

IN THE MUNICIPAL COURT OF THE CITY OF ELKO,
COUNTY OF ELKO, STATE OF NEVADA

THE CITY OF ELKO,
Plaintiff,

DOB
SSN

vs.

**SECOND OFFENSE
DRIVING UNDER THE INFLUENCE
WAIVER OF RIGHTS ON PLEA OF
EITHER GUILTY OR NO CONTEST**

Defendant.

I, Defendant _____ [Print Defendant’s True & Correct Name], hereby plead either GUILTY or NO CONTEST [Circle Plea Being Entered] to the misdemeanor charge(s) of Second Offense Driving Under the Influence, also known as “Second Offense DUI,” as set forth in the criminal complaint on file in this case.

A. Right to Representation by a Lawyer

_____ I have the right to be represented by a lawyer at all times. If I cannot afford a lawyer, the judge will appoint one to represent me upon my request.

_____ I also have the right to represent myself without the assistance of a lawyer.

_____ I waive (give up) my right to be represented by a lawyer. I have chosen to represent myself in this case. I have made this choice even though there are the following dangers and disadvantages to self representation, among others.

- [1] Self representation is often unwise, and I may conduct it to my own detriment.
- [2] I am responsible for knowing and complying with the same procedural rules as lawyers, and cannot expect help from the judge in complying with these procedural rules.
- [3] I will not be allowed to complain on appeal about the competency or effectiveness of my self representation.

- [4] The City of Elko is represented in this case by experienced, professional lawyers who will have the advantage of skill, training and ability.
- [5] I may allow the prosecutor an advantage, may not make effective use of legal rights, and may make tactical decisions that produce unintended consequences.
- [6] The effectiveness of my self representation may well be diminished by my dual role as lawyer and accused.

(OR, IF REPRESENTED BY A LAWYER)

_____ I have chosen to be represented by a lawyer in this case. My lawyer is _____ [Print Lawyer’s Name Here]. I have signed this document after consulting with my lawyer, and I am satisfied with my lawyer.

B. Other Rights

I understand that I have the following other rights in this case. I also understand that I will be waiving (giving up) these rights if I plead either guilty or no contest to the charge(s) I face.

- _____ I have a right to a speedy, public trial.
- _____ I have the right to require the City of Elko to prove the charge(s) against me beyond a reasonable doubt at trial.
- _____ I have the right to remain silent and refrain from incriminating myself. If I choose to remain silent, that choice cannot and will not be used against me by the judge.
- _____ I have the right to waive (give up) the right to remain silent, and testify in my own behalf in court.
- _____ I have the right to confront and cross examine (see and question) all witnesses called against me in court.
- _____ I have the right to present evidence and subpoena witnesses to testify on my behalf in court.
- _____ I have the right to appeal any conviction in this case.

C. Elements of DUI; Criminal & Civil Penalties for DUI

I understand that DUI is comprised of the following elements, and carries the following maximum and minimum criminal and civil penalties for a “first offense” DUI, “second offense” DUI, “felony” DUI and “Felony DUI With One or More Prior Felony DUI Convictions.”

DUI occurs when a person unlawfully drives or is in actual physical control of a vehicle upon a highway or on premises to which the public has access:

- [1] while under the influence of intoxicating liquor; and/or
- [2] while having a concentration of alcohol of 0.08 or more in his or her blood or breath; and/or
- [3] while he or she is found by measurement within 2 hours after driving or being in actual physical control of a vehicle to have a concentration of alcohol of 0.08 or more in his or her blood or breath; and/or
- [4] while under the influence of a controlled substance; and/or
- [5] while under the combined influence of intoxicating liquor and a controlled substance; and/or
- [6] having inhaled, ingested, applied or otherwise used any chemical, poison or organic solvent, or any compound or combination of these, to a degree which renders him or her incapable of safely driving or exercising actual physical control of a vehicle; and/or
- [7] with an amount of a prohibited substance in his blood or urine that is equal to or greater than

Prohibited Substance	Urine Nanograms per Millileter	Blood Nanograms per Millileter
Amphetamine	500	100
Cocaine	150	50
Cocaine Metabolite	150	50
Heroin	2,000	50
Heroin Metabolite		
Morphine	2,000	50
6-Monoacetyl Morphine	10	10
Lysergic Acid Diethylamide	25	10
Marijuana	10	2
Marijuana Metabolite	15	5
Methamphetamine	500	100
Phencyclidine	25	10

First Offense DUI

A “first offense” DUI is a misdemeanor.

Penalties for First Offense DUI - [1] jail term of at least 2 days, but not more than 6 months, or community service of at least 48 hours, but not more than 96 hours; [2] fine of at least \$400.00, but not more than \$1,000.00; and [3] required attendance and completion of an alcohol abuse school at defendant’s own expense.

- A defendant convicted of first offense DUI must also pay: [1] an administrative assessment of not more than \$115.00; [2] a court facility fee of \$10.00; and [3] a special court programs fee of \$7.00.
- The Department of Motor Vehicles will revoke a defendant’s driver’s license for at least 90 days, and impose a civil penalty of \$35.00.
- A defendant convicted of first offense DUI who was under 21 years of age and/or had a concentration of alcohol of 0.18 or more in his or her blood or breath when s/he committed the offense must be ordered to undergo an alcohol/drug dependency evaluation at his or her own expense of not more than \$100.00 before s/he is sentenced.
- A defendant convicted of first offense DUI who had a concentration of alcohol of 0.18 or more in his or her blood or breath will be ordered to attend a program of treatment for the abuse of alcohol and/or drugs.

Second Offense DUI

If a person is charged with and convicted of two DUIs occurring within a seven-year period, one of these convictions may be treated as a “second offense” DUI. A “second offense” DUI is a misdemeanor.

Penalties for Second Offense DUI - [1] jail term of at least 10 days, but not more than 6 months, or residential confinement (house arrest) of at least 10 days, but not more than 6 months; and [2] fine of at least \$750.00, but not more than \$1,000.00, or an equivalent number of hours of community service.

- A defendant convicted of second offense DUI must also pay: [1] an administrative assessment of \$115.00; [2] a court facility fee of \$10.00; and [3] a special court programs fee of \$7.00.
- The Department of Motor Vehicles will revoke a defendant’s driver’s license for at least one year, impose a civil penalty of \$35.00, and suspend his or her vehicle registration for at least 5 days.

- A defendant convicted of second offense DUI will be ordered to attend a program of treatment for the abuse of alcohol and/or drugs, and must be ordered to undergo an alcohol/drug dependency evaluation at his or her own expense of not more than \$100.00 before s/he is sentenced.

Felony DUI

If a person is charged with and convicted of three or more DUIs occurring within a seven-year period, one of these convictions may be treated as a “felony” DUI.

Penalties for Felony DUI - [1] prison term of at least 1 year, but not more than 6 years; and [2] fine of at least \$2,000.00, but not more than \$5,000.00, in addition to certain assessments and fees required by statute.

- The Department of Motor Vehicles will revoke a defendant’s driver’s license for at least three years, impose a civil penalty of \$35.00, and suspend his or her vehicle registration for at least 5 days.
- Before sentencing defendant, the judge must also require him or her to be evaluated to determine whether s/he is an abuser of alcohol or drugs, and whether s/he can be treated successfully for that condition.

Felony DUI With One or More Prior Felony DUI Convictions

If a person is charged with and convicted of another DUI which occurs after s/he is convicted of a felony DUI, that new DUI conviction may be treated as a “Felony DUI With One or More Prior Felony DUI Convictions.”

Penalties for Felony DUI With One or More Prior Felony DUI Convictions - [1] prison term of at least 2 years, but not more than 15 years; and [2] fine of at least \$2,000.00, but not more than \$5,000.00, in addition to certain assessments and fees required by statute.

- The Department of Motor Vehicles will revoke a defendant’s driver’s license for at least three years, impose a civil penalty of \$35.00, and if the defendant is convicted of a second or subsequent DUI within 7 years, the Court must issue an order to suspend his or her vehicle registration for at least 5 days.
- Before sentencing the defendant, the judge must also require him or her to be evaluated to determine whether s/he is an abuser of alcohol or drugs, and whether s/he can be treated successfully for that condition.

The judge must order a person convicted of first offense DUI, second offense DUI,

felony DUI and/or Felony DUI With One or More Prior Felony DUI Convictions to: [1] pay a chemical analysis fee of \$60.00; and [2] attend a victim impact panel at his or her own expense if s/he lives within 60 miles of where an impact panel meets. The judge may still order the offender to attend the victim impact panel if s/he does not live within 60 miles of where an impact panel meets.

D. Special Warning – Vehicular Homicide

I understand that “Vehicular Homicide” carries the following maximum and minimum criminal and civil penalties.

_____ A person who commits the crime of Vehicular Homicide after s/he has previously been convicted of at least three charges of DUI is guilty of a felony punishable by: [1] a prison term of life, with parole eligibility beginning when a minimum of 10 years has been served; or [2] for a definite term of 25 years, with parole eligibility beginning when a minimum of 10 years has been served. Certain assessments and fees required by statute may also be imposed.

_____ The judge must order a person convicted of Vehicular Homicide to attend a victim impact panel at his or her own expense if s/he lives within 60 miles of where an impact panel meets. The judge may still order the offender to attend the victim impact panel if s/he does not live within 60 miles of where an impact panel meets.

_____ The Department of Motor Vehicles will revoke a defendant’s driver’s license for at least three years, may impose a civil penalty of \$35.00, and suspend his or her vehicle registration for at least 5 days for any conviction of Vehicular Homicide.

_____ Before sentencing the defendant, the judge must also require him or her to be evaluated to determine whether s/he is an abuser of alcohol or drugs, and whether s/he can be treated successfully for that condition.

E. Other Consequences of Conviction

I understand that the following other consequences of conviction exist in this case.

_____ This Second Offense DUI conviction, and any other prior conviction from this or any other state which prohibits the same or similar conduct, may be used to enhance the penalty for a subsequent DUI conviction.

_____ I can be charged with and convicted of felony DUI even if all prior judgments of conviction were entered as a first offense DUI.

_____ If I am convicted of “first offense,” “second offense,” “felony” or “Felony DUI With

One or More Prior Felony DUI Convictions” at a time when I was not a U.S. citizen, I may be removed, deported or excluded from entry into the United States, or denied naturalization, in addition to other consequences defined in the federal law.

F. Entry of Plea; Waiver of Rights on Plea of Either Guilty or No Contest

By initialing and signing this document below, I acknowledge and declare as follows.

_____ I have read this document, and/or had this document read to me in the language I understand best, and I understand the entire document.

_____ If I am pleading guilty to a charge or charges of Second Offense DUI, I agree that I did what the City claims I did wrong in the charge(s) to which I am pleading guilty.

_____ If I am pleading no contest to a charge or charges of Second Offense DUI, I agree that the City has enough evidence to prove me guilty beyond a reasonable doubt of the charge(s) to which I am pleading no contest.

_____ I was sober and in full control of my mind at the time I: [1] read this document and/or had this document read to me; [2] initialed this document; and [3] signed this document.

_____ I have not been threatened or coerced in any way to enter (make) my plea(s). I am entering (making) my plea(s) without any promises of leniency, other than those which may have been placed on the record in court.

_____ I understand that the judge is not required to follow the sentencing recommendation of either party. The judge may impose any sentence allowed by law, including the maximum (harshest) sentence.

_____ I choose to waive (give up) my rights as described in this document, except the right to be represented by a lawyer if I am represented by one in this case, and request that the Elko Municipal Court accept my plea(s) of either GUILTY or NO CONTEST [Circle Plea Being Entered]. I understand the judge will sentence me on and convict me of the charge(s) to which I am entering the plea(s).

DATED this ___ day of _____, 20__.

Defendant

Witness or Lawyer

CERTIFICATE OF COUNSEL

The undersigned, as the lawyer for the defendant named herein, and as an officer of the court, hereby certifies as follows:

1. I have fully explained to the defendant the elements of and the allegations contained in any charge(s) to which either a guilty or no contest plea is/are being entered.
2. I have advised the defendant of the penalties for each charge to which either a guilty or no contest plea is being entered, and the restitution that the defendant may be ordered to pay.
3. All pleas offered by the defendant are consistent with all of the facts known to me, made with my advice to the defendant, and are in the best interest of the defendant.
4. To the best of my knowledge and belief, the defendant:
 - (a) Is competent and understands the charge(s) and the consequences of pleading either guilty or no contest.
 - (b) Will enter all pleas voluntarily.
 - (c) Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time of the execution of this waiver of rights form.

DATED this ___ day of _____, 20____.

[Signature of Lawyer]

[Nevada State Bar Number]

Based upon my review of the foregoing waiver of rights form, together with my canvas of the above-named defendant in open court, I find that the defendant entered his or her plea(s): [1] knowingly, intelligently and voluntarily; and [2] with full knowledge of his/her constitutional rights, the maximum and minimum penalties for the charge(s) to which a plea was entered, and the collateral consequences of conviction of the charge(s). I therefore accept the plea(s).

Municipal Court Judge

Date