

Minnesota has one of the toughest drunk driving laws in the country. This brochure will provide you with information on how the law is applied in the metropolitan area.

This text is not intended to be a substitute for legal advice and counsel. If you have been charged with a DWI and you are a student at the University's Twin Cities campus, contact University Student Legal Service to seek counsel about your case (612-624-1001). Others should consult their own attorney or the local bar association attorney referral service.

### **Being stopped and arrested**

A police officer may stop you if he/she has reasonable grounds. Reasonable grounds may be a violation of any traffic law, a mechanical defect in your vehicle, or questionable driving conduct. If, after the stop, the officer believes you have been drinking or are under the influence of alcohol or a controlled substance (e.g., smells alcohol or drugs) or if you are unable to perform various sobriety tests or fail a preliminary breath test, the officer will arrest you for driving under the influence. These roadside sobriety tests and preliminary breath tests are not mandatory, and you may not be punished solely for refusing to take those tests. Refusal, however, will constitute cause for your arrest.

If you are placed under arrest, the officer will ask you to submit to a chemical test to determine the amount of alcohol that is in your system. The only test that need be offered is a breath test, although a blood or urine test may be offered. **Minnesota law requires that you submit to the test.** Test refusal is a separate crime, and your privileges to drive will be revoked for one year. Revocation of your privilege to drive means denial of all driving privileges in this state. You may be eligible for a "limited" license which will permit you to drive back and forth to work. First-time offenders must wait 15 days before a limited license will be granted. Second- and third-time offenders may not qualify for a limited license. Prior to obtaining a limited license, you must take and pass the written portion of the driving examination and meet with a driving evaluator. If you are under the age of 21, further limitations may be placed on receiving a limited license.

If you are a first-time offender and the results of your test are .08 percent or greater, you are presumed to be driving under the influence, and your privilege to drive will be immediately revoked for a

period of 30 to 90 days. If you are under 21, the revocation period will be 90 to 180 days. If the test results are between .05 and .08, you may still be charged with DWI, as a rebuttable presumption may be made that your ability to drive has been impaired. If the results of your test are in excess of .20 percent or you have prior alcohol-related driving offenses, you will be charged with a more serious crime.

If you are arrested for DWI, you will be taken to the station for testing. Prior to testing, the police officer must inform you of your right and grant you the opportunity to speak with a lawyer. Generally, arrestees are released in a few hours after either posting a cash bond or signing a promise to appear at the court date. In some instances, arrestees may be kept in custody or taken to a detox center.

### **Are you required to take the test?**

#### **Implied consent/Crime**

Refusing to take the test is a separate crime. It may be a misdemeanor, gross misdemeanor, or felony, depending upon whether you have any prior qualified DWI incidents.

If you are stopped and the officer believes you are under the influence, the officer has the right to ask you to submit to chemical testing. Under the "implied consent law," refusal of chemical testing will result in the loss of your driving privilege for one year. In the event that you submit to testing and your alcohol concentration is .08 or more, this will be reported to the Commissioner of Public Safety, and your privilege to drive will be revoked for a period of 30 to 90 days, or 90 to 180 days if you are under 21. If you drive while intoxicated during the time your privilege to drive is under revocation for an earlier alcohol-related offense, you will be charged with and may be guilty of a gross misdemeanor. You may appeal the license revocation and have a judicial hearing. You must file your Petition for Judicial Review within 30 days of your arrest and pay a court filing fee.

As indicated above, you may be granted a limited license for work or school purposes. In order to receive a limited license or to legally drive after the revocation period ends, you must take the written portion of the license examination and pay a substantial reinstatement fee. The current reinstatement fee is \$700

Each year approximately 40,000 Minnesotans have licenses revoked due to alcohol-related incidents.

### **Criminal procedure**

If you are ticketed for DWI, you will be given a time and date at which to appear in court in the courthouse of the county in which you have been arrested. This is a serious offense, and all individuals should request counsel. This initial appearance is called an arraignment. At the arraignment, you as a defendant will be advised of the charge against you and asked to enter a plea of guilty or not guilty, or to request a formal complaint.

If you enter a guilty plea at arraignment, your case will be handled on that day. If you enter a not guilty plea, your matter will be set down for a pretrial conference. The pretrial conference is a time when your lawyer and the city attorney will meet to discuss the case and see if a possible plea bargain can be arranged. The pretrial conference is generally held within a few weeks of the time of the arraignment. It also is conducted in the courthouse of the county in which you have been arrested.

If you have requested a formal complaint, you will appear thirty days later to obtain the document which states the basis for the arrest, the charges against you, and possible penalties.

If the case is not settled through plea bargaining, the matter is set for trial.

### **Under-age drinking and driving**

If you are under the age of 21, you cannot consume any alcohol and drive (zero tolerance). A violation will result in a criminal charge and the loss of your driving privileges for 30 days on a first offense and 180 days for a multiple offender.

### **Penalties and sentencing**

If you are found guilty or plead to DWI or a lesser offense, you are guilty of a misdemeanor. The maximum sentence for a misdemeanor is up to 90 days in jail and a \$1,000 fine or both. If you have had more than one DWI in the past ten years or have a test reading of point .20 or greater, you may be charged with a gross misdemeanor, which carries a maximum penalty of up to one year in jail and fine of up to \$3,000. Also, if you have had a prior qualified DWI incident within the past ten years, you may be charged with a gross misdemeanor for refusing testing. The amount of jail time and fine is left to the discretion of the court. Many judges will impose a form of community service together with a fine for a first offense. If you are charged in Anoka, Washington, or Ramsey County, part of your

sentence will include a two-day in-house educational program in Anoka. If you have had prior convictions within the previous five years, the sentence in all likelihood will include 30 days of incarceration or home detention. Generally a fine will be between \$200 and \$500 for a first offense and larger amounts for further offenses. In addition to these fines, the Court will impose other surcharges and may require you to pay for the alcohol assessment or PSI (pre-sentence investigation) and probation fee. You may be able to perform community service to work off part or all of your fine or in lieu of jail time.

### **Alcohol assessment**

If you plead guilty or are found guilty of a DWI or alcohol-related offense, Minnesota law requires that you go through a PSI (pre-sentence investigation). This assessment is performed by an individual within the Department of Probation. You will be interviewed, and a determination will be made as to whether or not you have an alcohol problem. The probation officer will then make recommendations to the judge regarding further treatment, educational programming, and sentencing. There is a substantial fee for the PSI.

### **Insurance**

If you are convicted of a DWI or an implied consent revocation, your car insurance rates will increase substantially. The conviction will affect your rates for many years to come.

In addition to higher rates, there is a strong possibility that your insurance will be canceled altogether, and you will be required to obtain risk insurance from another agency or through the state.

### **Multiple offenses and enhanced penalties**

If you have prior alcohol-related offenses, you may be charged with a gross misdemeanor, which carries with it a maximum fine of up to \$3,000 and up to one year in jail. In addition, your vehicle license plates will be impounded and a third offense may result in vehicle forfeiture. If your alcohol concentration is above .20 percent, you face gross misdemeanor charges with even more severe penalties. Multiple offenses can result in a charge of a felony, allowing for imprisonment up to seven years and the permanent loss of your driving privileges.

### **University Student Legal Service**

DWIs are serious charges with serious

ramifications and consequences. If you are charged with a DWI, you should contact University Student Legal Service if you are eligible for its representation. If you are not eligible to use University Student Legal Service, you should strongly consider hiring a private attorney or seeing if you are eligible for a court-appointed lawyer or public defender. To determine if you are eligible for appointed counsel, you need to talk with the eligibility investigator or judge at the courthouse.

Costs for private attorneys vary, but the average fee for services of an attorney in the metropolitan area is approximately \$2,000 for a first-time offense. The total cost of any individual case varies greatly depending upon such things as: (1) whether the case is plea-bargained or goes to trial; (2) whether the attorney has any hearings or pretrial motions; (3) whether an expert witness needs to be hired; and (4) whether the attorney handles a related matter such as a motor vehicle hearing on license suspension or revocation.

**If arrested and taken into police custody:**

**DO** contact an attorney as soon as possible;

**DO** try to stay cool and calm;

**DO** try to remember facts, names, places, and times;

**DO NOT** resist arrest or attempt to escape;

**DO NOT** volunteer any information to the police, except for your name and address, until you have consulted an attorney;

**DO NOT** give your consent to a search of your home or motor vehicle;

**DO NOT** become hostile to the police.

**REMEMBER:**

- You have a right to remain silent. You may remain completely silent or answer some questions and not others.
- You have a right to speak with your lawyer at the place where you are being held.
- You have a right to telephone your lawyer, your friends, or your family to notify them of your arrest.
- You have a right to have a lawyer appointed for you if you cannot afford one.
- You have a right to have your lawyer present if you are placed in a police line-up.

Prepared for your information by University Student Legal Service (9/03)

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## USLS In Brief

USLS has a full-time staff of attorneys, legal assistants, and support staff to help students with legal problems. Any University of Minnesota Twin Cities student who is currently paying the student services fee is eligible. USLS can handle cases in the seven-county metro area.

USLS can help with the following:

- ▶ Landlord/Tenant
- ▶ Collection
- ▶ Consumer Problems
- ▶ Employment
- ▶ Immigration
- ▶ Family Law
- ▶ Misdemeanors/DUI
- ▶ Name Changes
- ▶ Power of Attorney
- ▶ Wills

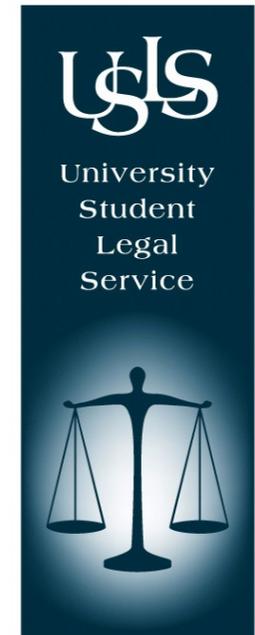
To make an appointment, please call our office at 612/624-1001. The receptionist can explain our eligibility requirements, answer questions about the scope of our practice areas, and refer you to other services or agencies that might be able to help.

Please note that USLS cannot take cases where the adverse party is the U of M or any of its departments, staff, or students.

Please see the *USLS Handbook* for the full text of all USLS policies.

# Drunk Driving in Minnesota: The Law, Penalties, and Responsibilities

UNIVERSITY OF MINNESOTA



**University Student Legal Service**

**160 West Bank Skyway**

**219 19th Avenue South**

**Minneapolis, MN 55455**

**Phone: (612) 624-1001**

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**[www.umn.edu/usls](http://www.umn.edu/usls)**