



THE BASSETT FIRM
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THE BASSETT BULLETIN™

‘TIS THE SEASON TO BE MERRY AND KNOWLEDGABLE

This is the time of year that we celebrate the holiday season. Shopping, decorations, and Christmas parties command our attention. Many Christmas parties will offer alcoholic drinks to the guests.

Without question, the safest course is to *not* drink and drive. However, if you chose to consume alcohol at one of these year-end parties, you need to be mindful of your rights and obligations under Texas law. Why? Because law enforcement agencies focus their efforts this time of the year on holiday drinking and driving.

It is important to understand that a DWI arrest needs to be dealt with on two fronts: (1) at the County level (criminal charges filed by the District Attorney’s office) and (2) at the Administrative level (driver’s license revocation proceedings filed by the Texas Department of Public Safety).

Driving while Intoxicated

A first offense of *Driving while Intoxicated* is a Class B Misdemeanor. The range of punishment can include up to 180 days in the county jail. Any jail time can be “probated” up to two years. Also, substantial fines, fees, and conditions of probation can accompany a *Driving while Intoxicated* conviction.

The Texas Legislature has specifically defined the term “intoxication,” as that term is used for prosecution of DWI cases. Intoxication can be proven by showing a person (a) did not have the normal use of *mental or physical faculties* by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body *OR* (b) having an alcohol concentration of 0.08 or more.

Administrative License Revocation Program

The ALR program went into effect on January 1, 1995. This program is the administrative process by which the Texas Department of Public Safety suspends the driver’s licenses of individuals who are arrested for DWI. This process is *in addition* to the criminal case that will typically take place at the county court level by the local District Attorney’s office.

An individual’s driver’s license/driving privileges may be suspended if he/she *either* (a) refused to submit to a chemical test *or* (b) provides a specimen with an alcohol concentration of 0.08 or greater.

How the ALR program works

First, a traffic stop is made by a law enforcement officer based on a determination that there is a reasonable suspicion for an initial traffic stop of a motorist. Reasonable suspicion at the ALR level is typically supported by a traffic violation, such as speeding.

After this initial contact is initiated, the officer then develops probable cause to arrest the person for DWI. Probable cause at the ALR level is typically supported by the officer's interaction with the individual, and the individual's performance on field sobriety tests.

Once a person is arrested for DWI they are taken to jail for additional questioning and processing. At the jail the driver will be asked to submit to a chemical test to measure his/her alcohol concentration. An officer *may* request a blood specimen, but the individual is typically asked to take a breath test.

If the driver refuses to provide a specimen, or provides a specimen with a prohibited alcohol concentration (greater than 0.80), the officer serves the individual with a Notice of Suspension. The officer will also confiscate the driver's license at this point and forward it to the Texas Department of Public Safety in Austin.

State Office of Administrative Hearings

The driver has 15 days from the date the Notice of Suspension was served to request a hearing. *If no hearing is requested, the suspension automatically goes into effect on the 40th day after notice was served.* If the driver requests a hearing, the temporary driving permit remains in effect until the date of the final decision of the administrative law judge.

A driver can be represented by an attorney at the ALR hearing. The DPS only has to prove its case by a preponderance of the evidence (50.01% of the credible evidence), not by the higher criminal burden of "beyond a reasonable doubt."

If an administrative judge finds that DPS has met its burden, the individual's driver's license will be suspended for a period of time, based on whether (1) the person refused to provide a specimen or (2) provided a specimen with an alcohol concentration of 0.08 or greater.

A refusal, for a first offender, will result in a 180 day suspension. For a first time offender, providing a specimen of 0.80 or greater will result in a 90 day suspension. If previously suspended for failing/refusing a specimen test (or for DWI/Intoxication Assault/Intoxication, or Manslaughter conviction during 10 years preceding the date of arrest), the suspension in a refusal case will be for 2 years, while the latter scenario will result in a 1 year suspension.

HAVE A WONDERFUL AND SAFE HOLIDAY SEASON

Everyone receiving this Newsletter is considered an extended member of the TBF family. We enjoy knowing you, and working with you. Please be safe this holiday season, and be mindful of the many legal consequences that are associated with drinking and driving.

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