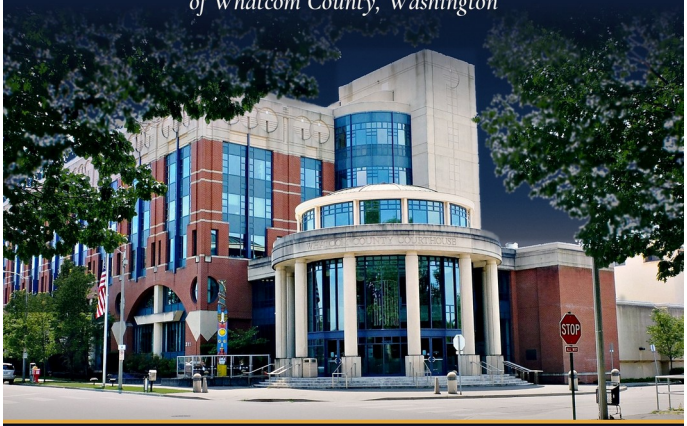
WHATCOM COUNTY

# DUI HANDBOOK

*A guide to the DUI process in the courts of Whatcom County, Washington*




**2027 EDITION**

DAVID N. JOLLY

*Whatcom County Courthouse · Bellingham, Washington*

The opinions expressed in this manuscript are solely the opinions of the author and do not represent the opinions or thoughts of the publisher. The author has represented and warranted full ownership and/or legal right to publish all the materials in this book.

**The Whatcom County DUI Handbook: 2027**

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This book provides general information about Washington law as of November 2026. It is not legal advice. Laws, court practices, fees, and contact details change; consult a Washington attorney about your specific case.

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**David N. Jolly is also the author of:**

*The DUI Handbook for the Accused (2007)*
*DUI/DWI: The History of Driving Under the Influence (2009)*
*The DUI Handbook for the Accused II (2010)*
*The Drug DUI Handbook (2011)*
*The DUI Investigation Handbook (2011)*
*The Ultimate Washington State DUI Handbook (2011)*
*The Traffic Ticket Handbook (2011)*
*The Washington State DUI Pocket Handbook (2012)*
*The Whatcom County DUI Handbook (2013)*
*The Snohomish County DUI Handbook (2013)*
*The Skagit County DUI Handbook (2013)*
*The Island County DUI Handbook (2013)*
*The King County DUI Handbook (2013)*
*The Marijuana DUI Handbook (2014)*
*Traffic Stops in Washington: A Lawyer's Handbook (2016)*
*Search and Seizure: A Lawyer's Handbook (2016)*
*Confessions & Statements: A Lawyer's Handbook (2016)*
*Criminal Convictions & Immigration (2017)*
*The DOL Hearing Handbook for Lawyers (2018)*
*The Whatcom County DUI Handbook: annual editions, 2017–2026*
*The Skagit County DUI Handbook: annual editions, 2017–2025*
*The Snohomish County DUI Handbook: annual editions, 2019–2023*
*The Island County DUI Handbook: annual editions, 2019–2023*
*The San Juan County DUI Handbook: 2022 and 2023 editions*

218 W. Champion Street
Bellingham, WA 98225
(360) 734-3847 | (425) 493-1115
https://washdui.com

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## YOUR FIRST SEVEN DAYS

**WARNING:** You will read this warning throughout this book: the Department of Licensing (DOL) is a very difficult agency to deal with. Do not take risks with your driver's license. Read every DOL document carefully, follow every rule, and prepare early. Violating DOL rules can lead to additional criminal charges and civil penalties.

- You have only **7 days from the date of your arrest** to request a DOL hearing to save your driver's license.
- Include the **$375 fee** with the request (check or money order). The fee may be waived if you cannot afford it; ask your attorney.
- If you do not request a hearing within 7 days, your license will be suspended or revoked beginning 30 days after your arrest.
- The DOL must hold the hearing within 30 days (business days) of receiving your request, and must give you only 5 business days' notice of the hearing date.
- If you miss the deadline or lose the hearing, you may still be able to drive with an Ignition Interlock License (see Chapter 1).
- Confirm your first court date now. Missing it can result in a bench warrant for your arrest.

## WHAT'S NEW

Major changes to Washington's impaired driving laws took effect on January 1, 2026 (ESHB 1493). The most important are:

- **Second deferred prosecution.** The old "one per lifetime" rule is gone. If you completed a deferred prosecution for a first-time DUI or Physical Control charge and have no other prior offenses, you may petition for a second one (Chapter 6).
- **Felony DUI look-back.** A DUI becomes a felony if you have three or more prior offenses within **15 years** (previously 10 years) (Chapter 2).
- **Reduced charges count.** Negligent Driving 1st Degree and Reckless Endangerment that result from a DUI charge are now "serious traffic offenses" for driver's license purposes (Chapter 2).
- **Probationary license.** After a deferred prosecution is granted, the DOL will notify you that you must apply for a probationary license within 45 days (Chapters 1 and 6).
- **Private toxicology labs.** Since June 11, 2026, blood and breath samples may be tested by accredited private laboratories, not only the State Patrol lab (Chapter 3).

## WATCH FOR IN 2027

The Legislature is expected to consider these proposals again in its 2027 session. Neither is law as of this edition:

- **A 0.05 legal limit.** A bill lowering the legal limit from 0.08 to 0.05 passed the State Senate in January 2026 but stalled in a House committee. If it becomes law, Washington would join Utah with the strictest limit in the nation (Chapter 2).
- **Felony DUI after two priors.** A bill would make a DUI a felony after two prior offenses within 15 years, instead of three.

Check https://washdui.com for updates during the year.

## DUI DEFENSE VIDEOS

We have a comprehensive video series on YouTube about the DUI defense process, with information about court, DOL procedures, and what you need to know to help yourself and your case. Find the links at https://washdui.com.

# Preface

**BEING ARRESTED FOR DUI in Whatcom County** is an introduction to a world of complex law, crowded court calendars, strict judges, cautious prosecutors, Department of Licensing hearings, and a long list of conditions and expenses that can seem never to end. The consequences may include jail, bail, probation, fines, multiple court dates, a Department of Licensing hearing, license suspension, an ignition interlock device, SR-22 insurance, an alcohol/drug evaluation, alcohol information school or treatment, and a DUI victim impact panel. Not surprisingly, most people feel overwhelmed once they face the sobering fact that they are in for a long and difficult journey.

It is therefore important that anyone arrested for DUI immediately learn what is required of them. Two things should be done right away. First, request your Department of Licensing hearing; you have only **7 days** from your arrest (see Chapter 1). Second, confirm whether you have been given a court date.

In Whatcom County, if a breath sample was requested by the arresting officer, you will more than likely appear in court within days of your arrest. Even if you were taken for a blood draw, you may be required to appear in court the week following your arrest. Be aware that blood cases often take much longer to resolve: according to the Washington State Patrol, roughly 16,700 impaired driving cases were awaiting toxicology testing at the end of 2025, with waits of at least ten months. To ease the backlog, a 2026 law now allows accredited private laboratories to test blood and breath samples, so wait times may improve. If you already know your court date, prepare to appear so that you do not risk a bench warrant for your arrest.

If you have been arrested for DUI in Whatcom County, or know someone who has, it is imperative to learn about the DUI process quickly. *The Whatcom County DUI Handbook* explains the Washington DUI process with a focus on Whatcom County District Court and the Municipal Courts of Bellingham, Blaine,

Everson-Nooksack, Ferndale, Lynden, and Sumas. It also lists the courts, probation offices, prosecutors, law enforcement agencies, treatment agencies, DUI victim impact panels, bail bond companies, ignition interlock providers, and Department of Licensing offices you are likely to deal with in Whatcom County.

CHAPTER 1

# Your Driver's License and the Department of Licensing

**IF YOU HAVE been arrested for DUI,** your driver's license is at risk. When you are released from custody, the officer should give you a document notifying you that the Department of Licensing (DOL) intends to suspend or revoke your license. It does not matter to the DOL that you might eventually be acquitted, or that your DUI charge might later be amended to a lesser offense that carries no license suspension. If your breath or blood test result was 0.08 or higher, or if you refused the breath test, the arresting officer will report you to the DOL.

However, you should not simply let your license be suspended without a fight. You can challenge the suspension or revocation by submitting the hearing request to the DOL **within 7 days of your arrest**, together with the $375 fee. This deadline is short and demands immediate attention.

If you take no action, or miss the deadline, the DOL will suspend or revoke your license. That result will not change even if you have valid legal defenses, and even if you are later found not guilty of the DUI.

If your license is suspended, you must then file proof of financial responsibility (high-risk insurance, also known as SR-22 insurance) for three years, the same as if you had been convicted of the DUI.

If you have the hearing and the DOL hearing officer rules against you, you may appeal the decision to superior court within 30 days of the decision. Be careful, and talk with your attorney first: an appeal may affect your ability to obtain an Ignition Interlock License.

In addition to fighting the suspension, the DOL hearing has another benefit: evidence gathering. Your attorney can subpoena the arresting officer (and other officers involved) and question them about your case. This "free deposition" can prepare your attorney for trial and negotiation, or reveal defense issues that would otherwise remain unknown. Do not overlook the value of the DOL hearing.

Finally, if you lose the DOL hearing and your license is suspended, you may be eligible for a restricted license, called an Ignition Interlock License, so that you can keep driving. It is discussed later in this chapter.

## The DOL Hearing

At the DOL hearing, a hearing officer (employed by the DOL!) will decide:

1. whether the officer had a valid basis to stop or contact you;
2. whether there was probable cause to arrest you;
3. whether you were properly advised of the implied consent warnings; and
4. whether the breath or blood test was properly administered and the result was 0.08 or more (0.02 or more for drivers under 21, or a THC concentration of 5.00 ng/mL or more for cannabis cases), or whether the refusal was proper.

The hearing is usually conducted by telephone or video, with the hearing officer calling your attorney's office. You may attend if you wish, and I recommend that you do. The hearing officer records the hearing, states the issues to be decided, and admits the State's exhibits, usually the police report and, if applicable, the toxicology report. You may also submit exhibits. The officer, you, or both may then testify. Usually no decision is announced at the hearing; a written decision is mailed to you and your attorney in the weeks that follow.

## License Suspensions

One of the many collateral consequences of a DUI arrest is the dreaded, inconvenient, and expensive driver's license suspension.

A suspension in Washington does not stay in Washington. Most states, including Washington, belong to the Driver License Compact, an agreement to share driving records, including convictions, suspensions, and revocations. If you hold a license from another state, expect that state to learn of your Washington suspension or conviction.

## SR-22 Insurance

A license suspension also brings an insurance requirement. An SR-22 is a certificate your insurance company files with the DOL confirming that you carry the required liability coverage. In Washington, you must maintain it for three years. If your coverage lapses, the insurer must notify the DOL, which can suspend your license again. See Chapter 4 for more on the cost of SR-22 insurance.

## Under 21

Drivers under the age of 21 face an automatic DOL suspension if arrested for a minor DUI. The same procedures apply: you must request a hearing within 7 days of the arrest and pay the $375 fee.

At the hearing, the hearing officer decides the same issues as in an adult DUI, except that the breath or blood result need only be 0.02 or more (or a THC concentration above 0.00). If the suspension is upheld, the license is suspended for 90 days for a first incident, or for one year or until age 21, whichever is longer, for a second incident.

If your license is suspended, either because you failed to request a hearing or because you lost it, you will be required to carry SR-22 insurance for three years.

## Ignition Interlock License

Washington offers a restricted license, the Ignition Interlock Driver License (IIL), that allows a suspended driver to drive vehicles equipped with an ignition interlock device. Generally, the requirements are that:

- you were arrested for, or convicted of, DUI or Physical Control;
- you have not been convicted of vehicular assault or vehicular homicide within 7 years before the incident; and
- your current suspension or revocation is not for, and does not include, Minor in Possession, vehicular assault, vehicular homicide, or Habitual Traffic Offender status.

Since January 1, 2026, a person whose license was suspended for violating a mandatory probation condition may also apply for an Ignition Interlock License.

When driving with an IIL, you must have an interlock device in every vehicle you drive, including an employer's vehicle during work hours. That can make the license seem useless if you drive for work. Fortunately, the requirement may be waived for an employer's vehicle if your employer signs an Employer Declaration for Ignition Interlock Waiver. If you are self-employed, a similar exemption may apply, but only if the vehicle is used exclusively for your work. You may not drive a commercial motor vehicle while you hold an IIL.

To apply, you must install the interlock device and obtain SR-22 insurance, and submit proof of both to the DOL before the application will be approved. Go to https://washdui.com and click on "driver's license" for details and the application.

## Deferred Prosecution and Your License

If you choose a deferred prosecution (see Chapter 6), you may be able to keep your license, which also avoids the substantial cost of SR-22 insurance. The process is not complicated, but it requires good timing:

1. Request a DOL hearing by submitting the hearing request form within 7 days of your arrest.
2. Complete and file the DOL form entitled **Intent to Seek Deferred Prosecution**, before your DOL hearing.
3. The DOL will then "stay" (put on hold) your license suspension, but not forever: the stay lasts for up to 150 days from the date the DUI is filed in court. Your petition for deferred prosecution must be granted within that window.
4. After the court grants the deferred prosecution, the DOL will notify you that you must apply for a **probationary license within 45 days**, and that you must install an ignition interlock device.

The ignition interlock requirement for a deferred prosecution mirrors the requirement for a conviction: one year if this is your first restriction, five years if you have been restricted once before, and ten years if you have been restricted twice before.

This benefit applies only if you provided a breath or blood sample. In a refusal case, the deferred prosecution will not save your license; you will have to win the DOL hearing.

## Commercial Drivers (CDL)

If you hold a Commercial Driver's License, a DUI arrest can be devastating to your livelihood, and even a reduction to a lesser offense may not protect your CDL. Commercial licensing is governed by federal minimum standards (the Commercial Motor Vehicle Safety Act of 1986) as well as Washington law (chapter 46.25 RCW).

**While driving a commercial vehicle.** You may not drive, operate, or be in physical control of a commercial motor vehicle with an alcohol concentration of 0.04 or more. If an officer finds you have *any* alcohol in your system while driving a commercial vehicle, or you refuse a test, the officer will issue a 24-hour out-of-service order (RCW 46.25.110). If your result is 0.04 or more, or you refuse, the officer will report it to the DOL, and you may request a hearing within 7 days of the DOL's notice. If no hearing

is requested, or the DOL proves the violation, you will be disqualified from driving commercial vehicles.

**In your personal vehicle.** You can lose your CDL privilege even if you were arrested in your own car. A CDL holder is disqualified from driving commercial vehicles for at least one year for a first DUI conviction, a DOL suspension, a commercial-vehicle violation at 0.04 or more, a personal-vehicle violation at 0.08 or more (0.02 or more if under 21), or a test refusal. A second violation results in disqualification for life (RCW 46.25.090).

**Amended charges.** Even a reduced charge can cost you your CDL. For example, a reckless driving conviction results in a disqualification of at least 60 days if you have one prior serious traffic violation, and 120 days if you have two or more.

**Deferred prosecution.** For CDL purposes, a deferred prosecution is treated as a conviction, so it will not save your commercial license.

**Notification duties.** A CDL holder convicted of any traffic violation other than parking must notify their employer in writing within 30 days of the conviction, and if the conviction occurred in another state or in Canada, must also notify the DOL within 30 days (RCW 46.25.030). If your license is suspended, revoked, or cancelled, or you are disqualified, you must notify your employer before the end of the business day after you receive notice.

If you hold a CDL, you must be very careful in how you proceed with your DUI case.

CHAPTER 2

# Washington DUI Law and Related Offenses

## Driving Under the Influence (DUI)

**RCW 46.61.502**

**UNFORTUNATELY, WE CANNOT avoid** looking at the statute to explain a DUI. A DUI is a creation of the Legislature, which decided what conduct is prohibited and what the alcohol concentration limit would be. It is this statutory definition that the prosecutor must prove beyond a reasonable doubt.

In Washington State, a person is guilty of driving while under the influence of intoxicating liquor, cannabis, or any drug if the person drives a vehicle within the state:

> (a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or
>
> (b) The person has, within two hours after driving, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or
>
> (c) While the person is under the influence of or affected by intoxicating liquor, cannabis, or any drug; or
>
> (d) While the person is under the combined influence of or affected by intoxicating liquor, cannabis, and any drug.

**Watch for 2027:** For several years, bills have been introduced to lower the 0.08 limit in subsection (a) to 0.05. In 2026, Senate Bill 5067 passed the State Senate 26–23 but stalled in a House committee, and its supporters plan to try again in the 2027 session. As of this edition, the legal limit remains 0.08.

Looking at the statute, it is clear that it is not only the excessive consumption of alcohol or cannabis (THC) that can lead to a DUI arrest. The law is not limited to cannabis; the use of any drug, legal or illegal, can place a driver in criminal jeopardy. Lawful use of a prescription drug is not a defense to a charge of DUI.

## Physical Control

**RCW 46.61.504**

You may be in "physical control" of a motor vehicle if you are in a position to operate and control it. You do not need to be moving the car, or even to have moved it, to be charged. Over the years, the courts have refined this offense so that you must not only be in a position to operate the vehicle but also have the means to do so. Typically, this means the keys are in the ignition or within close reach.

The statute for Physical Control, RCW 46.61.504, reads in part:

> (1) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within this state:
>
> (a) And the person has, within two hours after being in actual physical control of the vehicle, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or
>
> (b) The person has, within two hours after being in actual physical control of a vehicle, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or
>
> (c) While the person is under the influence of or affected by intoxicating liquor or any drug; or
>
> (d) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

The statute is not very helpful in defining "physical control." Case law helps to a degree: a person is in "actual physical control" if they have the authority to manage a reasonably operable vehicle or are in a position to regulate its movement. *State v. Smelter*, 36 Wn. App. 439, 674 P.2d 690 (1984).

## Minor DUI (Under 21)

**RCW 46.61.503**

Under Washington law, it is a crime for a person under the age of 21 to drive, or to be in physical control of a vehicle, with an alcohol concentration of 0.02 or more, or with any detectable THC. This is a zero-tolerance standard. Reaching 0.02 takes very little alcohol, often less than one beer or one glass of wine. A violation has grave consequences and may result in a criminal charge, an arrest, a license suspension, and possibly jail.

The statute, RCW 46.61.503, reads in part:

> (1) Notwithstanding any other provision of this title, a person is guilty of driving or being in physical control of a motor vehicle after consuming alcohol or cannabis if the person operates or is in physical control of a motor vehicle within this state and the person:
>
> (a) Is under the age of twenty-one; and
>
> (b) Has, within two hours after operating or being in physical control of the motor vehicle, either:
>
> (i) An alcohol concentration of at least 0.02 but less than the concentration specified in RCW 46.61.502, as shown by analysis of the person's breath or blood made under RCW 46.61.506; or
>
> (ii) A THC concentration above 0.00 but less than the concentration specified in RCW 46.61.502, as shown by analysis of the person's blood made under RCW 46.61.506.

A minor DUI is a misdemeanor with a maximum penalty of 90 days in jail and a $1,000 fine. In all likelihood there will also be probation for up to two years, and the conditions imposed at sentencing will almost certainly include an alcohol/drug evaluation and follow-up (an 8-hour alcohol information school or longer treatment), attendance at a DUI victim impact panel, and possibly community service or jail.

In addition, the DOL may impose a 90-day license suspension on anyone arrested for a minor DUI, regardless of the outcome of the criminal case (see Chapter 1).

Finally, if you are under 21 and your breath or blood test is 0.08 or more, your THC concentration is 5.00 or more, or the

prosecutor can prove you were impaired, you can be prosecuted for an adult DUI and face the same consequences as an adult, including mandatory jail.

## Prior Offenses

Many DUI penalties depend on whether you have a "prior offense." This term is broader than most people expect. Under RCW 46.61.5055, prior offenses include not only earlier DUI and Physical Control convictions, but also:

- a deferred prosecution for DUI or Physical Control; and
- a conviction for Reckless Driving, Negligent Driving in the First Degree, or Reckless Endangerment, if the charge was **originally filed as a DUI** or Physical Control (or as vehicular assault or vehicular homicide).

For mandatory minimum penalties, a prior offense counts if the arrest for it occurred within **seven years** of the arrest for the current offense. In other words, accepting a reduced charge keeps a DUI off your record, but it may still be used to increase your penalties if you are arrested again.

## Felony DUI

A DUI or Physical Control charge becomes a felony if you have **three or more prior offenses within 15 years** (the look-back period was 10 years until January 1, 2026), or if you have previously been convicted of felony DUI, felony Physical Control, vehicular homicide, or vehicular assault while under the influence. Felony DUI is a class B felony punishable by up to 10 years in prison. Felony DUI is handled in Whatcom County Superior Court and is beyond the scope of this book; if you are facing a felony DUI, consult an attorney immediately.

## Reducing the DUI Charge

The objective of any DUI attorney is to ensure that the client does not end up with a DUI on their record. The hope, of course, is that the DUI is dismissed and all related charges disappear. While that does happen from time to time, the reality is that

most cases handled by a qualified DUI attorney are resolved by amending the DUI to a lesser offense. Equally true, some DUI cases present very few defenses and circumstances that do not lend themselves to an amendment; then the attorney's job is to limit the damage.

The facts usually dictate what will happen with the charge. If your BAC was more than twice the limit and the available defenses cannot be successfully raised, or have failed, an amendment to a lesser offense becomes difficult. If there was an accident, or minor children were passengers, it becomes more difficult still. When all legal defenses have been raised and have failed, your attorney must be skilled at mitigation; in the worst case, your attorney must make sure your case does not go from bad to worse with greater penalties, including more jail. In cases with a high BAC (0.15 or more) where an amendment is not an option, your attorney should at least be able to negotiate a "no BAC reading" resolution, which can lower the mandatory jail and fines and may help with the license suspension.

Remember, as explained above, that the reduced charges described below count as prior offenses if you are later arrested for another DUI. Since January 1, 2026, Negligent Driving in the First Degree and Reckless Endangerment that result from a DUI charge are also "serious traffic offenses" for driver's license purposes.

## Reckless Driving

**RCW 46.61.500**

Reckless driving is a gross misdemeanor punishable by up to 364 days in jail and a $5,000 fine. Unlike a DUI, it carries no mandatory minimum penalties and therefore no mandatory jail. Another significant difference is that probation is limited to 2 years rather than the 5 years available in a DUI. Reckless driving has no alcohol element, but if it was amended from a DUI it still counts as a prior offense.

A reckless driving conviction carries a mandatory license suspension of at least 30 days. The suspension does not begin

immediately: the court forwards the conviction to the DOL, which then sends you notice of the suspension. The suspension in turn requires SR-22 insurance for 3 years.

The statute reads:

> (1) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving. Violation of the provisions of this section is a gross misdemeanor punishable by imprisonment of up to three hundred sixty-four days and by a fine of not more than five thousand dollars.
>
> (2) The license or permit to drive or any nonresident privilege of any person convicted of reckless driving shall be suspended by the department for not less than thirty days.

## Reckless Endangerment

**RCW 9A.36.050**

It is not uncommon to see Reckless Endangerment charged along with a DUI, or to face the threat of it being added, typically when there were passengers in your vehicle. In some cases, the DUI may be amended to Reckless Endangerment, particularly when Reckless Driving is not acceptable because of its 30-day license suspension. Reckless Endangerment does not carry a mandatory license suspension.

The statute reads:

> A person is guilty of reckless endangerment when he or she recklessly engages in conduct not amounting to drive-by shooting but that creates a substantial risk of death or serious physical injury to another person.

## Negligent Driving in the First Degree

**RCW 46.61.5249**

Negligent Driving in the First Degree is a misdemeanor with a maximum penalty of 90 days in jail and a $1,000 fine. Like Reckless Driving, it carries no mandatory penalties: no mandatory jail, no mandatory license suspension, and no mandatory SR-22 insurance.

Unlike a DUI, you do not need to be impaired to be convicted of this offense; you need only exhibit the effects of having consumed alcohol or drugs. Technically, if you have a sip of beer and then drive in a negligent manner, you can be arrested for Negligent Driving in the First Degree.

The statute reads in part:

> A person is guilty of negligent driving in the first degree if he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property, and exhibits the effects of having consumed liquor or cannabis or an illegal drug.

## Negligent Driving in the Second Degree

**RCW 46.61.525**

Short of a dismissal, an amendment to Negligent Driving in the Second Degree is the best possible result. It is not a crime but a civil traffic infraction, so it results in no criminal conviction and no jail. Most of my clients, rightly, want this outcome, but I must caution that it is rare.

The statute reads in part:

> (1)(a) A person is guilty of negligent driving in the second degree if, under circumstances not constituting negligent driving in the first degree, he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property.

CHAPTER 3

# DUI Court Procedures

**THE MOST INTIMIDATING consequence** of being arrested for DUI in Whatcom County is the court process. Following your arrest, you are a defendant, and you will appear before a judge who will advise you of the possible consequences, including up to 364 days in jail. Intimidating? Yes! However, there are steps you can take to reduce the fear and lessen the threat.

## Bail

Bail is money you pay in exchange for your release from custody, usually after booking, or sometimes after the arraignment if the judge orders you taken into custody. As a condition of release, you must promise to appear for every scheduled court date, including the arraignment, pretrial hearings, readiness hearings, motions, and the trial itself.

If you are not allowed to post bail immediately after booking, a judge may set the amount at a separate hearing or at the arraignment, or may release you on your own personal recognizance ("PR"). Bail may be set by a predetermined "bail schedule," or the judge may set an amount based on:

- your DUI record and criminal history;
- the seriousness of the offense, including any injury to others; and
- your ties to family, community, and employment.

If bail is imposed, you or your family and friends may "post" the full amount, or post a "bond" instead. A bond is a written guarantee that the full bail amount will be paid if you fail to appear. Bonds are usually obtained through a bail bond agency, which charges a fee (usually about 10 percent of the bail

amount) and may demand additional collateral, since the agency must pay the full amount if you "jump bail."

If you are released on personal recognizance, no bail is paid and no bond is posted. You are released after promising, in writing, to appear for all upcoming proceedings. Courts usually impose conditions on release, such as no driving unless you are properly licensed and insured, no consumption of alcohol or non-prescribed drugs, and no refusing a breath test if lawfully requested. There may be additional conditions, such as attending AA meetings or obtaining an alcohol/drug evaluation within a set time. In Whatcom County, all judges impose an additional condition of release: no frequenting bars and taverns.

If you have a prior offense, the court must require, as a condition of release, that you install an ignition interlock device or participate in a 24/7 sobriety monitoring program (RCW 10.21.055).

If you are released and then fail to appear in court as scheduled, you will be subject to immediate arrest.

## The Arraignment

The arraignment is your first appearance in court. It may occur at the next available court date after your arrest, or you may be notified by mail (a summons). When you are notified by mail, the arraignment may be within a couple of weeks of your arrest or several months later, depending on the court and on whether the case is waiting for a blood test result. The arraignment is mandatory; you must appear. It is primarily an advisement of your rights and your opportunity to enter a plea of not guilty. If you have an attorney, they will guide you through the procedure. You should always request a jury trial (you can change your mind later) and, naturally, plead not guilty.

At the arraignment, the judge will decide whether to impose conditions of release. For first-time offenders with relatively low test results, typical conditions include no driving unless licensed and insured, no driving after drinking, or no consumption of alcohol or non-prescribed drugs while the case is pending. For

those with prior offenses or high test results, conditions may also include an ignition interlock device, a SCRAM/TAD alcohol-monitoring bracelet, probation monitoring, or significant bail.

There is a risk of being taken into custody at the arraignment, particularly if you are a repeat offender. Having a lawyer present will help your cause tremendously. At the arraignment, you will be given a date for a pretrial hearing.

## The Pretrial / Omnibus Hearing

The pretrial hearing (often called the "Omnibus Hearing" in Whatcom County District Court) is typically the second court date. It is scheduled at your arraignment, usually 6 to 8 weeks later in Whatcom County. The pretrial hearing gives your lawyer and the prosecutor an opportunity to discuss the strengths and weaknesses of the case, explore plea bargaining options, and confirm that the parties have exchanged all information required by the court rules.

Continuances of the pretrial hearing are common. Typically, the defense needs more time to:

- obtain discovery, such as police radio recordings, video, toxicology reports, breath test documents, accident reconstruction reports, or missing pages of police reports;
- complete witness interviews;
- complete an independent investigation;
- retain an expert witness;
- locate missing witnesses;
- obtain an alcohol/drug evaluation;
- prepare a deferred prosecution;
- continue negotiations with the prosecutor; or
- prepare a disposition (the parties have an agreement but need time to finalize it).

If no continuance is needed and no acceptable plea offer has been made, your attorney may schedule legal motions (see below) or confirm a trial date.

If you have an attorney, your presence may be waived (you may not need to attend) at the pretrial or Omnibus hearing.

## The Motion Hearing

The motion (or suppression) hearing can be the most important hearing in your defense. At the motion hearing, the judge hears legal challenges to the admissibility of the State's or City's evidence, and a ruling in your favor can result in evidence being suppressed (excluded) from your trial, including the breath or blood test, some or all of the field sobriety tests, or statements you made. Successful pretrial motions often lead the prosecutor to make a better plea offer and, on occasion, result in dismissal of the charge!

Most courts schedule motions well before trial, although some hear most motions on the morning of trial. Most judges rule on most motions immediately.

## The Trial

A DUI jury trial typically lasts two days. It may take only a day if there is no breath or blood test and there are few witnesses, but it rarely lasts three days or more.

The court first hears preliminary matters (motions in limine), followed by jury selection ("voir dire"). Both sides question potential jurors about their biases and their views on police, drinking, and DUIs. Jurors may be excused "for cause" if they cannot be fair, and each side may also excuse up to three jurors without giving a reason.

Once the jury is selected, the prosecutor and your lawyer give opening statements outlining what they expect the evidence to show. The defense attorney may instead give the opening statement after the prosecutor rests.

The prosecutor then presents witnesses, which typically include:

- the investigating police officers;
- civilian witnesses or hospital personnel who are available and favorable to the prosecution;
- expert witnesses from the State Patrol breath test program or the state toxicology laboratory, who will testify that the breath test instrument was operated and maintained according to state law and regulations; or
- in a blood case, the person who drew the blood and the toxicologist who analyzed it.

Since June 11, 2026, blood and breath samples may be analyzed by an accredited private laboratory instead of the Washington State Patrol toxicology lab (2SSB 5880). If a private lab tested your sample, the lab must make the person who performed the analysis available for a **defense interview at no cost to you**. Your attorney must request the interview at least 30 days before trial, or within 10 days after the lab report is disclosed if it arrives later than that. The interview may be done by video or phone. This is a valuable opportunity to test the reliability of the result before trial, so make sure your attorney uses it.

After the prosecution rests, the defense may present evidence, but is not required to. In many cases, much of the defense has already been presented through the defense attorney's vigorous cross-examination of the prosecution witnesses.

Typical defense witnesses include:

- people you were with before the stop, who can testify about how much you drank and your sobriety, coordination, speech, and appearance;
- passengers, who can testify about your condition, your driving, and your performance on the roadside tests;
- people you called after the stop or from the police station, who can testify about your speech;
- the public defender or other lawyer you spoke with from the station, who can testify about your speech, the appropriateness of your questions, and your ability to understand and follow instructions;

- anyone who saw you after your release and can testify about your sobriety, coordination, speech, and appearance;
- experts retained to challenge the accuracy or reliability of the breath or blood test;
- defense investigators who interviewed prosecution witnesses, or who photographed or recorded the road and the field sobriety test location, or experts on the limitations of field sobriety testing; and
- you. You have the option to testify but cannot be required to. Most juries want to hear from the defendant, but there may be sound reasons your attorney will recommend against it. The decision is yours, but consider your attorney's advice very carefully.

After the evidence is presented, the judge instructs the jury on the law it must apply. Both lawyers then present closing arguments.

The jury then deliberates, which can take anything from 15 minutes to a day or more. There are only three possible outcomes:

1. All six jurors vote to acquit, and the case is over.
2. All six jurors vote to convict, and you are found guilty.
3. The jurors cannot reach a unanimous verdict. This is a "hung" jury, and the judge will declare a mistrial. The prosecutor may then retry the case, offer a plea bargain to a reduced charge, or dismiss the case.

## Sentencing

If you are convicted of DUI, whether by guilty plea or jury verdict, your punishment is determined at sentencing. The penalties that may be imposed include:

- fines and costs (statutory and probation costs);
- jail;
- probation;
- a suspended sentence (for up to 5 years);

- suspension of your driver's license;
- community service;
- a drug/alcohol evaluation and treatment, or alcohol/drug information school (ADIS);
- a DUI victim impact panel; and
- an ignition interlock device (which is also required by the DOL).

Sentencing usually happens immediately after a plea to DUI or an amended charge, or after a guilty verdict at trial. The judge hears from the prosecutor and the defense. In some cases, the judge will set a separate sentencing date. Some judges insist that you complete an alcohol/drug evaluation before sentencing (another good reason to obtain the evaluation early).

At sentencing, a judge may consider:

- your criminal history and any prior DUI convictions;
- your level of intoxication and your behavior;
- the impact on any victims (for example, injuries or passengers);
- your personal, economic, and social circumstances;
- any regret or remorse you express; and
- the agreement between you and the prosecutor.

## Probation

Probation is a consequence of a conviction for DUI or most other crimes. Its purpose is to monitor you to make sure you comply with your sentence, such as completing the alcohol/drug evaluation and any treatment, paying fines, and committing no new offenses.

If you fail to comply with your sentencing conditions, the court may summon you to explain. Some violations are minor and can be corrected before your court appearance. Others are serious (for example, a new DUI arrest), and the resulting punishment can be harsh (for example, 30 days or more in jail).

Probation may be supervised or unsupervised; supervised probation requires regular meetings with a probation officer. The best way to avoid lengthy supervised probation is to complete the alcohol/drug evaluation and the alcohol/drug information school or treatment before sentencing. That leaves probation very little to supervise.

If your DUI case ends in a conviction, an amendment to a lesser offense, or a deferred prosecution, Whatcom County District Court will place you on active probation and require you to report to the probation office the same day your case concludes. The Cities of Bellingham, Lynden, Everson, and Sumas use the Whatcom County District Court probation office; Blaine and Ferndale have their own probation departments.

Active (supervised) probation is a distinctive feature of Whatcom County, which practices it more aggressively than neighboring counties. In Whatcom County, expect at least one year of active probation. And active probation costs, wait for it, $100 per month!

## DUI Appeals

If you are convicted of DUI, you may appeal and ask a higher court to review the case for legal error in the conviction or the sentence. You must file your notice of appeal **within 30 days** of the entry of the final judgment (your sentencing). If you plead guilty to DUI (or any other offense), you generally give up your right to appeal.

On appeal, you argue that legal mistakes affected the verdict or the sentence, and that the case should be dismissed or that you should receive a new trial or a new sentence.

The reviewing court looks only at the “record” of the proceedings in the trial court and does not consider new evidence. The record is made up of the recording or transcript of everything said in court by the judge, the attorneys, and the witnesses, together with the exhibits admitted into evidence. That is why it is critical that your attorney present a solid case and create a sound record for review.

CHAPTER 4

# DUI Penalties & Conditions

## Mandatory Minimum Penalties

| | 1st DUI | 2nd DUI | 3rd DUI |
|---|---|---|---|
| **Jail** | 1 day / 2 days | 30 days / 45 days | 90 days / 120 days |
| **EHM** | — | 60 days / 90 days[1] | 120 days / 150 days |
| **Fine** | $991 / $1,246 | $1,246 / $1,671 | $2,096 / $2,946 |
| **License loss[2]** | 90 days / 1 year | 2 years / 900 days | 3 years / 4 years |
| **SR-22 insurance** | 3 years | 3 years | 3 years |
| **Ignition interlock[3]** | 1 year | 5 years | 10 years |
| **Alcohol/drug evaluation** | Yes | Yes | Yes |
| **Victim impact panel** | Yes | Yes | Yes |
| **Probation (up to)** | 5 years | 5 years | 5 years |

*"Prior offenses" are counted within seven years (see Chapter 2). Where two figures appear, the first applies to a BAC under 0.15 and the second to a BAC of 0.15 or more or a test refusal. Fines include mandatory assessments. [1]For a second offense, the court may order 24/7 sobriety monitoring in place of EHM where that program is available. [2]License loss is longer for a refusal: 2 years (first), 3 years (second), 4 years (third). [3]Interlock periods are 1, 5, and 10 years depending on how many times you have been restricted before.*

## Jail

Mandatory criminal penalties for a Washington DUI depend on your breath or blood test result (or refusal to provide a sample) and on whether you have any prior offenses within seven years. The mandatory minimums are set by the Legislature, and judges may not go below them.

Do not assume that the judge will impose only the minimum. A judge always has the discretion to impose up to the maximum penalty permitted by law, and may impose more than the minimum if the facts warrant it. Such factors include, but are not

limited to, passengers in the car (worse if they are minors), prior DUIs older than seven years, an accident, and belligerent behavior toward the officer. If you spent time in jail after your arrest, you should receive credit for that time against any jail sentence.

## Sentencing Enhancements

A sentencing enhancement is a fact in your case that the prosecutor or judge may use to increase your penalties (meaning more jail) if you are convicted. These include:

- a child (or any passenger) in the vehicle;
- excessive speed;
- an exceptionally high BAC (0.15 or more);
- refusing to submit to a breath or blood test;
- an accident, property damage, or injury arising out of the DUI; and
- prior related offenses.

## Work Release

Work release is an alternative to jail that allows you to go to work during the day and return to custody in the evening. You must obtain the judge's permission and then be approved by the local corrections facility (or probation department). You will be charged a daily fee for this privilege. The catch is that you typically must be sentenced to at least 10 days in jail (15 days in some courts) before you are eligible, and some courts do not offer it at all, so discuss this option with your attorney before sentencing.

In Whatcom County, you must work in the county to qualify. You will be required to report to the work release facility ("Alts," Whatcom County Jail Alternatives) immediately after sentencing, although work release itself may not begin for several weeks.

## Electronic Home Monitoring

Electronic home monitoring (EHM) is "electronic jail" served in your home. For a first offense, the judge may allow EHM instead of jail. Even if the judge allows it, you must still qualify by applying through the jail where it is to be served; jail administrators generally screen out people they consider risks.

Whether EHM is available depends on the court, so it is important that your attorney know the court and the prosecutor and their practices. Where EHM is not normally allowed, a judge may still grant it if you have medical needs that make jail impractical or harmful. For a second or third DUI within seven years, EHM is **mandatory in addition to** jail (see the table above).

EHM devices now use GPS to track, record, and report your location continuously. If you go beyond your permitted area, the device reports a violation. EHM is not free; you will pay for the "privilege," so ask your attorney about the current cost.

EHM is likely to keep growing in use as the technology improves and becomes cheaper, the cost of jail rises, and jurisdictions look for alternatives to crowded jails.

The City of Bellingham also runs a program similar to EHM, separate from the Whatcom County Alternatives program and operated directly through Bellingham Municipal Court. It offers defendants more flexibility with work schedules and locations. We don't praise every new program in the criminal courts, but this one has proven very successful for all involved. It is called "Friendship Diversion Services" and is described below.

## Community Service

Community service for DUI offenders developed in the 1980s as an alternative to jail because of high jail costs and limited space. Whether community service is permitted is ultimately up to the judge, and many judges will not permit community service in place of jail. It is important to know your judge.

If community service is approved, you will be given a jail commitment date and the opportunity to complete the community service before it. If you complete the service, you will not need to report for jail; if you do not, you must report.

Community service is performed at a not-for-profit or government organization. Some courts limit you to particular organizations, so check with the court, or better yet, have your attorney check. Typically approved organizations include the Salvation Army, food banks, community kitchens, city parks and recreation departments, and libraries. You must provide proof of your hours to the court, on the organization's letterhead and signed by an official of the organization.

## Friendship Diversion Program

The City of Bellingham and the City of Blaine use a program called "Friendship Diversion." Its mission is: "To provide a supervised alternative for the criminal justice system wherein the victim is restored, the community benefits from work provided by the defendant at non-profit or governmental agencies as well as through the reduction in costs in disposing of the crime and, finally, the defendant, on successful completion, will not have a criminal conviction and has accepted responsibility for their behavior." The program was implemented as part of BRIC (Bellingham's Reduction Incarceration Challenge) in response to a request from the Whatcom County Sheriff to reduce the City of Bellingham's inmate population in the Whatcom County Jail. If your case is in Bellingham or Blaine Municipal Court, ask your attorney whether this program applies to your case.

## Work Crew

Work crew is an alternative sentencing program designed to reduce jail overcrowding by giving low-risk offenders a work option to meet their court obligations. If your court offers work crew, you must be referred by the court and screened for eligibility. Once accepted, you will be assigned work, and your work will be monitored to ensure you complete it.

Some courts offer work crew and others do not. Be advised that work crew does not replace mandatory jail; it can be used only when the DUI is amended to a lesser offense that carries no mandatory jail.

## DUI Victim Impact Panel

A DUI victim impact panel is generally imposed at sentencing as a condition of probation. Although no statute requires it in every case, practically every judge imposes it, so plan to complete one, ideally while your case is still pending. A victim impact panel is a community meeting where people who have been victims, offenders, or witnesses of impaired driving describe their experiences. The panel's focus is to encourage people to take responsibility for their choices. It goes without saying, but it still must be said: you must be completely sober when you attend. Local options are listed in Chapter 8.

## Ignition Interlock Device

The ignition interlock device (IID), or breath alcohol ignition interlock device (BIID), is a breath-testing device connected to the vehicle's ignition. The driver must provide a breath sample before the vehicle will start. If the sample is below the set limit, the engine will start; if it is over the limit, the vehicle will not start, and the failed attempt is recorded and reported.

While the engine is running, the device will randomly require additional breath samples, typically every 10 to 20 minutes. These "rolling retests" prevent a driver from having a sober friend start the vehicle. If a requested sample is not provided or exceeds the limit, the device records the incident, warns the driver, and sets off an alarm (for example, flashing lights or a honking horn) until the ignition is turned off or a clean sample is provided.

A common but inaccurate belief is that an interlock will shut off a running engine if it detects alcohol. Because that would create a dangerous driving situation, interlocks are designed **not** to turn off a running vehicle.

The device keeps a running log of every test, which is downloaded each time the device is serviced and calibrated, commonly every 30, 60, or 90 days. These records may be provided to the court for probation review and to the DOL. If the court still has jurisdiction and a violation is detected, you may be ordered back to court to face additional sanctions. The DOL will not remove the interlock restriction until the vendor certifies a clean record for the final 180 days of the restriction.

An IID may be ordered by the court as a condition of release (see Chapter 3) or at sentencing, and it is also required by the DOL after a suspension, conviction, or deferred prosecution.

> **Warning:** Ignition interlock devices are delicate and fickle machines. They are far from perfect and will fail at some point. Do not add to the problems you will face. Learn how to use the device properly; do not let others use it unless they also understand it (and are trustworthy); do not eat or drink in the vehicle or within 30 minutes of driving; and do not remove the device until the DOL has confirmed that you may.

## SCRAM (TAD) Alcohol Monitoring Bracelet

SCRAM (Secure Continuous Remote Alcohol Monitor), also called a TAD (transdermal alcohol device), is a water- and tamper-resistant ankle bracelet that measures alcohol excreted through the skin in perspiration. It tests automatically, roughly every 30 minutes, and transmits the results to a monitoring agency, which reports to the court or probation officer. The bracelet also uses temperature and infrared sensors to detect tampering or anything placed between the device and the skin. It is commonly ordered as a condition of release after arraignment, or by probation after sentencing.

## SMART Mobile Portable Alcohol-Monitoring Device

SCRAM/TAD devices are expensive, and there is now an alternative that costs a fraction as much: the SMART Mobile portable alcohol-monitoring device. You must keep it with you 24/7, because it requires breath samples several times a day

and evening, at scheduled times and one or two random times. While far less expensive, it is riskier than SCRAM, because you must actively provide a sample when prompted, whereas SCRAM works automatically. Still, if cost is an issue, the portable device costs around $100 per month, compared with closer to $500 per month for SCRAM.

## Restitution

Restitution is money you pay to compensate for damage resulting from the incident. For example, if there was an accident, you must show that you paid all damages you are responsible for (or the insurance deductible). If your case ends in a conviction, whether for DUI or a lesser offense, or in a deferred prosecution, the court can order you to pay restitution. If the amount is known, you must pay it within a set period (typically 30 to 90 days). If it is not known, the court will direct the prosecutor to contact the victim and obtain an amount, with supporting documentation, within a set period, typically 30 to 90 days. If the prosecutor fails to provide this information in time, you may not have to pay. If you dispute the amount, you may request a restitution hearing.

## Insurance

If you are convicted of DUI (or your license is suspended at the DOL hearing), you will be required to carry SR-22 insurance for at least three years.

When you are eligible to reinstate your license, you apply to the DOL. Your insurance company files the SR-22 certificate directly with the DOL and must report any lapse in coverage, which can result in another suspension.

SR-22 policies may come with restrictions, such as covering only the vehicles listed on the policy. Practically speaking, though, the biggest effect is cost. How much more you will pay depends on your age, your vehicle, your driving record, the type and limits of coverage, and the insurer. Carrying high-risk insurance

for at least three years is one of the harshest economic consequences of a DUI arrest.

## Costs

The fines for a DUI or lesser offense are, unfortunately, only part of the story. You may also be responsible for the BAC fee ($250), an emergency response fee, filing and conviction fees, officer overtime, and probation costs, which can be extraordinarily expensive.

CHAPTER 5

# Alcohol/Drug Evaluations, Classes and Treatment

**IN THE CONTEXT of driving under the influence,** alcohol and drug use is front and center. While the great majority of people charged with DUI are not substance abusers who require treatment, for those who are, there is another very real danger: re-offending. That is why most courts order a person charged with DUI to undergo an alcohol/drug evaluation (also called an assessment) to determine whether they have a substance use disorder.

## Alcohol/Drug Evaluations

Evaluation and treatment of DUI offenders have broad support in law enforcement, the judiciary, and organizations such as MADD. The idea is that if the offender is evaluated, found in need of treatment, and then treated, the chance of another DUI is reduced.

An alcohol/drug evaluation will almost certainly be required if you have been arrested for DUI, whatever the eventual outcome. Do not choose an agency at random. This is an area where direction from your attorney is critical.

Whether the evaluation is court-ordered or you obtain it on your own, it must be done by a certified counselor at a behavioral health agency licensed by the State of Washington. The evaluation typically takes about two hours and includes standardized screening questionnaires and an interview with the counselor. The counselor may ask follow-up questions about your answers, your family history (including relatives who have had substance use problems), and your general patterns of drinking or drug use.

Use only a state-licensed agency, or the evaluation may not be accepted. Chapter 8 lists local agencies, but get a referral from your attorney, because some agencies are better than others. Remember that these agencies are businesses that earn most of their revenue from treatment, so some may be quick to recommend treatment when it is not necessary. Your attorney can also make sure you do not waste time and money on an agency whose evaluation will not be accepted.

When you go to the evaluation, bring:

- a copy of your driving record (abstract), available from the Department of Licensing;
- a copy of your police report and BAC ticket (the "who, what, when, and where" of your arrest); and
- copies of any court orders or citations.

The evaluator will prepare a diagnosis and treatment recommendation for the court. If you sign a release, a copy will be provided to your attorney, the court, and the DOL (if applicable). I firmly recommend that you sign a release only to your attorney at first, so that your attorney can review the evaluation and confirm that it is accurate before it goes anywhere else.

The evaluator will reach one of two broad conclusions:

1. **No substance use disorder.** The evaluator will typically recommend the 8-hour Alcohol and Drug Information School (ADIS).
2. **A substance use disorder,** diagnosed as mild, moderate, or severe. The evaluator will recommend a level of treatment based on severity, ranging from outpatient treatment to intensive outpatient or residential (inpatient) treatment, usually followed by a period of continuing care.

If you are convicted of a DUI (or a related offense), the court will order you to follow whatever the evaluator recommends. In other words, even if no substance use disorder is found, you must still complete at least ADIS; that is the minimum.

The cost of treatment varies. Some insurance plans pay for part of it, some pay for none, and a few pay for all of it.

Longer-term treatment plans are tailored to the individual but follow a common structure. A typical intensive outpatient program begins with two to three months of sessions several times per week, including individual counseling, group sessions, and attendance at Alcoholics Anonymous or another self-help group. This intensive phase is followed by weekly sessions for about six months, and then monthly contact for the remainder of the program. (A deferred prosecution requires a specific two-year version of this structure; see Chapter 6.)

## Alcohol and Drug Information School (ADIS)

Alcohol and Drug Information School (ADIS) is an 8-hour course that educates participants about the dangers of alcohol and drugs. It is typically recommended for people found not to have a substance use disorder.

ADIS covers topics such as:

- expectations, pre-test, and choices;
- blood alcohol concentration;
- long-term effects of alcohol and drug abuse;
- patterns of use, non-use, social use, misuse, abuse, and addiction;
- underage drinking and driving;
- Washington penalties;
- financial and personal losses;
- breaking the family cycle;
- exploring values and making decisions; and
- change plans and post-test.

Assessment & Treatment Associates (ATA) offers ADIS on Saturdays, in conjunction with a DUI victim impact panel. Call for the current schedule and format.

CHAPTER 6

# Deferred Prosecution

**WASHINGTON STATE OFFERS** people charged with DUI a program that is unique to this state. A deferred prosecution allows a person whose offense resulted from a substance use disorder or a mental health problem to complete a two-year treatment program in exchange for dismissal of the charge (or charges) after five years, with no jail and, in most cases, no loss of license (RCW 10.05). This program is a godsend for many, but the consequences of failing to follow it strictly can be horrendous.

The Washington Legislature has recognized that some people charged with crimes are not criminal by nature but have a problem that needs treatment, and that the best way to keep someone with an alcohol or drug problem from driving impaired is to help them stop drinking or using. From this belief came the deferred prosecution statute.

The statute allows you to petition the court to defer (postpone) your case for five years while you obtain treatment. If the petition is granted, the advantages are obvious: you keep your license, keep the DUI (and any related charges) off your record, avoid jail and fines, and, except in refusal cases, avoid the administrative license suspension. Most importantly, you are given an opportunity to get sober and regain control of your life.

## Eligibility

To qualify, you must obtain an assessment from a state-approved behavioral health agency. If the agency concludes that your offense resulted from a substance use disorder (or a mental health problem) and that you are amenable to treatment, meaning you are serious about treatment and willing to complete it, you may be eligible.

**A second deferred prosecution (since 2026).** Until January 1, 2026, a DUI deferred prosecution was available only once in a lifetime. That is no longer the rule. If you completed a deferred prosecution for a first-time DUI or Physical Control charge, and you have no other prior offenses, you may petition for a second deferred prosecution on a later charge. A person who never had a deferred prosecution for a first-time DUI may petition for only one. A second deferred prosecution comes with limits (for example, if you are still in the first one, the court must revoke it), so the decision requires careful advice from your attorney.

Even with this change, a first-time offender should still think carefully about whether to use a deferred prosecution now. A deferred prosecution is a demanding two-year treatment commitment, and failing it is worse than never having tried.

It is critical that you and your attorney know the court where the petition will be filed. Every court has its own rules and procedures that you must follow to qualify.

## The Treatment Program

In DUI cases, the most common reason for a deferred prosecution is a drinking problem. For a substance use disorder, the statute requires a **two-year** treatment plan that includes:

- total abstinence from alcohol and all non-prescribed mind-altering drugs;
- periodic random urinalysis or breath testing;
- completion of intensive outpatient or residential (inpatient) treatment, depending on severity;
- weekly outpatient counseling for at least six months after the intensive phase;
- monthly outpatient contact for the remainder of the two years;
- attendance at **at least two self-help recovery meetings per week** (such as Alcoholics Anonymous) for the entire treatment period; and
- monthly progress reports to the court.

If your problem is a mental health disorder that also involves substance use, the plan will combine substance use treatment with individual or group mental health services. If it involves no alcohol or drug use, the plan will follow the treatment recommended by a mental health provider.

Those who choose a deferred prosecution are also placed on supervised probation, which requires regular meetings with a probation officer. The cost varies, but typically runs about $50 to $100 per month for the first two years, with an annual fee for each of the remaining three years. An ignition interlock device is also required (see Chapter 1).

If you submitted to a breath or blood test, a deferred prosecution will save your license. This is clearly one of the program's big benefits. In a refusal case, however, you will still face a license suspension unless you win the DOL hearing.

Three years after you complete the two-year treatment program (five years in total), the charges are dismissed. During those last three years, you must stay out of trouble and follow every requirement the judge imposed.

## Is It Right for You?

If you are considering a deferred prosecution, take it seriously. This program is not for the faint of heart, and failure brings dire consequences because the court demands strict compliance. I meet with every client who chooses the program to make sure they know exactly what they are getting into. Done right, it can resolve a serious legal matter, protect your ability to drive, and address a significant health issue all at once.

Before entering the program, ask yourself:

- Do you need treatment?
- Are you amenable and committed to treatment?
- Do you have the support of family and friends?
- Are you willing to change your lifestyle?
- Will your schedule allow for the demands of treatment?
- Can you afford treatment?

- Will your insurance pay for treatment, in whole or in part?
- Do you like the treatment agency?
- Do you like the treatment counselor(s)?
- Is the treatment agency's location convenient for you?

If you fail to comply, the results are ominous. The deferred prosecution will be revoked, and you will be found guilty of the DUI and any accompanying charges, usually based on the police reports alone. The penalties may well be harsher than if you had simply pleaded guilty in the first place. Judges view a deferred prosecution as a privilege and are none too impressed by those who fail to meet their obligations. If you are convicted of a similar offense before completing the deferred prosecution, it will be revoked and judgment entered against you.

Critically, a deferred prosecution counts as a **prior offense** if you are later convicted of another DUI within seven years, and it will be used to substantially increase the mandatory minimum penalties on the new DUI.

If you successfully complete the deferred prosecution, you will benefit both legally and personally. Your DUI (and any other charges included in the deferred prosecution) will be dismissed, and you will have completed treatment and, hopefully, achieved lasting sobriety.

## Saving Your License

If you choose a deferred prosecution, be sure to protect your driver's license. You must file the DOL's **Intent to Seek Deferred Prosecution** form before your DOL hearing. The DOL will then stay your license suspension for up to 150 days from the date the DUI is filed in court, so your petition must be granted within that window. Once the court grants the deferred prosecution, it notifies the DOL, and the DOL will notify you that you must apply for a **probationary license within 45 days** and install an ignition interlock device. Chapter 1 explains these steps in detail.

CHAPTER 7

# Other Consequences and Issues

## Travel to Canada

For Whatcom County residents, the Canadian border is minutes away, and a DUI can make crossing it impossible. Canada treats a DUI very seriously, and it can make you **inadmissible**, meaning you may be refused entry at the border.

Since **December 18, 2018**, Canada classifies impaired driving as "serious criminality" for immigration purposes. For any DUI committed on or after that date:

- a single DUI conviction can make you inadmissible to Canada;
- you will **not** become "deemed rehabilitated" simply by the passage of time, as was possible under the old rules; and
- a refusal to provide a breath or blood sample is treated the same way.

Even a pending charge can cause problems at the border, so speak with your attorney before you travel.

### Overcoming Inadmissibility

There are two ways to enter Canada if you are inadmissible:

- **Criminal Rehabilitation** is the permanent solution. You may apply once at least five years have passed since you completed your entire sentence, including probation and payment of all fines. Processing can take many months.
- A **Temporary Resident Permit (TRP)** is the short-term solution. It allows entry for a specific purpose and period if you can show a compelling reason to travel. The Canadian government charges a fee for each permit.

## Immigration Consequences

For those who are not U.S. citizens, a DUI can have consequences far greater than jail, fines, and a license suspension. A single simple DUI is generally not, by itself, a deportable offense: the U.S. Supreme Court held in *Leocal v. Ashcroft* (2004) that a DUI is not a "crime of violence," and a simple DUI is generally not considered a "crime involving moral turpitude." However, aggravated DUIs (for example, driving with knowledge that your license is suspended, or a DUI causing injury), drug-related DUIs, and multiple DUIs can create serious immigration problems, including inadmissibility, removal, and the denial of a green card or visa. I strongly recommend that you consult an immigration attorney before resolving your case.

### Citizenship

Even when a DUI does not lead to removal, it can affect naturalization. U.S. Citizenship and Immigration Services (USCIS) may consider any criminal record when deciding whether an applicant has "good moral character." Under *Matter of Castillo-Perez* (2019), two or more DUI convictions during the relevant period create a presumption that the applicant lacks good moral character.

Be completely honest when applying for citizenship, and review all prior arrests and convictions with an immigration attorney before you apply. One DUI does not automatically disqualify you, but you must disclose it, and it is wise to complete probation before filing. Several DUIs can also support a finding that a person is a "habitual drunkard," which bars a finding of good moral character.

## Car Rentals

A DUI conviction may prevent you from renting a vehicle from a commercial agency. Policies vary, so check with several companies. Some will rent to people with a DUI conviction but charge a higher rate. The problem is greater if you have been ordered not to drive without an ignition interlock device.

Additionally, rental agencies may not honor a restricted license such as an Ignition Interlock License.

## Vacating a Conviction (Expungement)

Many states allow a DUI conviction to be vacated ("expunged"). Washington does not: a DUI or Physical Control conviction cannot be vacated.

A Reckless Driving, Negligent Driving in the First Degree, or Reckless Endangerment conviction can be vacated, even if it was amended from a DUI, but only after a long wait. If the conviction counts as a prior offense (see Chapter 2), you must show that:

- more than **10 years** have passed since the arrest;
- you have had no alcohol or drug violation within 10 years of that arrest;
- at least 3 years have passed since you completed your sentence; and
- you meet the other general requirements, such as having no new convictions and no pending charges.

The Legislature has considered bills that would allow DUI convictions to be vacated (most recently HB 1110), but none has become law; HB 1110 did not pass before the 2026 session ended.

## Employment and Background Checks

Many people charged with DUI worry about how it will affect their employment. The honest answer is that it depends! If you are a commercial truck driver or a professional pilot, for example, there is real cause for concern about keeping your job.

The more common question is what will appear on a background check. There are many kinds. Some show only convictions; others show driving history; and the most thorough, such as fingerprint-based FBI checks used for certain government, security, and licensing purposes, can show everything from the arrest through to the final result. There is

no way to predict which kind of check a particular employer will use.

Regardless of the outcome of your DUI, the arrest and the charge may still be visible on some background checks. Even a dismissal will not hide the past in many of them.

For more information about employment and background checks, talk with your attorney, who may refer you to an employment lawyer or your union representative.

## Avoiding a (Another) DUI

If you have a drink with friends, colleagues, or clients, or at a sporting event, and then drive, you can be stopped and charged with DUI. It does not matter whether you had one drink or several. I have represented (and prosecuted) more people than I can count who were charged with DUI with an alcohol concentration below 0.08. If you once thought you were fine to drive after one or two drinks, you were very wrong.

The only sure way to avoid a DUI is not to drive after drinking or using drugs. Plan your ride home before your first drink.

If you are stopped by the police:

- pull over promptly and safely when you see the officer's lights;
- be polite; a good impression matters;
- provide your license, registration, and proof of insurance;
- you have the right to remain silent: you may politely decline to answer questions about where you have been or what you have had to drink;
- you may politely decline the voluntary field sobriety tests; if you do take them, tell the officer about any physical condition that could affect your performance;
- at the station, ask to speak with an attorney, and do not refuse the breath test, because a refusal carries its own severe penalties;
- request your DOL hearing within 7 days; and

- hire an experienced DUI attorney.

CHAPTER 8

# Whatcom County Contacts

## Whatcom County Courts

**District Court**
311 Grand Avenue, Ste 401
Bellingham, WA 98225-4046
Phone: (360) 676-6770
Fax: (360) 676-7685
Jonathan Rands, Judge
Angela Anderson, Judge
Tony Parise, Commissioner

**Bellingham Municipal Court**
2014 C Street
Bellingham, WA 98225-4019
Phone: (360) 778-8150
Fax: (360) 778-8151
Debra A. Lev, Judge
Nicholas Henery, Judge

**Blaine Municipal Court**
435 Martin Street, Ste 4000
Blaine, WA 98230-4107
Phone: (360) 332-8311
Fax: (360) 543-9835
Thomas Lyden, Judge

**Everson-Nooksack Municipal Court**
Location: 111 W Main Street, Everson, WA 98247-8250
Mailing: PO Box 315, Everson, WA 98247-0315
Phone: (360) 966-3411
Fax: (360) 966-3466
Thomas Lyden, Judge

**Ferndale Municipal Court**
Location: 5694 2nd Avenue, Ferndale, WA 98248
Mailing: PO Box 291, Ferndale, WA 98248-0291
Phone: (360) 384-2827
Fax: (360) 383-0938
Mark Kaiman, Judge

**Lynden Municipal Court**
300 4th Street
Lynden, WA 98264-1905
Phone: (360) 354-4270
Fax: (360) 318-0301
William T. Wisdom, Judge

**Sumas Municipal Court**
Location: 433 Cherry Street, Sumas, WA 98295
Mailing: PO Box 9, Sumas, WA 98295-0009
Phone: (360) 988-5711
Fax: (360) 988-8855
Thomas Lyden, Judge

## Whatcom County Probation

Whatcom County District Court Probation provides adult probation services for people with misdemeanor cases in Whatcom County District Court and in the Municipal Courts that contract with Whatcom County, currently Bellingham, Lynden, Everson, and Sumas. Blaine and Ferndale have their own probation departments.

**Whatcom County District Court Probation**
311 Grand Avenue, Ste 406
Bellingham, WA 98225-4038
Phone: (360) 676-6708
Fax: (360) 738-2452

**Blaine Municipal Court Probation**
344 H Street
Blaine, WA 98230-4109
Phone: (360) 332-8311
Fax: (360) 332-8330

**Ferndale Municipal Court Probation**
Location: 2095 Main Street, Ferndale, WA 98248
Mailing: PO Box 291, Ferndale, WA 98248
Phone: (360) 384-5421
Fax: (360) 384-1163

## Whatcom County Prosecutors

In Whatcom County, the prosecutors for Whatcom County District Court and Bellingham Municipal Court are "in house," meaning they are employed by the Whatcom County Prosecuting Attorney's Office and the City of Bellingham City Attorney's Office. In Blaine, Everson-Nooksack, Ferndale, Lynden, and Sumas, the prosecutor is a local private attorney under contract. Because these contracts change periodically, contact the specific court for current information.

**Whatcom County Prosecuting Attorney**
Courthouse Suite 201
311 Grand Avenue
Bellingham, WA 98225
Phone: (360) 676-6784

**City of Bellingham, Office of the City Attorney (Criminal Division)**
2014 C Street
Bellingham, WA 98225
Phone: (360) 778-8290
Fax: (360) 778-8291

## Whatcom County Law Enforcement

**Washington State Patrol**
3860 Airport Way
Bellingham, WA 98226-8040
Phone: (360) 676-2007

**Whatcom County Sheriff**
311 Grand Avenue
Bellingham, WA 98225
Phone: (360) 676-6650

**Bellingham Police Department**
505 Grand Avenue
Bellingham, WA 98225
Phone: (360) 778-8800

**Lynden Police Department**
203 19th Street
Lynden, WA 98264
Phone: (360) 354-2828

**Sumas Police Department**
433 Cherry Street
Sumas, WA 98295
Phone: (360) 988-5711

**Blaine Police Department**
322 H Street
Blaine, WA 98230
Phone: (360) 332-6769

**Ferndale Police Department**
2220 Main Street
PO Box 1257
Ferndale, WA 98248
Phone: (360) 384-3390

**Everson-Nooksack Police Department**
111 West Main Street
Everson, WA 98247
Phone: (360) 966-4212

## Whatcom County Alcohol/Drug Treatment Agencies

Ask your attorney which agency to use before scheduling an evaluation (see Chapter 5).

**Advanced Choices**
2505 Cedarwood Avenue, Ste A
Bellingham, WA 98229
Phone: (360) 752-3262

**Assessment & Treatment Associates (ATA), Bellingham**
1752 Iowa Street
Bellingham, WA 98229
Phone: (425) 289-1600

**Bridges Treatment and Recovery**
1221 Fraser Street, Suite E1
Bellingham, WA 98229
Phone: (360) 714-8180

**CCS Recovery Center**
515 Lakeway Drive
Bellingham, WA 98225
Phone: (360) 676-2187

**Clarity Mental Health and Recovery**
722 North State Street, #522
Bellingham, WA 98225
Phone: (360) 676-4485

**Contact Counseling Recovery Services**
316 McLeod Road, Suite 102B
Bellingham, WA 98226
Phone: (360) 671-3277

**Lummi Care**
2616 Kwina Road
Bellingham, WA 98226
Phone: (360) 312-2420

**Nooksack Tribe Genesis II**
2505 Sulwhanon Drive, Modular Building A
Everson, WA 98247
Phone: (360) 398-6399

**Sea Mar**
3350 Airport Drive
Bellingham, WA 98226
Phone: (360) 734-5458

**Visions**
1603 East Illinois Street
Bellingham, WA 98226
Phone: (360) 647-4266

**Waterfront Counseling**
228 Cherry Street
Blaine, WA 98230
Phone: (360) 332-1000

**Whatcom Community Detox (Pioneer Human Services)**
2026 Division Street
Bellingham, WA 98226
Phone: (360) 676-2020

### Outside Whatcom County

**Assessment & Treatment Associates, Mountlake Terrace**
21907 64th Avenue W, Suite 310
Mountlake Terrace, WA 98043
Phone: (425) 289-1600

**Assessment & Treatment Associates, Bellevue**
13353 Bel-Red Road, Suite 101
Bellevue, WA 98005
Phone: (425) 289-1600

## DUI Victim Impact Panels

Judges impose a victim impact panel in practically every DUI case, so complete one while your case is pending.

**Whatcom County Courthouse Council Chambers**
311 Grand Avenue, Bellingham, WA 98225
Arrive 6:30 pm (runs 7:00 to 9:00 pm)
Cost: $50
Sign up: https://www.whatcomcounty.us/806/Victim-Impact-Panel

**Assessment & Treatment Associates (ATA)**
Saturday panels, offered with ADIS.
Call (425) 289-1600 for the current schedule and format.

## Whatcom County Bail Bond Companies

**All City Bail Bonds**
2 Prospect Street
Bellingham, WA 98225
Phone: (360) 734-1111

**Lucky Bail Bonds**
98 Central Avenue
Bellingham, WA 98225
Phone: (360) 734-3503

## Ignition Interlock Companies

Visit these state-approved providers' websites to find the location most convenient to your home or work. Most local offices are franchises, and their addresses sometimes change during the year.

**Smart Start**
Phone: (844) 979-1503
Web: www.smartstartinc.com

**Intoxalock**
Phone: (844) 861-5465
Web: www.intoxalock.com

**LifeSafer**
Phone: (888) 757-2005
Web: www.lifesafer.com

## SR-22 Insurance

Many, but not all, insurance companies will sell SR-22 insurance to their existing customers. That is an option, but we recommend looking elsewhere so that your current insurer does not learn of your situation quite so quickly. Contact our office for information on where to obtain SR-22 insurance.

## Washington Department of Licensing

**Department of Licensing, Hearings & Interviews Section**
PO Box 9048
Olympia, WA 98507-9048
Phone: (360) 902-3900
Web: https://www.dol.wa.gov

**DOL fax numbers for proof of:**
Alcohol/drug evaluations: (360) 570-7044
Hearings and interviews: (360) 570-4950
Restricted driver licenses: (360) 570-7824
SR-22 insurance certificates: (360) 570-7040

**Whatcom County Auditor (vehicle licensing)**
311 Grand Avenue, Ste 103
Bellingham, WA 98225-4038
Phone: (360) 676-6740

**Bellingham DOL Licensing Office (Cordata)**
4180 Cordata Parkway, Suite A
Bellingham, WA 98226
Phone: (360) 676-2096

# About the Author



David N. Jolly is a Washington State attorney who focuses on defending people accused of driving under the influence.

David was born in Australia and spent his youth in Australia and Canada. He graduated from the University of Calgary and moved to the United States in 1994 to attend Northern Illinois University College of Law. After graduating as the class speaker in 1997, he moved to Washington State and began practicing law the same year.

Before opening his own law practice in 2004, he spent more than 7 years as a prosecuting attorney and as an associate with a prestigious Snohomish County law firm.

David has authored more than 40 legal books, including the award-winning *DUI/DWI: The History of Driving Under the Influence*. His law practice has offices in Bellingham and Mount Vernon, and he is also licensed to practice in federal court.