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Driver's License Revocation Almost Certain with DWI Arrest in New Mexico

The first and among the most serious consequences a person arrested for DWI/DUI will face is the revocation of their driving privileges through Motor Vehicles Division (MVD). In fact, a DWI driver has only 10 days from the date of arrest to send in a Request for License Revocation Hearing to MVD. Failure to send in the request results in automatic revocation.

There is much confusion with DWI drivers about the jurisdictional issues between the MVD revocation and the criminal DWI proceeding. In fact, the two are completely separate. In other words, you can win at the MVD hearing and still lose at trial in the criminal proceeding. Likewise, you can lose at the MVD hearing and win at trial.

Both MVD and the criminal court have the authority to revoke the DWI offender's driving privileges. The length of the revocation depends on the number of DWI convictions and whether the charge was aggravated DWI.

In addition to the overlapping jurisdiction over driving privileges, the period of revocation may be different between MVD and the criminal court. For example, on a first time simple DWI (non-aggravated DWI), the revocation by MVD is 6 months. Upon conviction in the criminal proceeding, there is a mandatory one year interlock requirement.

With both the MVD revocation and the interlock requirement imposed as a result of the criminal conviction, driving without an interlock and an interlock license results in criminal charges for driving on a revoked license. A conviction for driving on a revoked license carries up to one year in jail.

The criminal court may impose the revocation from the time of the conviction. The MVD hearing often occurs much earlier than the criminal trial since it must be set by law within 90 days of the arrest. The court may, but does not have to, allow for credit for the MVD interlock period. Therefore, the actual revocation and interlock period may stretch beyond one year even on a simple first DWI.

Finally, the burdens of proof are different between the two hearings. The recent case of Glenn v. MVD has significantly lessened the burdens at the MVD hearing. Under the Glenn case, the state need not even prove the stop

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was legal. As a result of this case, the MVD hearing is even more formality than before since the State need only show the hearing was held within 90 days of arrest and the driver blew .08 or above or refused to blow.

The burdens are no better in the criminal proceeding. The State need only show (argue) that the driver's ability to drive was "impaired to the slightest degree" by alcohol. This is really no standard at all. On the upside, the State is supposed to show that the driver was legally stopped. This again is a fairly low burden since a reason can always almost always be found for pulling over a driver.

The bottom line is that a DWI seriously jeopardizes driving privileges. The driver and his or her attorney must run a gauntlet of hearings where the burdens are seriously stacked against them. In fact, it is pretty rare that a DWI arrest will not result in the revocation of driving privileges in some fashion unless the officers simply do not show up to fight.

And the moral to the story is "Don't Drink and Drive." It is not worth it.

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