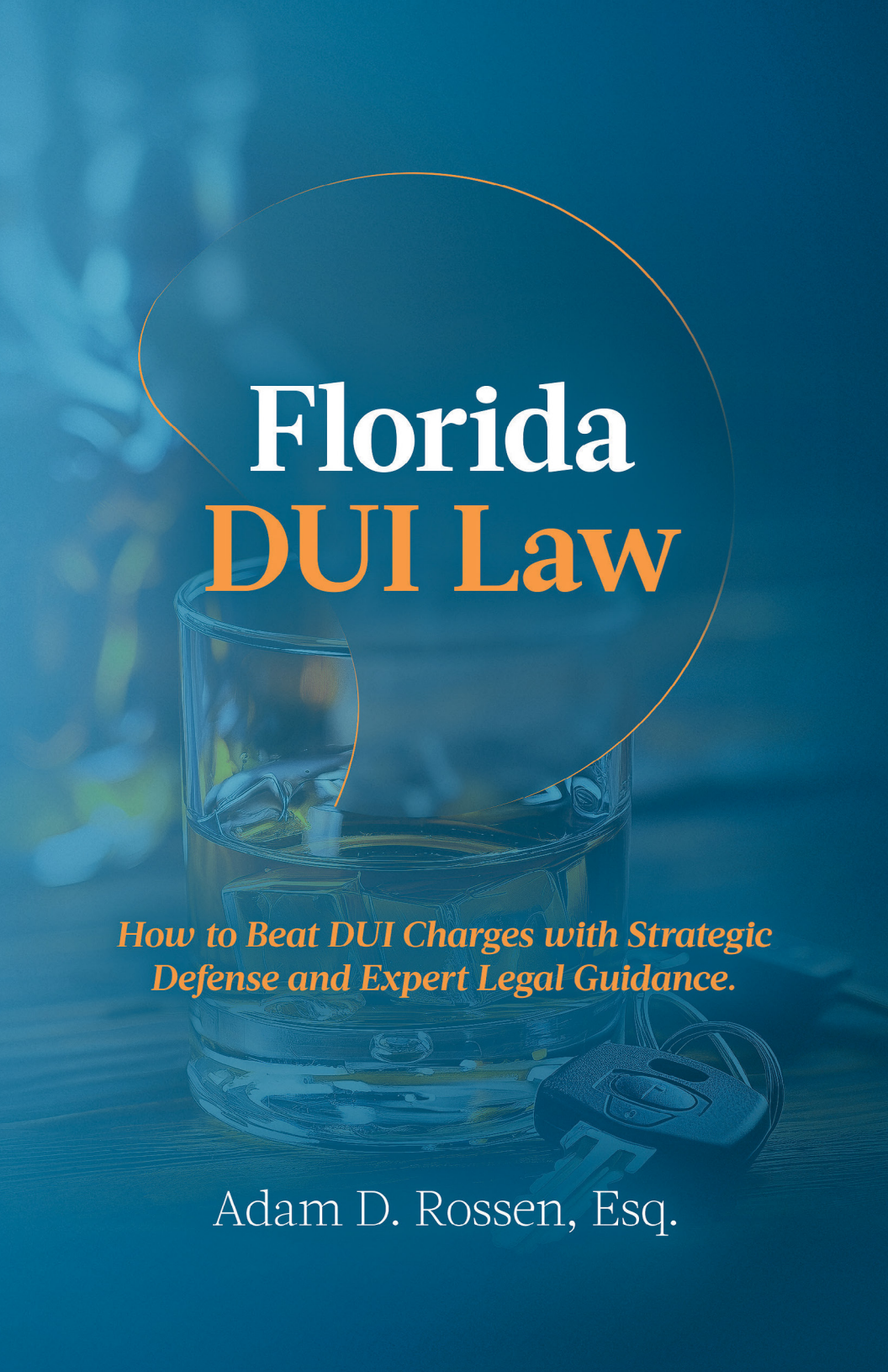

Florida DUI Law

How to Beat DUI Charges with Strategic Defense and Expert Legal Guidance.

Adam D. Rossen, Esq.

ROSSEN
LAW FIRM

HOW TO

Choose the right DUI Defense Attorney

When searching for the right DUI Defense Attorney for you, there are **4 key factors** that you want to look for:

1 Awards and Reviews

The experiences of former clients will give you a good idea of how well the firm handles their cases, so Google Reviews are a great place to start. Awards and certifications are also great indicators of attorney excellence. Look to see if there are Board Certified attorneys on theis team, as a Florida Bar Board Certification is the highest evaluations of experience in criminal law. Another signature of attorney skill is CLEs (Continuing Legal Education). Some lawyers are asked to take these classes. Some lawyers are asked to teach them. Pick the master, not the student.

2 Local Experience

A local law firm is the way to go. Attorneys who have experience in the county where your case occurred will build relationships with prosecutors, judges, Law Enforcement Officers, DMV hearing officers, and other key players in the system. This means they can get you a home-court advantage.

3 DUI Experts

You want an attorney who is a master of DUI cases, not just criminal law. Since DUI cases are unlike any other, a DUI lawyer will have a level of expertise that will serve you well. They know the system inside and out and they know the law down to the letter. The best DUI lawyers in the game know that an “unbeatable” charge is never truly unbeatable.

4 Power of the Team

When hiring a firm, there are so many more people working on your case than just one lawyer. Multiple attorneys will combine strenghts and work the same cases. Legal assistants handle the delicate behind-the-scenes paperwork and preparations. Even the front desk is going to be your access point to the whole defense team. Think of it whis way: Would you rather have a lone wolf? Or the entire wolf pack?

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DEDICATION

This book is dedicated to the good people trying to navigate Florida's DUI laws. For those entangled in the complexities of the criminal justice system and the loved ones by their side, may this guide serve as a beacon, simplifying the journey. Knowledge is power; everyone deserves to understand their rights and face the law with clarity and confidence. Amid challenges, let these pages be your ally, ensuring that everyone gets a fair shot. Thank you for seeking to learn, and may this work make the path ahead smoother and more transparent for all.

DISCLAIMER

This publication is intended to be used for educational purposes only. No legal advice is being given, and no attorney-client relationship is intended to be created by reading this material. The author assumes no liability for any errors or omissions or for how this book or its contents are used or interpreted, or for any consequences resulting directly or indirectly from the use of this book. For legal or any other advice, please consult an experienced attorney or the appropriate expert, who is aware of the specific facts of your case and is knowledgeable in the law in your jurisdiction.

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TESTIMONIALS

"I am very pleased with Adam Rossen as my family's Criminal Defense and DUI attorney. My daughter Betasha, age 6, was tragically killed on her way to school on November 6th, 2013 while accompanied by her grandmother. I hired Adam Rossen and he went beyond his efforts in order to help out my family with both civil and criminal cases. I was well pleased with him. Adam kept me informed and he has returned my calls promptly. Adam also represented my son when he was falsely arrested for DUI in Pembroke Pines, FL. After months of hard work, my son's charges were reduced to Reckless Driving. I have already recommended several friends to Adam Rossen because of his hard work and loyalty to my family. My friends are very pleased with his work on the Criminal Defense cases that he's represented them. I retained Adam Rossen as my family attorney. He is a dedicated attorney to my family. I trust him very much."

– M.B.

****

"I was in a very bad legal situation and Adam was able to assist me better than any other attorney and was able to resolve the issue in a fraction of the time. For all my legal needs, Adam is the first person I turn to. I was on probation for a DUI and made the stupid mistake of getting arrested for another DUI. The prosecutor wanted 2 years in jail and Adam took care of everything for me with great results. I didn't serve a single day in jail for this DUI case."

– B.H.

****

"Adam Rossen is a real lawyer for real people! He is one of the best Criminal and DUI Defense lawyers in South Florida. Mr. Rossen went out of his way throughout my case to make sure that every angle was covered; always in constant contact with me, checking up on me, making sure I understood all options of my case & in addition to that was someone I could talk to regardless if it was regarding my case or not. My case was extremely complicated and if my case wasn't dismissed I would lose my career. It took 2 and a half years to get dismissed. I am extremely grateful. Now I have been able to resume my career in a field that I Love and it's because of Mr. Rossen. Thank You!!!"

– J.D.

****

"I hired Adam after being charged with a DUI a few years back. He helped me understand what the consequences were and helped me navigate to the best solution possible. When getting wrapped up in a case like this, it's very easy to be overwhelmed, by not only the situation but the legal language of the law. Adam was able to translate exactly what was happening throughout the proceedings and give them back to me in layman's terms. I felt like he was constantly working on my case and gave me regular updates on what was happening. Knowing the ins and outs of the system, Adam was able to have the charges reduced, which allowed me to go back to my professional career. He was a great guide from start to finish."

– J.S.

****

"Outstanding Lawyer! Adam Rossen handled two DUI cases for me. I was extremely pleased with how quickly these cases were resolved as well as the outcome of both. DUI reduced to reckless. I would absolutely hire him again. He is very helpful and he patiently took the time to explain the answers to my legal questions. I would also like to say that Adam always answered the phone when I called. And when he didn't he always called back as soon as possible. He is

honest, straightforward, diligent, and a good negotiator. Love this guy! I highly recommend."

– F.S.

****

"I've used Adam Rossen for almost 4 years. He was recommended by a friend when I first was arrested for DUI. He was very honest and straightforward with everything I had to do for my case. In the end, I was very happy my DUI charge was reduced to Reckless Driving. I've used him in other cases with my family and friends. I would highly recommend him to anyone and other friends and family. Adam is one of the best Criminal and DUI Defense lawyers I've found and used. I would recommend him to people time and time again."

– R.C.

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INTRODUCTION

CHAPTER 1

Adam Rossen & Rossen Law Firm

My Story Starts Here

As I was growing up, I loved watching Law & Order on TV. I felt I was really good at debating and defending my position, but I also really wanted to help people. I didn't know what I really wanted to do, but I always knew that I would become either a doctor or a lawyer.

When I graduated from high school, I went to the University of Florida as a pre-med student. After only two semesters, I realized that I was miserable. It soon became apparent to me that I could help people through law – and the law soon became my passion.

I switched my major to criminology, and, about a year later, I decided to add an additional major in psychology. Both of these majors were so interesting, and I thought that a mixture of the two would give me the best preparation for a career in law. So, I went on to graduate as a double major with honors from the University of Florida before heading to the University of Miami for law school.

From day one, I wanted to be like the lawyers on television, practicing in a courtroom. Unfortunately, I realized pretty quickly that law school was more theory than practice for the first two years. I didn't really enjoy the theory, as I was impatient to step foot in a courtroom. But once I got to the trial skills classrooms, things changed. Once I started participating in mock trials and moot courts, I really started to enjoy myself.

Then, An Internship Showed Me What My Career Could Be

At that time, I still didn't know what kind of law I wanted to practice. It wasn't until my third and last year of law school, when I had an internship at the state attorney's office in Fort Lauderdale, that things started to click for me. I loved every single minute of my internship. I was in court every single day, excited and having fun.

During my time as a certified legal intern, I got to conduct five jury trials and even won one of them. In fact, the

defense attorney that I beat has now been a judge for the last 15 years (which is something I still think is cool.)

It was a fantastic experience, and I was pretty much hooked from then on. I had finally realized where I wanted to work and what I wanted to do – I was going to practice criminal law as a prosecutor.

I was hired at the state attorney's office in August of 2006, along with about 30 others. Of my class, I was the first to be promoted just eight months after being hired, in record time. I was prosecuting cases and really helping people, and I loved my job as a result.

After only two years, having been promoted twice before most of my class had even been promoted once, I was handling some pretty serious cases. Sadly, I was starting to become a little disillusioned with my job and with the system. I no longer felt as though I was really helping people in the way that I wanted to be helping them as a prosecutor.

I kept hearing the same stories about the same police officers being accused of doing wrong things. I didn't like how I didn't have discretion and was expected to function, in many ways, like a robot. We were taught that humanity and compassion weren't really a part of the analysis. It was at this point that I made the decision to view cases from the opposite side as a defense attorney.

My First Firm Started In 2008

I've always had a little bit of an entrepreneurial mindset, so I decided to start my own law firm. My roommate at the time, who was also a prosecutor, joined me in creating a law firm in March of 2008. We were together until 2015, practicing criminal defense with a big focus on DUI. We loved our work, defending and representing good people. In 2015, we decided to part the business amicably as good friends, and we remain really good friends.

Rossen Law Firm Was Born

In 2015, the same year I left my first firm, I officially started Rossen Law Firm. We came up with our firm's motto, and it's something that we not only mean but that we live by every single day.

We help good people when bad things happen so they can achieve their best future.

We truly love handling DUI cases. The truth is, DUI is a mistake crime - it's an everybody crime. It can happen to nurses, teachers, doctors, lawyers, construction workers, and almost anybody you can think of. Most people don't go out that night to get a DUI. It's just a mistake that happens.

We love the intricacies of DUI law. I always say that DUI law is way more complicated than most robberies or burglaries. It could even be more complicated than some murders. It is very complex, and we love the complexity of it. We are almost nerds about it when it comes to loving the law and figuring out loopholes in case law. We have a passion for holding the police to the constitutional standards that they're supposed to uphold. We believe in holding the police accountable for those Fourth, Fifth, and Sixth Amendment constitutional law violations.

We love defending the rights of the everyday citizen; we're passionate about it, and that makes us exceptionally good at what we do.

The Psychology Of Criminal Defense

My background in psychology has helped shape the way that I'm able to practice criminal law. Of course, we can be successful in several ways, but sometimes it's just by mitigation. It's not always by fighting, attacking, or defending the case. Rather, getting into the minds of our clients is crucial to building a successful defense for them.

Many of our clients have so much guilt and shame due to being charged with a DUI. You might have gotten a DUI while you were in the midst of a bad relationship, going through a divorce, or experiencing family issues. You may-

have substance abuse or mental health issues contributing to the situation. These factors just compound upon one another. Knowing the psychology behind that is so valuable to getting you the help that you need.

When we cross-examine a witness or take a deposition, there's a lot of strategy involved. There's a lot of psychological decision-making involved in how we defend our cases that most other lawyers just don't.

I look at us and our firm as relationship builders first, community builders second, and the absolute best criminal and DUI defense attorneys third. All of these things matter tremendously to us.

Our Philosophy Of Sharing Knowledge

Many attorneys feel that if they put information behind a curtain and hoard their knowledge and whatever secrets they think they possess, it will lead to people hiring them. At Rossen Law Firm, we're very big on giving you knowledge.

Our philosophy is to educate you and help you truly understand what we do, how we do it, and the why behind it. We have found that this significantly reduces stress and anxiety when you're going through one of the worst times in your life.

CHAPTER 2

The Biggest Mistakes You Can Make

When charged with a DUI, there are several mistakes you want to avoid making. These common mistakes can lead to unfavorable outcomes in your case, but they are easily avoidable with the proper knowledge. At Rossen Law Firm, we are committed to providing the information you need to make the best decisions for your situation.

"It's no big deal."

One of the biggest mistakes a person can make when charged with a DUI is thinking it isn't a big deal–couldn't be further from the truth, and failing to recognize that can lead to even more issues down the road.

A DUI can be one of the most expensive crimes that anybody could ever be charged with. It can also have lifelong consequences financially and in your personal and professional life. Having a criminal record can hold you back from quite a bit of life and advancement.

"Any criminal defense attorney will do."

Another common mistake you can make when charged with a DUI is to hire just any criminal defense lawyer. DUI law is a hyper-specialized subset of criminal law and there is a tremendous difference between attorneys who specialize and have vast knowledge in DUI versus criminal lawyers who masquerade as DUI lawyers. Hiring a lawyer who focuses on DUI law can make all the difference in the outcome of your case.

"I'll wait to hire an attorney until I have to go to court."

You certainly don't want to wait to hire an attorney until you have a court date. In Florida, we have what's called the 10-day rule that plays a part in what needs to be done in order to save your driver's license and what needs to be done at the DMV. The sooner you can hire an experienced DUI attorney, the better your chances are to remedy some of the consequences of your charge.

"I was drinking, so I'm just going to plead guilty."

One of the worst things you can do is walk into court and plead guilty to a DUI. The penalties for DUIs are extremely strict in Florida and can have lifelong consequences.

There's a difference between what the police think happened, what they actually know, and what they can prove in a court of law under the Florida Rules of Evidence and Procedure. Our job as your defense attorney is to hold them to that standard.

"I'm going to plead guilty because I know I have a problem."

Having a problem with alcohol or drugs doesn't mean that you deserve the worst possible outcome of your case. You're going to have to spend a night in jail and spend your hard-earned money on hiring a DUI attorney, and we feel that's punishment enough without having to deal with the lifelong consequences that come with a criminal conviction on your record.

Of course, we strongly encourage you to get the help you need for any existing alcohol or drug problems that led to your DUI charge. When you get arrested for DUI, there is a big process through the DMV where there's a drug and alco-

holevaluation. So, most of the time, you're going to get the help that you need and deserve for these issues.

Don't let your guilt and shame cause you to give up on yourself. Let us fight for you to give you the support you need and a future unhindered by a criminal conviction.

"I can just defend myself."

The quickest way to the worst possible outcome would be to attempt to defend yourself against a DUI charge. The prosecutors and the judges are not there to help you. Their objective is to convict you of a crime.

"He who represents himself has a fool for both an attorney and a client."

It is highly recommended that you not only hire an attorney but that you hire the right law firm with the knowledge and experience to defend you and your rights.

"I can hire a low-cost attorney."

If you hire a low-cost criminal lawyer who dabbles in DUI, there is going to be a stronger likelihood that you'll be convicted. You really are going to get what you pay for when it comes to defending a DUI.

When you hire DUI experts who know these cases inside and out, there's a much lower risk of being convicted. Of course, we can never promise or guarantee any result - we're not allowed to. However, our track record speaks for itself.

The vast majority of our clients end up without ever having a DUI conviction on their record. We have a proven track record of knowing…

- Every single issue that might arise
- Every loophole that exists
- How to fight for your rights

- How to make prosecutors and police work for that conviction
- How to present expert mitigation
- How to humanize our client

These have only been a small sampling of the most common mistakes you can make when charged with a DUI. Having an expert DUI attorney on your side can help ensure that you don't make any mistakes through the process that will have long-lasting consequences.

SECTION II

HIRING THE RIGHT LAW FIRM

CHAPTER 3

The Power Of Hiring The Right DUI Attorney

When you're charged with DUI, it can feel like the end of the road for you - literally. You might think that you will lose your driver's license and your ability to drive, at least for a period of time. This can lead to insecurity about whether or not you will be able to get to and from your place of employment, and, at a time when you are looking at paying for an attorney, this can cause additional stress.

You may think you can save money by simply going through the motions yourself, doing what you're told to do, and hopefully getting through on the other side - eventually. Is hiring an attorney and spending all that money really worth it?

You can try to do it yourself, but the chances of you making a critical mistake are astronomical. The DMV process for DUI arrests is only the beginning and can be the most complicated if you are trying to do it alone. Hiring the right DUI attorney can make all the difference in how you navigate the DMV process and the outcome you'll achieve.

The first ten days following your arrest are crucial. As your DUI lawyer, we will get you your hardship license so that you are back on the road and able to drive to and from your place of employment. You will be enrolled in DUI school and handle it right away, which will not only get you back on the road but will also allow us to set up your case to your advantage later on in the process.

We will then have you file a waiver of appearance, which means that you won't have to go to court. Most of our clients only go to court once or twice out of a six to 12-month period. That's how long it takes a normal DUI in South Florida to be done right. Filing a waiver of appearance shields you from the courthouse and the system.

When you have to show up to court once a month for 12 months in a row, you're going to end up beaten down or broken by the system. People who are beaten down, feeling extreme anxiety about the entire idea of having to go to court, are more likely to give up on themselves and plead guilty instead of fighting.

We understand that going to court is a scary and stressful thing for you. Whether it's the anxiety of simply entering a big building with intimidating metal detectors, the fear of having to miss work to wait three hours to be called before the judge, or the worries of accidentally missing your court appearance and having a warrant out for your arrest. Attending a court hearing can put a lot of undue stress on you during an already stressful situation. We don't want that; we want you to be able to continue living your life so you can achieve your best future.

Let us appear for those routine court appearances on your behalf and alleviate many of those stressors that might lead to your feeling beaten down. We will take depositions and file motions, such as motions to suppress evidence for constitutional law violations. Constitutional law violations are usually not as blatant as a police officer beating somebody up. They are most often minute and complicated details of your rights being violated, that you may not even realize until an attorney well-versed in the law points it out.

This is only one way that the right DUI lawyer can make all the difference in your DUI case, and this alone will be well worth the money.

What To Expect From Your Strategy Session With Rossen Law Firm

Our initial meeting with you is not a consultation, it's a strategy session. Our strategy sessions for DUI typically last an hour to an hour and a half, while other attorneys will give you a 10-minute consultation. This is because we are interested in building the relationship first, which gives us a firm foundation upon which to begin strategizing your defense.

This strategy session is an opportunity for us to learn…

- What you do for a living
- What you have going on in your life

- Where you are currently
- Where you want to be
- What might have led to this situation
- What your idea of your best future looks like
- What your biggest concerns are for this case

For some people, their biggest concern might be jail. For you, it could be having a criminal record. A lot of our clients are most concerned about the stigma of having lived to X years old without ever getting in trouble and now feel they've let their whole family down. Whatever it is, we want to know what is causing you the most anxiety so that we can help alleviate that in any way we can.

We really want to get to know you at a human level, to connect and bond with you so that you begin to feel more comfortable and confident that we will be fighting for you. Relationships are founded on trust, and we really want to put in the effort to build that foundation with you right from the first meeting.

At Rossen Law Firm, we value relationships over transactions. You are more than just a number to us; you are a human being deserving of our time. You really fight harder for someone you know, like, and trust than you do for someone you view as a business transaction. We want to build this deeper connection on a human level before we move forward with the process. This foundation, we feel, is the bedrock of a successful defense strategy.

From there, we will discuss the reports. We go paragraph by paragraph, stopping to give legal analysis so that you can understand, with clarity, exactly what you're being accused of doing.

We educate you on DUI law and any potential issues or motions for trial. We will talk a lot about the facts of your case, what our experience with similar facts is, and how we will defend against those facts for you. We outline the potential defense strategy with you so that you get an idea of what's ahead.

We equate a lot of what we do to what doctors do. That is to say that there are some doctors who go in and have bad bedside manners. They are in and out, not taking the time to get to know their patient, hear their concerns, or explain anything that is going to be happening to them. Then you have those rare, really good doctors who sit down and answer all of your questions, explain things in layperson's terms, and leave you feeling far more comfortable with your situation.

That is the purpose of your initial strategy session with us: To be the good doctor who is going to make sure you walk away from the table feeling like your concerns were not only heard but addressed in a way that gave you some peace of mind. We want to reduce your stress and anxiety, which is what happens when you gain understanding and confidence that there is a plan in place and what to do next.

Any attorney can breeze in and tell you not to worry; they're going to handle it because they play golf with the judge. We believe in telling you the how and the why and ensuring we've explained that in a way you can understand and trust.

SECTION III

THE BASIC ELEMENTS OF DUI IN THE STATE OF FLORIDA

CHAPTER 4

Definitions And Penalties

Elements Of DUI

The three elements of DUI, as defined in Florida, are:

1. Driving or actual physical control of a vehicle
2. Under the influence of alcohol, chemicals, or controlled substances

1 To the extent that your normal faculties are impaire-dOr

3 Had a blood/breath alcohol level of .08 or more at the time of driving

Driving Or Actual Physical Control Of A Vehicle

The first element that must be proven when charging an individual with DUI in Florida is that they were driving or in actual physical control of a vehicle. It's easy to prove that someone was driving but far harder to prove that they were physically controlling a vehicle. That usually comes into play when someone is either in a car crash or they were found sleeping behind the wheel.

The police need to make sure that there's what is called a "wheel witness." A wheel witness is someone who can put the defendant behind the wheel. Many times in car crashes, people never actually saw the defendant behind the wheel. In other cases, if the defendant is found sleeping or passed out, there are a lot of questions you can pose, such as…

- Where are they sleeping?
- Are they in the front seat, the passenger seat, or the back seat?

- Where are the keys?
- Is the car turned on or off?
- Does the car have a push to start or not?

The burden of proof is on the prosecutor, and if the police cannot prove, via a wheel witness, that you were behind the wheel, then that can cripple their case against you.

Under The Influence Of Alcohol, Chemical, Or Controlled Substance

The second element that must be proven when charging a person with DUI in Florida is that they are under the influence of alcohol, chemical, or controlled substances. Everyone knows that alcohol can lead to a DUI, but you can also get a DUI if you're under the influence of illegal drugs. This can include heroin, cocaine, LSD, ecstasy, and more.

You can also get a DUI if you're under the influence of a lawfully prescribed medication, such as Xanax, Vicodin, Percocet, or any other controlled substance. This can even include Ambien now. Driving under the influence of any substance to the extent your normal faculties are impaired will result in a DUI.

Impairment Under Florida Law

Under Florida Statute 316.193, driving under the influence is defined by…

1. **Being under the influence of an alcohol, chemical, or controlled substance to the extent that their normal faculties are impaired.**

As a general issue, the law defines normal faculties as the ability to…

- See
- Hear
- Walk
- Talk
- Judge distances

- Act in emergencies
- Make decisions
- Drive a car

Quite often, what police officers do is confuse "average" with "normal" when it comes to these faculties. We have many people in Florida who were born in many other places all over the country or even the world, and a byproduct of that is that not everyone walks, talks, or acts the same. Some people are naturally cool and calm under pressure, while others are simply nervous by nature.

The bottom line with this is that a normal DUI investigation is 10 to 30 minutes. It's very difficult to know what someone's normal faculties are in such a short period of time under highly stressful circumstances. Police officers can get this wrong quite often, and that can be a big part of our defense.

One thing to keep in mind is that DUI is not drunk driving. Impairment is a lesser standard than drunk. One could be impaired off of a drink or two because impairment is basically any diminishment of your normal faculties. Even

ifthat diminishment is slight in nature, it can be an impairment that leads to DUI.

The police look at impairment in the same way as you might look at pregnancy: There's no such thing as a little bit pregnant. You're either pregnant or you're not. It doesn't matter if you're slightly, moderately, or heavily pregnant. You're pregnant. So, to the police, you're either impaired or you're not. It doesn't matter to what degree; impaired is impaired.

2. **Having a blood-alcohol level of 0.08 or more grams per 100 ml of blood or having a breath-alcohol level of 0.08 or more grams per 210 liters of breath.**

Something that I want you to understand is that the blood or breath test is a confirmatory test. The decision to arrest you on the side of the road is 100% based on whether or not a police officer believes your normal faculties were impaired. It is illegal for a police officer to give you a breath test before being arrested in Florida as long as you're over 21.

So, while having a breath-alcohol level of 0.08 or more is illegal in Florida, this test is nothing more than a means to confirm an officer's pre-existing suspicion that you are impaired. The science behind these tests is significantly flawed. Due to this, it is an area where true DUI lawyers can shine by really attacking and beating breath cases, especially with high breath-alcohol results.

Most criminal lawyers will tell you that if you blew too high, there's nothing that can be done. You shouldn't have blown. That's simply not true, and, frankly, it means that they don't know what they're doing. Not every breath case can be won, but at our firm, we win significantly more than our fair share.

Another part of these tests that can be attacked and won is that the test must be issued at the time of driving. Many times, breath tests are given an hour or even longer after the time of driving.

Lack Of Intention Is Not A Defense To DUI

DUI is not an intent crime. What this means is that you don't have to have the intention of driving under the influence to be arrested for driving under the influence. Even if you are taking a lawfully prescribed controlled substance for a legitimate reason, you can still get a DUI if you are found to be driving with impaired faculties under Florida state law.

This differs from many other crimes, where intent must be proven. If someone is walking down the street, trips, and ends up knocking another person down and breaking their nose, that person could not be charged with battery because they never intended to hit the other person. The intention matters in most crimes, but it doesn't matter with DUI.

No one ever makes the choice to go out, get drunk, and get a DUI. If the intention were an element in charging you with DUI, no one would ever be charged with DUI. DUI, by definition, is a mistake crime. Your lack of intention - your honest mistake of taking a prescribed medication you didn't know would impair your ability to drive - is not a legal defense.

Penalties For DUI Under Florida Law

In Florida, we have some different types of DUIs. The penalties for each will vary, but this is a basic overview.

- **First DUI**

A first DUI can be punishable by up to 6 months, 9 months, or 12 months in jail, depending on the facts of the case. If it's a DUI with a car crash, there is a maximum penalty of one year in jail. If it's a DUI with an enhancement, that carries a maximum penalty of up to nine months in jail. For a regular DUI without an enhancement and without a car crash, the penalty can be a maximum of 6 months in jail or a year of probation.

- **Second DUI**

Although a second DUI is still a misdemeanor and has a maximum jail time of 1 year, it could carry significantly higher penalties depending on when your first DUI was. You-

could potentially have a minimum 10-day jail sentence and a five-year driver's license suspension.

- **Third DUI**

A third DUI can be filed as a misdemeanor or even a felony, depending on when your priors were. You could be looking at up to a year in jail or at a felony of up to five years in prison. Your driver's license suspension could be anywhere from 10 years to permanent. All of the elements are still the same except the felony DUI. They are going to need to prove at least two prior DUIs as part of a felony DUI case.

- **Enhanced DUI**

An enhanced DUI can come in two different ways:

- Providing a breath-alcohol sample of 0.15 or above
- Having a minor in the car at the time of the DUI

So, if you blow twice the legal limit or have a minor with you at the time of the DUI, you will be charged with an enhanced DUI, which could carry enhanced penalties. This could mean longer jail time or a mandatory breathalyzer on your car.

- **Underage DUI**

The penalties for underage DUI are basically the same as all of the other penalties, but the difference is in the legal limit. If you are charged with an underage DUI, the legal limit is 0.02 instead of 0.08. The state of Florida says that they have a zero-tolerance policy, but technically it's a 0.02 tolerance policy. Any small amount of alcohol will get you at that level or above, though.

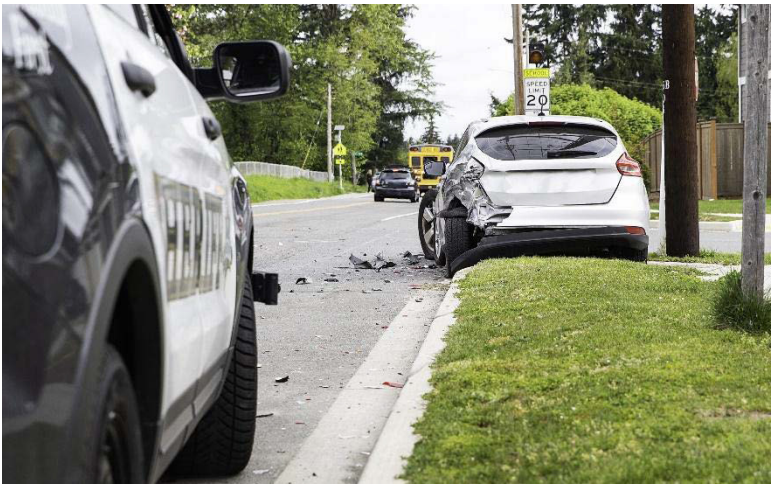
You can also get a DUI in a boat, on a golf cart, or on a bicycle in Florida. These are scarce circumstances, but they are included in the law, and they do happen from time to time. The penalties for these would be the same.

SECTION IV

DUI ARREST AND INVESTIGATION

CHAPTER 5

The DUI Investigation: How It's Triggered And What You Should Do During It



A DUI investigation begins with any simple traffic infraction. The things that you do wrong on the road at 9 AM and at 2 AM are all the same. You could be speeding, weaving, drifting, running a red light, or even just having an equipment violation. You could have too dark of tint on your windows or a broken tail light, or you could be in a car crash. Car crashes happen at any time of day or night and for any number of reasons. You could even just be found sleeping in your car, which happens every day on a person's lunch break at work or if you've pulled over during a long drive.

This is where the DUI investigation begins, though. You are pulled over for any number of reasons and it can lead to a police officer suspecting that you were driving under the influence of a substance, that your faculties are impaired, and that is how the investigation is initially triggered.

Psychological Conditioning: How You Talk Yourself Into Thinking You Can Talk Yourself Out Of A DUI

You are psychologically conditioned to talk your way out of a perceived conflict. A very common mistake you can make is telling the police officer that you've only had two beers and you're not drunk. This is because you think that DUI is drunk driving.

Many people have talked their way out of a speeding ticket before or gotten a break from a police officer. Even if you haven't, everyone in the world has talked their way out of a conflict with a loved one or with some other entity in their life. We are psychologically conditioned and trained to try to talk our way out of unfavorable situations.

Whether you grew up thinking that police officers were the good guys or the bad guys, you were also conditioned to see them as authority figures. They have their gun, their badge, their uniform, and all the accouterments of authority on plain display. When they approach you, they inspire in you the desire to make your case and win their understanding.

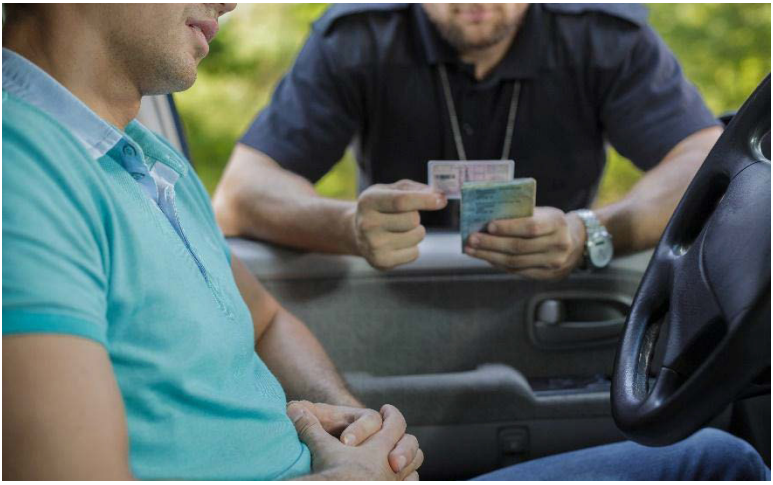
Unfortunately, this psychological conditioning ends up hurting you. It hurts you in the short term, and it hurts you in the long term, too.

Understanding Your Rights

It's important that you understand that there are no requirements for you to be cooperative. There is a big difference, of course, between politely declining to cooperate and becoming resistant or being a jerk. You're allowed to say "no, thank you." That doesn't mean you're being disrespectful or a jerk, and it doesn't mean that you're going to make the situation worse. In fact, you're going to make your situation much better in the long run.

CHAPTER 6

The Initial Interrogation



More often than not, a DUI investigation is triggered by an odor of alcohol on someone's breath during a routine traffic stop or at the scene of a car crash. This order will trigger some initial questioning, such as…

- Where are you going?
- Where are you coming from?
- Did you have anything to drink?
- Who were you with?
- When did you drink?
- What did you drink?
- When did you stop drinking?

While you may feel the compulsion to answer these or any other questions the police officer might ask you, you aren't legally obliged to answer them. It is much better for you to politely decline to answer than for you to lie. We strongly discourage lying in any situation, but even telling the truth during a DUI investigation can be detrimental to you. The best answer you can give is a simple "No, thank you."

While you have your Miranda rights, they're really only partial. You have the right to remain silent, but you generally don't have a right to an attorney on the scene during a DUI. In Florida, DUI is one of the only crimes where this is the case. If they're investigating you for any other crime - drugs on the side of the road, robbery, burglary, murder - if they're going to question you, they have to read you Miranda and, if you invoke the right to an attorney, they have to get you your attorney. You do not have this right to an attorney during the DUI investigation.

On television, you always see the police read a person their Miranda rights when they're handcuffed and arrested. In real life, it's different. In order to trigger your Miranda rights, you must be in a position of custodial interrogation. Being in a police officer's custody doesn't always have to look like being in handcuffs or in the back of a police car. For example, if you're stopped for speeding, you aren't able to say "No, thank you, officer, I don't really feel like getting a speeding ticket-

today," and then just drive off. You are in that officer's custody when they stop you for speeding and driving off would be a felony, fleeing and eluding the police.

Any time you're stopped for a traffic infraction, you are detained. You are in the custody of the police, according to Miranda purposes. It has to be followed by an interrogation, which is considered any question or statement that is likely to lead to an incriminating response. The police officer could say something like, "Boy, it smells like weed in here." The driver might respond, "Sorry, I just smoked." This exchange would then trigger the officer reading your Miranda rights.

You have now said something incriminating, and if the officer did not read your Miranda rights before this exchange, your admission to smoking weed may be suppressed as a violation of your Miranda rights.

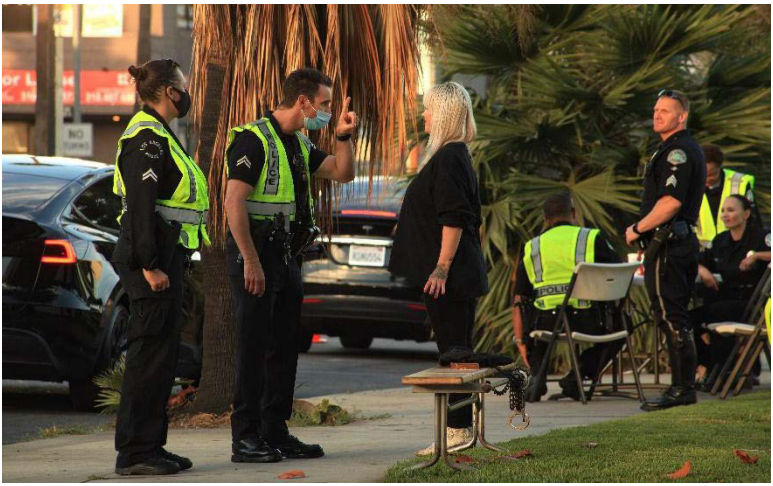
That being said, in a DUI situation, you do still have the right to say no thank you, but the police don't have to tell you about your right to say no thank you. It's one of the interesting differences in Florida DUI laws. It's one of the only crimes in Florida where the police aren't legally required to tell you that you have a right to remain silent and not talk to them.

This allows police officers to gather information during this initial questioning about where you are going, where you are coming from, what you drank, and how

muchyou drank. Every single case is going to say that the officer suspected impairment due to either the odor of alcohol, bloodshot or watery eyes, a flushed face, slurred speech, or slow and lethargic movement. Any of these things trigger their ability to investigate you for DUI.

CHAPTER 7

Field Sobriety Exercises



After the initial interrogation, the police officer is going to ask you to step outside of your vehicle. We always recommend that you cooperate with this request by calmly stepping out of your car because if you don't, this will usually escalate the situation. You can anticipate that they will try, at this point, to do the field sobriety exercises.

The officers do this to determine if your normal faculties are impaired. Everyone has the right to refuse the field sobriety exercises with a simple no thank you. There is no legal penalty for refusing the field sobriety exercises, meaning that you will not lose your driver's license. You only will lose your driver's license if you refuse a breath, blood, or urine sample, which is much later in the process.

Suppose you do refuse the field sobriety exercises. In that case, however, the police will usually tell you that they have to make their determination upon the evidence that they've seen thus far, and they're allowing you to dispel their suspicion.

They're challenging you to prove them wrong, and if you say no thank you, you're going to get arrested for DUI. It's important to understand that 99.9% of the time, you're going to get arrested for DUI whether you do the exercises or not. There is virtually no margin for error with these exercises and they are incredibly difficult to pass, even for a fully sober individual. This is the subjective decision by the police officer who has most likely never met you in your life and doesn't know what your normal faculties are.

Police officers are trained to exercise caution. The problem with this is that police believe that exercising caution means making an arrest and taking you to jail. For most of our clients, this is a life-altering situation. Their caution is not in your best interest to prevent you from having your life ruined or disrupted. They will make an arrest based on a very low standard, which is called probable cause, and defend it in court.

Florida's Field Sobriety Exercises

There are up to five field sobriety exercises that they generally do in Florida. Three are standardized and approved by NHTSA, which is the National Highway Traffic Safe-

tyAdministration. There are two other exercises that they will do that are not standardized.

The police are supposed to ask you if you have any knee, back, or ankle injuries, but oftentimes, they will only ask you if you have any disabilities. There is a big difference between injuries and disabilities when the goal is to get someone to do these exercises. These guidelines actually say that if you're 50 pounds overweight, these exercises should not be done. These guidelines also say that if you have any knee, back, or ankle injuries, these exercises should not be done standing up, and seated ones should be offered.

There are three seated exercises available, but most police officers aren't trained in them and don't even know how to do them. A lot of our clients do have knee, back, or ankle injuries and have said that the police will just move them on to the next step of doing the standardized field sobriety exercises, which are standing, walking, and balancing in a complex and unnatural way.

The five field sobriety exercises are…

1. **Horizontal Gaze Nystagmus**

The Horizontal Gaze Nystagmus, or the HGN, is commonly called the pen test. This is the first standardized field sobriety exercise. They are looking for Nystagmus in your eye, which is your eye twitching. It's like when a dirty windshield wiper is stuttering or twitching instead of smoothly tracking against the windshield in the rain.

There are significant problems with the way that the police do this exercise. They're not properly trained to perform the HGN. It takes roughly four to five solid minutes to do and most officers rush through it. They have to hold the pen usually between 6 and 12 inches away from your face, and they never measure that. They are looking for Nystagmus prior to 45 degrees, which can change depending on how far the pen is-

from the face. When you're talking about geometry and angles, it's paramount that you're measuring correctly.

There are about 53 other valid medical reasons for Nystagmus in your eyes besides alcohol. Officers are not trained in what these other medical reasons are or how to exclude those reasons. They aren't trained or qualified to ask the appropriate questions to conduct a medical evaluation and determine a proper diagnosis.

Due to all of those reasons, most of the courts in Florida don't allow the officers to testify about the scientific nature of the HGN unless they are DRE certified, which means they are a drug recognition evaluator with special certification. When they are not allowed to testify to that, they usually will still be allowed to testify to any balance or coordination issues or lack of following directions that occurred. For instance, if you moved your head instead of just your eyes or if you swayed.

Jurors, we have found, tend not to put much stock in this field sobriety exercise.

2. Walk and Turn

The standardized Walk and Turn exercise is one of the most complicated exercises they can give you at the roadside. They're going to put you in an instructional stance with one foot in front of the other, with your arms down by your side, and they're going to give you rapid-fire instructions. There can be as many as 20 to 25 different instructions, all while you're supposed to stand with your arms down by your side and your one foot in front of the other heel touching your toe.

What you're going to do is walk nine steps forward, heel touching toe, with your arms down by your side. You're going to be looking down and counting out the steps. Then, you're going to take a series of small steps, turn around, and do the same for nine steps back to where you started.

There's really no leeway in this exercise. If you step off the line, even once, the officer can use that to say that they believe you are impaired. Any small deviation from these 20 to 25 different instructions can be used to say you are impaired. The stance is very uncomfortable and unnatural, and it's incredibly complicated for 100% sober individuals to pass the exercise.

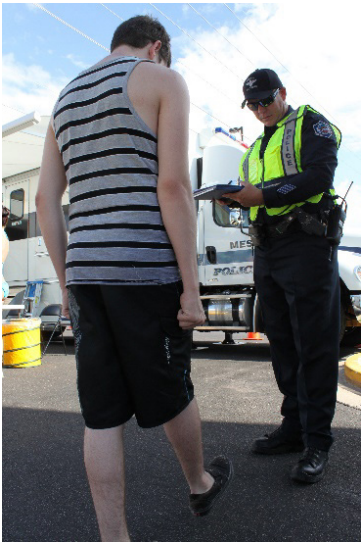
Many police officers will use an imaginary line or they'll use the fog line that's on the right side of the road right next to the gutter or the sidewalk. That white fog line is slanted, which can skew the exercise.

All of these exercises are supposed to be done in a well-lit area that is free and clear of debris. We've had many cases where we've gone out or had our private investigator go out with a level and show that the ground was slanted where the exercise took place. When you see the bubble all the way on one side, you don't need an expert witness to tell you that the area is not flat and level.

We've seen certain cases where our clients have done this exercise in the rain, standing in puddles. Well, puddles form because of uneven ground. Water will seek its own level and fill in the gaps of the uneven ground that is going back to that fog line. Again, that fog line is slanted specifically for water drainage and run-off on the streets. It's not there to be used as a line for the walk-and-turn field sobriety exercise.

Another thing that can impact the field sobriety exercise is the red and blue, extremely bright, flashing LED lights of the police vehicle. Police officers should turn them off or only turn on their rear strobe lights because they will typically have the exercises done in front of their vehicle so they can have their in-car camera pointed in that direction. The strobe lights can be either blinding or reflecting back off of street signs, which creates disorientation that will negatively impact a field sobriety exercise requiring balance.

3. One-Leg Stand



The One-Leg Stand is the third standardized field sobriety exercise. It is done by lifting one leg about six inches off the ground and balancing on the other leg. You will

balanceon one leg with your arms down by your side while counting from 1,000 to 1,030. There are also about 10 to 15 different instructions on this test, making it very difficult.

If you raise your arms for balance, that's a violation. If you put your foot down, that's a violation. If you hop, that's a violation. If you switch feet, that's a violation. The list of possible violations goes on and on.

4. Finger to Nose

The Finger to Nose exercise is a non-standardized exercise, which is one of the most complicated ones. The Finger to Nose begins with your feet together and your arms out with your index fingers pointing out. You are in the shape of a cross or a T. In this position, you close your eyes and tilt your head back. The officer will then say left or right, directing you to bring either your left arm or right arm in to touch the tip

ofyour finger to the tip of your nose before returning your arm to the starting position to await the next command.

Through this exercise, the officer is looking for your ability to follow instructions and your balance. They will usually put you on a side view and every time you don't touch the tip of your finger to the tip of your nose, they're going to mark you off.

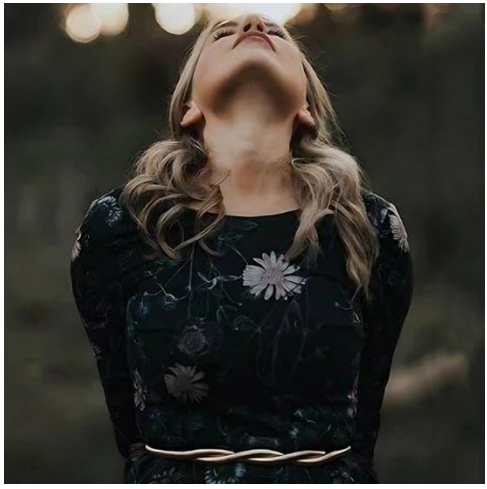
Often, people will use the pad or side of their finger, not because they're impaired, but because they didn't understand how specific the fingertip is to the exercise. It's also very hard to have your head all the way tilted back and your arms out without swaying. Another common violation is that you might leave your finger on your nose until you receive the next direction instead of returning to the first position in between.

There are a lot of different ways that people can make mistakes in this exercise, and the vast majority of them are simply from a lack of understanding or a learning perspective. These are highly specific, highly complicated things that most people have never, ever done in their lives. The very first time they're doing it is under the stress and anxiety of a potential DUI arrest.

It's always favorable to have teachers, coaches, trainers, and managers on the jury when a part of the defenseis

that these are highly complicated exercises and the defendant still did pretty well. It becomes very evident that the police officer is just being very nit-picky about them. When we have those types of jurors, they understand that part of the learning process is to practice. You try and fail and try again until you're able to get better and do it. Police officers expect perfection every time, but these jurors understand that perfection isn't realistic.

5. Romberg Balance



The Romberg Balance is another non-standardized field sobriety exercise. It requires you to stand with your feet together, eyes closed, your head tilted back, and your arms-

down by your side. While in this stance, you try to estimate 30 seconds.

If you estimate anything different than 30 seconds, you fail. If you sway or have any balance problems, you fail. If your eyes flutter, you fail.

In addition to these five exercises, they also have seated exercises for anyone with knee, back, or ankle injuries. The problem is that police rarely give these seated exercises. They are even more confusing than the standing ones, and most police don't even know how to do them.

The point of these field sobriety exercises is to determine whether or not someone's normal faculties are impaired. The problem is that a police officer who has never met you is highly unlikely to know your normal faculties. Whether or not your normal faculties are impaired is an opinion, not a fact. The standard by which to arrest you is probable cause, which is about 40% guilty. They're giving you these highly confusing exercises under duress in stressful circumstances that are impossible even if you're completely sober.

The law says that an individual is under the influence to the extent that their normal faculties are impaired. Police officers confuse normal with average because they have no idea what your *normal* faculties are; they're just assuming what

the average person should be able to do. They're assuming your mental capabilities, your physical capabilities, and your ability to learn and understand. And, during these exercises, most people are preoccupied with the implications of getting a DUI to a degree that they can't focus on the instructions.

CHAPTER 8

After Arrest: What To Expect & What They Won't Tell You

Either upon completion of the field sobriety exercises or if you refuse them, you are likely to be arrested for DUI. The decision to arrest you on the scene has nothing to do with a breath test, blood test, or urine test because it's illegal for them to give you those tests before arresting you.

The standard of evidence that the police officers need to meet to arrest you for DUI is probable cause, meaning that you are about 40% guilty based on their opinion of your behavior. Only once they arrest and handcuff you are they-

going to ask you to give a chemical test, usually in the form of a breath test.

While some police officers now have breathalyzers in their cars, the vast majority still don't. As a result, your test will occur down at the station. Usually, you will be tested at the breath alcohol testing facility (sometimes called the BAT center), which is a separate part of the station specifically for DUIs.

CHAPTER 9

Implied Consent Laws & Refusing A Chemical Test

If you refuse to give a chemical test, an officer has to read you Florida's Implied Consent Law. At this time, they only have to tell you what the law requires of them, which is what the consequences are for refusing the breath test. These consequences are…

- Your license will be suspended for 12 months if it's your first time refusing a breath test,
- Your license will be suspended for 18 months if it's a subsequent time refusing a breath test, and
- A second time refusing a breath test is an additional crime, which is a misdemeanor.

The things that law enforcement won't discuss with you at that time make for a much longer list. For example, they won't tell you that you'll likely be able to get a hardship license for the entire duration of the suspension, which means that you won't lose your ability to drive.

They also fail to tell you that if you give a breath test and it's over the legal limit, your license will be suspended for six months. Or that if you blow under the legal limit, you will still be arrested and detained.

They *won't* tell you that blowing under the legal limit will actually just mean that they now believe you're under the influence of drugs, not alcohol, so you'll need to give a urine test. They also won't tell you that if you don't or can't pee in front of them, they count that as a refusal, and you will still have the same penalties as refusing the breath test.

The fact is, they won't tell you anything that might skew your decision to comply with the breath test. This means you're only getting about 25% of the truth when they read Florida's implied consent law. As a result, you'll be forced to make a very important decision under duress without being given 75% of the facts.

This is a highly suggestive and even coercive tactic used to pressure you into compliance. It's wrong, and it's

whywe at Rossen Law Firm, believe so strongly in equipping you with the knowledge you need to make the right decisions in these situations.

You should know your rights and see that it's okay to refuse. Of course, if you do, you'll have to deal with the administrative red tape that follows – but it's your right to make that decision yourself.

CHAPTER 10

Blood Tests: Requests, Subpoenas, & Warrants

In Florida, police officers are not allowed to ask for a blood test unless a breath test is impossible or impracticable. Generally speaking, an officer may believe a breath test is impossible or impractical if there is a car crash or if there's a medical issue that requires a trip to the hospital.

In the state of Florida, the only way to get a warrant for a blood test is if there is a death or serious bodily injury where they have probable cause to believe that a DUI had been committed. In the case of death or serious bodily injury, the police or prosecutor can get a warrant for a forcible blood draw. However, there still needs to be probable cause for a DUI-

in order to get a judge to sign off on a warrant. In those particular cases, they can get your blood against your will.

There are two types of blood results:

1. **Legal blood**

Legal blood is blood taken for the purposes of a DUI investigation, usually by a nurse or fire rescue, at the direction of law enforcement. A lot of challenges exist in cases involving legal blood as they are very complicated, and the police will often make a lot of mistakes. Fortunately, that means these are very winnable cases when you know what you're doing, and an expert DUI lawyer will know exactly what challenges can be used to attack the case.

2. **Medical blood**

Medical blood is taken at a hospital or by a medical provider for the purposes of medical diagnosis. When you go to the hospital and the medical staff needs to know whether or not to give you a particular medication, they're going to need to take your blood to see if there's any alcohol in it. This is because many medicines - morphine, Vicodin, Percocet, etc. - can have a synergistic or amplifying effect when mixed with alcohol.

However, unlike legal blood, medical blood is protected under your HIPAA rights, so police and prosecutors

can't automatically get access to this information. To get access to your medical records, they must send you a notification that they intend to seek a subpoena to get those protected records. By law, you have ten days to object to their request.

If you go to the hospital regarding a DUI you may not be arrested right away, but you will still need to have a lawyer. Your lawyer will get right to work on objecting to the subpoena of your medical records and attending a special hearing with the judge called the Hunter Hearing.

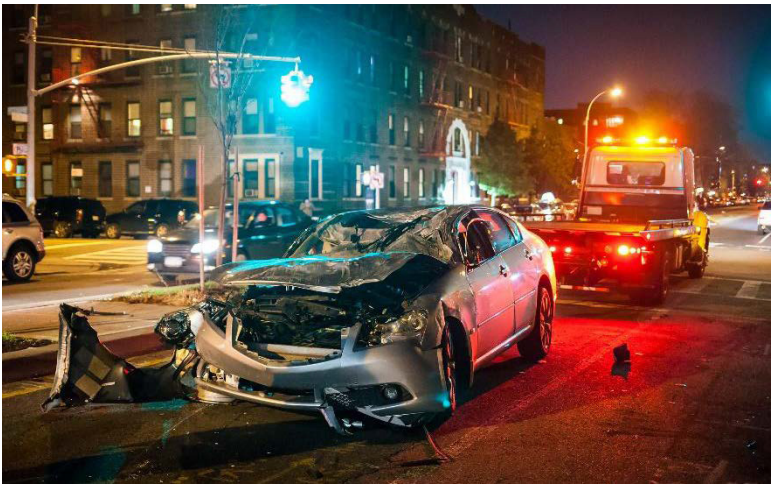
The Hunter Hearing

To get ahold of your records, prosecutors just have to show in the Hunter Hearing that there is some kind of nexus or connection between seeking the records and the potential crime of DUI. This is a very low standard, but our job as your attorney is to make the prosecutors go through the motions and work for it.

We've handled many cases that we've won because prosecutors simply forget to set a Hunter Hearing following our objection to their request for the subpoena and never get access to our client's medical records as a result. We've also won many Hunter Hearings, (even though they can be very hard to win) by successfully convincing the judge that there is no nexus and that the subpoena is a mere fishing expedition on the prosecution's part.

CHAPTER 11

DUI Cases Involving Car Crashes



When a car crash is involved, the entire procedure for DUI is different from start to finish. Only attorneys with expertise in DUI law will be able to win car crash DUI cases due to how highly complex they are. Fortunately, our firm has been handling cases of this nature for years, and we pride ourselves on having a great track record of winning cases for our clients.

The Role Of The Witnesses

The very first element that must be proven in a car crash DUI investigation is that the individual was driving or in actual physical control of a vehicle. With most car crashes, the-

only person to witness our client behind the wheel would be another civilian. But, sometimes, the witness never actually sees our client get out of the car.

Being in a car accident is a very scary situation. Airbags deploy, there's smoke, dust, debris, and a lot of confusion – so it's not unusual for someone to admit they never saw the other person behind the wheel. They may have assumed they were driving based on them being at the scene, coming and talking to them, or maybe sitting on the curb near the vehicle. But if nobody can put the client behind the wheel, it's a straightforward way to win a complicated car crash case.

In other instances, witnesses will disappear because they just don't want to be involved. In Florida, tourism is one of our major revenue sources, so there are a lot of people who are here for vacation from other states or even from different countries. If the witness is from out of state or country, they very likely won't want to return for a DUI case. Of course, the prosecutors will try to fly them back, but that doesn't mean they will cooperate.

This differs significantly from a regular DUI where police officers are the only witness and, as long as they're still on the force, they don't have any reason not to show up.

How A Car Crash Investigation Turns Into A DUI Investigation

Florida has what is called "accident report privilege." What that means is that if the first officer comes on the scene and they're investigating a car crash, you have to tell them what's going on with the crash by law. Any of your statements made to the crash investigator won't be used against you.

Since the law requires you to cooperate with the crash investigator, you certainly can't be penalized by having those statements used against you in a criminal DUI investigation. The accident report privilege is there to protect you because they want to encourage you to cooperate and explain what happened in a car crash. So, the statements you make to the first officer on the scene will automatically not be allowed to be used against you for the criminal DUI case.

However, the crash investigator's observations can be used against you. Their observations may include…

- Bloodshot, watery eyes
- Slurred speech
- Flushed face
- Balance issues

Only your statements are protected by the accident

report privilege, not any other observations that the officer may make. What will usually happen is that the initial officer will call a different officer in to investigate the DUI suspicion. There is a very specific procedure that must be conducted in a car crash DUI investigation, which involves the officers 'changing hats' and reading Miranda Rights.

Changing hats is done by the officer making a clear statement that they are switching from a crash investigation to a DUI investigation. An example of this statement might be, "The crash investigation is done and complete. I am now switching to a criminal DUI investigation. Do you understand?" Then, according to the law, Miranda rights must immediately be read to you.

Unfortunately, in about 90% of these cases, police officers strategically and deliberately do not read you your Miranda rights. Why is this? Our theory is that they know that reading you your rights is essentially them telling you that you don't have to speak to them, answer their questions, or take any field sobriety tests. They don't want to help you say no to them or stop cooperating with them.

Your Rights In A Crash-Related DUI Investigation

We wish that the penalty for a police officer violating your rights and not reading your Miranda would be that the

entire car crash DUI case goes away, but that doesn't happen. Ifthey stopped you illegally or if they can't prove you were behind the wheel or in actual physical control, the case would go away, but the same isn't true if an officer violates your rights.

If it so happens that if an officer does not read you your rights before switching to the DUI investigation, any statements that you make in violation of your Miranda rights will go away. For example, if the officer asked you how much you drank and you told him a six-pack, that statement wouldn't be admissible in the case because the officer failed to read you your Miranda rights. While your entire case isn't thrown out, this can still be very helpful to your case because these are now bad statements that the jury will never hear.

Judges in Florida law have held that field sobriety exercises are non-testimonial in nature, so any performance on these exercises would not go away or be suppressed as a result of the officer failing to read you your Miranda rights. Even though you may be speaking to parts of these exercises while doing them, the acts that you're doing on video can be used against you even if they violate your rights in this situation.

How To Fight Car Crash DUI Cases

Just as with regular DUI cases, we can attack and fight the factual issues about whether or not your normal faculties

were impaired. In car crashes, airbag deployment can lead to-concussions or even traumatic brain injury. Whether that injury is slight, medium, moderate, or heavy, the symptoms of a concussion are the exact same as being impaired by alcohol.

These symptoms can include…

- Confusion,
- Dizziness,
- Lack of balance,
- Lack of coordination, and
- Slurred speech.

All of these things can become a serious factor, especially if you're shaken up in a car accident. Your heart is pumping, you're terrified, and you hit your head or had a big jolt from the seatbelt. What's more, studies have shown that being involved in a crash can leave people concussed or with concussion-like symptoms even if they didn't hit their head or the airbags didn't deploy.

This is especially important because, a lot of times, police officers don't even request fire rescue at a crash scene. If fire rescue is there, they're basically just doing a very cursory examination. They're not really evaluating people to the extent that they need to be evaluated after a car crash. Unfortunately, there have been plenty of cases where clients are clearly suffering from some kind of medical issue, and rather than get

them medical attention, the police just gloss over it and go through the process as if it was just a normal speeding DUI case.

You can suffer knee, back, or ankle injuries in a car crash that can be used to our advantage to nullify your performance on the field sobriety exercises basically. The video of that performance is going to be used to say that your normal faculties were impaired, but no matter how bad you look in these videos, you can still win. If the jury is convinced that the issue was caused by a medical issue or injury from the crash rather than alcohol, we have found that they will often completely disregard that video of your performance.

SECTION V

DMV VS. YOU: THE ADMINISTRATIVE DMV PROCESS

CHAPTER 12

10-Day Rule

When you get arrested for DUI, you're going to have two cases. Here, we like to describe it as having the right hand and the left hand. This is because these two cases are separate and independent of one another, each case has entirely different rules and procedures that you have to follow, but they're both connected to the same set of facts: your body.

On the right hand is the criminal case. This is the State of Florida versus you. You're going to have to deal with the criminal charge where you go to court, have a prosecutor, a defense attorney, a judge, and possibly a jury. The criminal side of the DUI process is going to take anywhere from 3 to 12 months, on average.

On the left hand, you have the administrative DMV process. This is the DMV versus you. This process addresses the question of whether or not you're going to be able to continue driving. From the time you are released from jail, you have ten days to make a decision about the DMV process. The 10-day rule gives you only ten days to save your driver's license and address the situation with the DMV.

Obtaining A Hardship License

A hardship license, or a restricted driver's license, allows you to drive for the duration of your suspension. If you blow over the legal limit, it's good for six months. If you refuse the breath test, it's good for 12 months. It permits you to drive only for…

- Going to or from work,
- Going to or from your place of worship,
- Going to or from school,
- Taking care of your children,
- Getting groceries,
- Going to and from medical appointments,
- Going to or from the courthouse or your attorney's office, or
- Anything necessary to maintain your life, your livelihood, or the livelihood of your dependents.

(It's important to understand that while driving to and from work, you would not be allowed to stop on the way to work and pick up a co-worker. That is not allowed.)

Whether or not you obtain a hardship license or a hardship permit is based on whether or not you waive your formal hearing review. You need to decide this within that 10day period after leaving jail.

CHAPTER 13

The DMV Decision – Don't Let an Inexperienced Lawyer Steer You Wrong

One of the easiest ways to spot an expert DUI lawyer from an inexperienced one is surrounding the DMV decision process. There are two key choices to choose from, and making the right decision can help win your case.

If you have never had a DUI anywhere in the world, you have the option of waiving your right to a formal hearing. There can be pros and cons to waiving this, however. If you waive your right to a formal hearing, you are effectively pleading guilty at the DMV.

Pleading guilty at the DMV has no bearing on your criminal case whatsoever (although it will remain on your driver's license for 75 years). In fact, a criminal lawyer who is not well-versed in DUI law might tell you that if you waive the hearing, you'll get your hardship right away. As long as you have enrolled in DUI school within ten days, you are entitled to get your hardship for the entire duration of your suspension.

This is very attractive to most people, of course. When they're told that they can continue driving for their entire suspension and all they have to do is waive their right to a hearing and take some classes, many people will take that option. Unfortunately, the process is no longer quite so simple.

In the past, you would be able to go through that DMV process within a few days, get your full hardship, and slide right into that 6 or 12-month full hardship with no problems. Currently, the DMV is extremely underfunded and well behind those standards. That entire process is now taking between 30 and 45 days.

What ends up happening is that you're able to drive with zero restrictions within the first 10-day period, you waive your formal review, and then you have to wait over a month for your hardship license. That's over a month of no driving at all simply because the DMV can't get their part done due to being underfunded and understaffed.

So, in addition to pleading guilty and having that on your driving record for 75 years, there now is not even a true benefit to waiving your right to a formal hearing. As such, we discourage our clients from waiving their right to the formal hearing unless it is absolutely necessary.

Formal Hearing Review Process

A formal hearing review is the DMV's version of a "trial." Once requested, this formal hearing review must take place within 30 days of the request. You are able to push back the date of your hearing if necessary, but the burden is on the DMV to bring you to a final hearing within 30 days.

Additionally, when you request a formal hearing review, the DMV will give you a 42-day hardship permit. This permit is on paper with a red stamp, as opposed to a full hardship, which looks just like a driver's license.

The hearings are conducted over the phone by a DMV field hearing officer – a non-attorney DMV employee who works in this department as both the "judge" and the "prosecutor" of your case. You are allowed to subpoena witnesses, (both civilians and police officers), and the burden of proof is a much lower standard than that of a courtroom.

In fact, the DMV is only held to a standard based on the preponderance of the evidence, or 50.1% versus 49.9%likelihood of guilt, as opposed to criminal cases where

the standard of guilt must be "beyond and to the exclusion of every reasonable doubt," which is closer to 90% to 95% guilt.

The Benefits Of Requesting A Formal Hearing Review

Based on a review of the process above, you can see how these hearings are truly stacked against you. The DMV itself reports that every year, they win about 95% of the time. That means in 19 out of 20 hearings, they will rule against you.

As a result, you might be wondering why you should bother going through this process if the odds aren't in your favor…

The first benefit of having this formal hearing is that we get to subpoena the officers and get an early opportunity to question them about the case. While the results of the DMV case can't be transferred over to the criminal case, the testimony that we get from police officers under oath can be transferred over into the criminal DUI case.

We've had many cases, especially in Palm Beach and Miami, where the criminal judges don't freely give us depositions. However, we've won these cases because we had this early opportunity to question the officers, grill them, and lock them into a story. We even at times, have to keep a poker face when we're in the middle of a DMV hearing and realize

we're going to win the criminal case based on the officer's testimony.

The other benefit of going through the DMV hearing process comes specifically from working with our firm. Our win rate in DMV cases is roughly 33%, more than six times higher than the average. We do the extra work, subpoena the officers, and get the testimony that will carry into the criminal case. We see the big picture, understand all of the moving parts, and we feel that it's far more favorable for our clients to go this route instead of waiving their right to the hearing just to get their hardship more quickly.

Most criminal attorneys who aren't experts in the area of DUI will tell you that you don't need to go through this hearing or that they don't handle the DMV process and that you should just waive it and get your hardship. We fundamentally disagree with this practice. A true DUI lawyer knows that the benefits of having this formal hearing far outweigh any potential downsides.

Potential Outcomes Of Your DMV Case

If we win your DMV case, you will get your full license back with no restrictions. Ultimately, the future of your license is still dependent on the outcome of your criminal case, but for the pendency of the criminal case, your license will not be

suspended at all. What's more, the DUI suspension will not appear on your driving record.

On the other hand, if we lose your DMV case, there will be a hard suspension period. This is a period of time where there is no hardship license granted, and you are unable to drive for any reason at all.

The Period Of Hard Suspension Varies By The Facts Of Your DUI

First DUI with a breath test	30-day hard suspension
First DUI refusal	90-day hard suspension
Subsequent DUI with a breath test	30-day hard suspension
Subsequent DUI refusal	18-month hard suspension

Appealing Your DMV Case Outcome

Regardless of what type of suspension you're facing, if you lose, you do have the option of appealing to the Florida District Courts of Appeal. Often, if it's in the client's best interest and they want us to do it, we will appeal. That appeal process can take 6 to 12 months. During that period, you're still without your driver's license. With that in mind, it does have

to be the right legal situation and the right client in order for an appeal to make sense.

Penalties For DUI For A CDL Holder

A CDL is a commercial driver's license. The penalties for a CDL holder are significantly harsher than regular drivers. Even if you were not driving a commercial vehicle when you were arrested for a first DUI, the legal breath limit for CDL holders is 0.04% for the purposes of your DMV case – not 0.08%.

If you lose your formal hearing review, or if you waive the formal hearing review, you agree to an automatic one-year hard suspension of your CDL in addition to the regular suspensions that will still apply.

If it's your second DUI, regardless of whether or not you were driving a commercial vehicle, and you lose the DMV hearing or don't handle it correctly, you will have a lifetime ban on your CDL. It will effectively put you out of not just a job but a career. This can be absolutely devastating for people, which is why it's so important for you to understand and hire an expert DUI attorney should you ever find yourself in this situation.

SECTION VI

DEFENDING DUI CHARGES

CHAPTER 14

Exploring The Option Of A DUI Diversion Program

All four counties in South Florida - Monroe County, Miami-Dade County, Broward County, and Palm Beach County - each have DUI diversion programs. DUI diversion programs are available for first-time DUI cases that meet a limited set of facts. It's important to note that you will be disqualified from the DUI diversion program if:

- This is your second DUI arrest – even if your first DUI was dropped, reduced, or won at trial.
- If you're involved in any car crash – no matter how minor or how little damage was caused.

- If you blow two and a half times over the legal limit – at or above 0.20.
- Your Driver's License was suspended at the time of the arrest.
- You were arrested for any other crime during the DUI.
- You have significant prior driving offenses.

Even still, we have had tremendous success for people who want to get into the program when they've been on the border of blowing over a 0.20. We've been able to use our reputation and negotiation skills to get clients into the program who have blown a .25 or even a .30.

If there was a "crash," but it was something very minor like a bump in a parking lot, we have also had success getting clients into the program, though it isn't a guarantee.

Making The Right Choice

The real question you have to ask is whether or not the DUI diversion program is right for you. For our clients who are eligible, we have an earnest conversation with them about these programs. Of course, we neither encourage nor discourage you from the DUI diversion program. However, we want to make sure that you understand what you are committing to before there's no turning back.

One of the tenets of Rossen Law Firm is that we are advisors who give our clients the options, the analysis, and the knowledge to make the right decision for themselves. Everyone has the power to make their own decisions, and we strive to ensure you can make those decisions 100% fully informed.

What DUI Diversion Entails

The program procedures do change quite often and differ in all four counties of South Florida. Each DUI Diversion program is pretty consistent with what it requires, but the requirements in most cases are harsher than what you would face after a guilty plea. When you accept the program, there are quite a few conditions you must follow. All of these require…

- A visual alcohol device or
- An alcohol-sensing ankle monitor or
- A breathalyzer in your car

(Of these, the breathalyzer in the car is the least intrusive and the cheapest option.)

Other conditions or stipulations could also include…

- Fines,
- Costs,

- Community service,
- DUI School,
- Drug and alcohol treatment,
- Booting your car, and
- Being on probation (Reporting to a lesser crime, typically reckless driving.)

Many clients ask why they would want to do the DUI diversion program if the punishment seems harsher than if they plead guilty to the DUI. The answer to this lies in the short-term versus the long-term.

A DUI conviction on your record triggers the requirement of FR-44 insurance in Florida. This is one of the most expensive insurance policies you can have. Studies have shown that the requirement of carrying that insurance for three years will cost you approximately $18,000. This is in addition to all of your other costs, and it doesn't go toward anything but a greedy insurance company that makes semi-funny commercials.

A DUI conviction also means that should you ever get another DUI, heaven forbid, you would be looking at a second offense with extremely harsher penalties and enhancements. So, choosing the DUI diversion program in exchange for a reduction to a reckless driving offense is ultimately a win when

you weigh those facts and the consequences. Anything that doesn't result in a DUI conviction is a win every single time.

Some clients still don't opt to do the DUI diversion program, and that's also fine. We fully support that decision as long as we have given you all of the information regarding the benefits and drawbacks.

One drawback is that you aren't going to get an opportunity to see the full discovery of the case. You won't get to see the police reports, the videos, and everything else that would come to light in a trial. Accepting the program creates a lot less work for the prosecutors, which is why sometimes we can negotiate with them for a client who really wants to do the program despite having a disqualifying fact.

Requesting the full discovery means that the prosecutor will remove the DUI diversion program as an option. We have had many clients who are eligible for the program but have chosen to fight the case instead. If we believe that they have a very good factual or legal case, we'll go ahead and fight it for them. Again, this is a decision that you have to make for yourself, but we will give you all of your options and the pros and cons of each one.

This decision is made early on in the case, and if you do opt to go with the program, our focus shifts to getting you-

into the diversion program, making sure that you're going to all of the appointments and that any issues or problems that arise are solved. We give our clients the advice and counsel that they need, functioning as that expert tour guide who makes sure that you don't step into legal quicksand at any step of the way.

CHAPTER 15

The State Of Florida Vs. You: The Criminal DUI Case

Traditionally, criminal cases can take 3 to 12 months. The more complicated the case, the longer it will take. The length of a criminal case depends on many factors, such as…

- How aggressively the case is going to be fought
- The county you were arrested in
- The judge
- The facts of the case
- If the case involved a car crash
- If the case involved a blood test
- If there are a lot of witnesses
- Discovery● Evidence

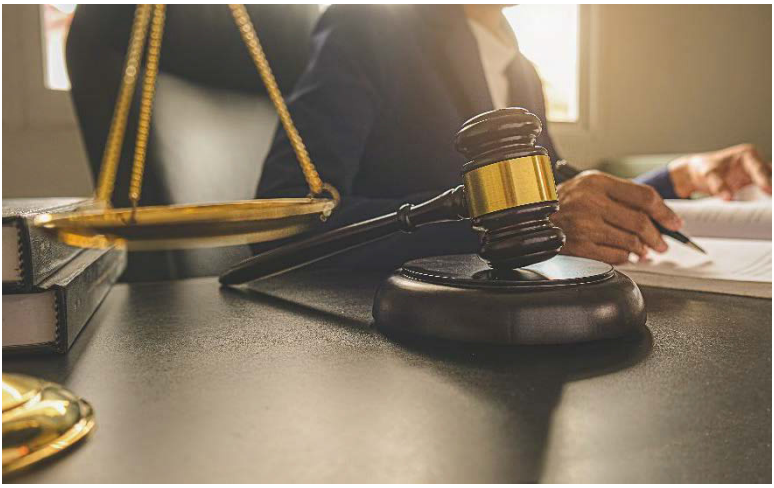
Once you get arrested, you may be able to bond out right away or you may be held overnight either for a first appearance or to see a magistrate judge. The job of the first appearance judge or magistrate judge is to set the bond amount and conditions of release. Those conditions can include money, phone or in-person check-ins, random breath or urine tests, or even an ankle monitor if this is a subsequent or very serious DUI involving manslaughter or vehicular homicide.

Once you get out of jail and the prosecutors decide to file charges against you, you're going to have your arraignment hearing, which is your first real court date in front of the division judge. The arraignment is when the formal charges are read to you, and you enter your plea of guilty or not guilty. At this point, if you plead guilty, the case is over that day, your case is done, and you get all the penalties that are associated with the DUI.

However, we never advise a client to plead guilty. We have our clients plead not guilty in pretty much 100% of all of our cases. This allows us to attack and defend the case.

CHAPTER 16

Rossen Law Firm DUI Defense Method



At Rossen Law Firm, our goal is to keep our clients out of the courthouse as much as possible. We want to shield you from the entire process. The reason for this is that we've seen far too many people with other lawyers, public defenders, or even on their own go in and get beaten and broken down by the system.

No one wants to wake up early, drive through traffic downtown, find expensive paid parking, or walk into an unfamiliar and intimidating place with metal detectors and uniformed personnel. Not to mention that most people

haveserious anxiety about accidentally showing up late and ending up with a warrant out for their arrest.

Then you have to take all of this into account with the fact that this process is repeated every four weeks for three to twelve months. As a result, people tend to want to give up. They just want it to be over because they're scared, they're nervous, and they want the pain and the stress of the situation to go away. Unfortunately, this too often leads to them pleading guilty and suffering lifelong consequences for some temporary relief.

We don't want our clients to feel bullied or broken down by the system. Our goal is to shield you and protect you from these feelings of helplessness.

We do this, in part, by having all of our clients sign what's called a waiver of appearance. This waiver allows us to go to court in your place. Our clients will typically show up to court once or twice as opposed to ten times. You will show up for a plea, a trial, or a motion - that's it.

Of course, you can come to court any time you want, but for those who find the situation stressful, we want you to know you have the freedom to send us as your advocate in your place. From the moment that we're hired, our goal is to protect you from this process in any way that we can.

Step One: Arraignment

The first thing we do in a case is to file our notice of appearance, which states that we represent you. The very first hearing is called an arraignment. That is where we plea not guilty. We always plea our client's not guilty at first. This allows us time to defend you and work on the case. The vast majority of the time our clients do not need to appear at the arraignment, we handle that for you.

Step Two: Status Hearings

After the arraignment, you will usually get set for some kind of Status Hearing. In Miami-Dade County, they call this a Sounding. In Broward, they'll call it a Status. In Palm Beach, they call it a Case Disposition. No matter what they call it, it's all the same thing: a brief court date to give the Judge an update on the progress of the case.

The Status Hearing is when the lawyers show up to court and, at a very preliminary stage, we talk about the case. It could be a 30-second to a 5-minute conversation, but rarely is it ever longer than 5 minutes. The vast majority of the time, we're going to be telling the judge that we need additional time on the case in order to discuss options with our client. It's not unusual to have a few of these Status Hearings. We may have three or four of them, as the court process is very slow and prosecutors are overworked and underpaid. In any case, we-

wrangle them up and make it so that we can really communicate proactively to get the best results for you.

Step Three: Discovery & Depositions

As we move forward to fighting the case, we go through what is called the discovery process. This is the process by which we are going to get access to all of the videos, dashcams, body cameras, and police reports. We get the opportunity to review all of this material and this step alone can take a few months to complete.

From that discovery process, we're going to decide if we want to take depositions or not. The law states that we have to ask permission to take depositions based on a certain set of criteria. If the judge agrees with us, then they will grant us the ability to take depositions. We have found that judges in Broward County tend to be more lenient with this, while judges in Palm Beach, Monroe, and Miami-Dade Counties tend to be more restrictive.

A deposition is where we subpoena the witnesses, whether they are police officers, civilians, medical doctors, toxicology experts, or a nurse at a hospital. The witness is put under oath through our court reporter, and we are able to grill them with questions. This can take place in person or over a video call.

Depositions can last anywhere from 20 minutes to three or four hours, depending on the complexity of the case and the issues that we have to discuss. Sometimes, these are fact-finding missions, meaning that we just don't have the answers that we need. For instance, if there was no video or if the video didn't capture everything, we may have to ask questions to fill in those gaps.

Sometimes, these depositions are just clarifying issues, and sometimes we try to pigeonhole them into one set of facts or circumstances. We call the latter one elimination depositions. These happen when we have a backup officer who didn't write a report, but we want to find out what they actually witnessed or if they were just dealing with traffic control. If they were just dealing with traffic control, we could get them to say, on record, that they didn't even watch anything with our client. We can then eliminate them as a witness entirely.

By doing this, we can make sure that if a more important witness is unavailable for trial or a motion, the prosecutors can't just parade this officer in who now suddenly remembers things. We have them under oath giving sworn testimony that they didn't see anything, don't remember anything, or weren't even involved in the case. This is an elimination deposition.

Asking for, fighting for, and taking depositions is a huge part of the way Rossen Law Firm handles DUI cases. Most attorneys don't take depositions because they want to charge you less money and do less work – they don't believe that depositions actually matter. We wholeheartedly disagree because we have used depositions time and time again to win many cases that other lawyers thought were unwinnable.

We took the depositions and were shocked at the testimony we got. There have been depositions in which the police officer admitted to making a tremendous mistake. Something like this can flip the entire case around or expose another potential issue for us to then further investigate.

The deposition process is critical to defending our clients – so we believe fighting for these depositions is absolutely crucial. We take more depositions than any other DUI attorney or DUI law firm in South Florida. It might cost a little bit more money, but it is worth every penny.

Step Four: Calendar Calls

The calendar call is the date when we would have a trial date looming. A calendar call is very similar to a case disposition or status, except we're now talking about a trial. The judge typically asks whether we're ready to actually go to trial, whether that's in two weeks or a month. If we say no, the-

case gets pushed off for another calendar call to see where we're at with the case. If all parties agree that we're ready for a trial, then we're going to be set for trial.

We may also bring motions to suppress during a calendar call. If we believe that the police violated our client's rights, for example, we could file a motion to suppress and request a court date for that motion. That court date would then take place before the trial.

Step Five: Motions To Suppress

If we believe that our client's constitutional rights were violated, we will explore and file motions to suppress. There could be many different motions to suppress throughout your DUI criminal case. Sometimes we'll read the reports and be able to identify where we have a motion to suppress, but there are many times when we need to watch the videos or question the officers to see if the evidence really is what it appears to be. As a result, a lot of our motions to suppress come from the deposition testimony that we get.

The most common ways to suppress evidence in a case include…

- Establishing an illegal stop
- Showing the officer had no probable cause to detain or begin a DUI investigation

- Displaying a clear violation of the accident report privilege
- Attacking the breath, blood, or urine tests
- Revealing that Miranda rights were not read
- Filing motions in limine

Illegal Stops

The best motion we could file, if applicable to your case, is a motion to suppress for an illegal stop. If the police officer violated your rights and that violation led to the evidence obtained to prosecute you, we can then suppress that evidence. That is what is called the "fruit of the poisonous tree," and evidence that is the fruit of the poisonous tree then becomes excluded. Everybody knows that that evidence is there, but the prosecutors are forbidden from using it against you at a trial in front of a jury.

If you are stopped illegally, everything that flows after the stop as a direct result of you being stopped illegally is suppressed or eliminated. In a DUI context, that is the entire case, including…

- Physical observations
- The odor of alcohol
- Stumbling
- Swaying
- Performance on field sobriety exercises

- Breath tests
- Vomiting
- Anything else that followed the illegal stop

I like to say that you could have had 10 dead bodies in your trunk and all of that would be suppressed if the police stopped you illegally. So, getting a motion to suppress for an illegal stop is the absolute best we can ask for, and we always look for that.

Lack of Probable Cause

Another motion to suppress is when there isn't enough evidence for starting a DUI investigation or making an arrest. If we win this motion, then all of the evidence after that point is gone. This could include…

- Field sobriety exercises
- Breath tests
- Any statements you made post-arrest or during the investigation

A lot of the time, all that would be left would be the reason that you were initially stopped, which might be for speeding, drifting, weaving, or the initial observations, but nothing more. That could mean that their body camera evidence, the fact that you did field sobriety exercises, how

well you performed them, or the results of a breath test could all be suppressed.

Excluding Statements & Chemical Tests

We also have motions to suppress, which involve accident report privilege or lack of reading your Miranda rights. While these are also good, they would only remove statements. Your poor performance on the field sobriety exercises and breath tests would still be admissible.

We can file motions to suppress the breath, blood, or urine test, but everything else would still be admissible, such as the stop, their observations, and your performance on the field sobriety exercises. Even so, being able to knock out a huge chunk of the scientific evidence that the prosecutors are going to present as infallible can be very important in beating the case or using that as leverage to negotiate reduced charges, such as reckless driving.

Motions In Limine

The last type of motion that we have is actually not a motion to suppress but a pre-trial motion called Motion in limine. This is less of a constitutional law violation and more of an evidentiary rule that allows us to "redact" evidence that is overly prejudicial from your case.

For instance, if you have a suspended license, that is a separate crime and shouldn't be discussed in a DUI case. If the jury hears that you were also driving on a suspended license, they'll be much more likely to convict you of DUI because they now think you have a bad character. So we would file a Motion in limine asking the judge to sever the charges, not address anything regarding the suspended license charge, and keep that matter for a separate trial. Typically, that kind of motion would be granted.

Another common example would be if you're on trial for a second or third DUI. We would motion in limine that the prosecutors and the police are not allowed to mention that you have priors because that is overly prejudicial. A jury would very likely hold that against you and it would factor into their ultimate verdict.

We've had clients in trials where it's been a third DUI, but the jury never knows about it. Once we win the trial, the juror gave my client a hug and apologized for the behavior of the police officers. If the jury knew that it was our client's third DUI, they probably would have convicted him in that exact same scenario because their minds would be corrupted against our client.

Our constitution states that every individual should be treated based on their actions in the case that they're

beingcharged with. Motions in limine are a way to protect your right to a fair trial without prejudice to this end.

All of these motions are very effective in helping us get dismissals of cases. Even when we don't get a dismissal, we can use these motions as leverage. If we have a stop motion and we believe it's a 50-50 chance, we're now going from criminal defense to criminal offense. That means we are now putting the prosecutors on defense because, once we allege one of these constitutional violations, it's the prosecutor's job to defend against our allegation.

Now, the prosecutors are the ones who have to do all of the work. They have to put forth the testimony and have all the pressure on them to convince a judge that our allegations are unfounded. If there's a 50% chance that they'll lose the case, the prosecutor will come to the negotiating table and we can use that as leverage to get a lesser charge of reckless driving with significantly fewer stipulations than a diversion. We have literally flipped the tables - we are now in control and have the power.

We have had a lot of cases that seemed to have no business getting reduced, but we've been able to allege these constitutional law violations by filing motions and, before you know it, the prosecutors are crawling to the negotiating table with us.

We never make these decisions by ourselves, though. At Rossen Law Firm, we have a very specific way of defending and winning DUI cases. Our methods begin and end by equipping you with the knowledge you need to make the best possible decisions at every step of the way. It's ultimately your decision because it's ultimately your life, and we want you to feel you have control over it.

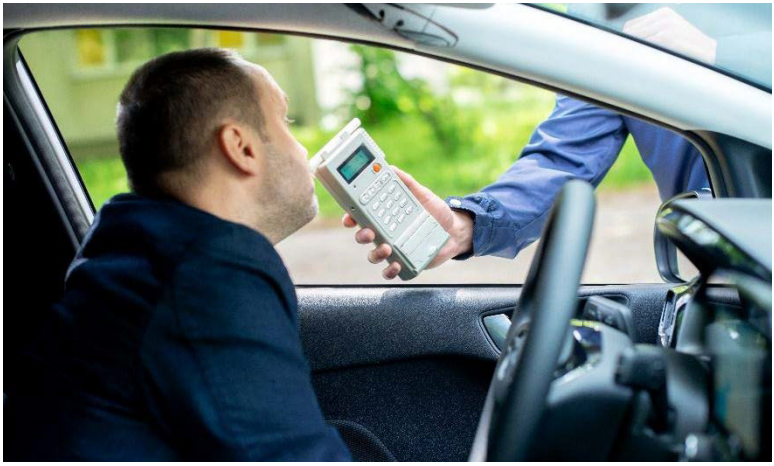
Part of our belief is that if there's a motion, even if it's a 25% chance to win, we're going to file it. Good things happen when you file motions. A lot of lawyers don't do these motions, though, because motions require research. Filing motions takes a lot of time, skill, energy, and knowledge that criminal lawyers who aren't DUI specialists simply do not have because they don't routinely file these motions – but we do.

SECTION VII

DEFENSE STRATEGIES FOR BREATH, URINE, & BLOOD TESTS

CHAPTER 17

Defending Against Breath Tests: The Flaws In Technology



Whether the police obtain a breath test, a urine sample, or a blood test, there are many elements that an experienced DUI attorney can attack with the right knowledge and approach. As such, this chapter is broken into three sections that explore the strategies relevant to defending against evidence gathered from these sources…

As of June 2023, the state of Florida uses a breathalyzer called the Intoxilyzer 8000 to collect breath tests. The Intoxilyzer 8000 was first manufactured in 2001, though it wasn't used in Florida until 2006. (To offer some perspective on this, the first iPhone didn't come out until 2007.)

Let's paint a picture of this device: The technology behind the breathalyzer is infrared radiation, which is from

the1920s. It looks like a computer from the 1950s, and, when it's in operation, it sounds like a dial-up modem from the mid1990s.

All of this is to say you shouldn't be afraid of a high breath test reading. The Intoxilyzer 8000 is not an infallible device, and it is very possible to beat the evidence of a breath test in a DUI. *So, how do you do it?*

Question The Breath Temperature

Just as officers make mistakes when deciding whether or not someone's normal faculties are impaired, they often use averages instead of actual biometrics…

One of the first issues with the breath machine is that there is no breath temperature sensor. The machine estimates your breath temperature to be 34 degrees Celsius or 93.2 degrees Fahrenheit across the board. However, studies have shown that breath temperatures range from 33 degrees Celsius to 36.7 degrees Celsius. Based on that study, the recommended average breath temperature is 35 degrees Celsius, not 34 degrees Celsius.

This means that the Intoxilyzer 8000 overestimates breath temperatures, which can lead to false positives and higher results. If the police officer tested your temperature beforehand, they would have much more accurate results. We-

would be able to know what happens if a person is running a low-grade fever or if they're running hot due to the stress of their current environment. *When the machine isn't factoring these things in, it will falsely raise your breath alcohol level up to 15%. That's statistically significant.*

Question The Partition Ratio

Another thing that can impact the outcome of your breath test is the partition ratio. Effectively, the partition ratio converts breath levels to blood levels. This means the molecules that are in the breath and the air are converted to an applicable blood alcohol content.

The ratio used by the Intoxilyzer 8000 is 2,100 to 1. However, scientifically valid studies have shown that the proper partition ratio average is about 1,750 to 1. By that standard, the Intoxilyzer is using a partition ratio that overestimates breath results to give false positives of *yet another 10% to 15% higher than what your breath level actually is.*

Question The Margin Of Error,

The next issue with the breathalyzer is the margin of error. Breathalyzers go through a monthly inspection where they are tested at different levels: 0.05, 0.08, and 0.20. However, they are being tested in ideal or perfect conditions which creates a closed system.

During the test, there is an alcohol solution that is hooked up to the machine that has been carefully, expertly, and professionally prepared by CMI Inc., which is the manufacturer of the Intoxilyzer 8000. There is no human body and no contaminated air from the room. The simulator's solution is being run through the breathalyzer in a sterile, closed system at a hospital level of cleanliness.

During this testing, under perfect conditions, there is an allowable margin of error.

- On the 0.05 test, an acceptable or passing range is anywhere between 0.045 to 0.055
- On the 0.08 test, a passing grade occurs at as low as 0.075 or as high as 0.085
- On the 0.20 test, (which is two and a half times the legal limit), the plus or minus is ten, resulting in a whopping 20-point swing and passing grades anywhere from 0.190 and 0.210

So, what we need to ask is this:

If there is this much of a margin of error within a closed, professional, and sterile environment – what's the margin of error with an actual human giving a breath test in a room where multiple people who have had alcohol on their breath have been breathing and giving tests?

Not to mention that other factors might result from the unsterile environment, such as burping, regurgitating, or acid reflux. *That margin of error is huge.*

Question The Agreement Of Your Two Tests

Yet another issue with these numbers is that, in the state of Florida, you must give two valid breath samples for it to be considered a valid breath test. Those two valid samples must be within 20 points of one another, resulting in a 0.02 agreement.

For example, if you give two breath samples five minutes apart and one is 0.063, and the other is 0.082, those samples are within 19 points or 0.019 of each other. As such, the breath machine is going to tell you that those are two valid samples, even though one was 63 and one was 82.

But consider this… If you weighed yourself and the scale said you weighed 63 pounds the first time and that you weighed 82 pounds just five minutes later, you would say that the scale was broken. That would seem like the obvious conclusion based on the discrepancy between the two results.

With the breath test, those same results would indicate to the police that the breathalyzer is working 100% correctly. As impossible as that may seem, those are the rules indicated-

by the makers of the Intoxilyzer 8000. These are the same rules that we will question in court.

Question The Time Of Testing

Prosecutors must prove that you were over the legal limit (0.08) at the time you were driving – not an hour or two later when you were at the station. The Intoxilyzer 8000 was designed as a portable device with a handle on it so that it could be brought out to the scene of DUI checkpoints and stored in officers' vehicles.

It's the officer's responsibility to prove that your breath alcohol level was at the time you were driving, so there's no reason why they shouldn't have a machine in their car but it's rare in Florida for officers to administer these tests at the scene of a DUI investigation.

The issue with this really comes into focus when you consider that your body absorbs and eliminates alcohol on a bell curve. You don't know whether or not you're in a current state of absorption or elimination. Most importantly, the prosecutors and the police cannot prove beyond and to the exclusion of every reasonable doubt whether you were absorbing or eliminating alcohol at the time of your arrest.

What this means is that blowing over the legal limit an hour or two later, (even if you disregard the issues and er-

rorswith the breath machine itself) really doesn't prove that you were over the legal limit at the time you were driving.

To prove that you were over the legal limit at the time you were driving, they would need an expert witness to conduct a scientific analysis of your case. This analysis would have to factor in such information as:

- What you drank
- When you drank
- What you ate
- When you ate
- Your weight
- Your age
- How your specific body metabolizes alcohol
- And more…

As a result, breath test results are virtually impossible to prove at trial, when you hire an expert DUI Defense team.

Question The Limitations Of Maintaining The Intoxilyzer 8000

CMI Inc., which is a Tennessee-based company that owns and manufactures the Intoxilyzer 8000, has a contract with the Florida Department of Law Enforcement that prohibits the agencies from ever opening up the machines.

This means that no current or active police officer or breath-tech has ever opened up the breathalyzer to inspect the machine, figure out how it actually works, maintain the machine, or fix the machine.

Any car mechanic or computer technician knows that you need to go under the hood of a machine to be able to diagnose it, to see how it works, to ensure there's no damage, and to see if any parts are malfunctioning. While the police say that they inspect the breathalyzer every day, every month, or every year, they don't ever actually go under the hood. They aren't even allowed to open up this basic machine to ensure functionality.

Create Distrust In The Machine For The Jury

Juries have routinely rejected the breath test when the issues above are expertly and professionally presented by a DUI lawyer who knows more about the breath machine than the police officers that the state uses as witnesses.

The more you can show a jury that you know more about the machine than the police witnesses do, the more credible you will be and the more trust you will gain with them. Ultimately, gaining a jury's trust can lead to a very high likelihood of you beating a high-breath case.

Once you can convince a jury that they can't trust the

machine, it doesn't matter what the level of your breath test was. The breath level can be three or four times the legal limit – and we've still found that a lack of trust in the machine from the jury can tip the case.

Final Thoughts On Defending Breath Test Evidence

A Florida judge was once quoted as saying, "The Intoxilyzer 8000 is a magic black box assisting the prosecution in convicting citizens of DUI. A defendant is required to blow into the box. The defense has shown significant and continued anomalies in the operation of the Intoxilyzer 8000 operation. The prosecution argues most of the tests do not show anomalies. In fact, a high percentage of the tests may show no anomalous operation. That the Intoxilyzer 8000 mostly works is an insufficient response when a citizen's liberty is at risk."That judge then went on to throw out the breath results in that particular case.

The above are only a few examples of issues or problems with breath tests. This begs a critical question… Knowing what you know now, if your freedom, future, liberty, and career are at stake, would you give a breath test? The answer should be a resounding no.

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[1] The state of Florida v. Lance Conley – County Court Of The Ninth Judicial Circuit In And For Orange County, Florida – CASE NO.: 48-2012-CT-000017-A / A

CHAPTER 18

Defending Against Urine Samples

Typically speaking, the only time urine samples are involved in a case would be if the case starts as a drug DUI or if you blow under the legal limit. *Why?* Because if you blow under the legal limit, the police will assume that you're on drugs instead of being intoxicated – even if there's been no mention or evidence of drugs leading up to that point.

Question The Timeline

The thing is, urine is nothing more than a waste byproduct of what was once in your blood. Urine is in your bladder, physically inside your body, but it is no longer-

actively metabolizing in your body; it's waste, the remnants of what your body has already used. (To get the clearest sense of this, you might think of your bladder as a Ziploc bag inside your body that your system is no longer able to use the contents of.)

It's very difficult to extrapolate the result of a urine test back in time to assess what was in your system while you were driving – it can only give you a snapshot of what was once in your body. For this reason, prosecutor's toxicologists in South Florida have testified that urine is unreliable for drug DUI cases time and time again.

Question The Result

All a urine result can prove is that, at some point in time, you used a substance. It doesn't say when you used the substance, how much of the substance you used, or how the substance was used. What's more, some substances have varying degrees of potency depending on whether they're ingested orally, snorted, or intravenously injected.

Question The Conclusion

Any legitimate forensic scientist will not be able to give an opinion on whether or not drugs found in your system were therapeutic or impairing. Most medications are therapeutic in nature and, up to a point, non-impairing. Even cocaine, LS-

D,and ketamine are therapeutic when used in small amounts. It isn't just that you have something in your system that makes you guilty of a DUI. It's that, at the time of driving, that chemical or controlled substance caused you to be impaired.

There is no per se legal limit for any of these drugs, chemicals, or controlled substances. What the prosecutors have to prove is that a specific chemical or controlled substance impaired you and that it was at a non-therapeutic level – and there is a massive distinction between drug cases and other DUI cases because of that.

Final Thoughts On Defending Urine Test Evidence

Obtaining depositions from the state's toxicologists is an absolute must in drug DUI cases – you cannot skimp or be lazy about this to get the result you need. Still, a lot of these toxicologists are not forthcoming because they're getting paid by the prosecution.

To get the right answers, you have to know the right questions. So, your lawyer must educate themselves on the pharmacology behind these issues. Only this way can you craft a strategic and solid legal defense.

CHAPTER 19

Defending Against Blood Tests

In Florida, there are only three scenarios where you will see a blood sample on a DUI case, all three of which will typically involve a car crash:

1. DUI manslaughter or vehicular homicide
2. DUI with serious bodily injury
3. If a breath test is impossible or impracticable

Because these cases involve a more severe set of circumstances, let's take a moment to outline the basics…

First: Know Your Right To Refusal

A breath test is usually considered impossible or impracticable when the suspect or defendant is taken to a hospital for a medical diagnosis or treatment. If you are taken to a hospital, and the police believe that two or more hours are going to elapse before they are able to obtain a breath test due to you being treated and discharged, they would request a blood test because a breath test would no longer be valid or reliable after such a lapse in time.

While the belief that the breath test is impossible or impracticable may be sufficient enough for investigators to request a blood test, they wouldn't be able to obtain a warrant to forcibly extract blood from you against your will in that situation.

If police request a blood test from you in the event of a death or serious bodily injury, you can decline. If you decline to give the blood test, the police are allowed to request a warrant from a judge to get permission to forcibly extract blood from you for the purpose of investigation and potential criminal prosecution.

Second: What Happens If The Police Obtain A Blood Warrant

In a vehicular homicide or DUI manslaughter case, a blood warrant will allow investigators to obtain two blood samples roughly one hour apart from each other. This is done so that officers can counteract some of the main issues that come up with breath testing. Namely, law enforcement is seeking to answer two questions:

1. Is your body absorbing or eliminating alcohol?
2. Can that result (from an hour or two after the accident) be extrapolated back through mathematical calculations to determine the amount of alcohol that was in your blood at the time of driving?

Doing two blood draws an hour apart won't guarantee that you can get a 100% valid blood alcohol level estimate for the time of driving. However, this is certainly more reliable data than a breath test would provide, which is why this technique is used in a DUI manslaughter or vehicular homicide case.

So, how do you defend against a blood test in a DUI case? You have to look at the two types of blood results: legal blood and medical blood.

Questioning Legal Blood

Legal blood is the blood that is taken at the direction or request of law enforcement for the purposes of criminal investigation and criminal prosecution.

The police and prosecutors must prove that there's probable cause for a DUI investigation to obtain legal blood. Though quite often, all they need in order to prove probable cause is the fact that you were in a car crash and they smelled alcohol.

There might have been no other indications or signs of impairment, such as stumbling, slurred speech, or poor performance on field sobriety tests. In fact, due to the severity of these situations and the injuries that result, DUI suspects in such cases are often unable to perform field sobriety exercises at all.

So, in these cases, it's not unusual for the only evidence to be that someone is seriously injured or has been killed and you smelled like alcohol. This is not probable cause for a DUI.

As such, we've been very successful in excluding these kinds of blood results on a Fourth Amendment constitutional law violation, which is basically an illegal search of your body - your blood - because there wasn't enough evidence that a crime was committed.

Questioning Medical Blood

Medical blood is the blood that is taken for the purposes of medical diagnosis and treatment by a healthcare provider, usually at a hospital or in an ambulance.

Your healthcare providers need to know if you have any alcohol or drugs in your system so that they won't give you a painkiller that will have synergistic and potentially deadly health effects. So, if you're taken to a hospital following a car crash, they're going to run a toxicology screen on your blood so that they don't commit medical malpractice and unintentionally harm you.

The police do not have automatic access to your personal health information (i.e., your blood) under HIPAA law, so there is a very specific process and procedure that the government needs to go through in order to try to obtain your protected medical information.

If the government wants to obtain your medical blood for evidence in a DUI case, they must put you or your lawyer on a ten-day notice that they have the intent to serve a subpoena duces tecum to get your medical records.

Objecting A Subpoena Duces Tecum

You have the right to object to the subpoena within those ten days, which is yet another reason why it's so crucial that you hire a lawyer early on in these cases. All too often, people receive this notice in the mail from the prosecutors and, if they don't have a lawyer, they have no idea what it means and just ignore it – ultimately making a grave mistake.

When one of our clients receives a subpoena duces tecum, we make an objection in writing every time. Once we object in writing, it is the state's burden to schedule a Hunter Hearing.

If the prosecutor fails to set the Hunter Hearing - whether they just forget or choose not to do so - the medical records are never allowed to be received by the prosecutor. If the prosecutor violates the rules and somehow obtains the medical records without the Hunter Hearing taking place, those records could be inadmissible against you at trial or in the case.

Attending The Hunter Hearing

If the prosecutor does go forward with the hearing, it tends to be an easy win for them. To succeed in a Hunter Hearing is to convince the judge that there is a nexus between the information sought and the crime alleged that over-

comesyour medical privacy rights. The truth is, most of the time we will lose the Hunter Hearing. So, why do we do it?

We do it because it forces the prosecutors to do their job. Prosecutors are often overworked and underpaid, which means that when we make them work, they're more likely to forget to get the records or set the hearing. (We've even handled cases where the prosecutors get the records but then forget to list them in supplemental discovery and then they're barred from using it.)

Requesting A Private Review

If the judge allows your medical records to be used against you in a DUI case, we will always request that the records be sent to the judge so that they can review the records in chambers before they are distributed to the prosecution and defense.

We ask the judge to do this private review as a courtesy to you because there may be other sensitive medical information included in your records that the prosecutors don't have the right to review or receive. Additionally, we've handled cases where the judge never received the records, and neither the judge nor the prosecutor remembered to follow up on them.

Final Thoughts On Defending Blood Test Evidence

If law enforcement officials didn't have the right to ask for your blood because there were no signs of impairment, regardless of what levels were actually in your blood, they don't get to go back and say that their hunch was correct. There is no revisionist history of these cases.

Getting blood as a form of evidence against you is based on whether or not the police had probable cause at the time to request entry into your body and extract your physical blood. You can be four times over the legal limit, but if the police didn't have enough evidence to request a blood test, your level is irrelevant.

The more hurdles we can put forth between the prosecutor and the evidence against you, the better it is for us. We win cases by putting up a fight, placing as many hurdles and barriers up as possible, and making it as difficult for the prosecutors as we can by enforcing your legal rights at every step of the way.

Imagine facing 15 to 30 years in prison. Now imagine having an attorney who gets your entire case dismissed by convincing the judge that the blood test they took from you was against your rights. That level of success is what we work to accomplish in every case that comes through our doors.

SECTION VIII

DUI PENALTIES

CHAPTER 20

Minimum And Maximum Penalties

In Florida, DUI has some very harsh and strict mandatory minimum penalties that are considered very rare for misdemeanor cases. The penalties will depend on several factors in your case, such as…

- Is this a first or subsequent DUI?
- If subsequent, how many priors do you have?
- When did the prior offenses take place?
- What were the facts of the prior DUI?
- Was there a breath test or a refusal?
- Was there a car crash?

There are three levels of first-time DUI offenses, which are…

1. **First DUI without enhancement**

   Minimum jail time: None

1. **Maximum jail time:** Six months**Maximum probation:** 12 months**Minimum fine:** $500

2. **First DUI with enhancement**

Enhancements: Breath level over 0.150 or a minor present in the vehicle at the time of the arrest

Minimum jail time: None

Maximum jail time: Nine months

Maximum probation: 12 months

Minimum fine: $1000

Required: Ignition interlock device for 6 months

3. **First DUI with a car crash or property damage**

Minimum jail time: None

Maximum jail time: 12 months

Maximum probation: 12 months

Minimum fine: $1000

In addition to the minimum fine, basic court costs often come out to roughly $500. However, these fines and court costs increase exponentially if it's a subsequent DUI. In fact, for subsequent DUI convictions, all of the minimum sentencing guidelines and the court costs go up.

There are many other consequences and penalties to consider, as well. These penalties include…

Ignition Interlock Device

An ignition interlock device is a device installed in your car that prevents your car from being started unless you blow into the machine to show that you don't have any alcohol in your body. You will also have to periodically pull over and blow into the machine again to make sure you haven't started drinking while driving. The cost of installing and maintaining this device comes out of your pocket and it is mandatory for all DUIs except a first DUI without enhancements.

Car Boot

For a first DUI, you will have to boot your car for ten days. In some cases, authorities may boot your car for up to 90 days. It is your responsibility to pay the booting company to boot your car. If you don't own or drive the car, you will have to pay the booting company regardless.

DUI School & Treatment

You will have to attend and complete DUI school. If you are convicted of a first-time DUI, you will be required to complete the level one program. If you are convicted of your second or subsequent DUI, you will need to complete the level two program.

Both levels of DUI school are very expensive and require you to attend classes as well as a drug and alcohol evaluation. What's more, if your evaluators believe that you need further treatment, you will be required to go to outpatient treatment that can last anywhere from 8 weeks to up to 35 weeks.

As with all other fees and fines, you will be responsible for paying all costs associated with DUI school and treatment.

Mothers Against Drunk Driving Victim Impact Panel

You will attend an impactful two-hour course with the Mothers Against Drunk Driving Victim Panel either in person or online. During this course, you will hear from people who have lost loved ones due to DUI manslaughter as well as from people who have gone to prison for DUI manslaughter.

FR44 Insurance

While not a court consequence, there is a DMV consequence that requires you to have FR44 insurance upon receiving a DUI conviction. Florida is one of the only states in the country that requires FR44 insurance and it is extremely expensive.

If you don't carry FR44 insurance, the DMV will suspend your license again, suspend your right to get a license, or suspend your hardship license. As a result, you absolutely must carry this insurance if you want to continue driving.

This insurance can raise your insurance rates by roughly $500 per month and must be carried out for a minimum of three years. At that rate, you are looking at around $18,000. This alone can bury someone financially.

License Suspension

Most people don't realize that your license can be doubly suspended - at the beginning of the case by the DMV and then again when the case resolves by the judge. For a first-time DUI, you'd typically face license suspension for a period of between 6 to 12 months by order of the judge.

If we've been able to get you a hardship license upon a first-time DUI conviction, we will likely be able to get

youanother hardship license to cover the court-ordered suspension. This may cause inconvenience for a longer period of time, but it will keep you from being without a driver's license at all.

On a second DUI where the first DUI was within five years, you'll be looking at a five-year license suspension – during which time you cannot get a hardship license for one full year upon conviction. That's one year of hard suspension where you cannot drive.

If it's a second DUI outside of five years, the license suspension would be somewhere within that 6 to 12-month range of a first-time DUI. However, under these circumstances, you aren't entitled to a hardship license at all. This means you will have a hard suspension for the duration of the suspension.

For a third DUI, you could be looking at a ten-year or permanent driver's license revocation.

Mandatory Adjudication (Conviction)

DUI requires mandatory adjudication, which means that if you plead guilty to a DUI, it can never be sealed or expunged from your record. In this event, no other crime that you may have been previously eligible for a seal or expungement can ever be sealed or expunged, either.

It's important to know this because DUI is one of the only misdemeanors that require mandatory adjudication. In fact, there are many felonies that don't even require mandatory adjudication.

For example, you could break into someone's house, commit a burglary of a dwelling, and avoid becoming a convicted felon if you have a very good attorney. Then, you could have that burglary charge sealed from your record. However, you can have just one DUI charge, and it will remain on your record forever.

Considerations For CDL Holders

Individuals who have a Commercial Driver's License (CDL) have even harsher penalties to worry about if charged with DUI. And in the state of Florida, these harsh penalties will apply even if you aren't driving a commercial vehicle at the time of your arrest.

If it's your first DUI as a CDL holder, you will get a one-year disqualification of your CDL upon conviction with no hardship available. If you are convicted of a second DUI, you will get a lifetime CDL disqualification. This means that if your career requires you to have a CDL, your career will be over as a result of a second DUI conviction.

Under such circumstances, it's easy to see why these cases are tremendously important – because you have so much to lose. The importance of hiring the right attorney cannot be overstated. When so much is on the line, from your freedom to your career, you need an attorney who has the right expertise with DUI law on your side, fighting for you.

CHAPTER 21

The Cost Of A DUI Conviction

Studies have shown that the overall cost of a DUI conviction based on penalties alone can easily climb to over $40,000. Of course, this isn't even factoring in the potential of lost job opportunities because you've been branded as a criminal. As a result, even a misdemeanor DUI carries longterm effects that could cost up to $100,000 in total.

Unfortunately, it isn't uncommon for individuals who have been convicted of DUI to be unable to keep up with all of the financial requirements and have their driver's license suspended as a result. We've seen an inability to pay DUIassociated costs become the catalyst of someone losing

theirdriver's license for five or even ten years. Some people just never recover financially.

As such, we always want to remain cognizant of the financial toll that DUI cases can take on our clients. We also want to make sure that you understand the road ahead of you so that we can try to avoid you finding yourself in a situation of financial ruin due to your DUI charge.

CHAPTER 22

Collateral Consequences Of A Conviction

We want to educate everyone on the collateral consequences of a DUI conviction. These are consequences that don't come directly from the court, but that can be the significantly detrimental impacts of having a DUI conviction. These can include…

Immigration

Generally speaking, you will not be deported for one DUI. If you get multiple DUIs, however, that could be a basis for harsher immigration status penalties according to today's immigration laws and rules.

Employment

If you drive for a living (whether you have a CDL or not), there are plenty of companies with policies preventing them from hiring anyone with a DUI on their record. This is often true even if you hold a valid driver's license or a valid CDL. Additionally, some employers are hesitant to hire anyone with a conviction regardless of whether or not the job entails driving.

Housing

Being convicted of a crime can mean that you won't be approved to rent certain apartments, townhomes, or other residences. This is because your DUI case will come up on a background check.

Travel

There are also some travel restrictions for those convicted of DUI. Canada, in particular, is very tough on DUI cases. If you have a DUI conviction as a US citizen, you may be unable to visit Canada. They are known for turning U.S. Citizens around at the border and sending them back home.

Custody and Divorce

DUI cases have negatively impacted individuals going through child custody cases or divorces. DUI-

convictions have been used as proof that a parent is unfit and should not have custody or be the primary decision-maker in their children's lives.

As you can see, DUI convictions can be very detrimental and can touch every single part of your life in longterm ways. While we can't prevent the initial arrest, we do everything we can to prevent a DUI conviction and alleviate these hardships for our clients.

SECTION IX

TRIAL VS. PLEA

CHAPTER 23

Trial Vs. Plea: The Strategy Meeting

At Rossen Law Firm, we hold a strategy meeting following our initial casework. This meeting takes place after we have…

- Taken depositions
- Examined discovery
- Examined body camera footage
- Reviewed all video evidence
- Filed any motions
- Looked at all physical evidence
- Looked at all scientific evidence

At this point, we will ask you to come into the office along with any loved ones that you wish to have present. There, we will go through everything in the case with you. Throughout the course of representation, we're going through everything in real-time, but this meeting is a big strategic summation. It's the point at which we're going to discuss and finalize our end-game and strategy.

For DUIs that are not dismissed via a motion, there are only three different paths:

1. Plead guilty to a DUI
2. Negotiate a reduced charge of reckless driving
3. Go to trial

Pleading guilty to a DUI is always the last resort, but it's on the table during this discussion because the choice is ultimately yours to make. We strongly believe that our clients should never be told what to do but rather be given all of the information in order to make the best decision for themselves.

At our firm, we understand that our clients are all intelligent people and are the drivers of their own lives – we are merely the guide to help you get where you want to go. As your guide, we are committed to giving you sound advice, providing a clear analysis of your case, and making you aware of all the pros and cons of each path.

At the end of the day, whatever decision you make, whether it results in a win, loss, or draw, it's you who has to live with that outcome. When you're laying in bed, staring up at the ceiling in the middle of the night, we want you to be happy and confident with the decision you made. We want you to know that the decision was yours to make, and you had the knowledge to make the right one.

So, during this strategy meeting, we go through the entire case and give a full case analysis along with our advice. We'll tell you what's good and what's bad about your case, and then we'll tell you how we can overcome the bad and how the prosecutor may overcome the good. We'll talk you through the entire case and ensure that you fully understand everything.

The Benefit Of Negotiating A Plea Deal

Throughout your case, we'll continue to negotiate for that reduced charge of reckless driving. Why? There are two great things about pleading down to a reckless driving charge: it doesn't require the mandatory minimum penalties of a DUI, and it doesn't count as a prior DUI if you ever get another DUI charge in the future.

If you have a DUI that gets reduced to reckless driving and you get arrested for another DUI four years later, that DUI would get prosecuted as a first-time DUI. That means the

harsher penalties for a second DUI won't apply to you because the first one was reduced to reckless driving.

Of course, reckless driving is still a crime and can still have many of the same or similar penalties as a DUI. Those penalties are open for negotiation, though, because they aren't mandatory minimums. What's more, reckless driving doesn't require adjudication, which means that, in most circumstances, it can be sealed off of our client's records – and that's huge.

CHAPTER 24

Taking Into Consideration What Happens At Trial

As we go through this analysis, we always look at it in the context of a trial, as well. During every strategy meeting, we explain what happens in a trial from the beginning…

Voir Dire

The first part of every trial is called Voir Dire, which is the jury selection process…

During Voir Dire in the state of Florida, anywhere from 20 to 35 potential jurors are brought in for a DUI case. Throughout the process, we are going to narrow that pool from the initial 20 to 35 down to only 6. (The only time there are

more than 6 jurors is in a capital case, at which point there would be 12.) This is a very long procedure that usually takes about half a day in court – and it is absolutely crucial.

Before the potential jurors reach the courtroom, they've usually filled out a questionnaire that gives us some very basic biographical information and data. The judge gets to question them first to make sure that they can be fair and impartial. Next, the prosecutor gets to question them. As the defense, we get to question potential jurors last.

The reason Voir Dire is essential both to trials and to winning cases is that you want jurors who are going to be on your side. You want to start a real pattern of explaining to them the law and your defenses. As much as you possibly can, you want to make them understand what the case is going to be about.

Judges and prosecutors will try to prevent you from doing this. However, we always try to sympathize as much as we can so that the jury can bond with us. We want them to put themselves in your shoes and start building trust between the attorneys and the potential jurors.

Opening Statements

Once we have selected our six jurors, we're going to start with opening statements. With a DUI case, opening

statements are usually 15 minutes long – the prosecutors go first and the defense goes last. In our opening statement, we're going to want to really let the jurors know our theory of the case, give them an overview of what we think the evidence will show, and our theory of defense.

Defense attorneys have varying opinions on how to use opening statements. Our strategy is to set the tone without giving too much of our defense away. This is because the prosecutors on DUI cases are relatively inexperienced and very formulaic. The police officers, even the more experienced ones, are also very formulaic with what they say and will be pretty robotic.

Our defense is very considerable. We will always have the benefit of knowing what their case is and what their theory is without them knowing what ours will be. We prefer not just to give away our whole theory until we can get in and really start grilling the officers.

Direct Examination Begins

After opening statements, the prosecutor gets a chance to present their case. They will call witnesses – most likely police officers or perhaps civilian witnesses if any were involved. This is called direct examination. During direct examination, the prosecutor will ask their witnesses a series of questions. These may include…

- How did you come across the defendant that night?
- What kind of driving pattern did you see?
- What did you do next?
- What did you observe?
- Based on what you observed, what did you do?

- And more…

Depending on the witness's answers, they will ask follow-up questions. The testimony of an officer is typically very formulaic and stays true to the police reports. They will talk about your performance on the field sobriety exercises, everything that we've already had in discovery, and everything that was covered in depositions.

If there are any body-worn camera videos, in-car videos, or 911 calls, the prosecutors will try to get that evidence admissible. If they're successful, the jury will get to watch and listen to that evidence.

Cross-Examination Comes Next

Once the prosecution is done with their direct examination, the defense gets a chance to cross-examine that witness. Cross-examination is when we get to really grill that witness and ask leading questions. Instead of asking openended questions like the prosecution, we want to focus more on ourselves and get the police officer or witness to agree with us. We want to pigeonhole them into yes or no answers.

For example, we may ask an officer a leading question like: "Isn't it true you only explained the exercises to my client one time?" The goal is to get a yes or no answer without any further explanation from the witness.

There is certainly an art to great cross-examination, and all of the lawyers at Rossen Law Firm are expertly trained in how to give an amazing cross-examination. This is where we're really able to poke holes in the prosecution's case.

When the prosecutor is presenting their case and the witness is testifying for them, you might see jurors nodding their heads in agreement. But by the end of our cross-sexamination, those same jurors might be shaking their heads, amazed at how the police officer had not done their job. Of course, we don't take the approach of trying to paint a police officer out to be a dirty cop unless we know that they actually are, which is rare. Instead, we take the approach of building them up to break them down.

In order to build a police officer up before breaking them down, we have to know the proper police procedures and the extremely formulaic way that these DUIs are supposed to be handled - which we most certainly do. Any time that an officer cuts corners, doesn't write something down in their report, doesn't remember very specific details that they-

should, or there are things not captured on video - any holes or conflicts in the case at all - we're going to exploit it.

We're going to remind them and the jurors that they are professional police officers who are trained, who went to the police academy for six months, and who have been handling DUI cases for X number of years. They know what they're doing – but, for whatever reason, they decided to cut a corner or take an easier route in this case. Then, we show where they cut that corner in their process.

Maybe they didn't ask about medical issues when they should have, and, due to that, our client ended up doing field sobriety exercises while standing up, when since they had a knee injury, they should have done them seated. We can get an officer to agree that they know the seated exercises and that seated exercises would have been more accurate had they known our client had a medical issue. We can also point out that it isn't our client's mindset or responsibility to volunteer this information, especially given the fact that the officer is in complete control.

By the time we're done with our cross-examination, we want the jurors to feel that our client wasn't given a fair shake and that the officer cut corners. Maybe they even feel that the officer's testimony is unreliable after our cross-examination. If we can show that a witness is unreliable about one thing,

thenit will suggest that they're unreliable about everything. That's the way credibility goes.

Motion For Judgment Of Acquittal

Once all of the witnesses have been under direct and cross-examination, the prosecutor will rest their case. At this point, we will file for a motion of judgment for the judgment of acquittal. That motion basically tells the judge that we don't believe there's enough evidence in the case and that they must dismiss the case immediately and acquit our client. These motions have a very low chance of success, but we have won them before – so we will always, always, always file one in every single case.

If The Motion Doesn't Work, We Can Present Our Case Or Take A Knee

If the judge denies our motion, it's then the defense's opportunity to present a case or present evidence. Under the United States Constitution, our clients are presumed innocent until proven guilty beyond every reasonable doubt. As such, it isn't our job, burden, or even our responsibility to put on a case because our clients are already presumed innocent. So, in most cases, we decline to put on a case.

Why would we decline to take this opportunity? At the firm, we use a little bit of a football analogy. When there

are 30seconds left in the game, your team has the ball, and you're winning – you don't run another play. You've already won, so you take a knee, the game ends, and you celebrate.

If we feel as though the prosecutors have not met their burden of proof and that we've successfully poked holes in their case, then our client may decide for us to take a knee. The jurors are taught over and over again that they cannot hold that against our client. They must accept that, under the constitution, our client is presumed innocent. On the other hand, if we do have a defense witness or if our client wishes to testify, then we will put on a case.

If our client wishes to testify, they will be put under oath before being subjected to both direct examination by us and cross-examination from the prosecution. This is something that we caution our clients about because it's a very high-stress situation. Unfortunately, we've even handled cases where an anxious client has admitted something they didn't mean to ever say.

With that in mind, it's still 100% your decision to testify in your defense or not. We can give you advice and counsel and help you weigh your options – and we've had many cases where we would not have won had it not been for our client testifying. However, we've also had very winnable cases that have gone bad because a client chose to testify. Less is more sometimes.

Closing Arguments

Once the decision to take a knee or out on a case has been made, we move into the closing arguments. In Florida, the prosecutors go first and last. This means that the prosecutor gives their closing arguments, then we give ours, and then the prosecutor gives a rebuttal. Their rebuttal is a response to our closing argument.

The closing argument is an opportunity for us to summarize all of the evidence, discuss the law, talk about the elements of the crime, what the rules of deliberation are, and make our passionate and vigorous arguments for why our client is not guilty.

Presenting a closing argument is a very valuable skill – you must be persuasive and be able to build a connection with the jury so that they trust you when you're passionately advocating for your client's innocence. If you've failed to build that rapport, they're not going to trust you, and they're not going to trust your client. Fortunately, our attorneys have trained countless hours to present these arguments with precision.

Then We Wait

When both sides are done with closing arguments; the judge will usually read the law to the jury. They will also

givethe jury instructions before sending them to deliberate – a process with an unpredictable timeline.

We've had cases where we've had not-guilty verdicts in as little as five minutes. This means that the jury didn't really have to deliberate at all – they just walked back there, agreed that our client wasn't guilty, and came right back out.

We've also had cases where the jury has deliberated for hours or even days because they're going over each piece of evidence and vigorously debating it. Even though the jurors are in the jury room and no one is allowed to be back there, there have been times we've heard serious arguments all the way in the courtroom.

Reaching A Resolution

For a case to conclude, the verdict must be unanimous. The verdict in a DUI is either guilty or not guilty. There really are no lesser included offenses in a DUI. As such, the resolutions you can expect from the trial are as follows:

Hung Jury/Mistrial

If the verdict isn't unanimous or the jury can't come to a unanimous decision, it's considered a Hung Jury and a Mistrial. That means that the case has to be tried again, usually within a few weeks.

Not Guilty

If you're found not guilty, the case is usually over. The state does not have the right to appeal a not-guilty verdict. You're done, freed, and the case is over.

Guilty

If you are found guilty, which is extremely rare, the court is supposed to sentence you immediately, though some judges will do this post-trial.

Motion To Appeal

Finally, if we believe that the judge made any issues or errors with the case or the trial, we always have the right to appeal.

SECTION X

DUI MANSLAUGHTER, DUI SERIOUS BODILY INJURY AND VEHICULAR HOMICIDE

CHAPTER 25

Investigation

When a DUI case involves serious bodily injury or the death of another person, the charges are severe, and the consequences are grim. Understandably, these circumstances bring with them the need for an especially careful and thoughtful approach. From the moment of the car crash, it becomes imperative to hire an experienced attorney to protect your rights throughout the entire case.

An overview of the charges that are associated with these cases is as follows…

- **DUI Serious Bodily Injury**

DUI with serious bodily injury is a third-degree felony with a maximum punishment of up to five years in prison.

The elements for a DUI charge that is enhanced by serious bodily injury are the same as for a typical DUI, with the addition of causing or contributing to the serious bodily injury of another person.

- **DUI Manslaughter**

DUI manslaughter is a second-degree felony with a maximum punishment of up to 15 years in prison.

A DUI manslaughter charge includes all of the same elements for a typical DUI, with the addition of causing or contributing to death.

In a DUI manslaughter case, the prosecution only has to prove that you were a contributor to the death rather than the sole proximate cause, and there doesn't have to be an element of recklessness.

For example, if a jury finds that your impairment was 10% of the cause of another person's death and another factor (such as another car cutting you off), was 90% of the cause, they can find you guilty of DUI manslaughter.

- **Vehicular Homicide**

Vehicular homicide is a second-degree felony with a maximum punishment of up to 15 years in prison.

Vehicular homicide is reckless driving with a willful and wanton disregard for the safety of others that causes death. This charge doesn't involve alcohol, and there must be dangerous driving.

It is harder for prosecutors to prove the crime of vehicular homicide than it is to prove DUI manslaughter because the threshold is much higher: You must be the sole proximate cause of another person's death.

For example, speeding alone, an illegal lane change, or even running a red light are not, by themselves, enough to be inherently dangerous. However, going 95 mph in a residential neighborhood can demonstrate a truly willful and wanton disregard for others and could be considered reckless driving.

Our Approach

With every case, we must start by understanding the elements of the crime and the statutes. In this way, we can determine what the prosecutors actually have to prove so that we can build our defense around the facts of the case, the elements of the crime being charged, and what we predict the prosecution will use to prove their case.

What To Expect After The Crash

While you would typically be arrested the night of your DUI, the same is not always true when there has been a death or serious bodily injury. This is mainly because under "speedy trial rules," you are entitled to a trial within 175 days of the date that you were arrested. However, the investigation of these more serious cases can take considerably longer than typical DUI cases.

Here, the crash scene is the very beginning of the investigation – and it can take anywhere between 2 and 22 months for this stage to be completed properly. If law enforcement officials wait as long as 22 months to complete their full investigation after you've been arrested, they're not going to be able to effectively prosecute you because good defense attorneys are going to push forward and take advantage of the speedy trial rules. That's why smart law enforcement officers don't make an arrest for these types of charges right away.

At The Scene Of The Accident

After an accident of this nature, law enforcement's goal is to secure the scene so they can obtain as much evidence as possible. So, the first thing that police officers are going to do is establish a perimeter to block off the area and make sure that no one can compromise the investigation. They will also cal-

lEMS, fire rescue, and traffic homicide – a special unit that is trained to work hand-in-hand with the police to handle cases where a death has occurred.

Next, the officers will make initial observations and take detailed notes on everything that's going on. If there are any other people in the cars, they'll want to separate as many witnesses as possible to prevent them from talking to each other.

If they have probable cause to believe that a person is impaired, the way that they handle the suspect will depend on whether or not that individual needs medical attention. Officers are unlikely to administer field sobriety tests at crash scenes – it's possible, but unlikely. More often, they will direct the person to fire rescue for a medical evaluation. From that point, fire rescue will determine whether they just need on-scene attention or they need to be taken to the hospital.

Obtaining A Blood Sample

The next thing investigators will do is try to obtain a blood sample from the suspect – this is one of the main goals of officers dealing with a potential DUI crash scene.

If you fail to consent to a voluntary blood draw, officers in Florida will seek a warrant. There will be a judge on call any time of the day or night, any day of the week, to whom they will send a warrant as soon as possible. Once the jud-

gesigns that warrant (which might be an electronic warrant), they can take a blood draw against your will.

To do this, the police will have either fire rescue or a medical practitioner take your blood twice, one hour apart. Taking multiple blood draws over time gives prosecutors a better idea of whether you're absorbing or eliminating alcohol at the time of the test. It also makes it easier to attempt a "retrograde extrapolation," where prosecutors can make an assumption of what the blood alcohol level would have been at the time of driving.

When Officers Collect Crash Scene Evidence

During the investigation, the police will examine the scene, the roadway, and the crash itself. They will search for and collect all of the following:

- Skid marks
- Measurements
- Witness statements
- Photographs of the scene and the vehicles
- Statements from any parties involved in the accident
- Any physical evidence that puts you behind the wheel
- Surveillance footage from neighboring businesses
- And more…

The police will have to move through their investigation reasonably quickly due to the need to reopen the roadway to traffic. Finally, when all of the initial information gathering is done, they will most likely let you go pending further investigation.

Taking A Look Into The Black Box

Most cars now have "black boxes" that record crash data similar to an airplane. These black boxes are always running and always keeping data, but they do not always save the data they collect. There are only two different instances where these devices will 'wake up' and start saving data: when the airbag is deployed or when there is a "non-airbag deployment event."

A "non-airbag deployment event" can include something as inconsequential as a bump in the road but can also include a crash that wasn't severe enough to deploy the airbag. You often see these occur when a vehicle hits a civilian or when the airbag control module malfunctions.

In almost every case of this nature, the police will request a warrant to get the black box data. Once they are granted the warrant and obtain the data, those numbers are sent to an expert witness for evaluation. If analyzed correctly, this data is going to give incredibly valuable information, which can include…

- The time of the crash;
- The GPS coordinates of the vehicle;
- The directional steering of the vehicle;
- The percentage of the accelerator or brake that was being used;
- How fast the vehicle was going in half-second intervals pre- and post-crash;
- And more…

Simply put, this data can show in half-second increments whether the driver was putting all of their force into the accelerator, or if they slammed on the brakes. And, using this data, investigators can get a much clearer picture of what happened.

CHAPTER 26

Why You Need An Attorney To Conduct Your Own Investigation

It's absolutely essential to have an attorney on your side who is trained and experienced in handling such severe cases. Only this way can we get involved immediately to begin a separate investigation. At Rossen Law Firm, we hire our own crash reconstruction expert to go out to the scene and conduct a review that is completely separate from the police.

This investigation is absolutely essential as it allows us to ensure that we have secured information as close in time as possible to the incident. We can't know if police officers are going to preserve and save evidence correctly – it's our job

toget our own evidence secured and preserved. As such, the earlier we're hired, the better our investigation can go.

Additionally, hiring an experienced lawyer at the start will allow us to go to a judge and request that they order the traffic homicide officers not to destroy their field notes. Most attorneys don't do this, which is a huge mistake…

During the course of a crash scene investigation, traffic homicide investigators write down field notes that they use to calculate mathematical equations. This involves a lot of engineering and physics, trying to estimate speeds and also recording any witness statements, and their notes are essential. Unfortunately, many investigators will use their notes to create a traffic homicide report and then destroy them completely.

The thing is, over the years, we've seen a lot of information from these notes omitted, whether intentionally or unintentionally. So the bottom line is that we need access to those notes – and in order to do that, we need a court to order that they don't get destroyed. What's more, doing this puts pressure on the police, which is exactly what we're trying to do in these cases.

If police officers still destroy their notes in violation of a court order, we can then have them held in contempt. We can then potentially use that to our advantage at trial and get the-

judge to tell the jury that this police officer destroyed evidence in violation of a court order.

Of course, it isn't going to look good when a lead investigator admits that they destroyed field notes that the judge ordered them to keep. It hurts their credibility with the jury. And as we've mentioned already, if we can show that a witness is unreliable about one thing, then it will suggest that they're unreliable about everything.

Communicating With The Other Side

If our firm is brought onto a case, we always want to reach out to the lead investigator to let them know that we're on the case and that everything has to run through us. We are sure to be nice and helpful when speaking with law enforcement – we need information from them, so it's best not to sour the relationship as much as possible. However, we make it clear that they're not to speak to you anymore.

This also gives us the opportunity to start a dialogue and open up the line of communication. Since these investigations can last up to nearly two years, it's important that everyone involved knows that we're the point person and defense team for our client.

Dealing With Insurance Companies

In addition to handling the criminal charges associated with your case, we will communicate with any involved insurance companies, as well. We do this to reduce your stress and ease your burden – and we do it to protect your case.

If you have insurance, you'll be hounded by your insurance company to provide a statement about the crash. Under Florida law, you are required to give a statement to your insurance company, but we also want to shield you when giving any statements or examinations under oath regarding the accident.

It's important to keep in mind here that an insurance company's main concern will be in protecting themselves. If someone has died or been gravely injured, the insurance company is going to want to pay that policy as soon as possible to avoid the severe sanctions that come with bad faith claims. However, they can't pay out this policy without information and cooperation from their client – but that person is our client, too. And our concern isn't for bad faith claims, it's for our client's best interest.

So, we must avoid a situation where your insurance company gets a statement that the prosecution could use against you in court. To do this, we send a very direct letter to-

the insurance company stating that you are unable to speak with them due to being involved in an ongoing investigation of very serious charges. We then ask the insurance company to assign an attorney to you. This way, anything you tell them is governed by the attorney-client privilege.

By assigning an attorney to you, the insurance company is then able to do what they have to do to close the claim without disclosing private and confidential communications. This protects your rights for the future of the case, which is significantly more serious than the personal injury lawsuit of a car crash.

As you can surely see, these cases are truly unlike any other cases in the criminal justice system, so it is so important to have attorneys who know how to handle all of these various moving parts and ensure that you are protected.

The Penalties Associated With A Conviction

In Florida, there is a score sheet for all felonies. This sheet sets out a point system based on the relevant charges, injuries, and any prior crimes. For example, a first-offense DUI manslaughter conviction with no prior criminal history will put you at a minimum of nine years and a maximum of 15 years in prison.

While judges can go below this score sheet, they cannot go any lower than the four-year mandatory minimum penalty. As such, there are only three ways that you can get below the four-year mark:

1. If the jury finds you not guilty;
2. If the prosecutor agrees to lower the sentence;
3. If you are under 21 at the time of the case and the judge grants you a youthful offender sentence.

The "youthful offender" sentence caps your punishment at six years. In these cases, the judge could decide to give you only probation, or a mixed sentence of a year or two in jail combined with probation or house arrest.

The truth is, we often see multiple charges with these cases. So it's not unheard of for some clients to be looking at up to 50 years when there are multiple counts that are stacked consecutively. The takeaway is this: Being charged with DUI manslaughter or vehicular homicide is not ten times harsher than a first DUI; it's a thousand times harsher.

If you are facing a serious offense of this nature, you cannot afford the risk of working with an attorney who isn't prepared to take every step available to mitigate the consequences of these charges. This is why the attorneys

atRossen Law Firm are so dedicated to our clients – to ensure that every person has the vigorous representation needed to receive a fair review under the law.

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NOTES

ROSSEN
LAW FIRM

10 Essential Questions to ask yourself before hiring a DUI Defense Attorney

Hint: If you can't answer **YES** to all these questions: **DON'T HIRE!**

- [ ] Was it easy to get in touch with the firm?
- [ ] Was the meeting all about me and not the attorney?
- [ ] Did the attorney pay attention to the details of my case?
- [ ] Did the attorney lay out a plan of action?
- [ ] Did the attorney welcome and answer any questions I had?
- [ ] Is this attorney an expert in DUI law?
- [ ] Was the staff and the attorney attentive to my needs?
- [ ] Did the attorney explain how they can beat my breath test, no matter how high I blew?
- [ ] Did the attorney explain how a Motion to Suppress works?
- [ ] Is this attorney willing to fight for me?
- [ ] Did the attorney explain the difference between having a DMV formal review hearing and waiving it? If you waive the formal review hearing you're allowing the DUI suspension to be on your driving record for 75 years.

Florida
DUI Law

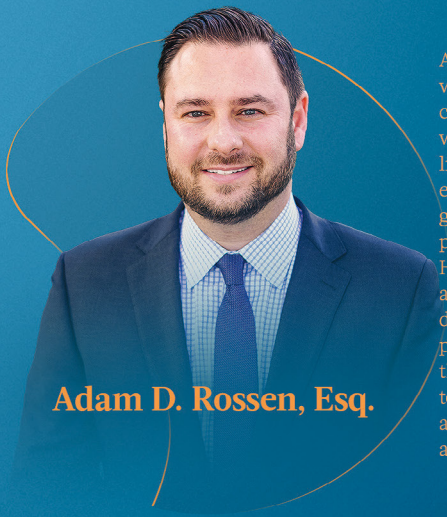
How to Beat DUI Charges with Strategic Defense and Expert Legal Guidance.

"I was in a very bad legal situation and Adam was able to assist me better than any other attorney and was able to resolve the issue in a fraction of the time. For all my legal needs, Adam is the first person I tum to. I was on probation for a DUI and made the stupid mistake of getting arrested for another DUI. The prosecutor wanted 2 years in jail and Adam took care of everything for me with great results. I didn't serve a single day in jail for this DUI case."

- B.H.

"I hired Adam after being charged with a DUI a few years back. He helped me understand what the consequences were, and helped me navigate to the best solution possible. When getting wrapped up in a case like this, it's very easy to be overwhelmed, by not only the situation but the legal language of the law. Adam was able to translate exactly what was happening throughout the proceedings and give them back to me in layman's terms. I felt like he was constantly working on my case and gave me regular updates on what was happening. Knowing the ins and out of the system, Adam was able to have the charges reduced, which allowed me to go back to my professional career. He was a great guide from start to finish."

- J.S.



Adam D. Rossen, Esq.

An award-winning attorney and former prosecutor with more than 17 years of experience in both criminal and DUI law, **Adam** is a skilled lawyer who works hard to get you the best results possible. A lifelong South Florida resident, Adam has spent his entire career practicing here, working closely with government agencies, law enforcement departments, police officers, and the local South Florida Courts. He's successfully conducted more than 50 jury triais and has handled thousands of DUI, criminal, and domestic violence cases. As a former assistant state prosecutor in Broward County, Adam knows how the prosecutors think, and what strategies they'll use to try and convict you. By anticipating their approach, Adam is able to develop an excellent plan and mount the best defense possible for you.

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