

LESSON 2



ALCOHOL AND OTHER DRUG-IMPAIRED DRIVING

THE LAWS AND BEYOND THE LAWS

LESSON TIME: 2 HOURS

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INTRODUCTION

This lesson covers legal information related to driving while impaired (DWI) penalties, sanctions (punishments), and loss and reinstatement of driving privileges. You will be asked to look at your own specific DWI situation. We will then look beyond the law and understand how people and the community become victims of DWI behavior. CAREFUL driving helps you to be responsible to your community. Responsible living involves DRIVING WITH CARE. DRIVING IS A SPECIAL PRIVILEGE, NOT A RIGHT. One important purpose of this program is to help you keep the privilege of driving.

Recall that DWI refers to all of the specific terms that various states use to mean driving when the BAC has exceeded legal limits or DWI by drugs other than alcohol. Some states use DWAI (driving while ability impaired), DUI (driving under the influence), or OWI (operating while impaired). Some states apply the laws to boating, flying, skiing, bicycling, Rollerblading, and skateboarding while impaired.

This lesson will give you general information about DWI laws, convictions, and penalties that apply to most states. Your facilitator or agency will give you specific information for the state where you received your DWI offense.

LESSON OBJECTIVES

- ▶ To provide general information about the laws related to DWI convictions and penalties.
- ▶ To provide specific information about the laws of your state as they relate to DWI convictions and penalties
- ▶ To look at the skills, attitudes, and behavior of safe driving and at your level of driving risk
- ▶ To help you understand your specific case as to these laws
- ▶ To look beyond the laws to help you see how DWI conduct affects others in the community

Exercise: You are now asked to complete the TAP Worksheet 4 (end of this lesson) for the past week. Group members may be asked to share what they thought about doing this exercise.

DWI LAWS, CONVICTIONS, AND PENALTIES

A. GENERALLY, THERE ARE TWO TYPES OF OFFENSES.

1. **Misdemeanors.** This applies to most DWI cases. In some states, persons under the age of 21 who have lower BACs at arrest (such as .02–.04) may be charged with a traffic infraction.

2. **Felonies.** Involves an impaired driving arrest that caused serious bodily injury or death. In some states, a felony is charged if the driver has had a number of prior DWI offenses even if there was no injury or death related to the DWI arrest.

B. PRESUMPTIVE AND PER SE CATEGORIES

1. *DWI presumptive* requires the observation of a clear lack of mental judgment or physical control that makes safe operation of a motor vehicle impossible due to alcohol use, and the BAC is (to use the national standard) .08 or greater, or due to use of drugs other than alcohol. Judgment and physical control are affected to the slightest degree so that it can be observed that there is lack of care in the safe operation of a vehicle.
2. *DWI per se, or driving with excessive content,* involves an alcohol level equal to or greater than .08 at the time of driving or within 2 hours of driving and does not require that erratic driving be observed, as does a charge of DWI presumptive.

C. BAC/THC LEVELS

1. BAC levels in all states except Utah, are set at .08. Utah has set the per se level at .05.
2. A few states have a lesser charge in which the BAC may be set at .05.
3. Most states have “zero tolerance” laws for drivers under the age of 21. The BAC level for zero tolerance is generally between .02 and the state’s legal level for DWI.
4. Some states have zero tolerance for THC and metabolites; others have zero tolerance for THC only, whereas, some have a per se THC, and one state, Colorado, has a permissible inference law for THC. This allows a judge/jury to permissibly infer that the person was under the influence.
5. Some states require that there be some traffic infraction coupled with the presence of a drug and rely on the officer’s observation of impairment.
6. The limits and laws on drugs and driving are changing rapidly, particularly with marijuana. Your facilitator or counselor will provide you with particular information about your state.

D. THERE ARE FOUR POSSIBLE OUTCOMES TO ANY OF THE CHARGES LISTED ABOVE.

1. Conviction
2. A deferred judgment or sentence in the misdemeanor or traffic infraction areas, generally only for first-time offenders
3. A plea of **Nolo Contendere** (No Contest) in the misdemeanor or traffic infraction areas, generally only for first-time offenders
4. A finding of not guilty

E. MOST STATES HAVE TWO SEPARATE LEGAL AGENCIES OR AUTHORITIES THAT IMPOSE SANCTIONS (PUNISHMENTS), AOD (ALCOHOL AND OTHER DRUGS) EDUCATION, OR TREATMENT FOR THE ABOVE CHARGES BASED ON THE ABOVE FIRST THREE POSSIBLE OUTCOMES.

1. The County or District Courts
2. The Department of Motor Vehicles (DMV) can impose driving restraint to any of the above charges if such charges place the driver in a restraint category for alcohol and other drugs driving offenses; or DMV may take action under an Administrative License Revocation Law.
3. Separately or together, these two legal agencies or authorities may impose sanctions. Different actions may be taken for the same offense.

F. COUNTY OR DISTRICT COURT ACTIONS

1. The court may impose the following sanctions not only to punish, but to rehabilitate the offender:
 - ▶ Fines, restitution, or community service
 - ▶ Specialized drunk-driver cash funds
 - ▶ Jail or incarceration
 - ▶ Probation—monitoring or various levels of intensity of supervision
 - ▶ Evaluation for AOD use and driving problems
2. The court may impose education, treatment, or various combinations of education and treatment that vary from state to state.
 - ▶ Education: Some states have various levels of education that differ as to length and intensity. For example, Colorado has Level I and Level II Education.

- ▶ Education and treatment: Impaired drivers who are identified as having problems related to AOD may have to attend both education and treatment programs.
- ▶ Treatment of different lengths and intensity such as outpatient, intensive outpatient, residential care
- ▶ Psychological assessment
- ▶ Treatment additions (adjuncts) that could include
 - Medications for alcohol and drug control
 - Random urine or breath screening or testing
 - Victim impact panels
 - Ignition interlocks
 - Self-help, mutual-help, or support groups such as Alcoholics Anonymous, or Narcotics Anonymous
 - Opioid maintenance medication
 - Other additions such as vehicle impoundment or immobilization
 - Electronic monitoring

G. DMV ACTIONS: MOST STATES HAVE SANCTIONS AND RESTRAINTS DESCRIBED BELOW THAT CAN BE IMPOSED BY THE DMV OR SOME OTHER STATE AGENCY. THESE ARE CIVIL RATHER THAN CRIMINAL AND DO NOT CONSTITUTE DOUBLE JEOPARDY. THEY ARE ENTIRELY SEPARATE FROM THAT TAKEN BY THE COURT.

1. **Suspensions:** Usually for first-time DWI offenders and often involve a point system. DWI offenses usually have the number of points to mandate suspensions and for time periods of up to and including 1 year. Some states set minimum time periods.
2. **Revocations:** Usually reserved for repeat DWI offenders and set at a minimum of one year or longer.
3. **Administrative License Revocations (ALR) are implied or express consent laws.**
 - ▶ Tied in with DWI per se laws, a law enforcement officer can require a blood, breath, or urine test if it is suspected that the driver is DWI, which allows quick removal of a driver from the road.
 - ▶ Refusal to take a test or the test results are equal to or greater than the state DWI per se level, resulting in a revocation, generally with no driving privileges being allowed. The revocation time period usually ranges from several months to 1 year and often depends on the BAC level.
4. **Restricted or probationary** licenses are issued by many states and are often limited to first-time offenders with restrictions varying from state to state.
5. In many states, **a DWI conviction remains on the record for the lifetime of the driver.**

6. **Reinstatement requirements** vary and generally **require** proof of insurance, payment of a reinstatement fee, and successful completion of required alcohol education and/or treatment program(s).
7. **Installing ignition interlocks** on all vehicles owned by (or available to) the offender are required by many states before a license can be reinstated or returned to the offender.

H. INTERSTATE DRIVER LICENSE COMPACTS ARE AGREEMENTS BETWEEN STATES TO HONOR RESTRAINT ACTIONS TAKEN BY ONE STATE.

1. Most states will honor the DWI education and treatment requirements of participating states.
2. An offender who moves from one participating state to another must provide proof to the Department of Motor Vehicles (DMV) of completing the education and/or treatment requirements in the new area of residence as well as meeting all of the other requirements before reinstatement will be granted.

I. EDUCATION AND TREATMENT REQUIREMENTS

1. In most states, the Court and DMV can require DWI education and treatment programs.
2. Many states use three conditions to determine the level of education and treatment:
 - ▶ Arrest BAC
 - ▶ Prior DWI convictions
 - ▶ History of or current alcohol or other drug use problems identified in the evaluation of impaired drivers following conviction of a DWI charge
3. Models for determining type and level of education or treatment vary across states. Table 2.1, page 28 presents the Colorado education and treatment model as an example. Table 2.1 is evidence based and can be a model for jurisdictions using DWI Education and Treatment programs.

Table 2.2 gives an example of education and treatment requirements based on the Colorado model. Your facilitator will go over Table 2.1 with the group.

Exercise: Put a check in front of the row in Table 2.1 that fits the program that you are required to complete. If none of the six rows fits you, then write in your program in the blank spaces in the last row of Table 2.1.

- ▶ In the first column of the last row, write the description of the program you are in.
- ▶ In the second column, write in your BAC at arrest and the number of prior DWIs, if any, you have been convicted of.
- ▶ In the third column of the last row, write in the number of hours and weeks of education you have to complete.
- ▶ In the fourth column, write in the number of hours and weeks of treatment (put “0” if none) you have to complete.
- ▶ In the fifth column, write in the combined number of hours and months of education and treatment you are required to complete.

Based on your history of impaired driving behavior, were you treated fairly? Check the one of the following that applies to you. Talk about this in your group.

- I got off easy and should have been given more education and treatment.
- I was given what was fair, based on my DWI history.
- I was given more education and treatment than what I deserved.



T A B L E 2 . 1

Model for Education and Treatment Tracks

PROGRAM EDUCATION AND/OR TREATMENT	CRITERIA BAC/PRIORS	LENGTH OF EDUCATION HOURS/WEEKS	LENGTH OF TREATMENT HOURS/WEEKS	COMBINED LENGTH OF EDUCATION AND TREATMENT HOURS/WEEKS/MONTHS
Level I Education	No Priors Less than .10	12 hours 6 weeks		12 hours 3–6 weeks
Level II Education	No Priors .10–.149 with no other clinical indicators, or <.10 with clinical justification	24 hours 12 weeks		24 hours 12 weeks
Treatment Track A	No Priors .10–.149 with 1 or more clinical indicators or <.10 with clinical justification	24 hours 12 weeks	42 hours 21 weeks	66 hours 8 months
Treatment Track B	No priors \geq .15 or refusal or <.15 with clinical justification	24 hours 12 weeks	52 hours 26 weeks	76 hours 9 months
Treatment Track C	1–3 Priors <.15	24 hours 12 weeks	68 hours 34 weeks	92 hours 11 months
Treatment Track D	1–3 Priors \geq .15, or refusal, or <.15 with clinical justification	24 hours 12 weeks	86 hours 43 weeks	110 hours 13 months
Your program				

J. PENALTIES FOR DWI OFFENSES

The penalties for DWI offenses vary from state to state.

- ▶ In most states, all or part of these penalties may be suspended by the court under certain conditions except for convictions for vehicular homicide and vehicular assault.
- ▶ The court, in most states, must follow the penalty statutes in that state.
- ▶ Penalties vary by state, and your counselor will provide you with specifics for your state.

Table 2.2, page 29, gives you an example of a penalty schedule for non-felony DWI convictions based on that used in the State of Colorado. Your facilitator will go over this with you.

Exercise: In the table below, write in your offense, the number of community service hours, days of jail time, your fine, and the length of your probation or parole, if any. If your conviction was a felony DWI based on DWI offenses, vehicular assault, or vehicular homicide, or some other felony offense, put that in the Description of Offense column. How did this compare with the penalty table for Colorado? Were you treated fairly? Yes No

WRITE IN WHAT YOUR OFFENSE AND PENALTIES ARE FOR YOUR DWI

DESCRIPTION OF OFFENSE	HOURS OF COMMUNITY SERVICE	JAIL TIME IN DAYS	AMOUNT OF YOUR FINE	PROBATION OR PAROLE (WRITE IN WHICH)



T A B L E 2 . 2

Model for Penalties for DWI Non-Felony Offenses

DESCRIPTION OF OFFENSE	COMMUNITY SERVICE		JAIL		FINES		PROBATION	
	MIN	MAX	MIN	MAX	MIN	MAX	MIN	MAX
DWAI 1ST OFFENSE	24 HRS	48 HRS	2 DAYS	180 DAYS	\$200	\$500	NONE	2 YRS
DUI 1ST OFFENSE	48 HRS	96 HRS	5 DAYS	1 YEAR	\$600	\$1,000	NONE	2 YRS
DUI, DWAI, PER SE 1ST OFFENSE WITH BAC = OR >.20	48 HRS	96 HRS	60 DAYS	1 YEAR	\$600	\$1,000	NONE	2 YRS
2ND OFFENSE	48 HRS	120 HRS	10 DAYS	1 YEAR	\$600	\$1,500	2 YRS	4 YRS
3RD OFFENSE	48 HRS	120 HRS	60 DAYS	1 YEAR	\$600	\$1,500	2 YRS	4 YRS

LOOKING AT YOUR SPECIFIC DWI SITUATION

- A. START WITH THE FOLLOWING TABLE AND LIST THE DWI OFFENSE YOU WROTE IN THE ABOVE TABLE. THEN LIST THE BAC LEVEL OR DRUG TYPE AT THE TIME OF YOUR ARREST.**

WRITE DOWN WHAT OFFENSE YOU WERE CONVICTED OF	BAC LEVEL/DRUG TYPE

- B. WHAT ARE THE SPECIFIC LEGAL OBLIGATIONS OR SANCTIONS GIVEN TO YOU BY THE COURT OR DEPARTMENT OF MOTOR VEHICLES?**

Exercise: Check the items in Worksheet 3, page 36, that apply to you and then write down the specific terms that you have to meet. Then, check the ones you have already met. Those not checked may be those you still have to complete.

- C. IF YOU HAVE FURTHER QUESTIONS, ON THE LINES BELOW, WRITE DOWN THESE QUESTIONS. THEN, USING WORKSHEET 3 AND WHAT YOU HAVE WRITTEN BELOW, BRIEFLY SHARE WITH THE GROUP WHAT OBLIGATIONS YOU STILL HAVE TO MEET AND IMPORTANT QUESTIONS THAT YOU HAVE.**

WRITE DOWN WHAT QUESTIONS YOU HAVE ABOUT YOUR SITUATION

LOOKING BEYOND THE LAW: VICTIMS OF DWI CONDUCT

A. WHEN A PERSON DRINKS AND/OR USES DRUGS, THAT'S HIS OR HER BUSINESS. WHEN HE OR SHE DRINKS AND/OR USES DRUGS AND DRIVES, THAT'S EVERYONE'S BUSINESS.

There is more than just you and the law with respect to your DWI. *Driving With CARE* means being concerned about and having respect for your community and the people who live in your community. This is our moral responsibility to our community. From the standpoint of the community and other people, there are two big outcomes from every violation of the law:

- ▶ It impacts people or affects people and the community;
- ▶ Some of those whom your offense affects may have been a victim or victims.
 - A victim is someone who is harmed by or suffers from an act or a certain situation (may not be physical injury).
 - Often, it is hard for DWI offenders to understand this statement, that there are victims related to your offense, particularly when an injury or death is a result of the DWI .
 - Increasing your awareness of the victims of your offense is not to punish you, but to help you increase CARING, SAFE, and RESPONSIBLE behavior in the community.

B. HERE ARE JUST A FEW FACTS THAT SHOW HOW THE COMMUNITY IS AFFECTED BY AND BECOMES A VICTIM OF IMPAIRED DRIVING.

- ▶ Intoxicated drivers kill almost as many people each year as are killed by all other forms of violent crimes combined.
- ▶ In recent years, almost 11,000 persons were killed per year in the United States in alcohol-related accidents—an average of 44 people killed each day.
- ▶ Approximately 1.1 million drivers are arrested each year for DUI of alcohol or drugs.
- ▶ Approximately 300,000 are injured in alcohol-related accidents each year or 800 per day or one every 2 minutes.
- ▶ Someone dies every 50 minutes due to impaired driving.
- ▶ Over 16% of all motor vehicle crashes involve drugs other than alcohol.
- ▶ The cost of impaired driving to the American public each year is over 100 billion dollars.
- ▶ Alcohol-related crashes alone cost 46 billion dollars annually.
- ▶ Persons using marijuana are about 25% more likely to be involved in a crash than drivers with no evidence of marijuana use, without taking gender or age into account.
- ▶ A national study showed that about 22% of day or nighttime drivers were drug positive. This does not necessarily mean the driver was impaired at the time of testing, only that a drug(s) was present in the body.

C. WHO HAS BEEN AFFECTED BY YOUR DWI?

Exercise: Let’s look at how many people and situations were involved in your DWI. In Figure 2.1, page 34, put an x over all of the blocks—persons, agencies, circumstance, and people in the community—that were affected by your DWI. Now, circle those you marked with an x that you see as being a *victim* of your offense (they suffered some emotional, social, relationship, or even physical pain). The **table below** lists some persons who might have been affected by your DWI. For each write down how they were affected (emotionally, physically) and their responses and reactions. You are asked to note whether the person or persons suffered bodily injury or damage to their property. Discuss your **thoughts** and feelings in class. Have you worked out your feelings and concerns with these persons? If you are still trying to work through your thoughts and feelings, ask to talk with a counselor.

PERSONS AFFECTED	THEIR RESPONSES, HOW THEY WERE AFFECTED
Spouse/intimate partner	
Minor children	
Adult children	
Parent(s)	
Close friend(s)	
Boss or employer	
Neighbors	
Other family member	
Other driver	
Passenger	
Other	

D. Exercise: You are asked to talk to a group of 16-year-olds in a Driver’s Education class about impaired driving. Write down what you would tell them. Share this with the group.

E. HERE IS ONE ACCOUNT OF A VICTIM FROM A DWI ACCIDENT.

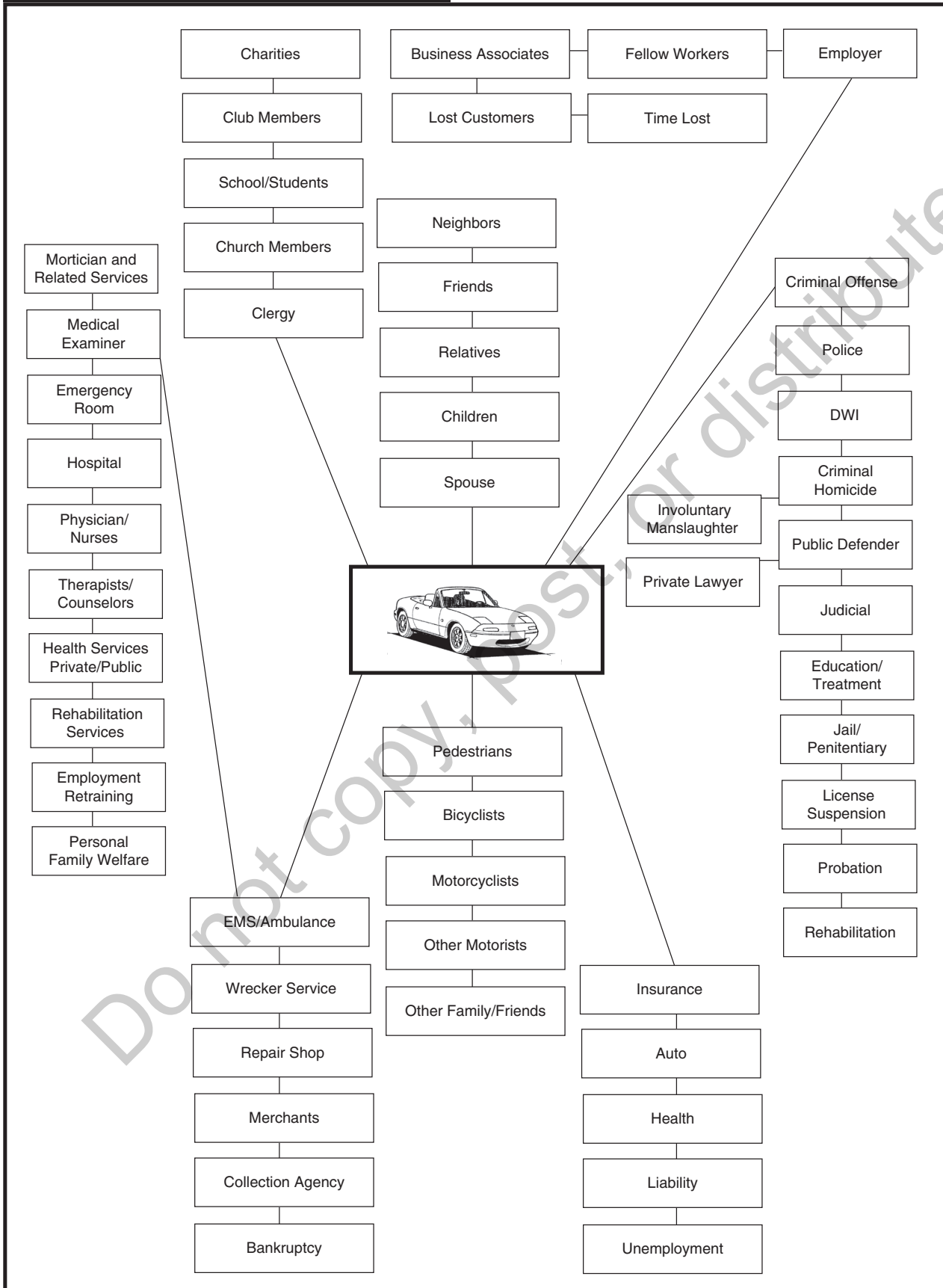
Eighteen-year-old Paul had just graduated from high school. He had great promise to be a star on the swimming team at the college he was to attend. The summer before going to college, he was riding his bicycle to the swimming pool. Without warning, a car pulled out in front of him and slammed into him. The driver had been drinking. Paul's leg was severely broken, and there was some concern that it might have to be amputated. He spent the following year in a cast and on crutches. Recovery from the injury was slow, and there was bone infection. After 1 year, the bone finally mended. Today, he has 60% use of that leg. It is difficult for him to take part in what were his favorite pastimes, skiing and hiking. And he often wonders what it would have been like to have been on that swim team during his college years. His life was changed by a drunk driver.

WRITE DOWN SOME OF YOUR THOUGHTS AND FEELINGS ABOUT THIS STORY.



FIGURE 2.1

Who in the Community Could be Affected by an Impaired Driver



YOUR CLASS EXERCISES

- A. Complete Worksheet 3, page 36, and the work on Figure 2.1 in this lesson.
- B. Do your TAP Worksheet for this week (Worksheet 4, page 37). Be ready to share what you learned from this.
- C. Rate yourself as to your understanding of what you must do to meet all of what the court is requiring you to do:

1		2		3		4		5		6		7		8		9		10
POOR				FAIR				GOOD				VERY GOOD						

Rate your understanding as to how well you understand who are the victims of your impaired driving:

1		2		3		4		5		6		7		8		9		10
POOR				FAIR				GOOD				VERY GOOD						

- D. For homework, read the next lesson in your workbook.

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W O R K S H E E T 3

Here are some legal obligations that are given by the court for a **DWI conviction**. In the second column, check if it applies to you. In the third column, write down what those requirements are. Then, in the last column, check if you have met that obligation.

OUR LEGAL OBLIGATION	CHECK IF APPLIES	WRITE IN THE AMOUNT/TERMS	CHECK IF DONE
1. Fines and penalties			
2. Restitution			
3. Jail sentence			
4. Persistent drunk driver funds			
5. Community service			
6. Probation			
7. Revocation of license			
8. Suspension of license			
9. Proof of insurance			
10. DWI education			
11. DWI therapy/treatment			
12. Mental health evaluation			
13. Antabuse or other medication			
14. Random urine/breath testing			
15. Victim impact panel			
16. Ignition interlock			
17. Vehicle impoundment			
18. Sell car (vehicle)			
19. Self-help (AA, NA, CA, SMART)			
20. Intensive outpatient			
21. Halfway house			
22. Hospital treatment			
23. Residential treatment			
24. Therapeutic community			
25. Other			

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