

The Department of Motor Vehicles would like greater power to suspend a person's license upon conviction for boating under the influence of drugs or alcohol.

Like driving under the influence (DUI), boating under the influence ([BUI](#)) of drugs or alcohol is a crime for which the law provides various penalties. These penalties include fines, imprisonment, completion of an alcohol or drug treatment program, and completion of a boating safety course.

The laws against BUI are similar to those criminalizing driving under the influence and a prior BUI conviction can be used to enhance a DUI charge. However, much as the Department of Motor Vehicles might wish otherwise, the DMV cannot suspend a person's driver's license based on a BUI conviction.

The DMV tried to argue before a California Appellate Court in *Cinquegrani v. Department of Motor Vehicles* (2008) 163 Cal.App.4th 741, 748 that when a person violates the BUI law he effectively violates the DUI law for the purposes of license suspension.

The Court disagreed with the DMV's attempt to rewrite the law and held that although a prior BUI conviction may be used to enhance the punishment for a subsequent DUI conviction, suspension of driving privileges is not a "permissible punishment" for a BUI conviction.

At the time the case went to court, the DMV had drafted proposed legislation for the Legislature to adopt so as to give the Department the power to revoke a person's license upon conviction of a BUI. Apparently the Department found an ally in State Senator John Benoit who sponsored Senate Bill 154 in 2009, after *Cinquegrani* was decided. SB 154 would grant the DMV the power to suspend a person's license upon conviction of a BUI.

The Bill passed the Senate but has yet to make it through the Assembly. An analysis by the Assembly Committee on Appropriations noted of the Bill that there are many differences between boating and driving both in people's actions and the legal scheme, which indicates that driving privileges should not be suspended upon a BUI conviction.

As it stands now, the a prior BUI conviction can be used to enhance the penalties for a subsequent DUI conviction (which includes license suspension) but the DMV cannot suspend a person's license upon a BUI conviction itself.

If you or someone you know has been arrested for a DUI charge contact [The Law Office of Johnson & Johnson](#) at 925.952.8900 for a consultation.