

Attorney and Client Guide to

DRUNK DRIVING

By Eric Alan Berg, Attorney at Law
Offices in Redding and Chico
24-Hour Crisis Hotline: (530) 223-5100



California has two basic drunk driving laws. They are **Vehicle Code section 23152 (a)** “It is a misdemeanor to drive under the influence of alcohol and/or drugs” and **Vehicle Code section 23152 (b)** “It is a misdemeanor to drive with .08% or more of alcohol in your blood.”

Most cases result in dual charges, and, although the defendant can be simultaneously convicted on both counts, he or she can only be punished for one. In any case, it hardly matters, because the sentences are identical.

Drunk drivers also face the possibility of a felony driving-under-the-influence (DUI) charge (**Vehicle Code section 23153**) if their actions result in an injury to anyone other than himself or herself. When there is a death, vehicular manslaughter sanctions apply. (**Penal Code sections 191.5 and 192**)

In short, drinking and driving is a serious offense that maims or kills thousands of innocent people every year and has a huge impact on the lives of offenders. Furthermore, because the crime has generated so much attention nationally, politicians are quick to pass new laws designed to punish drunk drivers and keep them off the roads.

So, what should someone do when stopped by police for a suspected DUI offense? Here are a few things you should keep in mind:

- **If Signaled to Pull Over** – Stop your vehicle at the first safe opportunity and stay in the car with your hands on the wheel; when asked, provide name, driver’s license, proof of insurance, and car registration, and, if requested, get out of the vehicle. It helps to call the law official “Sir,” “Ma’am,” or “Officer.”
- **Answering Questions** – Often, a person’s statements are later used – and, sometimes, misconstrued and misused – to convict a person. (**QUINTANA V. MUNICIPAL COURT [1987] 192 Cal. App. 3d 361**) Therefore, it is usually advisable for a person – as soon as they believe they are suspected of, or accused of, a crime – to politely ask for permission to leave and go about his or her way. (**PENNSYLVANIA V. MUNIZ [1990] 496 U.S. 582**) Police can lawfully question you and will use whatever you say against you. This is true, even if police fail to read your Miranda Rights. Your only protection is to not answer questions and politely say,

“If I am under arrest, I request a lawyer and will only take a blood test. If I am not under arrest, I would like to leave now.” Say nothing else.

- **Miranda Rights** – If placed under arrest, a suspect must be told that he or she has the right to remain silent, that anything they say can and will be used against them, that they have the right to an attorney, and that if he or she cannot afford one, the court will appoint one to represent them. If the arrested person is not told about these rights, or the suspect does not agree to voluntarily give them up, then, any statements made by him or by her may not be admissible as evidence at trial. (**MIRANDA V. ARIZONA [1966] 384 U.S. 436**)
- **Chemical Tests** – If a suspected drunk driver refuses to take a breath, blood, or urine test, he or she will lose his or her license for at least a year. (**Vehicle Code sections 13558 (c), 13353, and 23157**) Furthermore, he or she will probably still be charged with DUI and will be exposed to substantially greater time in jail if convicted. (**Vehicle Code section 23159**) However, refusal to take a chemical test does make it much more difficult to prove the person was driving drunk.
- **Testing for Drugs** – Usually the police will not screen for illegal or prescription drugs unless their other tests reveal no alcohol. But, if they observe something that indicates drugs were involved, they may test blood or urine samples. (**PEOPLE V. GORAK [1997] 196 Cal. App. 3d 1032**)
- **Automatic License Suspension** – Upon arrest for drunk driving, the person is usually told that if the blood-alcohol test shows a reading of .08% or higher, then, his or her license will be suspended for four months. (**Vehicle Code section 13353.3**) If the person has had a DUI conviction in the past seven years, the suspension is for a year. Your legal counsel should immediately request a hearing with the California Department of Motor Vehicles. If the urine or blood results show an alcohol content less than .08%, or if the fluid sample has been lost or destroyed, your attorney can argue for the DMV to set aside the suspension and for the court to dismiss the case. (**Vehicle Code section 13558**)

Breath, blood, or urine tests will largely determine the charges and possible sentence for drinking and driving. It's important that your legal counsel understand that chemical tests – particularly breathalyzer tests – are notoriously unreliable and susceptible to attack by an attorney who is knowledgeable in the science of blood-alcohol analysis.

Common conditions that can give falsely high results include: Untreated diabetes; persons on a strict diet; long-term smokers; alcoholics; inhaling paint, lacquer, or glue fumes; and eating various bread products.

-- Eric Alan Berg, Attorney at Law
5000 Bechelli Lane, Suite 201, Redding, CA 96002
1050 Esplanade, Chico, CA 95926

DRUNK DRIVING VICTORIES BY BERG & ASSOCIATES:

- In People v. Layman, Berg & Associates convinced the court to order the district attorney to produce certain evidence related to a Breathalyzer test. When the prosecutor repeatedly disobeyed the court's order, we convinced the judge to dismiss all charges, including driving under the influence of alcohol and driving at a 0.08 or above.
- In People v. Christians, Berg & Associates got the Appellate Court to dismiss charges of driving under the influence of alcohol and driving at a 0.08 or above because a lower court had postponed the trial due to calendar congestion. This violated our client's right to a speedy trial.

WHY CHOOSE BERG & ASSOCIATES . . .

Our business is protecting you and your family with the best possible legal representation. Your crisis is our crisis. We fight hard for you.

Berg & Associates is a Northern California law firm based in Redding and Chico. We have experienced and highly qualified attorneys and support staff who specialize in criminal defense, divorce, family law, and personal injury cases. We also have a full investigative team.

Berg & Associates is small enough to provide personalized services, yet is large enough to guarantee a spirited in-depth defense fully protecting your rights.

Our offices are conveniently located in Shasta and Butte counties at:

REDDING

Law Offices of Eric Alan Berg & Associates
5000 Bechelli Lane, Suite 201
Redding, CA 96002
(530) 223-5100

CHICO

Law Offices of Eric Alan Berg & Associates
1050 Esplanade
Chico, CA 95926
(530) 223-5100