

## **WHAT YOU SHOULD KNOW ABOUT DUI LAWS**

The laws in the United States concerning driving under the influence have steadily moved toward harsher penalties and reduced a judge's discretion with regard to the sentencing of DUI offenders. Congress has linked highway funding to a requirement that states lower the threshold for the blood alcohol level that violates DUI laws, resulting in all states setting that threshold at 0.08%.

No one should disregard the seriousness of the offense and the significant societal and economic costs of driving a vehicle while under the influence, since it is estimated that alcohol impaired driving is at least partially to blame for thirty nine percent of automobile related deaths. Unfortunately, this march toward more severe punishment has created a "one size fits all" system that, combined with the considerable revenue that can be received by a city, county or state, provides a huge incentive to focus on the enforcement of these laws and the "streamlining" of the prosecution of the charges. Moreover, recent changes in Federal law has made DUI roadblocks one of the few ways that law enforcement can stop all cars, with the added benefit that once stopped, an officer can ticket or arrest for anything else they observe during the stop.

These factors frequently combine to effectively deprive the accused of many of their state and federally mandated rights to a proper defense. Even a first offense DUI can carry heavy fines, jail time and the deprivation of driving privileges. The potential cost of a conviction is elevated even higher when one takes into account the laws that increase the severity of punishment as one is convicted of subsequent DUI offenses. Larger fines, longer license suspensions and mandatory prison time loom for those who are convicted of repeated DUI offenses, since DUI laws now provide that subsequent offenders may be charged with a felony after a sufficient number of convictions (usually two). That escalation in punishment, combined with a related body of law that requires that prison sentences be served and that early release or the suspension of time to be served in prison is very limited, makes even a first conviction a very serious matter.

Technology has also changed enforcement. Until the invention of machines that could predict blood alcohol content by sampling and analyzing the subject's breath, law enforcement personnel had to rely upon observed symptoms as indicators of illegal intoxication. More intrusive methods such as breath or blood analysis are often justified by the allegation that the officer observed these symptoms in the defendant. Law enforcement personnel look for things such as a vehicle being operated in an unsafe manner and administer field sobriety tests. It is important to keep in mind that even if the subject does not fail a breath, blood or urine test, in some states an officer can still testify about symptoms observed, such as weaving, lack of coordination, blood shot eyes, the smell of alcohol and, perhaps most importantly, any statements made by the accused.

Courts, without the intervention of aggressive legal representation on behalf of the defendant, also tend to take the theories and practice underlying breath testing and field sobriety testing as one hundred percent reliable. There is a significant body of research that calls this reliability into question and, in some cases, can raise reasonable doubt about the validity of the sobriety test in question.

When challenging a DUI charge, it is important to take into account each of the several critical issues that may be raised at trial. Law enforcement must be able to prove that they acted lawfully at each step of the stop, investigation, arrest and breath test can be challenged and should, at the very least, be investigated for susceptibility to a state law, Federal law or Constitutional challenge. The stakes are quite high with a DUI charge and it is important to be represented by an attorney who is experienced in DUI law.

An experienced DUI defense attorney will know to challenge not only the sobriety tests, but also the initial traffic stop, arrest, any other search/seizure issue. Your lawyer should be able to challenge the officer on issues relating to Miranda rights and other evidentiary issues. The officer must be able to prove that all evidence was properly collected. The officer must be able to prove that all relevant laws were followed. If the prosecution cannot show this, evidence, sometimes essential, may be excluded. The exclusion of certain essential pieces of testimony or evidence can lead to a finding of not guilty. Additionally, an experienced attorney will know the law of your state as it relates to record keeping, maintenance of the testing machine, qualifications of the testing officer, your right to ask for additional testing and how to best challenge their evidence with expert testimony. All these can lead to an acquittal.

Perhaps just as important as an attorney's familiarity with criminal law and courtroom procedure, is an attorney's ability to plea bargain. The involvement of a skilled negotiator, familiar with DUI law, the prosecutor and the judge, can sometimes result in dropped charges, a plea to a lesser offense, or a reduced/suspended sentence. Depending on your jurisdiction, an attorney can sometimes include terms in the sentence so that your record can be cleared after the passage of a certain amount of time. In legal terms, this is referred to as an expungement.

In a highly specialized and technical area of criminal defense such as DUI law, the selection of attorney may have a long lasting effect on your criminal record, insurance rates, employment opportunities and social standing.