

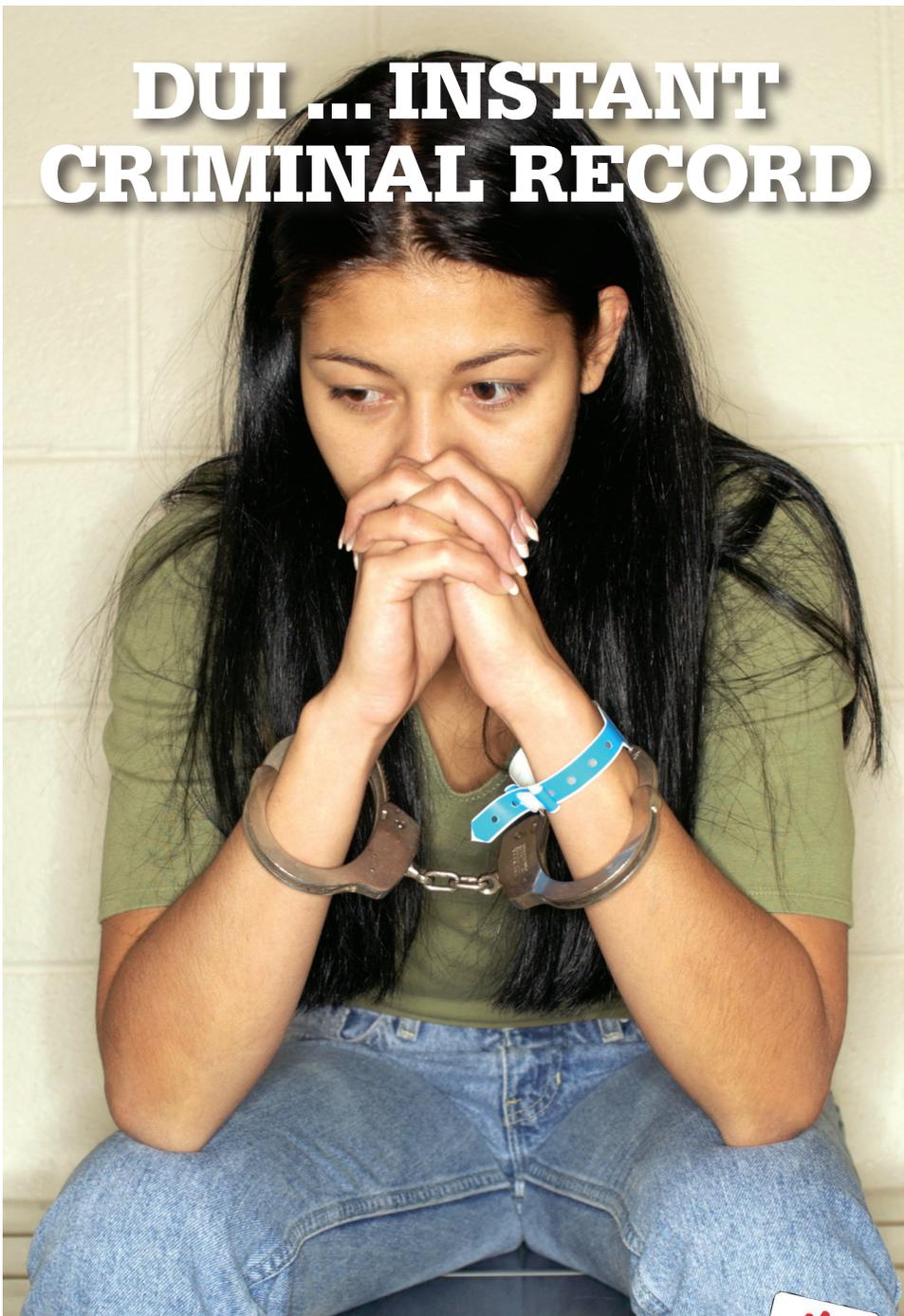
**DUI IS A TOTAL  
BUZZ KILL**

**DELAWARE DUI LAWS**

What you should know...



# DUI ... INSTANT CRIMINAL RECORD



**DRIVE SOBER. ARRIVE ALIVE DE**



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# DELAWARE AND DRIVING UNDER THE INFLUENCE

In Delaware, you may be arrested for Driving Under the Influence (DUI) if you are driving, operating, or in actual physical control of a vehicle, an off-highway vehicle, or a moped while under the influence of alcohol or drugs.

The illegal blood alcohol limit in Delaware is 0.08; a chemical or breath test indicating a blood alcohol concentration of 0.08 or greater is sufficient for a DUI arrest *and* conviction. In addition, a chemical test indicating the presence of any amount of any illicit substance is sufficient for a DUI arrest *and* conviction.

**However, it is still possible** to be arrested for DUI with a BAC of below .08 if there is evidence of impairment such as failing the Standardized Field Sobriety Tests administered by a police officer.

## IMPLIED CONSENT

Delaware has an “implied consent” law. That means if you drive in Delaware and are suspected of DUI, you voluntarily agree to a chemical test to determine your degree of impairment.

Failure/refusal to take the test carries a penalty of loss of license and/or driving privileges for a period of:

1st offense—12 months

2nd offense—18 months

3rd or subsequent offense—24 months in addition to the penalties for DUI

## HOW DUIS ARE HANDLED

DUI violations are dealt with under both **administrative** and **court proceedings**, which are conducted independently of each other. Juveniles under age 17 who are arrested for DUI (.08 or higher) are processed through Family Court, and lose their driver’s license until they turn 21. (For more information on juvenile DUI arrests, see Zero Tolerance Law Section on page 11.)

## I. DUI ADMINISTRATIVE PROCEDURES

At the time of a DUI arrest, a police officer will take your Delaware driver’s license and issue a 15-day temporary license, unless your driver’s license has already been suspended or revoked.

You must request an administrative hearing at the Division of Motor Vehicles within 15 days of your arrest or your driving privilege will be lost for a minimum of 3 months.

All DUI sentences are carried on the driving record for a **minimum** of 5 years.

## ADMINISTRATIVE HEARING PROCESS

You may file a written request or submit an online request for an administrative hearing at any DMV facility. The administrative hearing will be held to determine:

1. **Probable cause**—whether a police officer had probable cause to believe you were driving, operating, or in actual physical control of a vehicle, while under the influence of alcohol and/or drugs.
2. **Preponderance of evidence**—whether a preponderance of evidence exists that you were driving, operating, or in actual physical control of a vehicle while under the influence of alcohol and/or drugs. A chemical test of .08 or greater or the presence of any drug is conclusive evidence that you were under the influence.

An unfavorable ruling from the Administrative Hearing Officer will result in loss of your driver’s license for:

**Probable Cause**—1st offense through subsequent offenses, 3–18 months

**Refused Chemical Test**—1st offense through subsequent offenses, 12–24 months



## II. DUI COURT PROCEDURES

### A. Penalties

Listed below are the potential jail time, fines and length of driver's license revocation that a DUI offender could be sentenced to by the Court. Please note that upon conviction, if there is a record of "refusal to take chemical test" then the offender will be subject to the highest possible length of license revocation for that offense.

#### 1<sup>ST</sup> OFFENSE

Up to 6 months in jail  
\$500–\$1,500 in fines  
Ignition Interlock (IID) mandatory  
BAC below .15—12-month driver's license revocation  
BAC .15 to .19—18-month driver's license revocation  
BAC .20 or > —24-month driver's license revocation  
Minors—fines double and offenders must serve 40 hours of community service.

#### 2<sup>ND</sup> OFFENSE

Mandatory 60 days to 18 months in jail  
\$750–\$2,500 in fines  
IID mandatory  
BAC below .15 —18-month driver's license revocation  
BAC .15 to .19 —24-month driver's license revocation  
BAC .20 or > —30-month driver's license revocation  
Minors—fines double...must serve 80 hours of community service

#### 3<sup>RD</sup> OFFENSE OR SUBSEQUENT OFFENSES ARE CONSIDERED FELONIES

Mandatory 1–2 years in jail  
\$1,500–\$5,000 in fines  
IID mandatory  
BAC below .15—24-month driver's license revocation  
BAC .15–.19—30-month driver's license revocation  
BAC .20 or > —36-month driver's license revocation

#### 4<sup>TH</sup> OFFENSE

Mandatory 2–5 years in jail  
\$3,000–\$7,000 in fines  
IID mandatory  
5-year (60-month) driver's license revocation

#### 5<sup>TH</sup> OFFENSE

Mandatory 3–5 years in jail  
\$3,500–\$10,000 in fines  
IID mandatory  
5-year (60-month) driver's license revocation

#### 6<sup>TH</sup> OFFENSE

Mandatory 5–8 years in jail  
\$5,000–\$10,000 in fines  
IID mandatory  
5-year (60-month) driver's license revocation

#### 7<sup>TH</sup> OFFENSE OR SUBSEQUENT OFFENSES

Mandatory 10–15 years in jail  
\$10,000–\$15,000 in fines  
IID mandatory  
5-year (60-month) driver's license revocation

## **B. First Offense Election**

At the time of arraignment, you may choose to apply for enrollment in a First Offense Election (FOE) program in lieu of standing trial. If you choose to apply, the application will constitute an admission of guilt, which means you waive your right to a speedy trial.

To be considered for an FOE (may only qualify 1 time for FOE) one cannot have:

1. A previous DUI
2. Three or more moving violations within 2 years
3. Caused injury to another person
4. Been a suspended or revoked driver or held no valid license at the time of the arrest
5. Been transporting a child under 17 years of age on or within a vehicle while under the influence

By applying for the FOE you also agree to withdraw any hearing request previously made for this violation. The court will notify the DMV of your decision. The DMV will revoke your license and/or driving privilege for a period of one year, in addition to any penalties that may apply as a result of your refusal to take a chemical test (penalties listed on page 4).

Any person who elects the FOE program must remain on the IID for four months from the effective date of revocation. Prior to reinstatement the DMV must have received a satisfactory alcohol program completion report. A fee in the amount of \$143.75 must be paid to the DMV at the time of reinstatement, and an eye screening, law test, and road test may be required. The DMV will then authorize the removal of the IID.

The IID license provides Class D driving authority, provided you are driving the specified vehicle equipped with the IID and have the IID license in your possession. This driving authority may be limited in some cases. (See the IID section on page 10 for further information on this program.)

## **C. IID License—1st DUI Conviction**

A driver can apply for the IID License after an initial required 30- to 45-day (depending on BAC level) license revocation period and under the following terms:

1. Proof of enrollment in and payment for an approved alcohol education/treatment program.
2. Minimum of 30–45 days have lapsed from license revocation.
3. Complete an IID program application.
4. Proof of insurance and valid Delaware registration for vehicle that will have IID installed.
5. Your drivers license and/or privileges are not suspended, revoked, disqualified or denied for another violation that would prohibit the issuance of an IID license.

Once all requirements are met, the DMV will authorize installation of the device on the approved vehicle.

### III. ALCOHOL EVALUATION AND TREATMENT PROCESS

Any individual arrested for DUI must schedule an evaluation with the Delaware Evaluation and Referral Program (DERP). DERP can be contacted at 1-800-551-6464 or 302-656-4044.

An individual may request an evaluation following their arrest, or an evaluation will be ordered by the court, or by the DMV. Offenders have 10 days from the date of their conviction to contact DERP. Failure to contact will result in a non-compliance discharge and additional fees. The evaluation costs \$100.00. There is a \$35.00 missed appointment fee. The evaluation and referral of a DUI offender is an information gathering and analysis process. The client meets with an evaluator to construct a personal history, including medical, legal, social, and psychological information. The evaluation takes approximately 1½ hours.

#### The evaluation consists of:

1. A written and verbal evaluation
2. Social history survey
3. Substance abuse questionnaire
4. Several essay questions
5. Mental health symptom screening
6. Client rights/confidentiality issues
7. One-on-one interview with certified counselor



The information obtained from the evaluation, along with the evaluator's review of the offender's motor vehicle record and blood alcohol test results at the time of the violation, form the basis for analysis and recommendation. DERP will make a referral to one of the below types of programs.

Offenders with a BAC of 0.15 or higher at the time of arrest, or with more than one alcohol or drug violation (*any type*) on their record are not eligible for the Education Program. Offenders under the age of 21 are not eligible for the Education Program.

Offenders must make contact with the agency within 30 days of the referral or risk being reported as "non-complied" back to the court. Referrals are valid for 1 year.

#### A. Education Program

The major goal of the educational program is to help offenders take a careful look at their situation, take responsibility and ownership for their behavior and explore what it takes to solve the problems they have encountered.

**FEES:** \$250.00 program fee  
\$35.00 urine screen charge  
\$35.00 fee for each missed session

#### B. Outpatient Treatment

Outpatient Treatment programs offer a full range of treatment services to chemically dependent clients. The major goal of each agency is to provide services that will halt the progression of substance abuse. The standard program consists of a combination of individual and group counseling sessions over the course of approximately 3 months. All services are provided by professionals and are confidential.

#### C. Outpatient 21 and Under

This program is designed to provide treatment services to young offenders, ages 21 and under. Treatment consists of group, individual and family counseling sessions. Family members are encouraged to become involved in the overall treatment experience.

#### D. Alternative Program (Mental Health)

This program offers an alternative to DUI offenders who are experiencing mental and emotional adjustment problems in addition to their substance abuse dependencies. The program's major focus is to alter patterns of behavior that could lead to subsequent DUI violations.

#### OUTPATIENT TREATMENT PROGRAM, 21 AND UNDER PROGRAM AND ALTERNATIVE PROGRAM FEES:

\$750.00 program fee

\$35.00 fee for each missed group

\$35.00 fee for random urine screens—at least 2 are required, but additional screens can be required based on prior positive results.

### IV. ADDITIONAL INFORMATION

#### A. Ignition Interlock Program (IID)

Individuals eligible for IID are:

- FOE—.08 BAC or greater—Election must be made at Court
- 1st offenders and 2nd or Subsequent DUI Offense  
(IID is mandatory)

This program is paid for solely by the offender. The cost is \$70.00 for installation and \$75.00 per month plus tax to rent the equipment. There is a \$30.00 deposit, due at the time of installation, which is refundable when the device is removed. An offender must apply through the DMV for this program. A Delaware registered vehicle must be used for the ignition interlock device program.

The IID license is not available for CDL class vehicles.

#### B. License Reinstatement Process

An offender is eligible for license reinstatement if they have:

- Not driven during the revocation period
- Satisfactorily completed an alcohol education/treatment program
- Paid all fees
- Turned the revoked license into the DMV for the required length of time
- Successfully completed a DMV Character Background Review if required
- Paid \$143.75 reinstatement fee to the DMV
- Meet IID requirements

*License re-examination may be required.*

#### C. Out-of-State Violations

Offenders who are arrested in another state must contact DERP to schedule an appointment for an evaluation. Once the evaluation is completed, this agency will request the paperwork from the state where the arrest was made. Once the offender has completed the program satisfactorily, DERP will forward the information to the arresting state. An out-of-state conviction for offenders who hold a Delaware driver's license will result in license revocation.

#### D. Out-of-State Offenders

Offenders who are arrested in Delaware but are licensed and live out-of-state are required to meet the Delaware requirements for alcohol evaluation and treatment program completion. The offender must contact DERP and make arrangements through that office to have an alcohol evaluation conducted in the offender's home state. The offender must also satisfactorily complete an alcohol program that meets Delaware requirements.

#### E. Zero Tolerance Law

If you are under 21 years of age, as little as one drink can make it illegal for you to drive. The law says that anyone under the age of 21 years, who drives, operates or has actual physical control of a vehicle, an off-highway vehicle, or a moped while consuming or after having consumed alcohol, shall have their driver's license revoked for a period of 2 months for the first offense and not less than 6 months or more than 12 months for each subsequent offense, and must satisfactorily complete an alcohol education and/or treatment program. If the underaged person does not have a driver's license, the person shall be fined \$200.00 for the first offense and not less than \$400.00 or more than \$1,000.00 for each subsequent offense.

#### F. Appeal Process

Offenders who are discharged as "at-risk" from their DUI program and wish to appeal this discharge status may do so. An appeal is administered through the Department of Health and Social Services' Division of Substance Abuse and Mental Health (DSAMH). The offender must first appeal the "at-risk" discharge with the internal education or treatment agency involved. If the agency upholds the decision, the appeal to DSAMH **must be filed within 10 days** of the official notice of the internal appeals decision. To appeal an "at-risk" discharge, an offender must submit the following information to the Alcohol and Drug Screening and Evaluation Team:

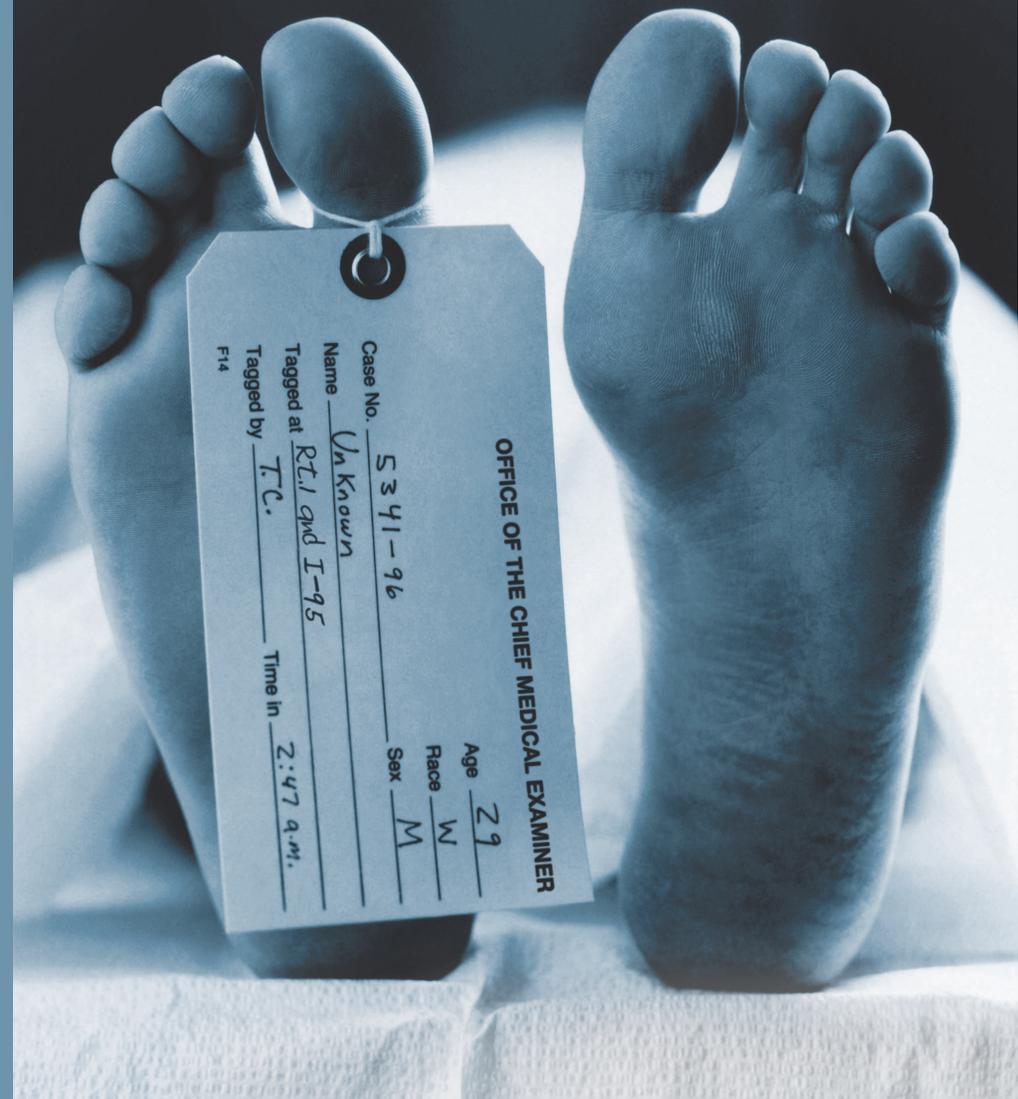
- A “Notice of Appeal of Discharge” (this form should be obtained from your education or treatment agency)
- The discharge letter from your education or treatment agency that clearly indicates specific reasons for the “at-risk” discharge
- The official notice of the internal appeals decision from your education or treatment agency, verifying that you have completed the internal appeal process
- A fully completed and signed “consent for release of confidential information” form that will allow your education or treatment agency to provide information to the Screening and Evaluation Team (this form should be obtained from your education or treatment agency)

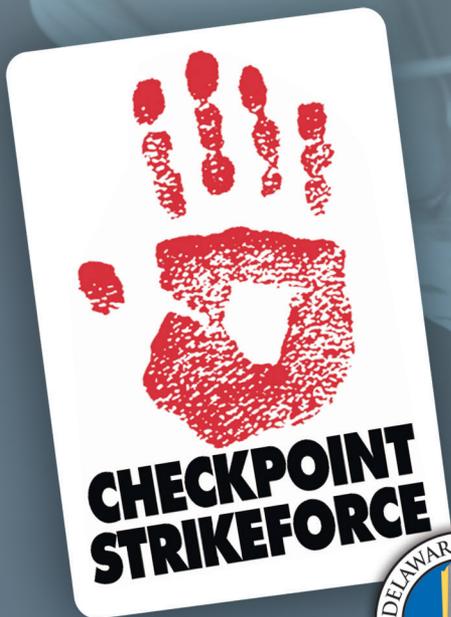
Any appeals packages postmarked more than 10 days after the effective date listed on the official notice of the Internal Appeals Decision from the education or treatment agency, will be returned to the offender and no action will be taken. Additionally, any appeals packages sent with incomplete information will be returned to the offender and no further action will be taken.

The Screening and Evaluation Team will meet monthly to review appropriately submitted appeals. Appeals will be carefully reviewed based on documentation provided by the client and the education or treatment agency. In-person appearances are not permitted by either the appellant or the provider agency staff. Within 10 days of the review, the Screening Team will notify the client, the Office of Highway Safety, and the education or treatment agency of its decision and the rationale behind the decision. **All decisions of the Screening and Evaluation Team are final and no further review of the same appeal will be held.**



# DUI CAN KILL MORE THAN JUST YOUR BUZZ.





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