

# 5 Substance Abuse and Driving

When you drink alcohol or use other drugs and drive, you endanger your life as well as the lives of your passengers and other motorists. Each year, thousands of people are killed or permanently disabled because someone drove under the influence of alcohol or other chemical substances. Michigan takes a strong stand against drivers who abuse substances and drive. This chapter provides information about drinking and driving, penalties for breaking the law, and the state's tough Repeat Offender laws.

## Drinking or Using Drugs and Driving is Illegal

Drink or use drugs and drive, and the results can be deadly. Several hundred people die every year in Michigan from alcohol- or drug-related crashes. The courts, law enforcement, state and local governments, as well as a number of private agencies, are working together to reduce and prevent the thousands of injuries and deaths that result from drunken driving in Michigan.

Under Michigan law, it is illegal to drive:

- While intoxicated, or visibly impaired, by alcohol, illegal drugs, and certain prescribed medications.
- With a Bodily Alcohol Content (BAC) of 0.08 or greater (operating while intoxicated) or with a BAC of 0.17 or greater.
- With any amount of a Schedule 1 drug or cocaine in your body.

If you are under age 21 it is against the law:

- To drive with a Bodily Alcohol Content of 0.02 or greater, or have any presence of alcohol other than that consumed at a generally recognized religious ceremony.
- To buy, possess, or consume alcoholic beverages. You may transport alcohol in a vehicle only when

accompanied by an adult age 21 or older. If you are caught with alcohol in your vehicle and there is no adult accompanying you, you can be charged with a misdemeanor, whether you are on the road or in a parking lot.

It is best to never drink and drive. If you plan on drinking, select a designated driver ahead of time who is not going to drink. You can also ask someone else to give you a ride, call a taxi, use public transportation, or seek other assistance. If someone you know has been drinking or using drugs, do not let him or her drive. Find a designated driver, call a taxi, or insist that the person use public transportation. Never ride with anyone who has been drinking or using drugs. If necessary, take away a person's car keys and offer him or her a place to sleep. Be sure drivers are completely sober before they get behind the wheel.

## **Effects of Alcohol**

Driving requires concentration, motor skills, common sense, and a concern for the safety of everyone on the road. Alcohol affects people differently. Mixing drugs or medications with alcohol can be particularly dangerous and even deadly, especially behind the wheel.

The effects of alcohol are the same whether you drink beer, wine, or whiskey. A 12-ounce can of beer, 5-ounce glass of wine, and a 1.5-ounce shot of whiskey all contain the same amount of alcohol. Drink a standard serving of any of these and the effects will be the same to your body. Your judgment and self-control will be affected. Drinking even one drink can impair your ability to drive, slow your reaction time, dull your concentration, and cause visual problems. Many people mistakenly believe that coffee, a cold shower, exercise, or fresh air can sober them up. The only thing that sobers you up is time.

## **Illegal or Street Drugs and Medications**

Because everyone's metabolism is different, it's difficult to predict how medications and drugs will affect the body. Drugs and medications can be as dangerous as alcohol when mixed with driving. Illegal or "street" drugs are sold without a prescription and are particularly dangerous because users do not always know the contents, purity, or possible effects of these drugs.

Prescription and nonprescription medications may also contain substances that can adversely affect your ability to drive safely. It is illegal to drive while impaired or under the influence of prescribed and over-the-counter medications. Some drugs such as antihistamines, which are found in many cold remedies and allergy preparations, tranquilizers, sleeping pills, and pain relievers may cause drowsiness. Diet pills, “stay awake” drugs, and other medications with stimulants such as caffeine, ephedrine, and pseudoephedrine may cause excitability or drowsiness. Effects may also vary depending on the combination of drugs.

Know the contents and potential side effects of any drugs you are taking and be sure it is safe to drive when using them. Please be aware that it is against the law to operate a motor vehicle with any presence of a Schedule 1 drug or cocaine. For more information, consult your physician or pharmacist.

## **Recognizing Drivers Who Have Been Drinking or Using Other Drugs**

It is possible to recognize drivers who may have been drinking or using other drugs. They may:

- Weave within their lane.
- Wander from one lane to another.
- Run off the pavement.
- Stop too quickly or slowly.
- Drive too quickly or slowly.
- Go through stop signs or other signals.
- Drive on the wrong side of the road.

These signs do not always mean that the driver has been drinking or using drugs, but they do require your full attention. If you observe a dangerous situation, do not become personally involved. Get an accurate description of the vehicle and license plate number. Call 911, the local Michigan State Police post, or a telephone operator for police help. You are most likely to encounter other drivers who have been drinking or using drugs at night or early morning, particularly from 8 p.m. to 4 a.m.; on

the weekends, especially late Friday and Saturday nights; on holidays; or near bars and other businesses that sell alcohol.

When you see someone you suspect of driving under the influence of alcohol or drugs, put as much distance as possible between yourself and that driver. Think twice about passing him or her. Let the driver pass you, especially when he or she is approaching rapidly. The driver's actions may be uncertain. Stay alert. It is possible that the same driver may be met further down the road.

## Anti-Drunken and Drugged Driving Laws

Anti-drunken and drugged driving laws require swift and sure action and stiff penalties for drunken drivers. The laws:

- Require courts to decide drunken and drugged driving cases within 77 days after an arrest or after an arrest warrant is served, whichever is later.
- Require a mandatory six-month driver's license suspension even for a first conviction of driving while intoxicated. A driver may be eligible for a restricted license after serving 30 days of the suspension.
- For a conviction of operating with a Bodily Alcohol Content (BAC) of 0.17 or greater:
  - A driver's license suspension for one year; eligible for a restricted license after 45 days with installation of an ignition interlock device.
  - Imprisonment up to 180 days.
  - A fine of not less than \$200 or more than \$700.
- For a second conviction of drunken or drugged driving within 7 years, require a fine of not less than \$200 or more than \$1,000, and one or both of the following:
  - Imprisonment for not less than five days or more than one year.
  - 30 to 90 days of community service.
- Include a felony for a conviction for drunken or drugged driving that causes death.

- Include a felony for a conviction for drunken or drugged driving that causes a serious injury to another.
- Require fines for a conviction of driving while a driver's license is suspended or revoked of up to \$500 for a first offense, and \$1,000 for an additional offense.
- Do not allow hardship appeals for habitual alcohol or drug offenders.
- Require a reinstatement fee of \$125 if your driver's license was suspended, revoked, or restricted. This fee is separate from the reinstatement fee needed for any other driving violations.
- Require payment of a Driver Responsibility fee of \$500 to \$1,000 for two consecutive years.

## **Preliminary Breath Test**

When stopped by a law enforcement officer for suspicion of driving while intoxicated, you may be asked to take sobriety tests including a Preliminary Breath Test (PBT) at the roadside to determine whether you are under the influence of alcohol. If you refuse to take the PBT, you will be charged with a civil infraction and fined up to \$100 plus court costs. Persons under age 21 who refuse to take the PBT will receive two points on their driving record. Even if you take the PBT, you must still take the evidentiary chemical test (blood, breath, or urine test).

## **Michigan's Implied Consent Law**

If arrested, you will be required to take a chemical test to determine your Bodily Alcohol Content (BAC) or to ascertain whether there are drugs in your body. Under Michigan's Implied Consent Law, all drivers are considered to have given their consent to this test. If you refuse to take the test, six points will be added to your driving record and your license will be suspended for one year. Please be aware that suspension of a license is automatic. This is a separate consequence from any subsequent convictions resulting from the traffic stop.

If you are arrested a second time in seven years and again unreasonably refuse the chemical test, six points will be added to your driving record and your license will be suspended for two years.

If you unreasonably refuse to take the test, or if the test shows your BAC is 0.08 or greater, your driver's license will be destroyed by the officer, and you will be issued a paper driving permit that allows you to drive, provided your license was valid at the time of your arrest, until your case is resolved in court.

### Types of Charges:

- Operating While Visibly Impaired (**OWVI**) means that because of alcohol or other drugs in your body, your ability to operate a motor vehicle was visibly impaired.
- Operating With a Bodily Alcohol Content of 0.17 or more means the bodily alcohol content of your body was 0.17 or greater.
- Operating While Intoxicated (**OWI**) means the alcohol or drugs in your body substantially affected your driving ability so you could not operate a motor vehicle safely, or your bodily alcohol content was 0.08 or greater.
- Operating With Presence of Drugs (**OWPD**) means operating a vehicle with the presence of any amount of a Schedule 1 drug or cocaine.
- Under Age 21 Operating With Any Bodily Alcohol Content means having a BAC of 0.02 or greater but less than 0.08, or any presence of alcohol other than that consumed as part of a generally recognized religious ceremony.

### Commercial Drivers and Alcohol

While many of the drunken driving charges are the same for commercial drivers as other motorists, there are some important distinctions. When operating a commercial vehicle:

- The threshold for an Unlawful Bodily Alcohol Content offense is 0.015. Commercial drivers with a UBAC of 0.015 will be placed out of service for 24 hours.
- A UBAC of 0.04 or greater but less than 0.08 will result in CDL suspensions or revocations, depending on the number of offenses.

Commercial drivers with one offense for operating a commercial or noncommercial vehicle while drunk will have their CDL suspended for one year; three years if they are transporting hazardous materials. A second or third offense will result in a revocation of their CDL for a minimum of 10 years. Their operator or chauffeur driver's license may also be suspended or revoked. For more information, please refer to the Department of State's *Michigan Commercial Driver License Manual*.

## **Teen Drivers and Alcohol**

Drivers between ages of 16 and 20 are typically the least experienced drivers on the road. When alcohol is added to their inexperience, the results can be even more deadly. Male teenage drivers with a bodily alcohol content between 0.05 and 0.10 are 18 times more likely than a sober, male teenage driver to be killed in a single vehicle crash. Female teenagers are 54 times more likely to be killed than a sober counterpart. Any involvement with alcohol by teenagers can result in the loss of their license. Simply possessing any alcoholic beverage, whether in a motor vehicle or not, can result in a license suspension for a teenager.

For information about licensing actions for drivers under age 21, please see the Zero Tolerance section on pages 59-60.

## **Anti-Drug Laws**

Michigan law requires driver's license suspensions for drug convictions, even if you were not driving at the time of the offense. Even the possession, manufacture or distribution of drugs may result in a driver's license suspension. If there are no prior drug violations, your driver's license is suspended for six months. No restricted license is allowed for the first 30 days. One or more prior drug convictions in seven years means your driver's license will be suspended for one year. No restricted license is allowed for the first 60 days. The driver's license reinstatement fee is \$125. This fee is separate from the reinstatement fee required for any other driving activity.

## **Repeat Offender Laws**

Michigan's Repeat Offender laws are designed to get tough with drivers who repeatedly drive drunk or while on a suspended license. Under the laws, you are a repeat offender if you have:

- Two or more alcohol- or drug-related convictions within seven years.
- Three or more convictions for driving while your license is suspended or revoked in seven years.
- Three or more alcohol- or drug-related convictions within 10 years.

## Penalties Under the Repeat Offender Laws

If you are arrested as a repeat offender, the law enforcement officer destroys the metal license plate of the vehicle you are driving, whether you own the vehicle or not. A temporary paper license plate is issued allowing the vehicle to be legally driven. A new metal license plate cannot be issued until your case is resolved in court.

Sanctions under the Repeat Offender laws include additional driver's license suspensions or revocations, metal license plate confiscation, vehicle immobilization or forfeiture, registration denial, the use of ignition interlock devices, and mandatory substance abuse treatment. Repeat offenders who cause an accident resulting in a long-term injury or death are charged with a felony and face thousands of dollars in fines and years in jail in addition to other penalties.

When drivers are convicted of a third drunken driving violation, or receive a fourth additional suspension because they drove while their license was suspended or revoked, these repeat offenders are subject to registration denial.

Registration denial prevents the repeat offender from purchasing, renewing, transferring, or replacing a license plate. Registration denial includes any vehicles that are registered, co-registered, leased, or co-leased by the repeat offender. During registration denial, it is a crime to attempt to purchase, lease, or obtain a vehicle. Unless a circuit court order is requested and issued, a repeat offender may not transfer a vehicle to any family member if that vehicle is carrying a temporary plate, is immobilized, forfeited, or subject to registration denial. Registration denial continues until the repeat offender is authorized to obtain a driver's license or has served all of the additional suspensions.

Please refer to the chart following this section for more information about offenders convicted of multiple alcohol or Driving While License Suspended (DWLS) offenses.

# Consequences for Alcohol, Drug, and Driving-While-License-Suspended Offenses

## Alcohol/Drug Violations

### **First Offense: Operating With A Bodily Alcohol Content of 0.17 or greater**

Sanctions:

- One or more of the following:
  - \$200 to \$700 fine.
  - Up to 180 days in jail.
  - Up to 360 hours of community service.
- Driver's license suspension for one year; eligible for restricted license after 45 days with installation of an ignition interlock device.
- Possible vehicle immobilization.
- Alcohol rehabilitation program required for at least one year.
- Six points on driving record.
- \$1,000 Driver Responsibility fee for two consecutive years.

### **First Offense: Operating While Intoxicated (OWI)/ Operating With Presence of Drugs (OWPD)**

Sanctions:

- \$100 to \$500 fine and one or more of the following:
  - Up to 93 days in jail.
  - Up to 360 hours of community service.
- Driver's license suspension for 30 days, followed by restrictions for 150 days.
- Possible vehicle immobilization.
- Six points on driving record.
- \$1,000 Driver Responsibility fee for two consecutive years for OWI.
- \$500 Driver Responsibility fee for two consecutive years for OWPD.

## **First Offense: Operating While Visibly Impaired (OWVI)**

### Sanctions:

- Up to \$300 fine and one or more of the following:
  - Up to 93 days in jail.
  - Up to 360 hours of community service.
- Driver's license restriction for 90 days (180 days if impaired by controlled substance).
- Possible vehicle immobilization.
- Four points on driving record.
- \$500 Driver Responsibility fee for two consecutive years.

## **Second Offense Within Seven Years: Operating While Intoxicated (OWI)/Operating With Presence of Drugs (OWPD)**

### Sanctions:

- \$200 to \$1,000 fine and one or more of the following:
  - Five days to one year in jail.
  - 30 to 90 days community service.
- Driver's license denial and revocation for one or five years.
- License plate confiscation.
- Vehicle immobilization 90 to 180 days unless vehicle is forfeited.
- Possible vehicle forfeiture.
- Six points on driving record.
- \$1,000 Driver Responsibility fee for two consecutive years for OWI.
- \$500 Driver Responsibility fee for two consecutive years for OWPD.

## **Second Offense Within Seven Years: Operating While Visibly Impaired (OWVI)**

### Sanctions:

- \$200 to \$1,000 fine and one or more of the following:
  - Five days to one year in jail.
  - 30 to 90 days community service.
- Driver's license denial and revocation for one or five years.
- License plate confiscation.
- Vehicle immobilization 90 to 180 days unless vehicle is forfeited.
- Possible vehicle forfeiture.
- Four points on driving record.
- \$500 Driver Responsibility fee for two consecutive years.

## **Third Offense Within 10 Years (Felony): Operating While Intoxicated (OWI)/Operating With Presence of Drugs (OWPD)**

### Sanctions:

- Driver's license denial and revocation for one or five years.
- License plate confiscation.
- Vehicle immobilization one to three years unless vehicle is forfeited.
- Possible vehicle forfeiture.
- Registration denial of all owned and leased vehicles.
- Six points on driving record.
- \$1,000 Driver Responsibility fee for two consecutive years for OWI.
- \$500 Driver Responsibility fee for two consecutive years for OWPD.

## **Third Offense Within 10 Years (Felony): Operating While Visibly Impaired (OWVI)**

Sanctions:

- Driver's license denial and revocation for one or five years.
- License plate confiscation.
- Vehicle immobilization one to three years unless forfeited.
- Possible vehicle forfeiture.
- Registration denial.
- Four points on driving record.
- \$500 Driver Responsibility fee for two consecutive years.

### **Heidi's Law**

Michigan's Repeat Offender laws require tough sanctions for motorists convicted of two or more alcohol- or drug-related offenses within seven years or three or more alcohol- or drug-related offenses within 10 years. However, if a third or subsequent drunken or drugged driving violation occurred more than 10 years after any previous convictions, the court had to count the current violation as a first offense when considering criminal sanctions.

Because of a concern that chronic repeat offenders could face lighter sentences simply because more than 10 years had passed since their last conviction, the state enacted Heidi's Law. Heidi's Law requires felony penalties for a third or subsequent drunken or drugged driving offense regardless of when prior offenses occurred. It also requires the Department of State to maintain certain drunken or drugged driving violations on a driver's record for life.

Under Heidi's Law, licensing and plate sanctions are treated as a first offense for motorists with three or more drunken or drugged driving convictions if more than 10 years has elapsed since the last violation. Vehicle sanctions include plate confiscation, vehicle forfeiture, and immobilization. Licensing sanctions are restrictions, suspensions, and revocations.

### **Third Offense in a Lifetime (Felony): Operating While Intoxicated (OWI) / Operating With Presence of Drugs (OWPD) / Operating While Visibly Impaired (OWVI)**

Criminal Sanctions:

- \$500 to \$5,000 fine and either:
  - One to five years in prison.
  - Probation with 30 days to one year in jail.
- 60 to 180 days community service.

### **Alcohol Offenses Causing Injury or Death**

#### **First or Second Offense Causing Death/Serious Injury (Felony): Operating While Intoxicated (OWI)/Operating While Visibly Impaired (OWVI)/Operating With Presence of Drugs (OWPD)**

Sanctions:

##### **Death**

- Up to 15 years in prison or a \$2,500 to \$10,000 fine or both.

##### **Injury**

- Up to five years in prison or a \$1,000 to \$5,000 fine or both.

##### **Emergency Responder Death**

- Up to 20 years in prison or a \$2,500 to \$10,000 fine or both.

##### **Death/Injury/Emergency Responder Death**

- Driver's license revocation and denial for one or five years.
- License plate confiscation.
- Vehicle immobilization up to 180 days unless forfeited.
- Possible vehicle forfeiture.
- \$1,000 Driver Responsibility fee for two consecutive years.

## Open Intoxicants in a Motor Vehicle

### Sanctions:

- Up to a \$100 fine.
- First offense—no action is taken against driver’s license.
- Second offense—driver’s license is suspended for 30 days/restricted for 60 days.
- Third offense—driver’s license is suspended for 60 days/restricted for 305 days.
- Alcohol screening may be required.
- Two points on driving record.

## Alcohol Offenses Involving Young Drivers

### First Offense: Zero Tolerance (Under Age 21)

#### Sanctions:

- Up to \$250 fine and/or
  - Up to 360 hours community service.
- Driver’s license is restricted for 30 days.
- Four points on driving record.
- \$500 Driver Responsibility fee for two consecutive years.

### Second Offense Within Seven Years: Zero Tolerance (Under Age 21)

#### Sanctions:

- Up to \$500 fine and/or
  - Up to 60 days community service.
  - Up to 93 days in jail.
- Driver’s license suspension 90 days. Any prior drunken driving conviction results in a minimum one-year driver’s license revocation.
- Four points on driving record.
- \$500 Driver Responsibility fee for two consecutive years.