DUI: Next Steps

How to Minimize the Consequences of your DUI Arrest

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INTRODUCTION

This short book is intended for anyone who has been arrested for driving under the influence in Utah. It covers the process from the time of your arrest to your first appearance before a judge. It is meant to encourage the reader to make wise decisions that will, hopefully, reduce the long-term consequences of such an arrest. It is not intended to constitute legal advice; instead, all information, content, and materials available in this book are for general informational purposes only. Readers should contact an attorney to obtain advice regarding any legal matter.

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At the end of the book is a one-page checklist with some simple Do's and Don'ts. That page lists important steps to take and things to avoid, as well. However, like the rest of this small book, it is not a substitute for sound legal advice.

Defending yourself against a charge for Driving Under the Influence (DUI – either alcohol or drugs) is a complex endeavor requiring interaction with both the Utah's Driver License Division

(DLD) and the state's criminal justice system. You need to understand the civil nature of the DLD's hearings versus the criminal standards that exist in a courtroom setting. You should have a thorough knowledge of: (a) Standard Field Sobriety Tests used by state and local law enforcement, (b) the proper use and calibration of the breathalyzers and other methods used to determine a person's blood alcohol content (BAC), (c) the constitutional rights an accused person has (and can easily forfeit) while being arrested and prosecuted, and (d) the common mistakes that are made by law enforcement officers in gathering and processing evidence of an alleged DUI violation.

Because this is a complex subject and process, a person charged with a DUI (or any of its legal variants) should always obtain the services of a licensed attorney who regularly defends DUI cases. Representing yourself is always a bad idea. Abraham Lincoln is frequently quoted as having said that "He who represents himself has a fool for a client." Don't be that fool.

WHAT IS A DUI?

IN Utah, a person may not operate or be in actual physical control of a vehicle with either a blood- or breath-alcohol concentration (BAC) of .05 grams either at the time of operation[1] or at the time of a subsequent test[2]. This measurement is based upon grams of alcohol per 100 milliliters of blood or 210 liters of breath[3]. It is also a violation of Utah law, to operate a vehicle while being under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that the person is rendered incapable of safely operating a vehicle[4].

It is important to know that this law is not limited to cars and trucks on streets and highways but that it applies to the operation of *any* vehicle *anywhere* in the State of Utah. Whether you are driving on the freeway, operating a boat, dirt biking on your uncle's farm, or even parked in your own driveway, you may not operate or be in physical control of a vehicle while under the influence of alcohol or drugs. And the vehicle does not even have to be running. Even if you are asleep in the front seat with the keys in your pocket, you could be arrested and charged with a DUI.

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[1] Utah Code Ann. §41-6a-502(1)(a).
[2] Utah Code Ann. §41-6a-502(1)(c).
[3] Utah Code Ann. §41-6a-502(2).
[4] Utah Code Ann. §41-6a-502(1)(b).

Utah also has an impaired driving[5] statute. The elements of the crime are identical to a DUI but the statute allows the prosecutor and your attorney to negotiate lesser consequences. You may avoid criminal fines and jail time. If the Driver License Division did not suspend your license as part of the original arrest, they won't suspend your license after pleading guilty to a charge of impaired driving. Even if they suspended your license after pleading guilty to impaired driving, they might reduce the length of that suspension.

[5] Utah Code Ann. §41-6a-502.5.

PRIOR TO ARREST

EVEN though you have been arrested, you have specific legal rights before, during and after an arrest. It is very important for you to note if any of those rights were violated prior to your arrest for DUI. If so, you need to tell your attorney.

The Fourth Amendment to the United States Constitution provides that:

> *"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."*

This means that a police officer must have probable cause and a search warrant signed by a judge before he can burst into your home to search it for evidence of a crime. In the context of a DUI, an officer cannot simply guess that you are impaired and then pull you over. A guess is not probable cause.

Typically an officer will see a driver commit a minor traffic infraction. This could be a failure to signal a turn, failure to stay in one lane, driving at night without your headlights illuminated, etc. The officer then initiates a traffic stop to investigate the commission of this specific crime.

Try to remember (and take notes, if you can) what the officer said right after he pulled you over. Why did he stop you? What did he say that he observed? These are important details that you should share with your attorney. They may help you.

Once the officer has stopped the driver, the officer then begins a conversation. This is not going to be a casual conversation regarding a college team's chances for victory in a sporting event. Nor is it intended to understand or "help out" the driver. The officer is not interested in that.

The sole purpose of this conversation is to allow the officer to gather evidence of possible wrongdoing on your part. While you must identify yourself and provide the officer with your driver's license and automobile registration, you should stop there. You should invoke your right to remain silent.

One of the most important rights you enjoy is your right to remain silent. In pertinent part, the Fifth Amendment to the United States Constitution provides that *"No person shall be... compelled in any criminal case to be a witness against himself..."*

This means that no police officer can force you to answer questions about a suspected crime. But nearly every police officer will ask you questions. And he can ask you all the questions he wants *without* informing you of your rights. You should still remain silent.

Nine times out of ten, however, a driver will think that he can explain himself to the officer and talk himself out of an arrest. We tend to think this because we like to believe that most people are just like us; reasonable and understanding. This is not the case.

The officer will first ask innocent questions like "Where are you going this evening?" but these questions will eventually turn to "Have you had anything to drink?" and "When was the last time you had a drink?" Because he has only stopped you for a broken

taillight and does not have you in custody, the officer is not required to inform you of your *Miranda*[6] rights.

While you do not have to be arrested to invoke your right to remain silent, simply remaining silent does not trigger the right to have interrogation cease. You must clearly communicate your intention to remain silent. All you have to say is something easily understood such as:

- *"I do not answer questions and I do not consent to searches,"*
- *"I intend to invoke my constitutional right to remain silent,"*
- *"I wish to remain silent," or*
- *"I want to speak to my attorney first."*

Don't say *"Maybe I should talk to an attorney first"* or *"I plan to remain silent."* Some courts have determined that such a statement indicates that you intend to invoke your right to remain silent at some future time. You must specifically state that you are invoking your right to remain silent. Skilled policemen know how to parse your words and to create ambiguity, so your best bet is to leave them no wiggle room when invoking your rights. Tell them specifically. Then follow up on that resolve and remain silent.

Do try to remember the specific details of the initial stop and the reasons for it. Write down as much as you can remember.

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[6] In 1966, the United States Supreme Court ruled in *Miranda v. Arizona* that a suspect also has a right to have an attorney present during questioning. Further, a police officer who intends to conduct further interrogation must inform a suspect of his right to remain silent as well as his right to an attorney once that suspect is placed in custody.

ARREST, BOOKING AND INCARCERATION

ONCE you have been arrested for DUI you have entered a system in which you must take certain steps to preserve your rights. This system has various stages that fall into three main categories: arrest/booking/incarceration, driver's license department hearings, and court appearances. The question is frequently asked: "When should I hire a lawyer?" The answer is "As soon as possible."

Even though you have been arrested, you still have the right to remain silent and you should continue to invoke that right. They will search your car and your person incident to your arrest. Don't consent to it but they will do it anyway. If they find anything in your car or on your person, don't respond. You need not answer their questions and you should not.

Shortly after arrest, you will be transported to either the police or sheriff's station or to a jail. Your car will most likely be impounded and towed away. Officers might still ask questions after you have been placed in custody. Again, don't answer their questions. You might inadvertently waive your right to remain silent simply by making voluntary statements after being informed of your *Miranda* rights. You should request an opportunity to contact your attorney.

However, if an officer asks you to submit to either a blood or breath test, you are required by law[7] to comply with those requests. Do NOT refuse such a request.

Operating a motor vehicle in Utah is considered by law to be consent to such a test. Refusing to submit to the test may result in an 18-month (or longer) revocation of your driver's license, a five or ten year prohibition of driving with any detectable alcohol in your body, and a three-year prohibition of driving without an ignition interlock device.

And refusing to take the test is usually futile. The officer can still get a judge to sign a warrant that will allow them to draw your blood and test it anyway. They will get the test results but you will still suffer the consequences of having refused. Refusal is a no-win situation.

You will be fingerprinted and booked. Unless your arrest involved other serious violations or a warrant had been previously issued for your arrest, you will probably be allowed to post bail and be released.

The Eighth Amendment to the Constitution provides that:

> *"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."*

Essentially, you have the right to have a reasonable bail set for the crime for which you are accused and according to the actual flight risk which the State believes that you may impose. The bail schedule for the most common Class B misdemeanor DUI is currently set at $1,460. If you use a bonding agent, you will only need to come up with a small percentage of that amount but the amount you pay will not be refundable like regular bail.

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[7] Utah Code Ann. §41-6a-520(1)(a) – "A person operating a motor vehicle in this state is considered to have given the person's consent to a chemical test or tests of the person's breath, blood, urine, or oral fluids…"

If you are incarcerated, it will probably be for a short time until the jail staff determines that you are sober enough to be released. It bears repeating that you should not answer questions or discuss your case with anybody inside or outside the jail. And any phone calls you make from jail are being recorded; what you say, if incriminating, will be used against you. Only discussions, including phone calls, with a licensed attorney are privileged and cannot be used against you.

In all likelihood, your car was towed away and impounded. You will need to pay for the towing and impound fees to get your car back. If you are acquitted, you may be able to receive a refund for the impound fee.

Once you are out, then it is time to collect some information. Write down everything you remember from the moment you were pulled over until you were released from jail. What reason did the police officer give you for pulling you over? What did the officers ask you and what were your answers? What standard field sobriety tests were performed and what is your recollection of the results? What chemical tests were offered to you? What tests were performed? Was there anything that seemed unusual about the tests? What documents did you receive after the arrest? Try to remember everything you can about your interactions with the police officers.

DRIVER'S LICENSE DEPARTMENT HEARINGS --- ACT FAST!

TOWARD the bottom of the DUI Summons and Citation that was issued to you is a section labeled "Right to Hearing." The wording is in a small font and many people fail to notice it or read it. This is a big mistake. The full text of this notice is as follows:

> RIGHT TO HEARING: A charge of driving under the influence is a violation of both the criminal code (handled by the court) and the civil administrative code (handled by The Driver License Division). In order to keep your driving privileges, you must prevail both before the court and the Driver License Division separately. The Driver License Division will grant you an opportunity for a civil administrative hearing, upon receiving a written request within **10 calendar days** of notice of arrest. (A proper hearing request must include the driver's full name, date of birth, date of arrest, and Utah license number if applicable.)
>
> Send request to: Driver License Division PO Box 144501, Salt Lake City, UT 84114-4501 (attn. DUI Section).
>
> Failure to properly request a hearing or to appear for a hearing may result in loss of driving privileges. A criminal conviction of DUI (from court) or an adverse administrative determination (from Driver License Division) will result in loss of driving privileges.

If you fail to request a hearing within ten days, you will almost certainly lose your driving privileges due to an adverse civil administrative decision from the Driver License Division (DLD). The period of time for which those privileges are lost may vary based on your criminal record but will be for at least 120 days. But this can be additive based on the results of your criminal DUI action. If you plead guilty to a DUI, then you will lose your driving privileges for another 120 day minimum.

Unlike many other states, Utah does not have a limited driving privilege available to you. You cannot get a special license "just to go to work and back" or to drive your kids to school. The State legislature does not care if you have a job or if you have six children or need to see the doctor. They assume that you can carpool to work or that somebody else will drive you. Or you can walk.

So, what should you do?

You should immediately write a short letter to the DUI Section of the Driver License Division (the address and/or fax number will be on your citation) and make sure it gets there within ten days of your arrest. If it arrives on the eleventh day, you will not get a hearing. If a hearing is granted, you will receive instructions in the mail on where to attend.

You must attend the hearing physically. The police officer can "call it in" to appear telephonically and state his case but you must actually be there in the Driver License Divison office and appear before the hearing officer. The safest and best practice is to immediately hire an attorney and ask that attorney to request a DLD hearing. There are some people (even some attorneys!) who will tell you that a hearing with the DLD is futile because the hearing officer will *always* side with the police officer.

This is not true.

There have been many times that the author has appeared at a DLD hearing and left with the hearing officer deciding against license revocation. It is not a common occurrence but it does hap-

pen. Failing to request a hearing virtually guarantees a license revocation thirty days after the DUI arrest. Requesting a hearing, however, can extend the time that you keep your license because a hearing must be held and then the hearing officer must send written notice of the determination after the hearing.

The final advantage to requesting a DLD hearing is that it requires the officer to go under oath and make specific statements of the circumstances of the arrest. Your attorney can ask questions about the initial stop, the officer's observations, the field sobriety tests employed, and the breath/blood alcohol tests conducted. There are specific legal requirements that an officer must satisfy to get evidence of your inebriation before a judge and jury. The officer's statements at the hearing may very well prevent that evidence from being introduced. It is definitely worth the time and effort to request a DLD hearing.

ARRAIGNMENT

YOUR first court appearance is referred to as an "arraignment." This is where the Court informs you of the specific charges[8] brought against you by the state.

While our criminal justice system asserts the belief that a defendant is presumed innocent until the charges are proven beyond a reasonable doubt, you will feel as if you are being treated like a criminal. Nevertheless, you still have additional rights. These include:

- The right to refrain from testifying against yourself[9].
- The right to a speedy and public trial[10].
- The right to a trial by an impartial jury[11] of your peers.
- The right to obtain witnesses[12] at trial.
- The right to confront witnesses[13] at trial
- The right to have the assistance of counsel[14].

These are important rights that you need to preserve. Sadly, too many unrepresented defendants prematurely waive some or all of their rights simply because they don't understand the process. This can seriously damage a defendant's case and result in

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[8] This is known as an "information" and is required under the Sixth Amendment to the United States Constitution.
[9] U.S. Const. amend. V.
[10] U.S. Const. amend. VI
[11] Id.
[12] Id.
[13] Id.
[14] Id.

more serious consequences than would otherwise be warranted. What should a defendant do?

Hire a lawyer!

Hiring a Lawyer

HIRING a lawyer may be one of the most important decisions you could make. While you could try to represent yourself in court, this would be a lot like trying to remove your own appendix or giving yourself a root canal. You don't have the knowledge or the experience and the end result will not be pretty. Hire an attorney to help you through this process.

If you think hiring an attorney will be too expensive, you should consider the full cost of a conviction for DUI. At minimum, you will experience the following additional costs:

- $1,460 fine (minimum)
- Two days in jail (minimum)
- Loss of driver's license
- The out-of-pocket cost you will pay for an alcohol/drug assessment
- The out-of-pocket cost you will pay for substance abuse treatment
- The cost of installing an ignition interlock system plus the monthly maintenance fees for that system
- The cost of increased car insurance premiums over the next seven years

Several agencies have estimated the average cost for a first-time DUI conviction at over $10,000 exclusive of attorney fees. If this is your third DUI in ten years, the consequences are considerably more severe including a possible prison sentence.

A licensed attorney can work hard to minimize the long-term consequences of a DUI charge. Hiring an attorney is the best step

you can take and you should take it as early in the process as possible.

CHECKLIST

DO

- ☐ Hire an attorney. You need a professional; somebody who can represent your interests in a confusing legal landscape.
- ☐ Request a Driver License Division hearing. If you fail to do this within ten days, your license will be suspended whether you are guilty or not.
- ☐ Consider attending Alcoholics Anonymous. This is highly recommended. Participation in AA shows a sentencing judge that you accept responsibility for the problem and that you want to solve it.
- ☐ Make your appearances. If you do not attend your court dates, a warrant for your arrest will be issued and you could be put in jail.
- ☐ Do what you attorney advises. Your attorney should be advising you on how to resolve this issue with the best outcome. Follow that advice.

DON'T

DON'T talk about your arrest. The only person to talk to is your attorney. If you talk to the police, anything you say will come back at you. If you talk to friends or neighbors, the state could compel them to testify.

DON'T drive if your license is suspended. A violation tells a judge you don't care about the law. That is not what you want the judge to think.

DON'T drink away from home. You will be tempted to drive afterward. Another arrest can only make your current situation worse.

DON'T violate your probation. If you plead (or are found) guilty, your sentence will include probation. Violating the terms of your probation could result in serving the maximum jail sentence allowable.

You can find out more about DUI law at **http://pac-legal.com/dui/**