

# MICHIGAN DUI SURVIVAL GUIDE

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## CHAPTER 1: BASIC DUI CONCEPTS

### What is DUI?

DUI stands for driving while intoxicated. It is a common term for drunk or inebriated driving. In Michigan the official term is OWI (operating while intoxicated). You can be convicted of OWI if you drive an automobile while under the effects of alcohol or any other intoxicating substance. There is also another crime called OWVI (operating while visibly impaired), which can be charged if the prosecutor can prove that there was visible proof that your ability to safely drive was hindered by the effects of alcohol or drugs.

While there are certain safe levels of alcohol consumption that will not result in a DUI, the presence of any amount of a schedule 1 drug is automatically illegal.

Due to the fact that driving is such an important activity in today's society, it is important to know how OWI/OWVI works and what the consequences can be.



## CHAPTER 2: MICHIGAN OWI/OWVI STATUTES

### What does the prosecutor have to prove for an OWI/OWVI conviction?

For a first-time OWI conviction, the prosecutor must prove that had a blood alcohol level of at least .08%, or that you were severely impaired.

An OWVI conviction only requires the government to prove that you were visibly impaired. There is no specific rule about how the government may or must prove this. The police officer who issued the citation can simply testify at trial. If either the judge or the jury is convinced by this testimony that you were visibly impaired. The level of impairment for OWVI is actually less than that of an OWI charge. Any level of impairment even slightly below the ability level of a normal, careful, driver is sufficient.

The penalties for OWI tend to be more severe, mainly because it either involves much worse intoxication or the fact that blood alcohol content is a more objective measure of impairment.

These penalties are all for a first time OWI/OWVI. A repeat offense will likely result in even harsher penalties. If you have no OWI/OWVI convictions for seven straight years, your record will be reset to zero and your next conviction will be considered a first-time offense.

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## Penalties for an OWI/OWVI conviction

The first OWI/OWVI offense can land you up to 93 days in jail. The fines for an OWVI are capped at \$300.

If you blow a blood alcohol level of .17% or higher, the maximum jail time for OWI jumps to 180 days (nearly double). Standard fines for OWI are \$100-\$500 dollars, but a .17% BAC will also boost that to \$200-\$700. The penalty for a first time OWVI conviction cannot exceed \$300.

OWI and OWVI can also be punished by up to 360 days of community service.

The second and third offenses for OWI and OWVI will also result in the confiscation of your license plate and the denial of vehicle registration.

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## CHAPTER 3: OTHER CONSEQUENCES OF AN OWI/OWVI CONVICTION

### **How many points will I get on my license for OWI/OWVI?**

The first OWI offense is worth six points. The first OWVI is worth four points. The second and third offenses (in a seven year period) is worth an additional four or six points respectively.

### **Can I have my license suspended for OWI/OWVI?**

Yes, you can? For an OWVI, your license will be “officially” suspended for 90-180 days. However, a restricted license will be available immediately. A restricted license will allow you to retain limited driving privileges. You will have to get an Ignition interlock device (stops car from starting if it detects alcohol) installed on your car.

An OWI carries a 180 day (6 month) suspension and you have to wait at least 30 days (1 month) to get a restricted license. If you blow .17% or higher on a BAC test, the suspension will last for 1 year and the waiting period for a restricted license is increased to 45 days.

### **Can an OWI/OWVI cause me to lose my car?**

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Yes, it can. The court has the option to immobilize your car for six months and can even have the vehicle forfeited completely. The penalties for OWI can easily outweigh the punishments usually dished out for comparatively more serious offenses.

### **Are there factors which can make an OWI conviction worse?**

Yes, there are factors which, if proven, can result in an enhancement of the normal penalties or consequences of a first time OWI/OWVI conviction. One such factor is blowing a .17 or greater on a BAC test (mentioned above). Another exacerbating factor is having a passenger younger than 16 years old when you commit an OWI/OWVI offense will result in enhanced penalties. The fines jump to \$200-\$1000, and the maximum jail sentence increases to up to 1 year. The court can also impose 30 to 90 days of community service. This will also increase the suspension period to the maximum 180 days and the waiting period will jump to 90 days.

The presence of a young passenger makes either immobilization or vehicle forfeiture mandatory. If the Judge doesn't order a seizure, then the court will automatically order immobilization as a matter of law.

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## CHAPTER 4: ASSET FORFEITURE (VEHICLES) FOR OWI/OWVI CONVICTIONS

### A Brief overview of asset forfeiture

Asset forfeiture refers to any process whereby the state or federal government confiscates someone's property for reasons other than taxation or eminent domain. Depending on context, asset forfeiture can either be criminal or civil. Criminal asset forfeiture occurs when property is confiscated as a result of a criminal conviction. This typically occurs when the confiscated property was used or involved in the crime.

Civil asset forfeiture, by contrast, does not require the criminal conviction of the property owner. In some cases someone's property might be confiscated because someone else committed a crime that involved that property. It is for this reason that civil asset forfeiture is a highly controversial issue.

### Civil and criminal forfeiture of vehicles arising from OWI/OWVI convictions

In the context of impaired driving, and vehicle confiscation that is a direct penalty of an OWI/OWVI conviction is a criminal forfeiture. However, in the rare case where the vehicle was seized before the trial, then the forfeiture is civil. In those cases the state of Michigan will allow the vehicle's owner to petition for the vehicle to be temporarily returned to their possession. The defendant will have to prove to the court that the vehicle is necessary for them or their family to use. If the defendant abuses this privilege by selling or

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concealing the vehicle in order to avoid forfeiture, they will be charged with an additional misdemeanor. In the wake of recent reforms to the asset forfeiture law of Michigan it is unclear if the state of Michigan will continue to confiscate vehicles prior to conviction.

When the prosecutor wants to confiscate a vehicle post-conviction, they must file a petition within 14 days of the conviction. This petition must give notice to anyone with an interest in the car. A forfeiture hearing will be held within 21 days of the petition being filed.

If the confiscated vehicle was leased, it can returned to the lessor without the consent of the defendant.

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## CHAPTER 5: THE COSTS, RISKS, AND CONSEQUENCES OF A SUSPENDED LICENSE

The obvious and immediate consequence of a suspended license is the severe inhibition of your ability to legally operate a motor vehicle. Barring certain exceptions, driving a car with a suspended license is a misdemeanor. The first offense carries a fine of up to \$500 or up to 93 days in jail. The second offense and all repeat offenses are worth \$1000 or 1 year. To put that in perspective, you could spend as much or more time behind bars than the entire duration of your suspension. Furthermore, a conviction for driving with a suspended license could lead to a lengthening of your suspension.

If you caused an accident that resulted in injuries while driving with a suspended license, the fines will jump to \$1000-\$5000, and the maximum jail sentence shoots up to 5 years (i.e. a felony). If the accident results in death, the fines can range from \$2500-10,000 and the prison term can last up to 15 years. Felony convictions can have serious lifelong consequences. They can completely ruin your job prospects and make it illegal for you to own or carry firearms for the rest of your life.

Causing death or serious injury as a result of driving while intoxicated is a felony identical to causing the same with a suspended license. If your license is suspended, you get drunk, and cause an accident involving injury or death, you will likely be charged with two separate felonies with doubled up penalties.

Even without considering all of these daunting criminal penalties, the suspension of the license itself is huge

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loss and burden to anyone who lives and works in Michigan. Just imagine everything in your life that depends on having a car. Now that you have a better understanding of the importance of your car, you will think twice before driving it while intoxicated. Not only is it incredibly dangerous, but these risks and costs should also serve to dissuade you.

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## CHAPTER 6: COMMON MISTAKES OF OWI/OWVI DEFENDANTS

### Refusing a breathalyzer test

It might seem strange for a lawyer to tell you to actually give evidence to the police, but any Michigan attorney who knows anything about Michigan traffic laws will tell you the same thing. Under Michigan law, all drivers on Michigan roads have given their implied consent to chemical testing when ordered by a police officer with reasonable grounds to ask for a test. If you are ordered to submit to a breath test, and refuse to do so, you can face severe penalties under Michigan law. A refused test is a civil infraction which carries fines of up to \$150. If you are under 21 years of age, you will have 2 points added to your driving record. Your license will be suspended for a year, and the police officer may even confiscate or destroy your physical license. If that happens, you will be given a paper permit that is valid until after the hearing where you can contest the suspension. A second refusal in a seven year period is an automatic two year license suspension.

The main takeaway here is that you are not legally allowed to refuse a police ordered breathalyzer test if you drive on Michigan roads. A court order is still required to compel someone to submit to a blood test.

### Assuming there is no way to fight the charge

Do not give up without even trying. For all you know, there could be several ways for you to get the charges

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reduced or even dismissed. What if you were charged based on a blood alcohol test that the officer never administered? Fighting a DUI charge may not be cheap, but the costs and inconvenience that can accompany a conviction are usually much worse.

### **Refusing to hire a lawyer or hiring a cheap one**

While DUI may seem like a fairly straightforward criminal charge, it takes a skilled attorney to navigate the nuances of the legal terrain that have grown around this criminal offense. For the best results possible, you should make sure to hire a skilled and knowledgeable attorney. Such an attorney will not be the cheapest one on craigslist, but suffering a DUI conviction will likely be even more expensive.

### **Failing to conduct adequate investigations or review of the evidence**

In order to succeed in a DUI trial, the defense attorney needs to have adequate evidence and a thorough understanding of the evidence that has been collected by both sides. It is vital that the defense attorney be willing to do detective work and be vigilant about getting access to whatever evidence has been collected by the police.

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## CHAPTER 7: HOW TO SPOT A DRUNK DIVER

Driving while intoxicated does not just put the drinker in danger. It also puts everyone around him at greater risk of injury or death. However, there will come a time when you will have to share the road with a drunk driver. In such a situation, the best way to protect yourself is to know how to spot one and to be prepared to stop your car or evade them if something goes wrong.

Signs of a drunk driver include, but are not limited to:

- Straddling to close to the center lane
- Nearly striking objects or other vehicles
- Extremely wide turns
- Weaving
- Driving on the wrong side of the road
- Driving excessively slow (usually 10 mph below the speed limit)
- Tailgating other cars
- Erratic braking
- Driving without headlights

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- Inconsistent signaling
- Stopping at green lights or crosswalks with no pedestrians

If you spot a driver you suspect to be drunk here are a few tips:

- Stay far behind them
- Be prepared to react at a moment's notice
- Wear your seat belt
- Do not, under any circumstances, try to pass them
- Do not tailgate them.
- If it wouldn't be dangerous or inconvenient to do so, stop and let them go on their way.
- If possible, call the police and give the location and description of the vehicle.
- Do not confront or attempt to arrest the drunk driver, leave it to the police

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## CHAPTER 8: CIVIL LIABILITY FOR IMPAIRED DRIVING

Like many crimes that carry the risk of injury or death to innocent bystanders, the victim of an injury caused by someone convicted of OWI/OWVI can sue the intoxicated driver for his or her negligence. There is usually nothing terribly complicated about these lawsuits. In the case of a drunk driver, the plaintiff simply has to prove that what the driver owed the people around him a duty of care regarding the way he operated his automobile. Furthermore, it must be shown that the decision to become intoxicated while driving is an unreasonably dangerous thing for a driver to do and fails to meet the level of care or prudence expected of a reasonable person.

As it turns out, the law gives victims of drunk drivers an added bonus that more or less guarantees the success of their lawsuit. In U.S. civil courts, you are presumed to have a duty of care which derives from any and all public safety laws (including traffic laws). That duty extends to anyone who that law was meant to protect and the violation of that statute is a de facto breach of that duty. If the defendant can also prove that their injuries were caused by the defendant's decision to drive while intoxicated, then they will meet all of the requirements to establish liability. This doctrine is known as "negligence per se" and it is quite useful in drunk driving cases. After all, laws against drunk driving are intended to protect anyone who might be injured by such dangerous behavior. Furthermore, it is usually pretty easy to establish causation in these cases.

The big lesson here is that drunk driving carries more than the risk of criminal penalties. It can also result in steep civil liabilities as well.

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## CHAPTER 9: FACTS AND MYTHS ABOUT DRUNK DRIVING

### The effects of alcohol on driving

Alcohol has a detrimental effect on concentration, common sense, motor skills and judgement. All of these are essential to any safe and competent driver. In order to avoid collisions with other motorists, pedestrian, and the occasional deer, you need uninhibited reflexes. Imbibing alcohol also makes you more likely to engage in risky driving practices and makes you that more likely to get into an accident.

37,133 people died in traffic crashes in 2017. Of those deaths, 10,847 (nearly a third) involved drivers who had a BAC of .08 or greater. Among those drunk driving crashes, 68% (7,368) involved at least one driver with a BAC of .15 or greater.

### Common Drunk driving myths

- Coffee, bread, or showers can sober you up: this is false, only time will make you more sober after consuming alcohol. Relying on these remedies to do things that are unsafe to do drunk (like driving) is dangerous.
- Hyperventilating can fool a breathalyzer: false, most of those urban legends about how to fool a breathalyzer are false. Even if it were true, you should never drive while drunk.

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- It is less intoxicating to drink a large amount of beer or wine rather than an equal alcohol content of hard liquor: false, the same quantity of alcohol, no matter how diluted, is equally intoxicating.
- A skilled driver/slow driving can drive safely even when drunk: The law doesn't care how skilled you are. All persons are prohibited from driving while intoxicated and the law prohibits them from inhibiting their own ability to drive safely in such a manner. More to the point, the kind of person who would rely on this myth is probably not as safe or skilled a driver as they think they are.

Also, driving slowly is more likely to draw the attention of the police. They know from experience that many drunk drivers believe this myth. Drunk driving will not make you a safe drunk driver. It will slow you down and make you more likely to suffer legal penalties for your foolish decision.

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## CHAPTER 10: DON'T BECOME A STATISTIC

While the primary purpose of this guide is to help those who are being charged with a drunk driving offense. However, it also serves another, very important purpose. It has also warned and informed its readers about the dangers of driving while intoxicated. It has covered both the physical risks as well as the legal consequences and financial costs. Beyond any advice that this guide or an attorney could give you, the single best way to avoid being charged or convicted with OWI or OWLI is to avoid driving while drunk in the first place. No matter who you are, you have too many important things in your life to risk dying from something as foolish and pointless as drunk driving.

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