

What you should know BEFORE being stopped for DUI

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The Law Offices of James C. Egan • Licensed since 1998

*1 in 4 adults is arrested for DUI at some point.
5 minutes of reading could save you 5 years of probation.*

Driving Under the Influence (DUI) is a common but serious crime in Washington, where last year 30,000 accused drivers faced mandatory jail, fines, license suspensions and five years of probation. Police do "DUI emphasis" on holiday weekends, sweeping up scores of drunk and not-so-drunk drivers. Even those with under .08 Breath Alcohol Content (BAC) are routinely charged with DUI, so if you ever drink and then drive a car, you must read this article!

Most adults have driven at some point while impaired. Having represented over 1,000 DUI clients with our team of associate DUI attorneys, I am often asked what to do when stopped after drinking. This article clarifies your rights if you're among the 250 people arrested weekly for DUI in King County. It should not encourage you to commit DUI to try out methods here. Please read and save this article, put it on your fridge or in your bathroom, share it with friends and contact us with questions or if you need help!

*MYTHS AND TRUTHS ABOUT DUI LAW

Can I only be stopped if I'm driving badly?

No. DUI Officers look for headlight, tail or license plate lights out, expired tabs or plates obscured by tow balls or bicycle racks. Officers run plates to see if car owners' licenses are suspended. Tossing cigarettes, not wearing seatbelts or hand-holding cell phones are now infractions. You don't have to drive like a maniac to get stopped and get a DUI; any traffic offense will do.

If I'm pulled over, should I roll down my window an inch so the officer can't smell me, and then pass my license and insurance through a crack in the window?

This bad idea was invented over too many cocktails. Not rolling down your window is "consciousness of guilt" supporting a DUI arrest. So is turning off your car and openly drinking alcohol before the officer; this guarantees arrest and looks suspicious to courts.

Everything's on video, so we can see what really happened.

Despite assumptions, police car video recordings are rare (except for some Seattle City cops). You'll be told if the officer's recording you. But because it's not a "private" conversation, you can legally record (using a cell phone) with or without the officer's knowledge. Set it up before contacted, then shirt-pocket the phone or place on dashboard. Without a recording the officer can overstate your impairment and fail to document police coercion. As recent events show, recordings of police bullying don't lie and may help you.

Should you admit to drinking when asked?

If possibly impaired, say "I don't believe I have to answer that." You have the right not to incriminate yourself. If you admit drinking, this supports an arrest decision. If you say "no" and are lying, the City of Seattle may add a charge of **False Statement to Officer** – a crime of dishonesty similar to theft. Politely decline to answer; if grilled, say "I want a lawyer."

Am I required to do the Roadside Field Sobriety Tests if the officer asks me to?

ABSOLUTELY NOT! Do not do field tests, ever. "Field tests" are roadside tests to gather evidence against you, which include an eye check, balance and walking test. Do them and you're guaranteed to "fail" by the officer's biased opinion, where physical conditions (weight, age, injuries) are not seriously factored. The officer may not state **they are voluntary**, but legally they are. After any drinking your best answer is, "No, thank you." If pressured, say "I want a lawyer first."

If I don't do the roadside field tests, I'll be arrested anyway, right?

Maybe not. When you refuse Field Sobriety Tests, the officer will probably have little evidence to support a DUI arrest. The officer may offer a Portable Breath Test (PBT), which is voluntary and **should be politely refused unless you are very close to sober**, in which case you'll be released.

Can I really talk with a lawyer at 3 AM?

Yes you can! Upon request officers must try to put you in contact with a free phone lawyer at the soonest chance (usually the station). A lawyer is your "lifeline" if you're arrested for DUI. We've all heard Miranda warnings: "You have the right to remain silent. Anything you say will be used against you. You have the right at this time to a lawyer." These warnings are especially relevant in DUI's, where your *statements* (what and where you drank) are repeated in court as proof you're impaired. **You should ask for a lawyer as soon as you know you're genuinely suspected of DUI or are read these rights.** Unlike other statements, your request for counsel is a *legal right*, and *can't* be used as evidence of guilt even if requested *before you're arrested*.

What happens when I ask for a lawyer?

After you request a lawyer, there can be no further questioning about your alleged criminal conduct. If requested right after you're stopped, the officer can't then ask you for field tests or about your drinking. Repeat yourself if the officer "didn't hear" you. At that point, the "investigation" ceases, but **you must cooperate with police orders.** The officer probably will arrest you (which happens to most people stopped after drinking). However, your goal is not to avoid being arrested – *but to limit evidence against you.*

What should I do after I'm arrested?

Politely cooperate with orders but remain silent. Small talk with a "friendly" officer may be recalled as evidence of slurred speech. Your car may be legally towed. The handcuffs are demeaning but temporary. Don't hang your head or appear impaired. Sit quietly as you're driven to the police station. You'll be escorted to a room where you'll have a private phone call with a 24-hour free attorney. This attorney will say to not answer questions and to blow into the BAC machine.

Should I delay the procedure so I sober up?

After being stopped, blood alcohol level is very likely still going up. Drinking lots of water at the police station has no instant effect and looks suspicious. Quicker is better.

Refusing the BAC machine test means they don't have evidence, right?

No. If you refuse the test, the Department of Licensing (DOL) can suspend your license for a year or more. The prosecutor will also use the refusal as proof you knew you were DUI. Refusal cases are hard to defend and the criminal penalties **extreme**, as if you're almost twice the legal limit. And there are various challenges against BAC results – *not refusals* – that we've used to eliminate BAC results altogether. Don't refuse (even if the free lawyer's "unavailable!") Quietly take the BAC test and have your lawyers try to "suppress" the BAC result from the State's evidence later.

If the BAC result is later "suppressed," I can't be prosecuted, right?

Even if suppressed, the prosecution still argues the officer's opinion proves impairment. While this seems unfair, it's easier to defend because the officer's credibility and observations are uncorroborated.

Does it help to hide a penny in my mouth?

Nothing instantly 'eliminates' alcohol content. However, if there's a **provable** foreign substance in your mouth (i.e. pen/cap, hair/clips, chewed fingernails) shortly before you blow into the machine, the BAC result is invalid. Sometimes the video camera in the BAC room records a "foreign object" in your mouth while the officer looks away or ignores it.

What if I have a tongue or lip ring?

An unremoved tongue or lip ring is a "foreign object" which nullifies the breath test if the officer's aware of it. Refusing to remove mouth jewelry is perfectly legal and cannot result in a valid BAC "refusal," it could lead to a legal blood draw, which may benefit you.

How can I make sure I'm not booked in jail?

After the BAC test, **clearly ask the arresting officer to let you get your own blood draw of your alcohol level.** If then jailed despite your right to an independent BAC test, there's an argument you were denied your chance to get helpful evidence, which could be grounds for **dismissal of charges.** Alternatively, for \$30 any



ARRESTED FOR DUI? Know your rights!

hospital can take a blood sample to compare with the earlier breath (or blood) test. It's unlikely the officer will wait for your independent blood test, then book you later.

When will I know if I'm getting charged? Shouldn't the officer give me a ticket?

No infraction is issued for the crime of DUI. Seattle cops will give you a court date in a few days upon release; other courts will mail a DUI summons in a few weeks or months. This is true **even if you blew under .08, because the officer's bare opinion of impairment is sufficient to charge DUI!** (Following our advice, though, makes it a weaker charge). The next day you should contact us to explain procedures and begin preserving evidence that's lost if you wait. Further, your license may be automatically suspended if you don't request a hearing soon after arrest. Don't delay! Consult a DUI defense team immediately.

*Does this article encourage DUI's?

No. Under Lawyers' Rule of Professional Conduct 1.2(d), I merely discuss legal consequences of courses of conduct **after a crime may have occurred** and the scope and application of DUI laws. This hypothetical opinion is for informational purposes only, and does not guarantee accuracy nor create legal relationships or liability from following pointers herein. I encourage readers not to drive impaired. Last year over 400 people died in Washington due to drunk drivers. After drinking, people get over-confident about driving abilities. Following these suggestions upon being stopped **will not** prevent a DUI charge (or possible conviction), but could keep a bad situation from being much worse. People with prior DUI offenses, high BAC's or current accidents will find prosecutions unforgiving, regardless of these tips. DUI's are costly to everyone, so take a cab or designated driver if you're impaired.

If I didn't follow the tips perfectly, am I screwed?

No, we can always help. Contact us or write me at info@eganattorney.com. Quizzing friends on these tips will help you remember. ■



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