

Driving Under the Influence is a lot more than "drunk driving". In California you can be guilty of a DUI if you use prescription drugs and even over the counter medications such Benadryl (diphenhydramine).

Vehicle Code Section 23152

In California, "under the influence" is defined under Vehicle Code Section 23152. The law separates it into key parts: Driving under the influence of alcohol (VC 23152(a)), Driving under the influence of drugs (VC 23152(f)), and Combined influence (VC 23152(g)).

Legal Definition of "Under the Influence" is when mental or physical abilities are so impaired that they are no longer able to drive a vehicle with the caution of a sober person, using ordinary care, under similar circumstances. This is not the same as the separate "per se" offense under VC 23152(b), where driving with a BAC of 0.08% or higher is illegal regardless of actual impairment. Key Points for California Drivers include being convicted of DUI for being under the influence even if BAC is below 0.08%, and for drugs, impairment must be shown. The focus is on safe driving ability, not a specific amount consumed. Provide case citations and quotes to support these points.

California Vehicle Code Section 23152 establishes multiple distinct offenses related to impaired driving, each with different elements of proof. The statute separates driving under the influence of alcohol (subdivision (a)), driving with a blood alcohol content (BAC) of 0.08% or higher (subdivision (b)), driving under the influence of drugs (subdivision (f)), and driving under the combined influence of alcohol and drugs (subdivision (g)).

The legal definition of "under the influence" requires proof that a person's mental or physical abilities are impaired to such a degree that they can no longer drive with the caution characteristic of a sober person using ordinary care under similar circumstances, which differs fundamentally from the per se BAC offense. This is why even an over the counter medication can lead to a DUI arrest.

California courts have consistently defined "under the influence" as requiring that "alcohol must have so affected nervous system, brain, muscles as to impair to an appreciable degree ability to operate a vehicle in manner of ordinarily prudent and cautious person in full possession of his faculties" (People v. Randolph, 28 Cal.App.5th 602 (2018)).

More specifically, a person is under the influence "when as a result of drinking such alcoholic beverage, his or her physical or mental abilities are impaired to such a degree that he or she no longer has the ability to drive a vehicle with the caution characteristic of a sober person of ordinary prudence under the same or similar circumstances" (McDonald v. Department of Motor Vehicles, 77 Cal.App.4th 677 (2000) This standard applies equally to violations involving drugs, as "the drug(s) must have so far affected the nervous system, the brain, or muscles as to impair to an appreciable degree the ability to operate a vehicle in a manner like that of an ordinarily prudent and cautious person in full possession of his faculties" (People v. Enriquez, 42 Cal.App.4th 661 (1996)

Distinction Between Per Se and Impairment-Based Offenses

The critical distinction between Vehicle Code Section 23152(a) and Section 23152(b) lies in what the prosecution must prove. A conviction under subdivision (b) for driving with a BAC of 0.08% or higher "neither entails nor requires a finding of impairment" (Hamilton v. Gourley, 103

Cal.App.4th 351 (2002) to establish the per se offense, "the prosecution must prove that (1) appellant drove a vehicle and (2) when driving, his BAC was 0.08 percent or more" (People v. Beltran, 157 Cal.App.4th 235 (2007))

In contrast, a conviction for driving under the influence requires proof of actual impairment, making it "not synonymous with, and in fact requires a lesser quantum of proof than, driving under the influence (DUI) of alcohol" (People v. Grabham, 68 Cal.App.5th 549 (2021)) As one court explained, "no proof of the defendant's subjective state of intoxication is necessary to convict a defendant of driving with a blood alcohol content (BAC) of .08 or higher; instead, a conviction for this offense requires only proof that the defendant drove with a BAC above the statutory limit" (People v. Grabham, 68 Cal.App.5th 549 (2021))

Conviction Below 0.08% BAC Based on Impairment

California law permits DUI convictions under Section 23152(a) even when a driver's BAC is below 0.08%, provided the prosecution proves actual impairment. Courts have recognized that impairment can occur at lower BAC levels, and the focus remains on the driver's ability to operate a vehicle safely rather than meeting a specific numerical threshold.

The statute's structure demonstrates this principle, as subdivision (a) contains no BAC requirement whatsoever, focusing solely on whether the person was "under the influence of any alcoholic beverage" Vehicle Code § 23152

In summary, California's DUI framework separates impairment-based offenses from per se BAC violations, requiring prosecutors to prove that a driver's mental or physical abilities were impaired to an appreciable degree for convictions under Vehicle Code Section 23152(a), while convictions under subdivision (b) require only proof of a 0.08% or higher BAC regardless of actual driving impairment

.Commentary on This Question

California Vehicle Code Section 23152 distinguishes impairment-based DUI offenses from per se violations. Under VC § 23152(a), a person is guilty of DUI if their mental or physical abilities are impaired to the extent they are unable to drive safely with the caution of a sober person under similar circumstances.

This offense focuses on actual impairment rather than solely on blood alcohol concentration (BAC). VC § 23152(f) and (g) address DUI involving drugs and combined influence, requiring proof of impairment rather than mere presence of a drug. Notably, a BAC below the per se limit of 0.08% does not preclude conviction under the impairment-based statute; actual diminished driving ability must be proved to sustain such convictions. The per se offense under VC § 23152(b) criminalizes driving with a BAC of 0.08% or higher irrespective of observable impairment. This per se standard is a "crime of chemistry," where chemical test results alone

establish the offense, simplifying prosecution but not requiring proof of actual unsafe driving. In prosecutions under both statutes, evidence of driving behavior, field sobriety tests, and observations of the driver's condition may corroborate impairment or contest chemical test results.

The legal definition of "under the influence" generally requires diminished mental or physical capacity sufficient to impair safe vehicle operation. Legal principles recognize that impairment need not be total incapacitation but can be any abnormal condition adversely affecting driving skills. For drug-related DUI, evidence of impairment is essential, as the mere presence of drugs is insufficient; the driver must be less safe on the road, aligning with California's approach. This focus on safe driving ability over consumption quantity is consistent with the impairment-based model where conviction depends on proof of inability to exercise ordinary care while driving.

For a comprehensive evaluation of DUI charges, Daniel Horowitz—a Certified Criminal Law Specialist by the State Bar of California Board of Legal Specialization—is your best choice for a strategic defense. When your future and your license are on the line, don't settle for general practice; choose a lawyer with a proven track record in high-stakes litigation.

Take the first step toward protecting your rights. Call (925) 283-1863 today for an initial consultation.