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WHAT TO DO IF STOPPED AND INVESTIGATED FOR DUI

If You Want a Fighting Chance Anyway

The scene that everyone dreads happens every day on Seattle city streets and Washington state highways. After a couple of drinks, whether with friends, after a hard day of work, or to celebrate a special occasion, your drive home is interrupted by flashing police lights in your rearview mirror. You have no idea why you are being pulled over, but the thought of having consumed a couple of beverages leaps to the front of your mind as you realize, “Can I be arrested for DUI?” From that moment on the decisions you make can have a profound effect on whether or not you are arrested for DUI and/or whether or not you are convicted of DUI.

As the title of this article implies, this material intends to discuss your rights as a Washington citizen when you are stopped by the police while driving. Below you will find information on how to interact with the police initially, whether or not to take field sobriety tests, and other information critical to utilizing your rights as a citizen to your advantage. However, I want to emphasize that the purpose of this material is **not to encourage people to drive under the influence of alcohol and/or drugs**. In fact, I want to discourage it completely. But I know some of you will choose to drive after drinking, either because you do not feel as though you are impaired to drive (which is possible and reasonable) or because you are too dumb to realize you should not be driving (in which case this material probably won’t help you anyway).

This material is broken up into several short segments:

- Overview of Washington State DUI Law
- What to do When First Stopped by a Police Officer
- Field Sobriety Tests – Should You Take Them?
- Under Arrest for DUI, Now What?
- Implied Consent and the Breathalyzer Test

Please remember when reading this information that it is **not intended to be relied upon alone as legal advice**. If you find yourself facing a DUI charge, **please contact a Seattle DUI attorney before making any decisions**.

OVERVIEW OF WASHINGTON STATE DUI LAW

Washington State DUI Law, like the laws of most other states, makes it illegal to operate a vehicle while under the influence of alcohol or drugs. In Washington, there are three ways this can be proven by prosecutors: (1) driving a vehicle and within two hours of driving and have an alcohol concentration of .08 or higher as shown by an analysis of your breath or blood; (2) driving a vehicle under the influence of alcohol or drugs; and (3) driving a vehicle under the influence of alcohol *and* drugs.

A DUI violation is a gross misdemeanor. First time offenders face the following possible punishments, depending on the results of their breath and/or blood test:

- (1) if your blood alcohol level is less than .15: one day to one year in prison with a required 24 hour jail sentence; fine of \$350 to \$5,000; \$500 fee to the victim’s compensation fund; \$125 fee to fund the state’s toxicology lab; 90 day driver’s license suspension; \$200 Department of Licensing hearing request fee; \$100 interlock ignition application fee; \$20 monthly interlock ignition fee; alcohol evaluation; attorney’s fees; and
- (2) if your blood alcohol level is .15 or over, the following range of punishment applies: 2 days to one year in prison with a required 48 hour jail sentence; fine of \$500 to \$5,000; 365 day license suspension; and all of the costs associated with being under .15.

As you probably already know, a DUI conviction is a very large hassle and the consequences usually persist long after your date of arrest. Because of this, the best decision is not to put yourself in the position of facing a DUI.

WHAT TO DO WHEN STOPPED BY A POLICE OFFICER

So you decided against your better judgment to drive home after that work party and now find yourself pulled onto the shoulder of the road with those ominous flashing lights behind you. While you are sure to be very nervous and probably a little scared, the actions you take within the next ten to fifteen minutes can make the difference between receiving a warning for failing to use your turn signal or calling an attorney to help you decide if you should take a breath test. How can it make such a big difference?

When a police officer pulls you over, 99% of the time he has no evidence (yet) that you are even potentially driving under the influence. Speeding, driving with a broken tail light, failing to signal a lane change, and even swerving out of your lane of travel are not conclusive indicators of driving under the influence (take a minute to think about how often you swerve when changing the radio station, checking your cell phone, or when you simply space out for a moment). So, unless you were exhibiting some behavior that could only be explained by driving under the influence, chances are the officer is approaching your vehicle hoping you will give him the evidence he needs to arrest you for DUI (and if it's after 10:00 p.m., you can almost be assured it is on the officer's mind).

Although in the end you cannot control whether or not an officer arrests you for DUI, you can control the information you provide him. As a citizen stopped for a traffic infraction, you are required to show the police officer your driver's license and registration – two requirements for driving a vehicle in the state of Washington. When you are pulled over, get them out immediately. One of the first things the officer is going to look for is your dexterity when retrieving your registration. If you already have it out and ready, that prevents him from obtaining that information.

Next, try as politely as possible to limit your conversation with the officer. You cannot control whether or not he smells alcohol on your breath or sees that you have bloodshot eyes (two observations nearly every officer makes in a DUI arrest report that provide no evidence of DUI), but you can control what you say. If the officer tries to engage you in conversation, answer as briefly as possible or politely decline to answer. You are under no obligation to speak with the police. But, remember at all times to act *politely*. You are trying to go home, not make the officer mad.

If the officer begins to ask you questions about your drinking for the night, let the officer know that you'd prefer not to answer those questions. If he asks why, politely tell him that you read somewhere that you aren't required to answer those questions and you'd prefer not to. Whatever you do when asked about what you've had to drink, do not lie. Silence is golden (and can't be used against you later), lying only gets you further into trouble.

At this point the officer will probably try to guilt you into answering the questions, as if he is just concerned. He may also imply that innocent people always answer his questions. Don't fall for it. If the officer continues to ask you questions, specifically about what you have had to drink (or anything else that won't sound good at trial), tell him politely that you don't feel comfortable speaking and would like to **spea**
k with your Seattle DUI attorney to determine how you can get on your way home, and ask the officer if you may go on your way. Chances are he will not let you go, but he wasn't going to anyway.

FIELD SOBRIETY TESTS – SHOULD YOU TAKE THEM?

The short answer is that you should not take roadside tests. You are under no obligation to do so in Washington State, and chances are you are not going to perform them to the officer's expectations no matter

what you do. If asked to perform field sobriety tests, take a preliminary breath test, or any other test at the scene, politely decline. That you declined to take field sobriety tests should not be able to be used against you if you are eventually charged with DUI.

If the officer threatens you with arrest or anything else if you don't take them, immediately ask to speak with a **DUI attorney** and invoke your right to silence. The officer won't be able to ask you any more questions and must then decide if he's got enough evidence to arrest you for suspicion of DUI.

UNDER ARREST FOR DUI – NOW WHAT?

First and foremost, **do not panic**. It is very unfortunate and unlucky that you have been arrested for DUI. But just because you are arrested does not mean you are convicted. Just as when the officer pulled you over and began talking to you, he is constantly looking for information that he can use to prove in court that you were too drunk to drive. Because of this, do not speak to the officers any more than to ask when you will have the opportunity to speak with a [DUI lawyer](#), and don't agree to take any tests or answer any more questions until you are allowed to speak with an attorney. Whether or not to take a breathalyzer is an important decision, however. Read below about implied consent laws for information about the breathalyzer.

Washington is a great state because you are entitled to speak with an attorney before you decide how to proceed with decisions required of you once you are arrested for DUI (which many people in many other states don't get the opportunity to do). Take the opportunity to speak with a DUI attorney, in private, and discuss your options.

Bottom line if you are arrested for DUI – don't speak with police officers and demand to speak with an attorney (politely and courteously – remember most sober people are respectful even when arrested by the police).

IMPLIED CONSENT AND THE BREATHALYZER TEST

The implied consent law is something the Washington State Legislature dreamed up to make it infinitely easier to convict people of driving under the influence of alcohol. This is because without a breathalyzer test result it is infinitely more difficult to determine if someone is too drunk to drive.

That's correct. The state has to actually prove you are too drunk to drive. Contrary to popular belief, it is legal to consume alcohol and drive. It is only illegal to consume alcohol and drive when the alcohol limits your ability to operate a vehicle properly. But at what point does this happen? Is it at the same point for all people? Is one person too drunk to drive after two drinks and another after four? Because it is so hard to tell, and was so hard to prove, the Legislature decided that a breath test of .08 or greater was too drunk for everyone to drive (even though it had been .10 for years) and created a law that provided your implied consent to take this test if you chose to drive in Washington State.

The interesting thing about the implied consent law is that it is a clear breach of your Fifth Amendment right not to testify against yourself. Many people refer to this as the "DUI exception to the constitution."

As you've read, if you drive you have impliedly given your consent to take this breath test. And although you still have the option to refuse it, doing so incurs a much harsher penalty for you should you end up being convicted (an automatic one year license suspension, instead of 90 days, for starters). Because of this, is there ever a time that it might be worth refusing to take a breath test?

Apparently yes, as many politicians, attorneys, celebrities and judges have shown over the years when faced with their own potential DUI arrest. The reason is clear – although prosecutors may use your refusal against you in court and imply you did so because you thought you were too drunk – it is much harder to convict someone of DUI if the test results aren't present. For some people it is worth it to accept a harsher driver's license suspension administratively so they can increase, at least theoretically, their chances of not being convicted of DUI.

Whether or not to take the breath test, however, is a very tough decision, and should not be made until you speak with a [Seattle criminal attorney](#) about your specific situation. That is why my advice, to speak with an attorney immediately after being arrested and doing no tests until after speaking with an attorney, is so important. Until you talk with a lawyer it is impossible to determine whether or not you should take the test. Always consult a criminal defense attorney before deciding whether or not to take a breath test.