



The Definitive Guide to  
**DUI**  
in Maryland

A Complete Step-by-Step Guide for Anyone Arrested for DUI

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## Table of Contents

<b>Chapter 1: Maryland's Drunk Driving Laws</b>	<b>3</b>
<b>Chapter 2: DUI versus DWI in Maryland</b>	<b>4</b>
<b>Chapter 3: 8 Reason Police Might Pull you over for a suspected DUI in Maryland</b>	<b>6</b>
<b>Chapter 4: Should you take the DUI Field Sobriety Test?</b>	<b>8</b>
<b>Chapter 5: Is DUI a Felony or a Misdemeanor in Maryland?</b>	<b>10</b>
<b>Chapter 6: Arrested for DUI in: What's Next?</b>	<b>12</b>
<b>Chapter 7: What are the Maryland Alcohol Education Requirements?</b>	<b>14</b>
<b>Chapter 8: What Is The Best Defense For A DUI Charge?</b>	<b>16</b>

## 1) Maryland's Drunk Driving Laws: .07 or .08, What's the Difference?

A .07 is considered Driving While Intoxicated (DWI). A DWI is punishable by up to two months in jail. A DWI could subject you to a five hundred dollar fine and a temporary loss of your driver's license.

A DUI (Driving While Under the Influence) carries stiffer penalties. For a first time DUI

*If you see flashing lights in the rearview mirror and you know you have had something to drink, you do not have to take roadside tests.*

You do not have to tell police anything. When you are stopped on suspicion of drunk driving, the officer is collecting evidence to use against you. But be warned: not taking the sobriety tests can have serious consequences as well, including:

- An automatic 120-day license suspension for the first offense
- A one-year suspension of your license for the second offense.

This is why you should ask to speak with a lawyer right away. An experienced lawyer will help you navigate the situation and make the best decision for you.

## 2) DUI Versus DWI in Maryland

You're driving home. The stereo is loud and the night has been memorable. And then it happens: the headlights of the car behind you flash and blue and red lights suddenly appear. If you've been drinking before you got behind the wheel, there's nothing quite like having multiple thoughts and feelings washing over you, all in the same instance, including:

- Panic
- What's this going to cost?
- Will I go to jail?
- How many drinks did I have again?
- I've never had a DUI before. Or a DWI. Wait, what's the difference?

Of course, you wouldn't be having this experience if you simply hadn't been driving after drinking. But people do drink and drive, often without fully appreciating the potential consequences.

### First Things First

Regardless of which offense applies to your traffic stop, you will be charged with DUI (Driving Under the Influence) and DWI (Driving While Impaired) because they're governed by the same Maryland statute. This requires that each be charged separately in the event the facts don't support a conviction on one of the alleged offenses (this also provides some latitude for a plea bargain).

**There Are Actually Three  
Classifications Of Drinking And  
Driving Offenses:**

*Driving Under  
the Influence of  
Alcohol*

*Driving Under  
the Influence of  
Alcohol Per Se*

*Driving While  
Impaired by  
Alcohol*

### The Difference Between DUI and DWI In Maryland

Unlike many other jurisdictions, a DUI is punished more harshly in Maryland than a DWI. Here are the most important things you should know (all jail sentences and fine amounts shown are maximums under the law unless otherwise indicated; license suspensions are for the minimum period set by law): →

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A DUI offense occurs when the Blood Alcohol Concentration (BAC) is .08 or higher.  
For a DUI offense, the penalties include:

### 1st Offense

*1 year in jail/\$1,000 fine (if transporting a minor, maximums increase to 2 years/\$2,000). Your license can be suspended for a minimum of 6 months.*

### 2nd Offense

*2 years/\$2,000 fine (with minor passenger, max increases to 3 years/\$3,000 fine). If 2nd offense occurs within 5 years of first, license suspension 12 months unless you agree to Interlock program after first 45 days of license suspension.*

### 3rd And Subsequent Offenses

*3 years/\$3,000 fine (with minor, 4 years/\$4,000). License suspension: 18 months.*

A DWI offense occurs when the BAC is above .07 but below .08.

For a DWI offense, the penalties include:

### 1st Offense

*60 days in jail/\$500 fine (with minor, up to 6 months/\$1,000). License suspension: 6 months.*

### 2nd Offense

*1 year/\$500 (with minor, the fine can increase to \$2,000) and license suspension of 12 months.*

Note that Maryland has zero tolerance (BAC of .02 or above) for drivers under the age of 21. This is also an implied consent state, meaning that by accepting a driver's license you automatically consent to submit to blood, breath or urine testing; refusal can result in a license suspension of 120 days. A second refusal results in an automatic suspension of 12 months.

### 3) 8 Reason Police Might Pull You Over For A Suspected DUI In Maryland

Driving under the influence is defined as operating a motor vehicle with a blood alcohol content (BAC) over the legal limit. In most states the BAC limit is set between .05% and .08% and there's no need for the presiding officer to show impairment or intoxication.

Local law enforcement make over one million DUI arrests every year and drunk driving is estimated to squander over one hundred billion dollars in revenue annually. DUI arrests are highest for males and people in the 21-25 year-old age range.

Bearing that information in mind, here are tipoffs local law enforcement use to spot drunk drivers.

#### Probable Cause, DUI and the Law

For the officer to pull you over in the first place, most jurisdictions require the officer to establish probable cause. This means that the officer has to reasonably show that criminal activity was taking place before the pullover took place.

The most common reason for a pullover vis-a-vis an eventual DUI offense is speeding. In the State of Maryland, police officers need only have suspicion of intoxication to pull you over.

The officer who pulled you over must later be able to articulate why the driver was engaging in criminal activity. This could be as simple as a relatively routine traffic violation or forgetting to use your turn signal. Always make sure that your turn signal is engaged if you change lanes.

Because the fourth amendment protects undue search and seizures, the officer must show a violation of the law (probable cause) before stopping you and legally making an investigation. Sometimes the reason for the pullover is seemingly unrelated to the eventual DUI charge. For instance, expired tabs or a defective break light could avalanche into a field sobriety test.



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## NHTSA's Visual Clues for Impaired Driving

The National Highway Traffic Safety Administration lists the following visual identifiers that law enforcement around the country use to detect impaired driving:

- Turning with an overly wide radius
- Weaving
- Driving on an improper roadway
- Slow speed
- Swerving
- Stopping without a cause
- Following too closely
- Almost striking or striking an object

It is important to note that any driving behavior that smacks of impaired ability (and could be used as probable cause later) could increase the chances of a DUI stop. A vehicular deficiency, such as a busted break light or out-of-date license plate tag, could also be enough to pull you over.

These seemingly trivial traffic violations could lead to the officer approaching your vehicle and demanding a field sobriety test. Make sure you understand the risk factors before getting behind the wheel.



## How to Respond to an Officer

In the event that you are pulled over for suspected DUI, there are a few important things you should know. Although all drivers should cooperate with local law enforcement, drivers suspected of drunk driving should not incriminate themselves or provide statements that the prosecution could use against them at a later date.

Streamline the pull-over process by stopping your car in a safe place, answering questions in a straightforward manner and having your insurance and license ready. Do not agree to take a field sobriety test (it is within your rights to refuse this) and do call an attorney right away. DUI charges are serious, so it is important to understand what you should and should not do if you are pulled over for suspected DUI.

## 4) Should You Take The DUI Field Sobriety Test?

What happens if you find yourself in the unfortunate situation of being pulled over by a police officer that suspects you are driving under the influence of alcohol or drugs? If the officer asks you to submit to a series of field sobriety tests, how should you respond? Without taking into account whether you've actually been drinking or are stone cold sober, the answer to the question, "should you take the DUI field sobriety test?" is an absolutely, positively, resounding NO! Here's why:



### Field Sobriety Tests are Scientifically Proven to be Inaccurate. What Is a Field Sobriety Test (FST)?

A field sobriety test is a balance, coordination and cognitive acuity exam administered by a law enforcement officer along the side of the road to a person suspected of driving under the influence. If the officer subjectively determines that you've failed the battery of tests, you'll be arrested and asked to submit to a blood, urine or breathalyzer analysis at the police station.

Although the National Highway Traffic and Safety Administration (NHTSA) has attempted to standardize field sobriety tests, by their very nature they cannot be relied upon to be fair, objective or accurate. In fact, statistics indicate that each year hundreds of citizens find themselves falsely arrested and convicted as a result of erroneous FSTs.

Despite these findings, incredibly many law enforcement jurisdictions continue to administer FSTs as a means of helping officers determine whom they should take into custody. The best advice we can give you should you find yourself in this situation is to know your rights and remember that you are under no legal obligation to submit to the tests and, in addition, there can be no legal consequence for declining. Err on the side of caution and respectfully say, "thanks, but no thanks."



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## It's Highly Unlikely You Will Pass A Field Sobriety Test

Let's say, theoretically, that you agree to the police officer's request to perform the FST. First, keep in mind that the officer who stopped you has most likely witnessed behavior that he or she thinks indicates intoxication and so they've already decided to arrest you – the field sobriety test just gives the officer probable cause and additional evidence against you in court. Second, most pull-overs happen late at night. You'll be asked to perform physical balance and coordination tasks in the dark, along the side of a road with uneven asphalt or gravel, cars whizzing by you at high-speed while headlights blind you in the cold, wind and rain. Not exactly the optimum conditions for walking toe-to-toe on an arbitrary straight line while reciting the alphabet backwards. Nicely, but firmly decline, decline, decline.

## What Happens If You Take The Test and Fail?

Unfortunately, many people don't understand their rights and mistakenly agree to the FST. If this should happen to you, all is not lost. Consult with a competent and experienced DUI attorney who can challenge the unreliable and inaccurate tests in court and succeed in having your arrest and conviction overturned. Don't be under the incorrect assumption that if you failed the FST it proves you were over the legal limit.

In actuality, what a failed field sobriety test proves is your complete inability to successfully touch your nose with your finger while your eyes are closed standing on one foot!

**Period.**



## 5) Is DUI a Felony or a Misdemeanor in Maryland?

Driving under the influence (DUI) is illegal in all jurisdictions of Maryland, yet whether the offense is categorized as a misdemeanor or felony depends on individual circumstances. First off, a misdemeanor offense is typically viewed as less serious than a felony charge; moreover, a felony will affect your voting rights whereas a misdemeanor will not affect your right to vote in Maryland. So, when does a driving under the influence (DUI) or driving while intoxicated (DWI) charge transition from a misdemeanor to a felony charge?



### DUI in Maryland: Misdemeanor or Felony?

Whenever a vehicular manslaughter has taken place in a DUI or DWI case, the charge is typically boosted from a misdemeanor to a felony. That said, strict penalties are still in effect for misdemeanor DUI charges in Maryland.

In the following circumstances a DUI or DWI charge is treated more seriously by the courts:

- You have more than one reported drunk driving offense in the last decade;
- You showed a blood alcohol content of .20 or higher;
- You had a juvenile aged fourteen or younger in the car at the time of the DUI; or
- You were driving recklessly at 20 MPH (or more) over the speed limit.

If one or more of these conditions are met, you may face jail time of three years and criminal fees of \$3,000 in the state of Maryland. These penalties may be added to administrative fees and a one-year suspension of your driver's license.

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## Breaking Down Maryland's DUI Laws

If, as a result of a DUI accident, the other driver, passenger or a nearby pedestrian suffered an injury, the offense against the drunk driver is escalated to a more serious misdemeanor. That is, the misdemeanor is treated more seriously by the courts than a DUI offense that did not involve an accident or personal injury.

If the impaired driver (i.e., BAC of less than .08) is successfully charged with a life-threatening injury to another driver, passenger or pedestrian, then the penalty may be two years of jail in addition to \$3,000 in further penalties; administrative fees may also apply. If the drunk driver (i.e., BAC over .08) is successfully charged with a life-threatening injury, the repercussions may be jail time of three years and \$5,000 in further penalties.

If another driver, passenger or involved pedestrian dies as a result of a proven DUI or DWI offense, the charge is automatically shifted from a misdemeanor to a felony. This is technically termed "homicide by motor vehicle" while impaired or under the influence of an alcoholic substance. In these cases, stiffer jail time awaits drunk drivers than impaired drivers convicted in the state of Maryland.

DUI offenses involving a fatality entail up to five years of jail time whereas driving while impaired (i.e., BAC less than .08) and killing another driver, passenger or pedestrian may result in three years of jail time.

## Mitigating Circumstances and Misdemeanor DUI

Other ramifications from a DUI offense in Maryland may involve the following:

- Three times insurance costs
- Limited employment opportunities
- Limited housing opportunities

If the DUI is a misdemeanor and not a felony, you may have the chance to get your sentence reduced if the judge agrees to sanction substance abuse treatment or the installation of an ignition interlock device (essentially a breathalyzer installed into your car) in your vehicle.

## 6) Arrested for DUI in Maryland: What's Next?

It's a Saturday night in Annapolis and you're out with friends and have had a few drinks. You feel like you can drive home, since your house is only a few blocks away, but halfway home you get pulled over by a police officer and, next thing you know, you're arrested for DUI. As you sit in the back of the police car on your way to the station, you realize that driving home probably wasn't the best idea, and now you may have to deal with this for the rest of your life.

*Once you've been arrested, what happens next?*

**It is illegal for any person over the age of 21 in any state to drive with a BAC of 0.08% or higher.**

Here in Annapolis, if you do get a DUI, you will have a very strict timeline ahead of you. In Annapolis, you are granted a temporary license for up to 45 days after your DUI was received. You have 30 days to request a hearing with the Maryland Office of Administrative Hearings or else your license will be suspended after the 45 days.

However, if you request a hearing within 10 days after receiving your DUI, your license can be extended until your hearing date. When it is time for your hearing, you will appear in front of the Anne Arundel County District Court. It may take up to a few months to schedule a hearing, so it is important to schedule one as soon as possible so you are able to keep your license up to the time of your hearing. At your hearing, the judge will determine the verdict and any sentencing.

### Standard Sentencing for DUI Convictions

Some of the standard sentences for DUI convictions include:

- Fines
- Alcohol education classes
- Loss of driving privileges
- Requiring that an ignition interlock device be installed in your vehicle.

It is possible that you will have to face one or more of these sentences depending on the severity of your DUI. In Maryland, it is common for drivers to have the ignition interlock device system installed in their car for a year or longer if they want to keep their license.

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## What is an Ignition Interlock Device System?

This device requires you to blow into a breathalyzer before you can turn on your vehicle. The BAC varies for different cases from 0.02% to 0.04%. Once this is installed in your vehicle, you must return to the Ignition Interlock Service Provider every 30 days so information can be collected and stored to make sure you are following the rules of a sober driver.

In addition to any one or combination of standard sentences, your car insurance company will likely raise your monthly rates, or they may drop you altogether. Once your car insurance drops you, it will be difficult and very expensive to find another one that will accept your DUI infractions. Unfortunately, car insurance is the least of your worries at this point, because it is possible to lose your job as a result of your DUI. Every company has different rules regarding DUI's, but some companies may have a zero tolerance policy. Clearly, driving under the influence is not worth the risks that you could face for the rest of your life.

## What About Minors?

Although it is illegal to drink alcohol if you are under the age of 21, that doesn't mean that kids don't drink anyway, and sometimes they go behind the wheel while they are under the influence. In Maryland, if you are under 21, your BAC cannot be over 0.02%. If it is, you will be issued a DUI, be arrested on the spot, and given a temporary paper license for 30 days. You have up to 30 days to schedule a hearing. The outcome of underage drinking and driving usually results in a suspended license for a minimum of 6 months, and mandatory alcohol education classes. This DUI will also be on your permanent record, which may make it difficult for you when you apply for jobs.

The consequences of getting a DUI at any age are not worth driving drunk. By driving under the influence, you put your life in danger as well as the lives of all of the other drivers on the road. If you're planning to drink, make arrangements to get a ride home with a cab or a designated driver.

## 7) What are the Maryland Alcohol Education Requirements?

If you've been charged with a Driving Under the Influence (DUI) offense, it is critical to secure an experienced DUI defense attorney. Among the attorney's tasks is to negotiate every penalty in an effort to manage – if not minimize – the impact on you. One thing the lawyer is likely to push for is your participation in the Maryland Alcohol Education Program because the alternative can be far more punitive.

### The Charge

If you are under 21 driving with a Blood Alcohol Count (BAC) of 0.02%, you are considered impaired. If you are over 21, you are driving under the influence (DUI) at 0.08%, and if you are 0.04% with a commercial license, you are DUI. The penalties may include license suspension, jail time, and hefty fines.

If one of your penalties is the revocation of your license, you can pursue a new license by enrolling in a 12-hour Maryland Alcohol Education Program (AEP). The AEP is structured to turn you and your future around by avoiding any future incidents involving alcohol and driving.

You wind up in the AEP when you are referred by:

- A District Court Judge
- An Administrative Law Judge in the Office of Administrative Hearings (OAH)
- The Maryland Motor Vehicle Administration (MVA)



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## The 26-week AEP

The program begins with a preliminary alcohol assessment, a psychological assessment to determine if you are an alcohol abuser or alcohol dependent. If the assessment measures a serious problem with dependency, you will be required to participate in a more intensive 26-week therapy treatment. Drivers who are required to attend the 26-week Alcohol Treatment Program will be given a reasonable time period in which to complete the program.

## The 12-hour AEP

The 12-hour Maryland Alcohol Education Program is meant for those who have not been identified as an alcohol abuser or alcoholic dependent. Your DUI defense attorney can refer you to a number of AEP course providers, and you can enroll and start at any time – the sooner the better. Online AEP programs are generally NOT acceptable. The provider sets the price for the program.

### To get started:

- Sign-up for a convenient session.
- Pick a date within 90 days of the due date printed on the referral letter.
- Bring the referral letter to your training session.
- To replace a lost referral letter, visit your local MVA office or call the Driver Improvement Programs Unit in the Maryland Driver Wellness and Safety Division.

You will receive a letter confirming your course work from the AEP provider which you can present with your application for a new license. Failure to complete the AEP within the time frame specified in your referral letter will result in the suspension of your driving privileges. Then, you will be notified that you must surrender your license to the MVA.

## The Total Cost

The penalty for a conviction for Driving Under the Influence (DUI) or Driving While Intoxicated (DWI) is a typically a complex package that may include fines, threats of imprisonment and loss of license, as well as lost reputation and wages. The Maryland Alcohol Education Program is designed to provide offenders with rehabilitation and recovery and your participation may lesson some of the more punitive sentences you could otherwise receive, but this is very tough terrain to

## 8) What Is The Best Defense For A DUI Charge?



If you are pulled over and subsequently arrested for suspicion of Driving Under the Influence (DUI) you could be facing some very serious consequences such as felony conviction, stiff penalties and fines, loss of your driver's license (which can affect employment) as well as possible jail time. If this happens to you, the first thing you should do is retain an experienced and competent DUI attorney in your area to represent you at trial.

**What is the best defense for a DUI charge? The answer to that question is "it depends"**

There are many mitigating factors that surround a DUI case and extenuating circumstances that must be evaluated before a defense can be formed. Each case is unique and your attorney will attempt to ferret out the facts and find holes in the prosecution's case that could result in a dismissal or not-guilty verdict at trial. Although the outcome of your case is dependent on many variables, the following are 4 of the most common and successful defenses

for a DUI charge: →



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Although the outcome of your case is dependent on many variables, the following are 4 of the most common and successful defenses for a DUI charge:

## Best Defense #4: No Probable Cause

*In order for an officer to stop someone for a DUI, he or she must first have probable cause to do so. The US Constitution provides that a peace officer cannot arbitrarily detain someone for no reason – they must provide evidence to justify the stop. Were you were driving erratically? Were your headlights out? Did you appear to be intoxicated or did they see open containers in the car? Without probable cause for being pulled over, the stop is illegal.*

## Best Defense #3: Evidence at the Scene

*When a police officer has probable cause to pull someone over on suspicion of a DUI, he or she must gather sufficient evidence to use against you at trial. You will most likely be asked to submit to a Field Sobriety Test (FST) or breathalyzer. These “tests” are extremely inaccurate and are to your disadvantage to perform because they will give the DA more evidence to support the officer’s assertion that you were driving under the influence. Since you have no legal obligation to take the FST or breathalyzer at the scene, the best course of action is to politely but firmly decline. You’ll most likely have to submit to a blood alcohol test if you are arrested, but if your attorney can prove that the stop was illegal (see #1) then any evidence gathered will also be deemed “inadmissible” and your charges can be dismissed.*

## Best Defense #2: Breathalyzer/FST/Blood Test Results

*If you do submit to one or all of these tests, your attorney can use these test results to your advantage by:*

- *Challenging whether the equipment used was properly maintained, calibrated, outdated or if the officer was trained to administer the tests.*
- *Proving that the person performing the blood test did not follow protocol and hospital procedures.*
- *Asserting that the results of the blood test was affected by prescription medications that contained alcohol or that rubbing alcohol on the skin was drawn into the needle during testing.*
- *Citing evidence that Field Sobriety Tests are statistically unreliable and based on the subjective opinion of the officer and not on scientific facts.*

*As with every legal case, these defenses have their strengths and weaknesses. It’s up to your attorney to gather the complicated facts, go over them carefully and design a successful defense to win you a dismissal or not-guilty verdict.*

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