

ARRESTED FOR DUI in Washington State?

Useful Info Revealed That May Help
You Fight Your DUI Case



SRL Attorneys at Law
Dennis J. Twichel, esq.
3700 Pacific Hwy E. #406
Fife, WA 98424
(253) -926-1494

By Dennis J. Twichel
SRL Attorneys At Law

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Dennis J. Twichel, esq.
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“Well unfortunately DUI is a serious offense and every year the legislature in Washington considers and adopts new rules stiffening the penalties and sanctions relating to DUI. Oftentimes I’m asked that question, “I’ve got a DUI do I need a lawyer?” With mandatory jail time and loss of driver’s license if you are convicted can you afford not to hire legal counsel? The law surrounding DUIs is extremely complex and takes a lot of skill to navigate.”

“A lot of times I’ll have clients themselves refer to the public defenders as “public pretenders.” But I am very quick to interrupt and correct them. I truly believe that most public defenders are very good, and very qualified attorneys, especially in criminal defense matters.” But they do have huge client loads and you may not get the individual attention your criminal case deserves.

“Public defenders in the State of Washington also do not represent an individual with the Department of Licensing, when it comes to the license revocation or suspension. In Washington, when you receive a DUI, you essentially deal with a two headed monster. The court on one hand, the Department of Licensing on the other. The DOL can suspend or revoke your

driver's license independently of what the court does. The court can obviously incarcerate you, fine you, can require mandatory alcohol or drug treatment, and also require an ignition interlock. They can also suspend or revoke your driver's license.”

When you've requested the DOL hearing, you are still going to need legal representation for that in order to prevent the suspension of your driver's license. The request must be post marked in the 1st 20 days after you arrest. The officer who's arrested you for the DUI at the time of the arrest should have given you a hearing request form. That hearing request form and fee has to be sent in to the Department of Licensing. Either you have the option of doing it online or by regular mail.” But I advise doing it by way of certified mail.

You will also need to get a drug and alcohol evaluation. I've worked with many agencies over the past 20 years. I can certainly say some agencies are better than others. The agencies I refer my clients to are trustworthy agencies, they do a thorough job and are very good about getting the evaluation back to me in a timely manner. The Drug and Alcohol Evaluation will be used at court when I go to an arraignment for a client.”

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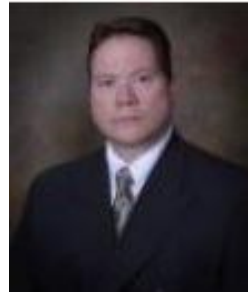
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INTRO & AUTHOR BIO

Dennis: My name is Dennis Twichel, I've been an attorney since 1990. I primarily specialize in DUI and traffic offenses. My office is located right outside of Tacoma in the city of Fife, Washington. I'm right off of Interstate I-5, easy access in the Trans-Pacific Trade Center building. I've been practicing criminal defense law for 20+ years, with my partner Steve Levy. Steve has been in practice for 35 years, and his area of expertise lies primarily in family law and bankruptcy. I'm 51 years old and married with two teenaged children.

Interviewer: Very good to have you here today, Dennis. What areas do you serve in Washington State to help defend people accused of Driving Under the Influence?



Dennis: Because my practice focuses primarily on driving offenses, from DUIs to all kinds of traffic citations, (because people drive everywhere) I end up covering much of Washington State.

I have represented people as far south as Vancouver, Washington, and as far north as Bellingham. I've also represented clients as far east as Spokane. I will travel where I am needed, depending on the jurisdiction of my client's arrest or citation.

HOW SERIOUS ARE DUI CHARGES & DO YOU NEED A LAWYER?

Interviewer: If I've been arrested, released and charged with DUI in Tacoma, Washington and surrounding areas, what are some of the first things I need to figure out, such as do I need a lawyer and how serious are the charges I'm facing?

Dennis: Well unfortunately DUI is a serious offense and every year the legislature in Washington considers and adopts new rules stiffening the penalties and sanctions relating to DUI. Oftentimes I'm asked that question, "I've got a DUI do I need a lawyer?" The response I commonly make is well, "With mandatory jail time and loss of driver's license, can you afford not to hire legal counsel" with DUIs. The law surrounding DUIs is extremely complex and takes a lot of skill to navigate."



For instance, there are mandatory penalties, even on a first time DUI and they are serious. It requires automatic jail time and automatic driver's license suspension. Requirements also include mandatory alcohol treatment, and in the State of Washington, an ignition interlock device (breathalyzer in your car).

If you don't have a lawyer, certainly you can represent yourself but if you go to court representing yourself the judge is going to at least impose the mandatory minimums if you are convicted (included herein is a chart of current penalties). The judge can think you are the nicest person in the world, you could be Mother Theresa, he or she could easily believe and understand this is a one time only occurrence, but that judge won't be able to give you any benefit of the doubt when it comes to sentencing, the legislature has seen to that.

That judge will have to sentence you to at least the mandatory minimum penalties, which for a DUI is one day in jail, as well as a fine that's going to average around \$1,000, plus costs, assessments and probation fees. You are going to be required more often than not to install an ignition interlock, which is the breathalyzer device you are for at least 90 days. you are going to have to follow through with a mandatory drug and alcohol evaluation and whatever that evaluation recommends. Anything from a one day class to a 2 year intensive outpatient treatment program.

PUBLIC DEFENDERS VS. PRIVATE LAWYERS – DOES IT MATTER?

Interviewer: I've heard people say “Oh well, maybe I'll just go get a public defender.” I've also heard that public defenders are usually heavily overworked, and I don't even know if they are allowed to go to the motor vehicle department to help you possibly get your license out of suspension. What can you say about why public defenders might or might not be a good choice?

Dennis: A lot of times I'll have clients themselves refer to the public defenders as “public pretenders.” But I am very quick to interrupt and correct them. I truly believe that most public defenders are very good, and very qualified attorneys, especially in criminal defense matters.



But it is true that public defenders have very large caseloads, and you may be one of 200 defendants he or she is representing, and those cases could range from a DUI to a felony murder case. So, you may not get the attention your case might deserve.

Interviewer: Fair enough.

Dennis: Public defenders in the State of Washington also do not represent an individual with the Department of Licensing, when it comes to the license revocation or suspension. In Washington, when you receive a DUI, you essentially deal with a two headed monster. The court on one hand, the Department of Licensing on the other.

The court can obviously incarcerate you, fine you, can require mandatory alcohol or drug treatment, and also require an ignition interlock. The court can also suspend or revoke your driver's license.

The Department of Licensing, in addition to the court system, ALSO has the authority or the jurisdiction to suspend or revoke a person's driver's license just because they have been arrested for a DUI, even if the individual is never convicted in court.

I've seen a lot of people who have been represented by a public defender and although they've been acquitted, (or perhaps the public defender's been able to get the charge reduced to a lesser included offense such as reckless or negligent driving). There may not be a driver's license suspension from the court. However, because the DOL considers their driver's license suspension a civil and not a criminal matter, the DOL can still suspend or revoke your driver's license.

So in order to get through this process without a suspension or revocation, *you have to prevail with both, the court and the DOL.*

You at least have to have your case reduced to a negligent driving to avoid any licensing consequences with the court and you have to win the Department of Licensing administrative hearing to keep your driver's license in good standing. This all gets back to the day you are arrested for DUI. In Washington you only have 20 days from the date of the offense to request an administrative hearing with the Department of Licensing.

I have seen cases where somebody has gotten a public defender



to represent them in the criminal context but, because the public defender cannot represent them in the civil matter, (with the Department of Licensing on the administrative hearing) they are left to represent themselves.. Although they may ultimately not be convicted of a DUI in court, they still end up getting their license suspended because they have not had the proper legal representation at the DOL Administrative Hearing. As a final note, even if you request a public defender, you are not going to get approved for one unless you are indigent without financial resources.

DEPARTMENT OF LICENSING HEARINGS – DRIVER LICENSE SUSPENSION

Interviewer: How about the Department of Licensing Hearing? (aka the DMV or MVD)

Dennis: If you've requested the DOL hearing, you are still going to need legal representation for that in order to prevent the suspension of your driver's license. This request must be made within the 1st 20 days after your arrest. The officer who's arrested you for the DUI should have given you a hearing request form. That hearing request form and currently requires a \$200 fee has to be sent in to the Department of Licensing. Either you have the option of doing it online or by regular mail.



I prefer my clients do it by way of certified mail, because they get a green-colored return receipt that has 2 dates on it. It has the date it was mailed in the by Post Office and the date it was received by the Department of Licensing. That way if the Department of Licensing tries to later claim that they did not receive the \$200 and the hearing request within the 20 day allotment, my client has proof positive that it was sent in time and that hearing must be conducted.

In addition, the arresting officer has probably also punched a hole in your driver's license or marked it in some way, and again you need to get that hearing request sent in within 20 days of when they marked the driver's license (day of arrest).

Typically these hearings are conducted over the phone. If you have an attorney they are going to take place in your attorney's office. Occasionally they can be done in person, especially if the attorney decides he or she wants to subpoena the officer to testify. But nonetheless, those hearings will take place, typically within 60 days following the date of the arrest. When you get a DUI you've got to be proactive and start doing several things in order to protect yourself and to protect your legal rights.

WHAT'S IMPORTANT TO DOCUMENT ABOUT YOUR DUI ARREST

Interviewer: Once you've been arrested, charged and released what information about what happened to you is important to note down and to have ready when you speak to a private DUI lawyer, so they can help you more effectively?

Dennis: I'd advise all potential clients or anyone charged with a DUI to as soon as possible, write down exactly whatever you remember happened on the date of the arrest, i.e. what happened leading up to the arrest, during and what happened afterwards.

In Washington State, if you are arrested for DUI, your vehicle will be impounded on the spot. It's mandatory by law. So one of the first things you are going to want to do is get your vehicle out of the impound yard to save money, because if you don't, you are going to be accruing \$200 - \$300 a day in impound fees and you don't want those to accumulate.

After you have done so and when you get a moment, sit down and write just like writing a letter to yourself, kind of like a diary entry, to remind yourself what happened.

I urge my clients to start their journal entry from when they woke up the day of their arrest.

Say they got the DUI on a Saturday night. Your attorney will want to know what time they woke up on Saturday, what they did throughout the day, the number of meals that they had, what they had to eat, where they were consuming alcohol prior to being stopped, how much and what they were drinking, and the people that were with them.



This is important because oftentimes when I get a police report, it's just the officer's version of the events. My client may not have had anybody in the car with him or her at the time of the arrest. Basically it can

come down to my client's word against the officer so I want as much information as possible.

Interviewer: ...and he said she said sounds like a weak way to contest a DUI charge.

Dennis: That's generally not a very powerful situation to be in, as you can imagine, someone sitting on a jury seeing an officer in his nice blue uniform telling his side of the story. Then when we try to tell client's our side of the story, the mere fact a juror may hear a uniformed police officer testifying, may put more stock or credit in what the officer's saying.

So if anyone was with you before or leading up to the time of your arrest, it's often advantageous to get a hold of them and say "Hey look, my attorney just wants you to jot down some notes, it doesn't have to be anything formal, "Mr. Smith or Mrs. Smith" was within for example from such and such time to such and such time." We left "whatever the establishment about such time. In my opinion "Mr. / Mrs. Smith" did not appear to be intoxicated. I had no concerns about he or she's ability to operate a motor vehicle."

Those letters can be given to the attorney and they can be written up in an affidavit format. That way, when your attorney is meeting with the prosecutor at the pre-trial conference. **Note:** At the pre-trial conference follows the arraignment there, the attorney meets with the prosecuting attorney who's ultimately assigned to the Defendant's case to see if a resolution can be made such as a reduction in the charge to negligent or reckless driving.

These short letters or affidavits, can paint a different side of the story. They can be very powerful in helping to convince a prosecutor to realize “Hey, there are two sides of this story, it’s not just black and white.” The prosecutor will realize additional facts may come out at trial other than those just in the arresting officer's report.



Interviewer: And how will that help a client?

Dennis: It may help get a plea bargain or a reduction when there wasn't one previously available or offered by the prosecutor's office.

WHY DRUG & ALCOHOL EVALUATIONS ARE EXTREMELY IMPORTANT

Some other things that need to be done in fairly short order, after an arrest for DUI such as getting a Drug and Alcohol Evaluation from a State Certified Agency.

Interviewer: On their own or do you have to refer them?

Dennis: At the referral of the attorney. I've worked with many agencies over the past 20 years. I can certainly say some agencies are better than



others. The agencies I refer my clients to are trustworthy agencies, they do a thorough job and are very good about getting the evaluation back to me in a timely manner. The Drug and Alcohol Evaluation will typically be used in court when I go to my client's arraignment..

Interviewer: What's the reason for have this screening done and bringing it to your arraignment?

Dennis: Because in Washington the arraignment now has essentially has two purposes. The first of which is to accept the client's initial plea of not guilty. When you go to the arraignment you are going to be asked to plead guilty or not guilty to the DUI. Obviously you are going to be pleading not guilty.

The second issue that's addressed at the arraignment is the conditions of (the defendant's) release pending the next pretrial conference. Every year, it seems like the legislature is getting tougher and tougher on people charged with DUI. They impose more and more requirements to ensure public safety in general. They are giving judges more and more discretion on setting conditions of release.

So when you go to your arraignment, and plead not guilty, the judge then can set a wide range of conditions of your release, pending your next court date (the pre-trial conference).

Interviewer: Ok, please continue.

Dennis: For example the judge can say “I don't think this person has a problem with alcohol, they have been assessed by a professional agency, the agency has stated that this person does not have a problem with alcohol, and they do not pose a danger to society”

In that case, that person is essentially going to be released on his or her own personal recognizance and

just required to abstain from alcohol and return for his or her next court date.

However, in other cases, where especially if there is prior history, (such as prior DUI arrests.

...and if the person goes into the arraignment without having an assessment, it's very likely the judge is going to say, "Look, you've had a prior DUI, or prior alcohol related offense. Apparently you haven't learned your lesson, apparently you still can have a problem with alcohol and I don't have an assessment from a State Certified Agency that I can rely on. We are going to set your bail at \$20,000, and we're going to take you into custody and you are going to sit in jail until somebody can post that \$20,000" and even then you can only be released to electronic home monitoring.



Interviewer: Are you serious?

Dennis: Yes I can have even seen worse conditions imposed at one's arraignment.

Interviewer: Let me get this straight... When you're arrested for DUI, you may have to bond out initially. The police may release you after they process you for DUI. **But when your arraignment takes place, if you have priors, or if the new DUI is aggravated, or you do not certified alcohol evaluation, you may not be going home from your arraignment. You may be taken into custody and go to jail that day.**

Dennis: Exactly, and that's one thing a lot of people don't understand. You may not even be taken to jail, (just the police station) when you get arrested for a DUI, even if it's your second or third time.

Here's an example: Let's say you're stopped and charged with your second DUI, You're taken to the police station. If you have been cooperative, provided a breath sample, even if it's above the legal limit of a 0.08 in Washington the police officer can release you pending your arraignment.

and then?

Dennis: So you may be given the false confidence that everything is OK. Then you show up for your arraignment and then the judge starts looking at your record, looking at the fact you don't have a current drug and alcohol evaluation, and you may not be going home. You may be taken into custody. As I said seen some cases judges setting bail at \$50,000 or more.

Interviewer: That's crazy.

Dennis: So you want to be prepared and make sure you are being proactive in showing that judge that you're taking this matter seriously that you are going to do what the judge orders, and you're going to follow through with whatever requirements are set.

One of the best things you can do to demonstrate that is to go to your arraignment with your attorney, with a certified drug and alcohol evaluation, completed by a State Certified Agency. It really shows the court that you're being proactive and you're taking this seriously.

At the end of the day, you don't want that judge to be thinking "I'm afraid to let this guy or gal out, because they might kill somebody if they're not in control of their alcohol or drug consumption, I do not want to be known as the judge who let them out when I shouldn't have." That Judge does not want his or her name in the newspaper. The court always errors on the side of public safety.

Interviewer: I understand why now. So it's not that judges are mean-spirited. They have to think about all these things and the person they've judging might be a danger to release. Okay, got it.

Dennis: Sure, because it does happen, unfortunately.

WHAT HAPPENS DURING A DRUG & ALCOHOL SCREENING

Interviewer: What happens during the drug and alcohol screening? Do you go to a lab and pee in a cup and talk to a counselor? What do you literally do at this screening?

Dennis: Your attorney will give you a name or two of an agency that they trust do a good job. These drug and alcohol evaluations are mandated by the legislature. For a while they kind of got to be like a cottage industry. A lot of these agencies were springing up left right, and they were just taking people's money and trying to get as much money out of the them as possible without the client's best interests at heart.

Interviewer: Right.

Dennis: So that's why you definitely want to get a referral from your attorney, because he or she will be sending you to an emergency that is actually concerned about your well-being, and not only concerned about getting into your wallet or pocketbook.

Once you go in for the evaluation, they're going to require you to bring your complete driving history. You can get that of course from the Department of Licensing. Most of the better agencies have the ability, (if you pay them a nominal fee of maybe \$10), they can run your criminal history for you.

Then the alcohol counselor will sit down and they will talk to you about the incident. They will talk to you not only about the incident on the date of the arrest, they'll want to know all about you and your drinking and/or drug use history.

For example, if it's a DUI involving alcohol, they'll want to know how long have you drank, how often do you drink, how often do you experience hangovers or blackouts. Do you drink more now than you did a year ago, as opposed to five years ago? Does your drinking interfere with any

of your personal relationships or your employment? Is

the spouse getting on you about your drinking, or another family

member is calling attention to your drinking. The counselor will also ask you personally what do you think? Do you think you have an issue with alcohol, is it something that's starting to get away from you?



Once they go through about an hour long oral interview, they'll also give you some written tests, with true and false, fill in the blank questions, those types of things. They're essentially searching for the same type of information they have gained in the interview. To confirm that their diagnosis is correct one.

Not only that you said in the interview, but they'll use the written test to confirm what you said earlier.

Interviewer: Now I understand what the evaluation is all about.

Dennis: Most of your experienced DUI attorneys work closely with one agency and that's true in my case. I work closely with an agency and they essentially will complete the evaluation at no cost to my client.

Interviewer: That's great.

Dennis: It's going to save my client \$100 - \$150, which, in the great scheme of things isn't a lot of money. But once you get charged for DUI, and start incurring impound fees, the assessment fees, treatment fees, fines, costs, ignition interlock fees, it really starts to add up fast.

If I can pass along a monetary saving of any sort to my client, then I'm all for it. I also work close with one ignition interlock company, If my client is unfortunately required to get an ignition interlock for a period of time, This company will install the device and also remove it for free. Again, not a huge savings but again (about \$150), but it does start to add up.

The drug and alcohol and the interlock company appreciate the business I send them and that's why they don't charge my clients for the assessment. And I appreciate dealing with agencies and companies I trust.

Interviewer: Earlier, you went over a couple of big mistakes that people can make that can make their situation worse. Is there one more common mistake you see that's important to bring to light that people make, that really messes them up?

Dennis: Unfortunately getting a DUI is a stressful and traumatic experience. Some people don't like to deal with stress and unfortunately they'll take the ostrich approach and just stick their head in the sand and hope it all goes away. It's not going to go away, especially when there are mandatory minimum penalties that the judge must impose if you are convicted of the DUI. Thus another mistake I see waiting too long to hire an attorney for a DUI.

HOW SHOULD YOU CHOOSE A DUI ATTORNEY THAT'S RIGHT FOR YOU?

Interviewer: That leads into my next question. What kind of credentials should someone look for when they are interviewing different attorneys and what warning signs should tell them "This might not be the lawyer I should hire"?

Dennis: In addition to some folks waiting too long to hire legal representation another mistake I encounter is when defendants fail to do any research or investigation when they hire their lawyer.

I'm in court a lot, (because DUIs require negotiation and litigation. I'll be in court all morning, I'll get back to my office in the afternoon, when going through my phone messages and returning calls somebody will have called in the morning and left me the message "I've got a DUI last night, I got your name from a friend, can I come in and see you?"

I'll call that person back that day and it surprises me when that person answers and says "Oh, I already got a hold of an attorney I've already hired them". Essentially that person is hiring the first attorney they talk to. I think that's a big mistake.



Interviewer: So some people are impatient and don't take time to evaluate multiple attorneys – they just react.

Dennis: Not necessarily that that the first attorney you speak with may not be qualified, but when you get a DUI you want to talk to more than just one attorney. DUI is a very specialized practice. You want to check on credentials and reputation.

If a person comes in and sees me, and I'm the first attorney that they've spoken to, and they want to hire me on the spot, I still urge them you to interview at least one if not more attorneys.”

Why do I do this? Because I believe that when they interview other attorneys they'll become more confident in the decision they alternately make and the attorney they hire. It helps give a good attorney-client relationship them more confidence in me and creates more trust as well.

Remember, knowledge is power. As you talk to different lawyers, you'll get a different perspective on the various aspects of your pending case. It certainly can't hurt, so you should, as I said, interview or speak to at least 2-3 attorneys. Make sure they are qualified DUI attorneys.

Because DUI is a very specialized practice, it's a potential red flag (and I'm not saying it's this way in all cases) if you go to an attorney who says he or she also divorces, medical malpractice, personal injury, etc, but criminal matters, and they also do some DUI work.

I know from 20 plus years experience the good DUI attorneys in western Washington Most "DUI" Attorneys, but all in the same context as DUI. To recap, you're going to want to interview more than one experienced DUI attorneys, before you make your decision.

Interviewer: You want somewhat of a specialist not just a generalist that says 'we do everything'.

Dennis: Yes, because the way the DUI laws are constantly changing and new legislation is always being promulgated and codified in the law, you need somebody who is up on that. Also, you want an experienced DUI attorney who's used to dealing with the court and the prosecutor's office in the county or the jurisdiction that you're being charged.

Although "the law" is the same throughout the State, every court or every individual prosecutor's office has its particular quirks and procedures. If I have a client who's been arrested for DUI in Pierce County District Court (for example), and I find out who the prosecutors are going to be, there are certain ways to approach that case as opposed to a client that who's been arrested for a DUI in Seattle Municipal Court.

Each court and it's prosecutors, judges, and court personnel handle drunk driving cases a little bit differently. An experienced DUI lawyer is going to know the ins and outs of each of those courts in order to get the best deal or best negotiated settlement for his

or her client. It's never a good idea to go into any court saying "Well, we're just going to set the matter for trial and let the chips fall as they may."

Interviewer: I got a specific question I'm going to ask on behalf of your readers... a good interview question for DUI attorneys I talk to should be "Hey, looks like my court is in Pierce County, in the XYZ district. Have you, Mr. Attorney, worked in that court? Do you know the personnel, do you know at least some of the judges and prosecutors?" And then if they say yes..

Dennis: Those would be very good questions to ask, and I would say "I've got a DUI in Pierce County District Court number One. Typically on a monthly basis how many DUIs do you handle in that court?" You want somebody who knows where they are going, who they are going to be talking to, and what the policies and procedures are in each court. Also, you want an attorney who knows the prosecutor.



Interviewer: I think that's a great filter and a good litmus test. That's an easy question to ask as well.

Dennis: Another thing I would be wary of, if I was facing DUI charges, is when you go in and see a lawyer and although they may seem very professional

and on the ball, but yet after everything is said and done, if you say “I think I really want you to represent me” they respond by saying, “Okay, well, I may not be with you when we go to court but I will have my associate (A, B, or C) and he or she will be with you at the arraignment and then maybe this person or another associate may be at the pre-trial conference”.

Interviewer: As a client, **I would feel much more comfortable knowing that the person I hire is going to be the same one who is going to be with me every step of the way.** Whether it’s at the arraignment, the pre-trial conference, the Department of Licensing administrative hearing, a motion hearing prior to trial, or the trial itself.

Dennis : Yes, As I said sometimes you may visit an attorney and they may have a good name and be very qualified but do have a large caseload, so they have associates who do most the leg work. If you're comfortable with that, that's fine. But, if you hire me, I am going to be with you every step of the way. I'm not going to be delegating different aspects of your case to different attorneys that you may not have even seen until you set foot in court.

Interviewer: That’s a good point, because that would literally freak me out. Especially because you said the stakes can be so high at the arraignment. If I talk to you and then your office assistant comes and something bad happens that would really freak me out and upset me tremendously. I understand why that's so

important to have the same person you started talking to with you every step of the way.

Dennis: Right.

WHAT HAPPENS IF YOU DON'T SET UP YOUR ADMINISTRATIVE HEARING WITH THE DEPARTMENT OF MOTOR VEHICLES?

Interviewer: Let's talk more about the Department of Licensing. What can happen to your driver's license if you don't request a DOL hearing, what are the license-specific penalties, and how can you help defendants in this area?

Dennis: Much like the mandatory minimum penalties that the court may impose for a conviction on a DUI, the Department of Licensing has mandatory minimum licensing sanctions that will be imposed if you fail to request or lose your administrative hearing.

So if you are arrested for a DUI with a breath test .08 or higher, and it's the 1st time you've had a DUI, if you do not request that administrative hearing, you will lose your license for 90 days.

You can drive during that initial 90 day period, if you get an ignition interlock license, which requires you to get the ignition interlock device (which is the

breathalyzer or the blowing machine) installed in your car. You also have to submit proof of what's called SR22 insurance to the Department of Licensing.

SR22 auto insurance is just a code word for 'high risk insurance'. You have to have that more expensive, high risk insurance, on file with the DOL for 3 years, not merely just the 90 days that your license has been suspended. You're also going to have to pay additional re-issue fees and reinstatement fees. The Department of Licensing also will require proof that you've completed the drug and alcohol assessment that we talked already about.

If you request that hearing and your attorney wins the hearing, then you avoid all of these problems, at least as far as the Department of Licensing is concerned. They will not suspend your license, after the hearing (if it's successful) you will be able to hand in your driver's license, (with the hole punched in it), and the DOL will issue you a new driver's license, without any marking on it whatsoever.

So, again, that's something that a public defender is not going to do for you and, quite candidly, your chances of representing yourself at that administrative hearing and prevailing are very minimal. About the only chance of winning on your own is if the arresting officer messes up and forgets to send in his report, and there's no evidence at the time of the hearing for the hearing officer to consider. That happens very rarely.

Interviewer: I'm sure.

Dennis: Those are the minimums you are facing. Unfortunately, if you had a DUI before, then you'll face a 2 year suspension or revocation of your license, instead of just 90 days. Again the ignition interlock requirement is available, but you have to jump through all the hoops in order to get that, which we've already touched upon. It's certainly worth requesting that DOL hearing. Unfortunately just like everything else, that fee of \$200 will be going up to, I believe, \$300 in the next couple of months. As I said, DUIs are not getting any cheaper for people to defend themselves against in the State of Washington.

HOW PUBLIC IS YOUR SITUATION GOING TO BE WHEN YOU'RE CHARGED WITH DUI?

Interviewer: When you're charged with DUI, how public is your situation going to be? Will work find out? Will your friends and family find out?

Dennis: It really depends on your employment, the requirements of your employment, and whether you are required to disclose or not disclose your charges.

Certainly somebody who is a professional driver or who has a CDL are required to



report this to their employer almost immediately due to insurance purposes and liability issues and people in the military will face separate penalties from their military command.

Here in Pierce County, for example, we've also got a lot of people who work for Boeing. Well Boeing's not going to find out about this unless you tell them. Down the road there could be repercussions, especially if you get convicted and you lose your license and if you have to do jail time. Honestly, it varies so much from

individual to individual it's just really hard to make a generalization about how it's going to affect your employment.

As far as friends, family members, and the general public, it's really up to the individual whether they want to disclose it or not. But like I said earlier, if you've been out with some friends before you got the DUI, it may be advantageous to let those friends know that you've been arrested and could they provide your attorney with a brief letter about what happened. For example how you only had two beers and that you really were okay to drive when they last saw you.

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Interviewer: Right.

Dennis: Not only is a DUI stressful, but it's embarrassing. None of us ever plans to get a DUI. DUIs are like lightning bolts. They come out of the sky when you do not expect them. But because they are embarrassing. The natural reaction is not to tell a lot of people about it.

But I'll let you know that almost 50,000 people per year in Washington get a DUI, so you're certainly not alone. It's not by any means unique and by disclosing it to a friend or a family member, it might help relieve your stress. It also may help if that person is able to provide any additional background that could help strengthen your defense.

WHEN YOU'RE ARRESTED, WILL YOU GET A TICKET AND BE THROWN IN JAIL?

Interviewer: If someone gets charged with a DUI, will it say on their ticket whether it was aggravated or not? And if it does say that, what does that mean for them?



Dennis: When you get a DUI in Washington you may or may not get a physical ticket.

Say you're stopped for speeding. If you get stopped for speeding, the officer usually issues you a citation and you go on your way. You have 15 days to send it in to challenge it.

When you get a DUI the officer may give you a similar type of ticket that says you have been charged with DUI and you need to show up in court on such and such a date. But more likely, what will happen is as long as you are cooperative and not be a jerk to the officer who's processing you, they're going to release you that night and maybe even take you home, or to a local restaurant or even call you a cab. The arresting officer may instead let somebody come and pick you up at the station, especially if it's a first time DUI.

In these scenarios you won't receive an actual ticket, but the officer WILL write a police report about the incident. He or she will also get a copy of the breath ticket or whatever information they have, and then they forward of the evidence that to the prosecutor's office of the jurisdiction of your arrest.

For example, if you are arrested in the city of Tacoma, it's going to be Tacoma Municipal Court, if you were stopped by a Tacoma police officer. If you were stopped by State patrol or if you were stopped by a Sheriff's Deputy then you are going to be charged in District Court, not the Municipal Court.

Once the prosecutor in either of those jurisdictions gets that information (or evidence), they will basically review it and they'll say "Yeah, there's enough evidence here to charge this individual with DUI." and then what they'll do is they'll send out a summons to your address on your driver's license. That's why **it's very important to keep the address on your driver's license current to where you receive your mail because if you miss that arraignment date there's going to be a warrant issued for your arrest.**

So you may walk away that night thinking "Maybe everything's okay because I didn't get a ticket". Then, 2-3 weeks down the road the summons goes out and it's an old address on your driver's license because you forgot to change it, then you miss you arraignment and then there's going to be a warrant issued for your arrest. You do not want that to happen.

WHAT IS AGGRAVATED OR ENHANCED DUI, AND WHAT ARE THE PENALTIES?

When you get the summons or when you get that ticket to appear in Court, it's not going to say you're your DUI is aggravated. It's typically going to say you've been charged with DUI. If you receive with a statement of probable cause it's just going to have boilerplate language, i.e. the day you were stopped, the breath test level, the bare bones information.

What makes a DUI aggravated will not necessarily be on your ticket or summons. What makes a DUI aggravated or not is whether or not you took the breath test, or if you did take the breath test, were the results above a 0.15. As we discussed earlier, the legal limit in Washington State is .08 which is pretty standard level for DUI throughout the nation. However, in Washington if you refuse the take the breath test or if the breath test is above 0.15 then you are looking at aggravated penalties. So if you are convicted of a DUI with refusal or with a breath test of .15 or greater, those mandatory minimum penalties that we talked about earlier increase. It of course also depends on whether or not you have ever had a DUI before.



Instead of just looking at one day in jail, aggravated 1st time penalties automatically goes to at least 2 days in jail. The fine rises from a minimum \$1,000 to about \$2,000. The 90 day loss of license goes up to a 1 or 2 year suspension or revocation. With any DUI conviction, whether it's aggravated or not, you are required, once the license suspension, (whether it be 90 days or two years) to continue to have an ignition interlock in your car if you don't already, for an additional year minimum.

Let's talk a little about refusing the breath test. 9 times out of 10, I advise my clients they are better off taking the breath test, because you avoid the automatic refusal and the aggravated penalties for a refusal. Plus, even if the breath test results are above a .15, the machines aren't perfect and the breath result may be suppressed in court.

In fact, the State patrol is in the process of replacing all of the DataMasters with a new device called the Draeger. Why are they doing it? Because they had problems with the old DataMaster. It's been common over the last 25 years for the results to be thrown out by the court. Still now many times I can find problems with the machine and get that breath test suppressed, even if it's above a .15. But if you don't take the breath test, it's a lot harder to avoid those aggravated penalties.

HOW MUCH CAN YOU REDUCE A PERSON'S DUI CHARGES, FINES, FEES, AND REQUIREMENTS?

Interviewer: This will be a difficult question, but how often can you mitigate a person's penalties and fines and all that stuff, and what level of success do you have in reducing clients' penalties, jail time, fines, fees, ignition interlock requirements, license suspensions, etc? I know it varies and person to person, but just in general.

Dennis: It does vary and there are a number of factors that goes into answering that question. Certainly somebody



who's facing a 1st time DUI is going to be given more options, or there's going to be more opportunity to mitigate those penalties, i.e. getting a reduction to reckless or negligent driving.

It comes down to human nature. A prosecutor is always more willing to give a first time offender a break, as opposed to somebody who, in their eyes or their opinion, has not learned their lesson, continues to

drink and drive and rack up DUIs is posing a danger not only to themselves but to society in general.

It also depends upon the facts regarding the arrest. How strong is the overall evidence against that individual? Is it a case where we have a video tape of the roadside tests. The person looks like they're doing a pretty good job and they are coherent? Or is it a case where the video looks, quite candidly, as if my 11 year old son says, "Dad, that guy looks like he's really drunk".

Interviewer: I see.

Dennis: Then there are the results of the drug and alcohol evaluation. Other things such as the jurisdiction you are in can make a difference. This gets back to knowing having an experienced DUI attorney knowing the jurisdiction or the prosecutor's office where you received the DUI. Different courts and different prosecutor's offices have different policies. Some jurisdictions they are more willing to give that first time offender a break.

In other jurisdictions, we'd better have some good evidentiary issues (that are going to get the breath test thrown out or something along those lines), otherwise, even if it's your first DUI, you probably are not going to be getting any breaks from "this" prosecutor or this judge. So, there is lot of factors that go into and if it really comes down to a case by case basis, in order to make any type of valid prediction of a likely outcome.

Dennis: But, I would say, in the majority of my cases, I am able to mitigate the penalties, whether it's getting it reduced from an aggravated DUI to a DUI or down even to a reckless or a negligent driving charge. It gets tougher on subsequent offenses, with cases with lots of bad evidence. All those factors come into play.

I certainly will not represent somebody if I don't think I can do something better than they can do for themselves. However, in almost all cases we are going to be able to put you into a better position than if you represent yourself with a more favorable outcome.

ARE THERE DIVERSION PROGRAMS OR DEFERRED PROSECUTION FOR DUIS IN WASHINGTON STATE?

Interviewer: Are there any diversion programs in Washington State? I've heard Oregon and some other States have them for first time offenders. How about deferred prosecution?

Dennis: Again, this depends on the court or the county or the jurisdiction you find yourself in when you are arrested. There is one blanket law in Washington, it's under the revised code of Washington or RCW Section 10.05, and it's called a deferred prosecution. Any individual, whether they are facing their 1st, 2nd, 3rd, or more DUI is eligible for a Deferred Prosecution,

as long as they have never used or petitioned any court in Washington for a deferred prosecution before.

The way that works is the person is going to get evaluation. The evaluation must show that this person has a problem with alcohol (or alcoholic) and they need treatment, or their alcohol problem it's going to get worse.

That person then goes into court with this drug and alcohol evaluation and essentially tells the judge “Your honor, I've got a problem with alcohol or drug, I need this treatment, I want to enter into a 2 year intensive outpatient treatment program to overcome my addiction”. And the judge will say “Okay, complete the treatment program and stay out of for the next five years.”



Again the program is for 2 years, it's an out-patient program that starts out with you going to meetings 3x a week for the first eight weeks, then you go to group sessions one time a month for the next four weeks, then for the remaining 16 months you go one time a month for group sessions or for one on one counseling.

You ALSO have to do two AA meetings per week which is 104 AA meetings a year, or similar self help group. As long as you are serious about completing the program, serious about remaining sober, and especially serious about not getting another DUI for the following 5 years, at the end of five years, the DUI will be completely dismissed by the Court. If never goes on your record.

Now of course, you have to do a lot of work to get there by remaining sober and going through this treatment program. But I however do not recommend that anybody do a deferred prosecution on their very first DUI.

Interviewer: Why is that?

Dennis: Because it's a once in a lifetime opportunity and typically on your first time DUI, by doing a deferred prosecution you would only be avoiding 1-2 days in jail.

Well, I can't tell you the number of times where somebody has gone to an inexperienced DUI attorney or maybe an overworked public defender and they say, "Well, we can keep this off your record, we can keep you out of jail, we'll get you into a deferred prosecution."

They may do good for a few years but then, unfortunately they get another DUI, and now that person is sitting in front of me. They are looking at

mandatory minimum penalties now on a 2nd DUI which are at least 30 days in jail or at least 45 days in jail and since they've already "used" their deferred prosecution, it's not available to them anymore.

Now in that case, in order for them to avoid any penalty whatsoever, we're going to have to take their case to trial and put their future in the hands of a jury, which is not always successful.

Only under very rare circumstances, is it conceivable to petition for a deferred prosecution on your 1st DUI. Generally, though any attorney who's recommending a deferred prosecution on your 1st DUI that is not probably looking out for your best interests, so that's another red flag that I would watch out for.

Then there are, in (Pierce County), for example, (up to about six months ago), we used to have pre-trial diversion agreements. If you qualified and if there were issues regarding some of the evidence in your case, usually on a first time DUI, the prosecutor's office could or would offer to amend the DUI to a reckless or a negligent driving, if you agreed to stay out of trouble or not incur any law abiding behavior violations for two years. It was a good program that gave many 1st time offenders a nice break.

Sadly, the prosecutor's office has done away with that program - it no longer exists. There may be different types of diversion situations with different courts, it just depends what jurisdiction you are in and what is

the current status or policy of the prosecutor's office is at that time.

Remember, again that is a big reason why you want the experienced DUI attorney. For lack of a better term who knows that, is working or not working with your judge or in your court or the prosecutor's office, as far as trying to mitigate or reduce the penalties.

HOW TO CONTACT DENNIS TWICHEL TO SET UP AN INITIAL FREE CONSULTATION

Interviewer: So for potential clients are reading this material and are now convinced that they set up a free initial consultation with you, what next step they should take to contact our office and how do they do it?



Dennis: In my opinion, any good DUI attorney should never charge you a dime for an intense face to face consultation. I want you to come in and see me whether you hire me or not. I want you to be armed with all the information you need. The information to request the hearing, to get the evaluation to do

everything you need to do in order to protect your future and protect your constitutional rights.

When you come in and see me for your free initial consultation, I'll spend time to make sure all your questions are answered to your satisfaction. Just call my office, and my legal assistant, (Amy), will make an appointment for you to come in and see me at your convenience. We'll work around your schedule. But of course it's a good idea to get in sooner, not later, for many of the reasons we've already discussed.

If you become a client, I'll also give you my cellphone number. You can call me on my cellphone at any time, because I want to make sure that if you have questions or concerns that you can get a hold of me on the weekends. I also have 24 hour voice mail.

Like I said, DUIs are stressful. You may be laying in bed at 1:30 at night and not be able to sleep because you are worried about one specific issue or question. Call me then and leave me a message on my voice mail and I'll call you back as soon as I can to address whatever you are concerned about in order to ease your anxiety.

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This publication is intended to be informational only. No legal advice is being given, and no attorney-client relationship is intended to be created by reading this material. If you are facing legal issues, whether criminal or civil, seek professional legal counsel to get your questions answered.

SRL Attorneys at Law
Dennis J. Twichel, esq.
3700 Pacific Hwy E. #406
Fife, WA 98424
(253) -926-1494

ARRESTED FOR DUI in Washington State?

Useful Info Revealed That May Help You Fight Your DUI Case

"Well unfortunately DUI is a serious offense and every year the legislature in Washington considers and adopts new rules stiffening the penalties and sanctions relating to DUI. Oftentimes I'm asked that question, "I've got a DUI do I need a lawyer?" The response I commonly make is well, "I know how to flush a toilet, but I certainly would not want to try to do anything that involved major plumbing, especially with DUIs. The law surrounding DUIs is extremely complex and takes a lot of skill to navigate."

"A lot of times I'll have clients themselves refer to the public defenders as "public pretenders." But I am very quick to interrupt and correct them. I truly believe that most public defenders are very good, and very qualified attorneys, especially in criminal defense matters."

"Public defenders in the State of Washington also do not represent an individual with the Department of Licensing, when it comes to the license revocation or suspension. In Washington, when you receive a DUI, you essentially deal with a two headed monster. The court on one hand, the Department of Licensing on the other. The court can obviously incarcerate you, fine you, can require mandatory alcohol or drug treatment, and also require an ignition interlock. Now as I said, they can also suspend or revoke your driver's license."

"And you've requested the DOL hearing, you are still going to need legal representation for that in order to prevent the suspension of your driver's license within the 1st 20 days after your arrest. The officer who's arrested you for the DUI at the time of the arrest should have given you a hearing request form. That hearing request form and a \$200 fee has to be sent in to the Department of Licensing. Either you have the option of doing it online or by regular mail."

"At the referral of the attorney. I've worked with many agencies over the past 20 years. I can certainly say some agencies are better than others. The agencies I refer my clients to are trustworthy agencies, they do a thorough job and are very good about getting the evaluation back to me. The Drug and Alcohol Evaluation will be used at court when I go to an arraignment for a client."