEMEANOR SENTENCE **MAY** ALSO INCLUDE:

- An order to pay for damage caused as a result of the offense;
- An order to complete an approved driver improvement course;
- An order to perform community work service;
- A term of probation and requirement to comply with probation conditions;
- An order to forfeit the vehicle, aircraft, or watercraft; and
- An order to take a prescription medication that discourages the consumption of alcohol.

Penalties for Felony Offenses

Depending on when the prior offenses occurred, a third or subsequent DUI or Refusal may be a felony, and result in a higher mandatory minimum jail sentence, fine, and other penalties.

A FELONY SENTENCE **MUST** INCLUDE:

- A jail sentence ranging from a mandatory minimum of 120 days (third offense) to a mandatory minimum of 360 days (fifth or subsequent offense);
- A mandatory minimum fine of \$10,000;
- Permanent revocation of the driver's license, and permanent loss of the privilege to drive or privilege to get a license (subject to restoration of license after a minimum of 10 years and only if certain other conditions are met);
- Forfeiture of the vehicle, watercraft, aircraft used in the incident;
- Revocation of registrations of all vehicles in your name;
- For violations involving alcohol or intoxicating liquor, an order requiring use of an ignition interlock device for a mandatory minimum of 60 months **if** the privilege to drive is regained (except in certain communities not on the state road system);
- Disqualification for life from operating commercial vehicles if the incident was committed in a commercial vehicle;
- An order to submit to drug and alcohol evaluation, and complete any treatment program(s) required by the evaluating agency; and
- An order to pay certain surcharges, and the cost of emergency response services if any were required after the incident.

A FELONY SENTENCE **MAY** ALSO INCLUDE:

- An order to pay for damage caused as a result of the offense;
- An order to perform community work service;
- An order to take prescription medications that discourage the consumption of alcohol; and
- A term of probation and a requirement to comply with probation conditions.

Administrative License Revocation

The statutes require that defendants whose licenses are revoked by the court face additional administrative license revocation by the Division of Motor Vehicles (DMV). The court revocation may be concurrent with (at the same time as) or consecutive to (in addition to) the DMV revocation.

If a driver fails a chemical test (has a test result of 0.08% or greater, or 0.04% or greater while operating a commercial vehicle) or refuses to take a chemical test, the law enforcement officer will seize the driver's license and give the driver a "Notice and Order of Revocation." That notice informs the driver that **the driver's license or privilege to drive will be revoked by DMV on the eighth day following the arrest.** The notice serves as a temporary license for seven days and describes how to request an administrative review of the revocation. (If the person was operating a commercial motor vehicle, they will be ordered out of service for 24 hours.)

A request for an administrative review must be made in writing within seven days after the driver receives the notice. The driver may write a letter or use a form obtainable from DMV at <http://doa.alaska.gov/dmv/forms/pdfs/447.pdf>. The request for a hearing should be mailed or delivered to DMV at Dept. of Administration, Anchorage Driver's Licensing, 1300 W. Benson

Blvd., Suite 100, Anchorage, AK 99503. When a request is received, DMV will issue a temporary license, which is valid until the date of the administrative hearing. If the driver is dissatisfied with the result of the DMV hearing, the driver may file an appeal in superior court. A booklet entitled **Appellant Instructions-Appeal to Superior Court from Administrative Revocation of Driver's License under Alaska Statute 28.15.165 (AP-220)** is available from the court.

Overview of Mandatory Minimum Penalties

<i>MINIMUM PENALTY</i>	<i>MISDEMEANOR</i>	<i>FELONY***</i>
FIRST OFFENSE		
Jail / Monitoring Time	72 consecutive hours	
Fine	\$1,500	
Ignition Interlock Device*	6 months	
Cost of Imprisonment**	\$66 for first 3 days plus \$14 for each additional day ordered	
License Revocation	90 days	
SECOND OFFENSE		
Jail Time	20 days	
Fine	\$3,000	
Ignition Interlock Device*	12 months	
Cost of Imprisonment**	\$1,467	
License Revocation	1 year	
THIRD OFFENSE		
Jail Time	60 days	120 days
Fine	\$4,000	\$10,000
Ignition Interlock Device*	18 months	60 months
Cost of Imprisonment**	\$2,000	Not applicable
License Revocation	3 years	For life
FOURTH OFFENSE		
Jail Time	120 days	240 days
Fine	\$5,000	\$10,000
Ignition Interlock Device*	24 months	60 months
Cost of Imprisonment**	\$2,000	Not applicable
License Revocation	5 years	For life
FIFTH OFFENSE		
Jail Time	240 days	360 days
Fine	\$6,000	\$10,000
Ignition Interlock Device*	30 months	60 months
Cost of Imprisonment**	\$2,000	Not applicable
License Revocation	5 years	For life
SIXTH OFFENSE		
Jail Time	360 days	360 days
Fine	\$7,000	\$10,000
Ignition Interlock Device*	36 months	60 months
Cost of Imprisonment**	\$2,000	Not applicable
License Revocation	5 years	For life

* Ignition Interlock Device requirement for violations involving alcohol.

** This amount is subject to change by regulation. Defendant must pay surcharges too.

*** Third or subsequent DUI or Refusal convictions may be misdemeanors or felonies, depending on when the prior convictions took place.

DMV forms and other useful information are available on the DMV website at:

<http://doa.alaska.gov/dmv/forms/forms.htm>.

Limited License Privileges

The court may grant limited license privileges to enable a misdemeanor DUI defendant to drive in order to earn a livelihood if the court determines that the defendant may drive without excessive risk or danger to the public. The availability and terms of a limited license will vary depending on the defendant's criminal record, driving record, and treatment history.

The court may also grant limited license privileges to a felony DUI defendant if the court determines that the defendant successfully completed Wellness or Therapeutic Court (or the equivalent in an area where those programs are not available). Wellness or Therapeutic Court is available in Anchorage, Fairbanks, Juneau, Bethel, and Ketchikan. Use court form [CR-742](#) for a verification of eligibility. In order to use this form, you must have successfully completed Wellness or Therapeutic Court with the Alaska Court System. If you are in an area where Wellness or Therapeutic Court is not available, use court form [CR-741](#) instead.

If the defendant's license was also suspended by DMV, the defendant must also obtain a limited license from DMV. Requests for limited licenses from DMV are made by paying a non-refundable \$100 fee, and completing an application form available at DMV offices and online at <http://doa.alaska.gov/dmv/forms/forms.htm>. The DMV requires Financial Responsibility Filing (SR 22 insurance filing form); installation of an approved ignition interlock device; and verification that the defendant met the alcohol education and rehabilitation treatment program requirements. If DMV grants a limited license, the defendant may submit the same limited license application form to the court.

Reinstatement of Driver's License

At the end of any period of revocation, a driver must apply for a new license at DMV. The original license that was surrendered will not be returned. Before a new license will be issued, the driver must meet DMV requirements. See <http://doa.alaska.gov/dmv/akol/reinststate.htm>. A driver who was granted a limited license must also apply for a new license.

Commercial DUI (DUI-CMV)

The crime of operating a commercial motor vehicle under the influence (DUI-CMV) is committed when a defendant who is under the influence of alcohol, inhalant, or any controlled substance operates a commercial motor vehicle, or when a defendant who has a blood alcohol level of 0.04% or greater operates a commercial motor vehicle. "Commercial motor vehicle" is defined in AS 28.90.990. A defendant who operates a commercial motor vehicle under the influence of alcohol, inhalants, or drugs may also be charged with non-commercial DUI and Refusal in connection with the same incident.

A DUI-CMV conviction will result in penalties identical to DUI **plus disqualification from driving a commercial motor vehicle** for one year (first offense) or for life (subsequent offenses).

Disqualification is required when non-commercial DUI and Refusal offenses are committed in commercial vehicles, and for other offenses (such as leaving the scene, failing to file an accident report, felonies facilitated by the use of a commercial vehicle, driving in violation of service orders, and serious traffic violations - see AS 28.33.140.)

Penalties for driving while license revoked, cancelled, suspended, or in violation of a limited license

Driving while a license is revoked, cancelled, or suspended for a DUI or Refusal is a Class A misdemeanor, with a maximum 10 days and 10 days suspended if the revocation was for a DUI or Refusal and it is the first DWLR, or 10 days if it is the second or more. The maximum fine is \$25,000.

In addition, if a defendant is convicted of driving during a period of license revocation, DMV will suspend the registration of every vehicle registered in that defendant's name until the defendant provides proof of financial responsibility for each vehicle.

Penalties for driving a commercial motor vehicle without being lawfully licensed

Driving a commercial motor vehicle during a period of license revocation, driving in violation of a limited license, and driving during a period of disqualification (see AS 28.33.150) are Class A misdemeanors with a maximum penalty of up to one year in jail and a \$25,000 fine. The court **must** impose the following minimum penalties upon conviction:

<p>If the defendant has not been previously convicted of (a) driving a commercial vehicle without be lawfully licensed, (b) driving while license revoked/suspended, or (c) driving in violation of a limited license:</p>	<ul style="list-style-type: none"> • 20 days in jail (10 suspended) • 80 hours of community work service • Additional 90 day license revocation
<p>If defendant has been convicted during the preceding 10 years of (a) driving a commercial motor vehicle without being lawfully licensed, (b) driving while license revoked/suspended, or (c) driving in violation of a limited license:</p>	<ul style="list-style-type: none"> • 60 days in jail \$1,000 fine • Additional 90 day license revocation • Additional conditions of probation mandatory probation condition

Other Consequences

It is not possible for the court to advise defendants about all the consequences that a conviction for DUI, Refusal, or DUI-CMV may have in addition to the sentence imposed by the court. Common consequences include:

- Federal Aviation Administration regulations require all FAA licensed pilots to report “motor vehicle actions” to the FAA within 60 days. Motor vehicle actions such as DUI convictions and license revocations may be the basis for suspension or revocation of a pilot’s license.
- DMV may classify a driver as a “habitual user of alcohol” and refuse to license the driver even after the revocation period has ended, until the driver provides proof that the substance abuse problem has been under control for one year.
- Motor vehicle insurance rates may increase.
- Information about convictions may be requested by employers or on job applications.
- Convictions may affect a defendant’s ability to obtain or renew a pilot’s license, or another occupational license.
- Convictions may affect eligibility for military service or U.S. citizenship.
- Convictions may prevent entry into Canada or other foreign countries.

For more information about this publication,
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