

Overview of Criminal Punishments for DUI and Related Offenses in California

Created by the staff of the Committee on Revision of the Penal Code

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Offense	Level	Incarceration (minimum term is if probation imposed)	DUI program	Ignition interlock VC § 23575.3(h)
DUI without injury, Vehicle Code § 23152				
1st VC §§ 23536, 23538	Misdemeanor	Up to 6 months county jail	3 or 9 months	Court discretion — up to 6 months
2nd VC §§ 23540, 23542	Misdemeanor	Up to 1 year county jail with a 4 day minimum	18 or 30 months	12 months
3rd VC §§ 23546, 23548	Misdemeanor	Up to 1 year county jail with a 30 day minimum		24 months
4th+ VC §§ 23550, 23552	Wobbler	Up to 3 years county jail with a 30 day minimum		36 months
DUI with injury, Vehicle Code § 23153				
1st VC §§ 23554, 23556	Wobbler	Up to 3 years state prison with a 5 day county jail minimum	3 or 9 months	12 months
2nd VC §§ 23560, 23562	Wobbler	Up to 3 years state prison with a 3 month county jail minimum	18 or 30 months	24 months
3rd+ VC § 23566, 23568	Felony	Up to 4 years state prison with a 1 year county jail minimum		36 months

“Wet reckless”

With a prosecutor’s consent, some DUI charges can be resolved with a guilty plea to a “wet” reckless driving misdemeanor conviction, which carries reduced penalties (up to 90 days in county jail) compared to a DUI but can still be used to enhance future punishment and can result in a court order to install an ignition interlock device. Vehicle Code §§ 23103 & 23103.5; 9 CCR § 9851(b)(1) (12 hour program).

Sentence enhancements	
Minor passenger VC § 23572	If a child under 14 was in the vehicle, jail time increases by 2 to 90 days. Applies only to DUI without injury.
Chemical test refusal VC § 23577	Refusal can add additional jail time from 2 to 18 days
Excessive speed VC § 23582(a)	Driving 30 mph over the limit on a freeway (or 20 mph on other roads) during a DUI adds 60 days in jail.
Multiple victims VC § 23558	Adds 1 year for additional injured victims, up to a maximum of three years. Applies only to felony convictions for DUI with injury.

Prior offenses

- Penalties increase based on prior DUI-related convictions within a 10-year period. DUIs with and without injury, out-of-state-convictions, and some wet reckless offenses count as priors. See, e.g., Vehicle Code §§ 23550, 23626.
- According to the DMV, 75% people convicted of a DUI offense, have no prior convictions:

DUI convictions by status of prior convictions, 2020

Status of prior convictions	Percentage
No prior DUI	74.7%
1 prior DUI	19.2%
2 prior DUIs	4.6%
3 or more prior DUIs	1.4%

Chart: Committee on Revision of the Penal Code • Source: California DMV Report of the DUI Management Information System, Table 8 • Created with Datawrapper

License suspensions

- Administrative suspension by the DMV: Occurs shortly after arrest, before the criminal case is resolved. Lasts 4 months for a first offense (if BAC was under 0.15% and no refusal); 1 year if there are priors, a chemical test refusal, or a BAC of 0.15% or higher. See Vehicle Code §§ 13353.2, 13353.3(b)(1)(A), 13353.3(b)(2)(A).
- Court suspensions: Triggered automatically upon conviction in criminal court. Ranges from 6 months for a first conviction up to 4 to 5 years for a fourth or subsequent conviction. See Vehicle Code § 13352(a)(1)–(7).

“Watson” advisory

Under VC § 23593, when someone is convicted of DUI or “wet” reckless driving, courts must formally advise that driving under the influence is extremely dangerous to human life, and that if they continue to do so and kill someone, they can be charged with murder. This warning can be used as evidence to prove “implied malice,” and can allow prosecutors to elevate a future DUI-related killing from manslaughter to second-degree murder. See *People v. Watson*, 30 Cal.3d 290 (1981).

Vehicular manslaughter and murder while intoxicated

- Vehicular manslaughter while intoxicated is a wobbler that can result in up to 4 years in county jail. Penal Code § 191.5(b).
- Gross vehicular manslaughter while intoxicated is a felony that can result in up to 10 years in state prison. Penal Code § 191.5(a).
- With a prior DUI-related or other specified conviction, gross vehicular manslaughter while intoxicated is a felony that has a 15-to-life state prison sentence. Penal Code § 191.5(d).
- “Watson” murder based on extremely dangerous driving while intoxicated is second-degree murder that has a 15-to-life state prison sentence (the default sentence for second-degree murder). Penal Code § 190(a).