

UCSB LEGAL RESOURCE CENTER

THINGS TO THINK ABOUT IF YOU DRINK ALCOHOL

Here is some important information to keep you out of trouble with the law.

If you drink alcohol when you are under 21, there are serious, unexpected consequences:

- You can lose your driver's license for one year (even if you are not even close to a car!)
- You can be charged with DUI with only .01 blood alcohol content (that's *any* trace of alcohol)

If you drink alcohol in public, no matter what your age:

- You might be convicted of a misdemeanor and could have a criminal record for the rest of your life
- A criminal record could prevent you from being a doctor, a lawyer, a credentialed teacher, and many more professions
- The applications for many graduate programs ask if you ever have been convicted of a crime

Driving after you have been drinking can cause you to:

- Lose your driver's license for at least 120 days
- Pay a fine and fees of more than \$1,600
- Pay huge increases in insurance premiums
- Be required to attend a costly and time consuming alcohol abuse program
- Have a criminal record for DUI

Questions commonly asked by UCSB students:

Question: I am 19 years old and was convicted of being a "minor in possession of alcohol" because I was drinking beer at Deja Vu. I know this is illegal, but I just found out that my driver's license could be suspended for one year. I wasn't even near a car, so why is my license suspended?

Answer: As you already know, it is a violation of California law for you to drink alcohol in public until you are 21 years old. Although for most purposes 18 years old is the age of "majority," you are considered a "minor" until you are 21 years old for purposes of alcohol purchase, possession and consumption. Even in cases where no motor vehicle is involved, the California Legislature has decided as a policy matter to impose additional sanctions for underage drinking; when a minor is convicted of an alcohol related crime (e.g., purchase, possession or consumption of alcohol, furnishing alcohol to a minor, possessing an open container of alcohol in public), the minor's driver's license may be suspended for one year. When you plead guilty as charged the court enters the guilty plea, and sends the information about your conviction to the Department of Motor Vehicles ("DMV"). The DMV then automatically suspends your license for one year. You can ask the court for a restricted license to drive to and from work, school and home for 11 months, and our courts will typically grant you one.

Follow-up Question: I was on private property when I was drinking at Déjà vu. How is this "in public"?

Answer: "Public" means a lot of things. For purposes of an MIP it can mean being on a public street, being in a public place (like Giovanni's or Deja Vu), being in a common area on private property that is open to public access (like a quad area or common walkway to apartments), and being visible from a public vantage point (like sitting in a living room with the door open that faces the common area of the building, or on a balcony that is visible from the street). It can also mean being at a house party that is open to the public ("open parties") even if you are inside the house and not visible from any public vantage point. An "open party" is treated the same as Giovanni's or Deja Vu because it is open to the public. If something is open to the public that means the cops can enter, too.

Follow-up Question: *What if the drink wasn't mine? Or what if I didn't drink from the cup/bottle?*

Answer: It doesn't matter. The law does not require the drink to be yours or for you to have drunk from the container. The law requires that you are in possession of it. "Possession" means that the container of alcohol is within your area of control. It doesn't mean you literally have to be holding it (which is why some students receive citations even though they set the cup down on the ground or table near them). If you have a container with alcohol within your proximity that you could reasonably reach for, then you are in "possession" of it. If there is another person who is within the same distance from the container as you, then it is between the two of you as to who wants to take responsibility for the container. One of you will be cited, if not both.

Question: *I was walking down the street after a party and a cop stopped me and cited me for drunk in public, 647(f). I wasn't doing anything, and he didn't test my blood alcohol level to see if I was a .08 or above. How can I be drunk in public?*

Answer: The most common questions about DIP involve "how drunk do you have to be to be cited?" The standard is that you are so intoxicated that you are a danger to yourself or others, and are in public. If you are throwing up or passed out at your house you are not drunk in public, but if you are walking down the street you are ripe for picking by the IVFP. Most citations would never meet the standard for DIP, but there is no consequence to the officer for giving you a citation that is later thrown out in court. Typically, a student who receives a DIP falls within a few categories of conduct: passed out; stumbling home, and isn't sure exactly where home is; walking alone late at night with alcohol on his/her breath; walking with a group of people but is clearly being held up by 1 or more among the group; vomiting into a planter or trash can; acting in a way that a sober person would not. The law requires that when an officer issues a DIP he must take the individual into custody until they sober up and can care for themselves. This is a safety issue, not because the officer wants to be mean to you. If you are too drunk to care for yourself, then you should not be left alone. It is for a judge or jury to determine whether you really were too drunk by legal standards. No test is taken to measure your BAC, and there is no requirement that it has to be taken. It is objective observations by the officer that support the citation.

Question: *I was at a friend's party and I really had to go to the bathroom. Instead of going inside I thought it would be easier to pee out by the driveway behind a tree. A cop saw me and cited me for urinating in public. If I'm on private property how is this "in public"?*

Answer: Santa Barbara County has a local ordinance that addresses people who urinate in public. Some people receive citations for illegal dumping, which is a California state law and is not applicable to urinating in public. If you receive a citation for illegal dumping the fine is quite high, but luckily our courts understand what the correct violation is and will correct the citation at court. Doing this act in public means you are in view of someone standing at a public vantage point (like street or sidewalk). You can receive a citation even if you are on private property (like in someone's driveway) as long as you are visible from a public vantage point.

Question: *I was walking down the sidewalk outside of my apartment building drinking a bottle of beer, and a police officer stopped me, gave me a ticket called a "Notice to Appear," and said I would have to go to court. I am over 21 years old and wasn't causing any trouble, so why do I have to go to court?*

Answer: It is illegal in California for anyone (even people over 21 years old) to possess an open container of alcohol in public. Public places include the sidewalk in front of your apartment. Fortunately, because you are over 21, your offense is only an infraction; if you were under 21 or in a motor vehicle (either as a driver or passenger) with your "open container," you would be charged with a misdemeanor. A misdemeanor is a criminal offense and will become part of your permanent criminal record, which can affect your ability to attend graduate school, obtain a state license (e.g., to be a physician, attorney, accountant, teacher), or secure certain types of employment. In contrast, an infraction is like a traffic violation and does not have the same impact as a misdemeanor. Nevertheless, you will need to go to court

no later than the date noted on your Notice to Appear and either pay a fine or plead “not guilty” and obtain a trial date. At trial, you will have to represent yourself or pay for an attorney to represent you, as you are not entitled to free legal counsel (Public Defender) for an infraction.

Question: *I was arrested for DUI when I was driving home from a party. I only had a couple of drinks, but the police officer said I failed the field sobriety test and “blew a .13.” What does all of this mean?*

Answer: Under California law, it is illegal to drive when you are under the influence of alcohol. You are presumptively “under the influence” if your blood alcohol content is .08 or more if you are older than 21 years of age, and .05 or more if you are under 21. The blood alcohol content is determined by a breathalyzer, urine, or blood test, which you are required by law to take. Generally, the police officer administers a field sobriety test first; this test includes various verbal and physical tests such as walking a straight line or counting backwards from 100 by 7’s. It appears from your question that the police officer believed you did not perform well during the field sobriety test and that you took a breathalyzer test, which showed that your blood alcohol content was .13, well in excess of the legal limit.

There are several consequences of a DUI charge. First, regardless of the outcome of the criminal charge, the Department of Motor Vehicles will suspend your driver’s license for four months. This license suspension is triggered by a .01 blood alcohol content if you are under 21 years old, and refusal to take the test results in a one year suspension. Secondly, and most importantly, a DUI is a misdemeanor. Conviction of a first offense typically results in a fine that can exceed \$1,600, required completion of an alcohol treatment program, a 120-day license suspension, and probation for 3 years. Subsequent DUI convictions carry sentences that are substantially more severe. A DUI conviction also will cause your automobile insurance rates to increase significantly for several years or even cause your policy to be cancelled. In addition, as described in the answer above, conviction of a misdemeanor can have educational and employment consequences as well, although a DUI conviction generally is viewed as the most serious of the alcohol charges.

The information contained in this article is of a general nature. If you have a similar problem, you should consult with an attorney. Currently registered UCSB students are encouraged to call A.S. Legal Resource Center for an appointment (805.893.4246). Appointment hours are Monday through Friday in the afternoons. Drop-ins are also welcome.