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Felony DUI

Most states classify a standard DUI (or DWI) charge as a misdemeanor. Certain circumstances can raise the level of the charge to a felony, however. A conviction for a felony DUI carries stiffer penalties and more lasting consequences than a misdemeanor charge. Not every state has the same rules for what does and does not constitute felony drunk driving, though, so you should check the laws and procedures in your state for more information. Here are some common situations that could result in a felony DUI/DWI charge:

Elevated Blood Alcohol Concentration (BAC)

Every state currently has a .08 percent "per se" DUI rule in effect. This rule states that, if a driver has a BAC of .08 or above, the state can assume that the driver is intoxicated in violation of the statute.

In addition, States commonly will elevate a drunk driving charge to a felony if chemical tests reveal that the driver's BAC exceeds a certain elevated level set by law - usually around .16 percent. Not every state has this law, but at the minimum states generally impose a harsher punishment for a high BAC.

Bodily Harm

Some states raise a DUI/DWI charge to a felony if the driver causes bodily harm to another. Sometimes, prosecutors have the discretion to decide whether to prosecute a DUI/DWI case involving bodily injury as a misdemeanor or a felony. In some states, like California, prosecutors must also demonstrate that the person charged with DUI/DWI caused that injury in question. If another driver runs into the intoxicated driver while stopped at a stop sign and suffers injuries, then the intoxicated driver didn't cause the bodily harm and the DUI/DWI charge will remain a misdemeanor.

Prior Convictions

States generally will charge an intoxicated driver with felony DUI if the driver has multiple prior convictions for the offense within a certain period of time. The number of prior convictions and the time period vary between states but some states, such as New York, will charge a person with felony DUI if he or she has just one prior conviction for any DUI/DWI crime within the past ten years.

Children in the Vehicle

Many states have passed laws that make driving while under the influence with children in the vehicle a felony. A recent high-profile example of this is Leandra's Law in New York. The law passed after an 11 year-old girl died when her friend's mother crashed her car while driving under the influence. Leandra's Law applies when a child of 15 years or younger is present but be sure to check your own state's law since the ages that trigger the law can vary.

DUI/DWI while Driving on a Restricted, Suspended or Revoked License

Many states make a DUI/DWI offense a felony if it occurs while the offender had a restricted, suspended or revoked license. Illinois, for example, makes this crime a Class 4 felony punishable by 1-3 years in state prison.

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