



DWI Penalties

Driving While Intoxicated (DWI) in Texas is a serious offense. Blood Alcohol Content (BAC) over .08% or being under the influence of a controlled substance are grounds for arrest under Texas DWI laws. It should be noted that even a first time drunk driving conviction in Texas may be considered a felony depending on the circumstances and criminal record of the convicted.

1st Offense

A first time conviction of Driving While Intoxicated (DWI) in Texas will result in a driver's license suspension of ninety (90) days to one (1) year, seventy-two (72) hours to one-hundred eighty (180) days in jail, and fines of up to \$2,000. Additionally, a convicted DWI offender may also be subject to the installation of an ignition interlock device in their automobile at their own expense.

2nd Offense

A second conviction of DWI in Texas will result in a driver's license suspension of six (6) months to two (2) years, thirty (30) days to one (1) year in prison, and fines of up to \$4,000. Second time offenders may also be required to install an ignition interlock device in their automobile at their own expense.

3rd Offense

Being convicted of DWI in Texas for a third time is considered a third degree felony. Penalties include a license suspension of up to two (2) years, two (2) to ten (10) years in prison and fines of up to \$10,000. The court also has the option to require the convicted to install an ignition interlock device in their automobile at their own expense upon the reinstatement of their driver's license.

INTOXICATION – MEDICAL DEFINITION

A medical definition includes poisoning or becoming poisoned. All drugs have an effect on the human body. 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 while operating an automobile.

INTOXICATION – TEXAS DEFINITION

Intoxication is defined by Texas law. The instructor should make sure that the class understands that either of these is sufficient to be considered intoxicated: (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 those substances or any other substance into the body; **or...** (b) Having an alcohol concentration of .08 or more [PC 49.01 (2)(A)&(B)].

Note: The DWI law is not age specific and individuals of any age may be charged with a DWI violation. There are additional charges that involve minors when any alcohol is detected that are presented later in this topic.

The loss of faculties portion of the law relies on a judgment by the officer that the person has been affected by alcohol or another drug. Physical "field sobriety" tests may be used to determine this as well as unsafe driving actions. The alcohol concentration portion is determined through analysis of a person's breath (intoxilyzer) or blood [Blood Test].

MOTOR VEHICLE DEFINITION

It is defined as a device in, on, or by which a person or property is or may be transported or drawn on a highway, except a device used exclusively on stationary rails or tracks [PC 32.34a(2)].

PUBLIC INTOXICATION

May be danger to self or others. If an officer believes a person *may cause harm* to himself or someone else, even if the person is not actually doing a dangerous act at the time, PI may be charged.

In a Public Place. Texas law provides a definition of public place. As you will note it constitutes a great variety of locations. “Public place” means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops [PC 1.07(40)].

Intoxicated. As previously described, intoxication is defined in Texas statutes as: (a.) Not having normal use of mental or physical faculties because of alcohol or other drugs [PC 49.01(2)].

Penalty. There is no requirement to obtain blood or breath test results and officers usually use the loss of normal faculties portion of the definition. The penalties for violation of this law is a fine of up to \$500. Under 21: same as MIP

CONSUMPTION LAW

It is illegal to operate a motor vehicle in a public place while consuming alcohol [(PC 49.03)].

PC § 49.03 CONSUMPTION OR POSSESSION OF ALCOHOLIC BEVERAGE IN MOTOR VEHICLE. (a) A person commits an offense if the person consumes an alcoholic beverage while operating a motor vehicle in a public place and is observed doing so by a peace officer.

(b) An offense under this Section is a Class C misdemeanor.

Penalties. The driver must be seen by an officer **consuming an alcoholic beverage** for this law to apply. The fine only offense is up to \$500.

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ZERO TOLERANCE LAW

Texas' **ZERO TOLERANCE LAW** also provides sanctions for minors who commit offenses under the non-driving alcohol-related offenses. Generally speaking, a minor may not purchase, attempt to purchase, falsely state they are 21 years of age or older or present any document that indicates that they are 21 years of age or older to a person engaged in the selling or serving of alcoholic beverages, consume, or possess an alcoholic beverage. The penalty upon conviction of one of the above non-driving alcohol-related offenses and for Public Intoxication for a minor is as follows:

- **1st Non-driving Alcohol-Related Offense by a Minor**—Class C misdemeanor, punishable by a fine up to \$500.00, 8 to 12 hours of community service, and mandatory attendance of an alcohol awareness course. The minor's driver's license will be suspended (or his/her privilege denied if not licensed) for 30 days.
- **2nd Non-driving Alcohol-Related Offense by a Minor**—Class C misdemeanor punishable by a fine up to \$500.00, 20 to 40 hours of community service, and may be required to attend an alcohol awareness course. The minor's driver's license will be suspended (or his/her driving privilege denied if not licensed) for 60 days.
- **3rd Non-driving Alcohol-Related Offense by a Minor (10 years of age or older but less than 17)**—Class C misdemeanor and "Conduct Indicating a Need for Supervision" under the Family Code punishable by a fine of up to \$500.00, 20 to 40 hours of community service, and the minor's driver's license will be suspended (or his/her privilege denied) for 180 days. Minors are not eligible for deferred disposition on the third and subsequent convictions.
- **3rd Non-driving Alcohol-Related Offense by a Minor (17 years of age or older but less than 21)**—Class B misdemeanor punishable by a fine not less than \$250.00 or more than \$2,000.00, not less than 40 nor more than 60 hours of community service, and/or confinement in jail not to exceed 180 days. The minor's driver's license will be suspended or his/her privilege denied for 180 days. Minors are not eligible for deferred disposition on the third and subsequent convictions.

Beginning September 1, 1999, a minor who is convicted of driving while his/her license is suspended because of a non-driving alcohol related offense is subject to the penalties of Driving While License Suspended (see Chapter One for Penalties).

Intoxication Manslaughter

A person commits an offense if the person:

- operates a motor vehicle in a public place, operates an aircraft, a watercraft, or an amusement ride, or assembles a mobile amusement ride; and
- is intoxicated and by reason of that intoxication causes the death of another by accident or mistake.

An offense under this section is a felony of the second degree.

INTOXICATION ASSAULT

Commits an offense if the person operates a motor vehicle, aircraft, watercraft, or amusement ride, or assembles a mobile amusement ride and is intoxicated. By reason of intoxication causes the injury of another person by accident or mistake. [PC 49.07]

Penalty is felony of 3rd Degree

- Fine is \$0-\$10,0000
- Penitentiary sentence is 2-10 years
- License suspension is 180 days to 2 years

OTHER SANCTIONS FOR NONDRIVING ALCOHOL-RELATED OFFENSES

A person who purchases an alcoholic beverage for a minor or who furnishes an alcoholic beverage to a minor can be punished by a fine up to \$2,000.00 and/or confinement in jail for up to 180 days. A person who sells a minor an alcoholic beverage can be punished by a fine up to \$4,000.00 and/or confinement in jail for up to one year.

OPEN CONTAINER LAW

"Open container" means a bottle, can, or other receptacle that contains any amount of alcoholic beverage and that is open, that has been opened, that has a broken seal, or the contents of which are partially removed.

"Passenger area of a motor vehicle" means the area of a motor vehicle designed for the seating of the operator and passengers of the vehicle. The term does not include:

- a glove compartment or similar storage container that is locked;
- the trunk of a vehicle; or
- the area behind the last upright seat of the vehicle, if the vehicle does not have a trunk.

"Public highway" means the entire width between and immediately adjacent to the boundary lines of any public road, street, highway, interstate, or other publicly maintained way if any part is open for public use for the purpose of motor vehicle travel. The term includes the right-of-way of a public highway.

A person commits an offense if the person knowingly possesses an open container in a passenger area of a motor vehicle that is located on a public highway, regardless of whether the vehicle is being operated or is stopped or parked. Possession by a person of one or more open containers in a single criminal episode is a single offense.

It is an exception to the application of Subsection (b) that at the time of the offense the defendant was a passenger in:

- the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, including a bus, taxicab, or limousine; or
- the living quarters of a motorized house coach or motorized house trailer, including a self-contained camper, a motor home, or a recreational vehicle.

An offense under this section is a Class C misdemeanor.

- A peace officer charging a person with an offense under this section, instead of taking the person before a magistrate, shall issue to the person a written citation and notice to appear that contains the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged. If the person makes a written promise to appear before the magistrate by signing in duplicate the citation and notice to appear issued by the officer, the officer shall release the person.