DUI in SC: 1st, 2nd, 3rd, 4th & Subsequent Offenses

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Charged with DUI in SC?

Whether this is your first experience with SC's criminal justice system, or you've been here before, it can be confusing and stressful. People often wonder: *Am I going to jail? Will I lose my license? Is this going to be on my criminal record for the rest of my life?*

If you have been charged with DUI in SC, your first step should be to get an experienced DUI defense lawyer on your side *immediately*, so they can answer questions specific to your case and begin preparing your defense. You may have defenses you don't know about, and your case could end with a dismissal, a negotiated plea to a lesser traffic offense, or an acquittal after trial.

In this article you will learn:

- The basics of DUI laws in South Carolina,
- How DUI offenses are defined,

- How South Carolina's implied consent laws may affect your case, and
- The potential penalties that you will face if you are convicted of a DUI offense.

Introduction to DUI Charges

DUI, or driving under the influence, can be a serious offense in South Carolina. If you have been charged with DUI in South Carolina, you have a tough road ahead. If you are here reading this article, you're on the right track – you are learning about what you've been charged with and what it means.
In this article, we are going to look at the basic nuts and bolts of DUI in South Carolina. First, what is DUI, and how is it defined in South Carolina law?

What is DUI in SC?

DUI in South Carolina is defined in SC Code Section 56-5-2930, which makes it a crime to:
1. Drive,
2. While under the influence of alcohol, any drug, or a combination of alcohol and drugs,
3. To the extent that your "faculties to drive a motor vehicle are materially and appreciably impaired."

Each of these three elements must be proven beyond a reasonable doubt before you can be convicted of DUI in South Carolina. For example, if you are not driving, you are not guilty. If you are just sitting in your car listening to the radio, or *even if you are passed out at the wheel with the engine running and the transmission in gear*, you are not *driving*.
The State must prove not only that you were under the influence, but that you were under the influence to the extent that your abilities to drive were "materially and appreciably impaired." People are often surprised when I tell them, "It's not illegal to drink and drive." It's illegal to drink and then drive *if* your ability to drive is *materially and appreciably impaired*.

Implied Consent Law

South Carolina's implied consent laws cause confusion for many who are charged with DUI. South Carolina law says if you drive in our state, you *impliedly consent* to give a breath or blood sample to law enforcement if they suspect you are DUI.

You can refuse to give a breath or blood sample, but they will suspend your license if you refuse. On the other hand, if you give a breath sample and the blood alcohol content (BAC) is .15% or greater, they will still suspend your license. And, if the machine says that your BAC is .08% or greater, they will use it as evidence against you at your trial.
Implied consent proceedings are separate from the criminal case – they are in a separate administrative court, and, if you lose the implied consent hearing or do not request an implied consent hearing, you can be punished twice with license suspensions or ignition interlock device (IID) requirements.

What's the Legal Limit in South Carolina?

We often say that, technically, there is no "legal limit" for DUI in South Carolina. But:

- If you are charged with DUI, a breath or blood sample result of .08% or greater creates an "inference" that you were under the influence, and
- If you are charged with DUAC (driving with an unlawful alcohol concentration), the State only needs to prove that your blood alcohol content was .08% or greater, which they can do by presenting evidence of your breath or alcohol test results to a jury.

DUI 1st Offense

Driving under the influence first offense is the "least serious" of South Carolina's DUI offenses. You can be charged with DUI first offense if there is evidence that you were driving while under the influence to the extent that your faculties to drive were materially and appreciably impaired, even if there is no BAC result.

If there is a BAC result, it can affect your case in a number of ways, including:

- An implied consent suspension if the result is .15% or greater,
- A rebuttable inference that you were DUI if the result is .08% or greater but less than .15%,
- No inference if the result was between .05% and .08%, or
- A presumption that you are not under the influence of alcohol if the result is .05% or less.

If you are convicted of DUI, your BAC result can affect the potential sentence as well. For example, for a DUI first offense, the potential penalties for a conviction include:

- BAC less than .10% (including anyone who refuses the breathalyzer): “a fine of four hundred dollars or imprisonment for not less than forty-eight hours nor more than thirty days,” but the 48 hour mandatory minimum can be waived if the person completes 48 hours of community service.
- BAC .10% or greater up to 16%: “a fine of five hundred dollars or imprisonment for not less than seventy-two hours nor more than thirty days,” but the 72 hour mandatory minimum can be waived if the person completes 72 hours of community service.
- BAC .16% or greater: “a fine of one thousand dollars or imprisonment for not less than thirty days nor more than ninety days,” but the 30 day mandatory minimum can be waived if the person completes 30 days of community service.

DUI 2nd Offense

As with DUI first offense, DUI 2nd, 3rd, or 4th and subsequent offenses can be charged if there is evidence that you were driving while under the influence *to the extent that your faculties to drive were materially and appreciably impaired,* even if there is no BAC result.

Another difference is that DUI first offense is usually charged in the magistrate or municipal courts (although General Sessions Court does have “concurrent jurisdiction”), while DUI 2nd, 3rd, or 4th and subsequent offenses are charged in the Court of General Sessions.

Apart from this, the only difference between DUI 1st offense and 2nd or greater offenses is the potential penalties. If you are convicted of DUI second offense, the potential punishments include:

- BAC less than .10% (including anyone who refuses the breathalyzer): “a fine of not less than two thousand one hundred dollars nor more than five thousand one hundred dollars, and imprisonment for not less than five days nor more than one year” (community service is not an option to avoid the mandatory minimum sentence for DUI 2nd offense or greater).
- BAC .10% or greater up to 16%: “a fine of not less than two thousand five hundred dollars nor more than five thousand five hundred dollars and imprisonment for not less than thirty days nor more than two years.”
- BAC .16% or greater: “a fine of not less than three thousand five hundred dollars nor more than six thousand five hundred dollars and imprisonment for not less than ninety days nor more than three years.”

DUI 3rd Offense

The penalties increase again if a person is convicted of driving under the influence third offense in South Carolina.

For example:

- BAC less than .10% (including anyone who refuses the breathalyzer): “a fine of not less than three thousand eight hundred dollars nor more than six thousand three hundred dollars, and imprisonment for not less than sixty days nor more than three years”
- BAC .10% or greater up to 16%: “a fine of not less than five thousand dollars nor more than seven thousand five hundred dollars and imprisonment for not less than ninety days nor more than four years.”
- BAC .16% or greater: “a fine of not less than seven thousand five hundred dollars nor more than ten thousand dollars and imprisonment for not less than six months nor more than five years.”

DUI 4th or Subsequent Offenses

Driving under the influence fourth offense or greater is the second most serious DUI charge in SC after felony DUI (where someone was injured or killed).

If the person took the breathalyzer test and their result was .16% or greater, they could be imprisoned for up to seven years and there is a mandatory minimum sentence of three years:

- BAC less than .10% (including anyone who refuses the breathalyzer): “imprisonment for not less than one year nor more than five years.”
- BAC .10% or greater up to 16%: “imprisonment for not less than two years nor more than six years.”
- BAC .16% or greater: “imprisonment for not less than three years nor more than seven years.”

Felony DUI in SC with Death or Great Bodily Injury

Felony DUI is the most serious DUI offense in South Carolina, and it is charged when someone is seriously injured or killed as a result of a DUI-related accident.
If you are charged with felony DUI in SC, the State must prove that:

- You were driving,

- You were under the influence of alcohol, drugs, or a combination of alcohol and drugs,
- You committed an “act forbidden by law or neglect[ed] any duty imposed by law in the driving of the motor vehicle” (for example, a traffic violation like speeding or running a red light), and
- The violation that you committed was the proximate cause of death or great bodily injury to another person.

The potential penalties for felony DUI are much greater than those for “ordinary” DUI offenses, and a conviction will usually involve substantial prison time:

- Felony DUI with death carries a mandatory minimum of 1 year and up to 25 years in prison and a fine between $10,100-$25,100, and
- Felony DUI with great bodily injury carries a mandatory minimum of 30 days and up to 15 years in prison and a fine between $5,100-$10,100.

DUI Penalties Chart

The potential penalties for DUI in South Carolina increase based on the number of DUI-related convictions you have had within the past 10 years. For example, if you had a DUI conviction in 2012, and you are convicted of another DUI in 2021, the 2021 DUI would be a second offense with harsher penalties.

Below is a chart that contains the potential penalties for DUI or DUAC 1st, 2nd, 3rd, or 4th and subsequent offenses, including the *mandatory minimum penalties*. Note that the penalties increase based on the breathalyzer or blood test results:

Charge of DUI or DUAC	BAC Level	Offense Classification	Penalty (does not include court costs and assessments)	Mandatory IID	License Suspension
1st Offense	< .10 %	misdemeanor	Fine = $400 OR Jail = 48 hours to 30 days	None	6 months
1st Offense	.10-.15 %	misdemeanor	Fine = $500 OR Jail = 72 hours to 30 days	BAC .15% or more requires 6 successful months	Depends on BAC: .10-.14% = 6 months .15 % or more = indefinite suspension with IID

1st Offense	>.15%	misdemeanor	Fine = $1,000 OR Jail = 30 to 90 days	6 successful months to get license back	Can only drive pursuant to the Ignition Interlock Device Program
2nd Offense	<.10%	misdemeanor	Fine = $2,100-$5,100 AND Jail = 5 days to 1 year	2 years	Can only drive pursuant to the Ignition Interlock Device Program
2nd Offense	.10-.15%	misdemeanor	Fine = $2,500-$5,500 (can't be suspended lower than $1,100) AND Jail = 30 days to 2 years	2 years	Can only drive pursuant to the Ignition Interlock Device Program

2nd Offense	>.15%	misdemeanor	Fine = $3,500-$6,500 (can't be suspended lower than $1,100) AND Jail = 90 days to 3 years	2 years	Can only drive pursuant to the Ignition Interlock Device Program
3rd Offense	<.10%	misdemeanor	Fine = $3,800-$6,300 AND Jail = 60 days to 3 years	3 years	Can only drive pursuant to the Ignition Interlock Device Program
3rd Offense	.10-.15%	misdemeanor	Fine = $5,000-$7,500 AND Jail = 90 days to 4 years	3 years	Can only drive pursuant to the Ignition Interlock Device Program

3rd Offense	>.15%	misdemeanor	Fine = $7,500-$10,000 AND Jail = 6 months to 5 years	3 years – or If the 1st conviction occurs within 5 years then 4 years IID	Can only drive pursuant to the Ignition Interlock Device Program
4th or Subsequent Offense	<.10%	felony	Jail = 1-5 years	Life	Can only drive pursuant to the Ignition Interlock Device Program
4th or Subsequent Offense	.10-.15%	felony	Jail = 2-6 years	Life	Can only drive pursuant to the Ignition Interlock Device Program
4th or Subsequent Offense	>.15%	felony	Jail = 3-7 years	Life	Can only drive pursuant to the Ignition Interlock Device Program

Other Penalties for DUI in SC

Jail time is only one of the consequences of a DUI conviction. Other negative consequences can follow you for the rest of your life. For example:

- DUI convictions cannot be expunged in South Carolina – 30 years from now, potential employers may still reject you because there is a DUI on your record.
- After a DUI conviction or implied consent violation, you must enroll in ADSAP (the alcohol and drug safety action program) before you are allowed to drive again.
- You will be required to carry expensive SR-22 insurance for three years, and, if your insurance lapses even once, the requirement will be extended.
- You may be required to install an ignition interlock device (IID), which requires you to blow into a breathalyzer before your vehicle's ignition will work.
- Many employers will reject applicants who have a DUI on their record – it's a potential liability, especially if the job requires driving. If there are multiple applicants for a job, and one has a DUI conviction while another does not, who are they going to hire?
- The financial consequences for a DUI conviction involve more than just a fine – ADSAP, SR-22, and IID requirements all cost money, as well as the lost opportunities when potential employers reject you because of a DUI on your record.

A Note on Judicial Discretion

Judges have a lot of leeway as to the length of a person's sentence after a DUI conviction, and the length of the sentence can vary depending on your criminal history and the mitigation that your attorney collects and presents to the court.
On the other hand, judicial discretion has its limits. Judges have *no* discretion when it comes to:

- Mandatory minimum sentences,
- IID requirements,
- License suspensions,
- ADSAP, or
- Expungement of your record (you cannot expunge a DUI in SC).

It is critical that you consult with an experienced DUI defense lawyer immediately after you are charged and *before* your initial court date so that you *avoid a DUI conviction whenever possible*.
We cannot promise results to any client, but we can do everything that is legally and ethically within our power to get our client's case dismissed, win their case at trial, and avoid a lifetime of negative consequences from a DUI conviction.

Questions About DUI in SC?

If you have been charged with DUI in SC, get an experienced DUI defense lawyer on your side *immediately* who can begin preparing your defense and ensure that you do not miss important deadlines.

Call **843-761-3840** or use this form to contact us today to discuss your case and start working towards the best possible outcome for you.