



Over The Limit? **Under Arrest!**

DWI Survival Guide For People Living In And Around
Bryan & College Station In Texas



Stephen Gustitis, Esq.

「 Over The Limit? 」 **Under Arrest!**

DWI Survival Guide For People Living In And Around
Bryan & College Station In Texas

Stephen Gustitis, Esq.

Copyright © 2017 by Stephen Gustitis, Esq.

All rights reserved. No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other noncommercial uses permitted by copyright law. For permission requests, write to the publisher, addressed “Attention: Permissions Coordinator,” at the address below.

Speakeasy Publishing
73-03 Bell Blvd, #10
Oakland Gardens, NY 11364
www.speakeasypublishinginc.com

Ordering Information:

Quantity sales. Special discounts are available on quantity purchases by corporations, associations, and others. For details, contact the publisher at the address above.

Orders by U.S. trade bookstores and wholesalers. Please contact Speakeasy Publishing: Tel: (888) 991-2766 or visit www.speakeasypublishinginc.com.

Printed in the United States of America.

Published in 2017.

ISBN: 978-1-946481-21-4

FOREWORD

Stephen Gustitis has been practicing criminal law since 1989. He learned the ways of the prosecutor during his first five years of law practice. First, he practiced with the Jefferson County District Attorney in Denver, Colorado. Next, he worked as a felony prosecutor in Brazos County, Texas from 1990 to 1994. Since then he has been a tireless champion of people accused of crime by the Texas government. This book is a compilation of his 27-year experience prosecuting and defending DWI cases. Its purpose was to provide people with a detailed and handy resource for coping with the complicated and frightening experience of getting charged with driving while intoxicated.

ACKNOWLEDGEMENTS

I would like to thank Richard Jacobs of Speakeasy Marketing who encouraged the writing of this book. Thanks, also, to Nicole Farrell for helping me with editing the manuscript. Lastly, I want to thank my family for their patience, understanding, and their sacrifice of vacation time with their Dad during the final edit.

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.

Stephen Gustitis
Criminal Defense Attorney
102 East 26th Street
Bryan, Texas 77803
(979) 823-9111
www.gustitislaw.com

CLIENT TESTIMONIALS

“Steve and his wonderful assistant Nelda couldn’t have been more professional. It’s unfortunate I had to meet them under these circumstances but I wouldn’t have chosen anyone different to represent me if I could. This was my 2nd DWI case we’re fighting. Nelda always kept me up to date on things I needed to get done and both were available when I had questions. Considering it was my 2nd DWI and my blood test was double the legal limit. Steve was able to get me 2-year probation. Even after the case was closed Steve went to court and made sure I kept my driver’s license at no extra cost. They are first class in my book.”

- Anonymous

“I was not ready for, nor had any idea how to deal with a very emotional and unexpected legal situation, and was extremely grateful for Mr. Gustitis. He was the calm in what felt like the middle of a storm. I appreciated his knowledge, his demeanor, his willingness to answer all questions, and most of all for his ability to give us confidence that the situation would work out with his help. He was more than capable and his office was constantly in contact with us and very professional. I would recommend him to anyone who needs help maneuvering through the legal system and is looking for a partner that will safeguard their interests as much as possible.”

- Jennifer

“Irresponsible behavior on campus got me in trouble with the law. I was charged with a class B misdemeanor. I chose to hire Mr. Gustitis to represent me after personally meeting him in his office. He was interested in getting to know me as a person before discussing the details of the incident. After that he discussed his strategy and laid out in detail the procedure and costs of the process. I liked his style, which was probably the deciding factor. Mr. Gustitis’ services are not cheap. However, Mr. Gustitis has a professional work ethic, a well-thought-out strategy and an extremely nice assistant Nelda who keeps you informed about appointments and such. Mr. Gustitis was able to negotiate a deferral of a class B misdemeanor to two class C misdemeanors, which in my case was the least risky outcome. I am overall very pleased with his services. I would recommend him.”

- Anonymous

“Mr. Gustitis is an outstanding leader in his profession. The moment I met him to discuss our case, I knew we had chosen the very best who possesses both expertise and quality as an individual. He is very patient and attentive, answering every question and is thorough in his explanations of realistic strategy without the fluff or bluff. He is kind and genuinely cares about providing the best outcome for his clients. He is always punctual, well prepared and sporting a warm smile that lets you know he’s got this. You can place your trust in Mr. Gustitis, worry free, you won’t find a better attorney with his qualities, this one is in an A class all his own.”

- Shelly

“Despite parental advice/admonishment and the legion of examples around him, my son managed to get himself arrested on 2 misdemeanors and a felony drug charge. All for personal use of marijuana. We hired Mr. Gustitis based on reviews and an interview. He had a strategy that dismissed one charge and resulted in a reduction of the felony and ended with deferred adjudication for the rest and a couple of weeks in county jail. We had several opportunities during court appearances to observe other lawyers consulting in hallways (just as we were), we noticed Mr. Gustitis was more prepared, professional and engaged with us more than many other attorneys around us.”

- Karen

“Mr. Gustitis was professional, understanding, and most importantly knowledgeable of the law. After a warrant for my arrest was issued, I admittedly took a while to get it resolved. I opted to hire an attorney to help resolve my case. Mr. Gustitis was understanding, non-judgmental, and straightforward. Little did I know the warrant was unlawful, but Mr. Gustitis knew the law well and was able to cite why this was issued unlawfully, and I am finally able to rest easy after the case was dismissed. I will definitely use Mr. Gustitis’ services again if needed. The reviews are accurate, and Mr. Gustitis is the real deal and will fight for your rights. Thank you!”

- Nathan C.

“Our son was charged with a felony DWI in Grimes County. As a parent, these charges were devastating not only to our son, but to our whole family. We were scared and overwhelmed when we met with Steve, but speaking with him helped calm our nerves. He explained the facts of the case in terms we could understand, as well as all the outcomes we could expect. Steve is honest, straightforward and a man of good character. He has extensive knowledge of the criminal system and years of experience to back it up. He truly cares about his clients and will do everything in his power to help them through difficult situations and get them outcomes they are comfortable with. Steve’s assistant, Nelda, is amazing. She was always there to answer questions when Steve was unavailable and kept us posted on upcoming court dates. Nelda always had a smile on her face and her cheerful attitude was so uplifting during those stressful times. If you need a knowledgeable, experienced and honest attorney; Steve and his staff will work tirelessly to win or get you the best results possible.”

- C&M

“Stephen truly cares about his clients and does everything he can for them. He actually goes out of his way to comfort his clients. His advice would always put me at ease and I always knew he was telling me the truth. I am so grateful for everything he did for my case and he literally saved my future. Thank you so much Stephen!”

- Banyan C.

“Stephen took what I considered to be an aggressive approach in the defense and leveraged the facts in the case to make sure the prosecution knew we were willing to fight for a favorable outcome. In the end, a fair plea offer was made that I don’t feel otherwise would have been on the table without this approach. During the entire course of this year long process Stephen made us aware of the legal terms and options in the case.”

- Mike

“Mr. Gustitis was very polite and professional in our initial interview and explained our situation in detail. He was able to settle the case to our satisfaction although it did take longer than we expected. While I do not hold that against him, that is the reason for 4-star instead of 5-star. I would not hesitate using him again on other legal matters.”

- Morris

TABLE OF CONTENTS

<i>i.</i>	Foreword	3
<i>ii.</i>	Acknowledgements	4
<i>iii.</i>	Disclaimer	5
<i>iv.</i>	Client Testimonials	6
<i>v.</i>	About The Author	13
<i>1.</i>	DWI and Related Charges	17
<i>2.</i>	Roadside Sobriety Testing	21
<i>3.</i>	The Process After DWI Arrest	25
<i>4.</i>	The ALR Hearing	31
<i>5.</i>	The Process After A Release On Bail	36
<i>6.</i>	Aggravating Factors For A DWI Charge	39
<i>7.</i>	Sentencing For DWI Convictions In Texas	41
<i>8.</i>	Collateral Consequences Of A DWI Conviction	47
<i>9.</i>	The Student Conduct Code	54

10.	What Sets Your Firm Apart In Handling DWI Cases?	56
vi.	What's The Next Step?	59
<hr/> <hr/>		
vii.	Index	60

ABOUT THE AUTHOR



People arrested by the police come from all walks of life. They are young and they are old. They may be advantaged or disadvantaged. I have helped teachers, doctors, students, police officers, soldiers, immigrants, professionals, and the average working man and woman, not just the hardened criminal. I represent good people, people who really

need my help - people who may have simply made a mistake. Getting arrested is a complex problem and helping people navigate those frightening and dangerous waters has been rewarding to me.

I'm also good at it. It's the reason I have focused exclusively on criminal defense. I've concentrated on criminal law for over 25 years and I am a Board Certified expert in the field. I've been tested by fire in every manner possible, trying the most complicated criminal cases imaginable. For over 22 years I've represented more than 5,000 clients since starting private practice in 1994. My AVVO rating is 10 (Superb) and I was selected to the Texas Super Lawyers (Thomson-Reuters Service) in 2011 and 2012. I have extensive trial experience while I was a member of the National College of DUI Defense. I also know how prosecutors think, having worked for the district attorney early in my career. Equally important is my appeal experience. My unique combination of legal and scientific expertise gives me a special advantage when advising you on the best course of action when you're confronted with criminal charges.

I have defended cases like high BAC breath and blood DWI cases, hit and run charges, death penalty

defense, family violence and assault, drug and narcotics offenses, sexual assault, stalking and harassment, fraud and theft, computer and internet crimes, student university discipline matters, all felonies and all misdemeanors.

Stephen Gustitis in the News

- The cost of getting caught with drugs
- Illegal police searches
- DWI laws in Texas
- Using lab delays to help clients

About Steve

1. Licensed since 1990
2. Board Certified in Criminal Law since 1995
3. Selected to Texas Super Lawyers (Thomson-Reuters Service), 2011-2012
4. Practice dedicated to criminal and DWI defense
5. Felony prosecutor with the Brazos County District Attorney's Office (1990-1994)
6. Received B.A. in Geology (Chemistry Minor) from Susquehanna University, Selinsgrove, PA (1981)
7. Received J.D. from University of Denver College of Law, Denver, CO (1990)

8. Member of the Texas Criminal Defense Lawyers Association
9. Featured author in the Texas Criminal Defense Lawyers Association "Voice for the Defense"
10. Member of the Brazos County Bar Association
11. Admitted to practice in Texas courts, the United States District Court of the Southern and Western Districts of Texas, and the United States Court of Appeals, Fifth Circuit
12. Approved by the Texas Court of Criminal Appeals for capital murder – post conviction writs of habeas corpus
13. Approved for capital murder lead counsel and appeals in the Texas Second Administrative Judicial Region

We Are Accessible

My firm offers free initial consultations to discuss your case. We accept all major credit card payments. Our office is conveniently located in downtown Bryan, Texas, near the courthouse, and we keep flexible hours to accommodate your schedule. I also handle criminal cases in Burleson, Washington, Grimes, Madison, and Robertson Counties, as well as surrounding areas.

CHAPTER 1

DWI AND RELATED CHARGES



There are several types of alcohol related offenses that involve driving a motor vehicle with alcohol in the driver's system. The most common is driving while intoxicated (DWI). DWI applies to a driver of any age. In Texas, DWI is defined as having lost the normal use of one's mental or physical faculties, caused by the introduction of alcohol (or drugs) into the system, or by having a breath or blood alcohol concentration of 0.08 or above. For drivers under 21 years of age, there is a similar offense called driving under the influence (DUI). DUI is a class C misdemeanor offense and is

less serious than DWI. If someone under 21 has any detectable amount of alcohol in their system, they can be prosecuted for DUI. In addition to DWI and DUI, Texas prosecutes similar intoxication related offenses like boating while intoxicated, intoxication assault, and intoxication manslaughter. We represent persons charged with all types of intoxication offenses.

Reasonable Suspicion

Before a police officer may legally detain someone, they generally need what's called reasonable suspicion. In DWI cases, reasonable suspicion might develop through a variety of common circumstances. For example, if an officer observed a motorist committing a traffic offense, like speeding or failing to signal a turn, that could give them the required legal justification to stop and detain the person. Other behavior that might justify a stop would be erratic driving. That is, driving that's not necessarily a traffic offense, but because of the time of night or the location, driving that might indicate someone is intoxicated. Another common way police may contact a driver is at an accident scene. Less common circumstances are anonymous tips, 911 calls, or someone reporting alarming driving behavior of some kind.

What Should I Do If An Officer Is Investigating Me For A DWI?

Every DWI investigation and every contact with the police is different. Every person's performance on sobriety tests is different, as well. Consequently, it's very difficult to provide quality advice about what to do when you're investigated for a DWI. However, other than avoiding drinking and driving, there are two things I can say with confidence.

First, remain silent! When an officer pulls you over and begins asking questions, the law only requires you to provide them with your driver's license and your proof of insurance. You are not required to answer any further questions. If an officer suspects you've been drinking, they will ask you what you had to drink, how much you drank, and even ask whether you believe you're intoxicated. All those answers will be used against you in court. Therefore, the most important thing you can do is keep your mouth shut!

Second, following an arrest the police may request a sample of your breath or blood using the Texas implied consent law. If you refuse to voluntarily provide a sample, they often apply for a search warrant to obtain your blood. In general, blood tests are more difficult to defend than

breath tests. Breath testing is less scientifically sound than blood testing. As a result, breath testing is somewhat easier to defend. Consequently, if you're confronted with deciding whether to provide a sample, especially here in Brazos County, I would much rather someone provide their breath sample. Years ago, our standard advice was do not provide any sample at all. But with the advent of blood search warrants, that advice has changed.

So, other than remaining silent and consenting only to a breath test, any other advice on what to do would only be guessing. I cannot speculate on what might be helpful to you at the moment in time when you're under investigation.

Is Self-Representation A Viable Option In A DWI Case?

Self-representation is never a viable option, even though a person is entitled to self-representation under both our United States and Texas Constitutions. The danger is no layperson has the legal or scientific training necessary to appropriately and effectively defend their DWI case. These cases are just too complicated, both from a legal and technical point of view. So, in that respect, a person accused of DWI has no business representing themselves.

CHAPTER 2

ROADSIDE SOBRIETY TESTING



Roadside sobriety testing is the third phase of a DWI police investigation. The vehicle in motion is phase one and we touched on that briefly when discussing reasonable suspicion.

Once someone is stopped by the officer, the second phase begins. It is called the personal contact phase and is where the police officer observes the driver face-to-face. They observe the person's eyes, their manner of speech, whether or not they smell like an alcoholic beverage, and other possible indicators of intoxication. This is where the

officer talks with the driver, generally while they're still seated in their car, and asks them questions about where they've been, whether they've been drinking, and how much alcohol they have consumed?

Following the personal contact phase, if the officer believes there is continued legal cause to detain the driver for DWI, they may ask the driver to exit the car and perform the roadside field sobriety tests.

There are three standardized tests police officers may administer in any given investigation. The first is called the horizontal gaze nystagmus (HGN) test. The second test is called the Walk and Turn. The third test is called the One Leg Stand. These are standardized tests, which require the officer to administer and score them in a very specific way. Other non-standardized tests may be conducted, as well. Examples are counting or alphabet tests, touching finger-to-nose, or standing with eyes closed and head tilted back. This is called the Romberg test. Lastly, some police agencies use a portable breath test device (PBT). Even though the PBT results are not admissible in court, the police officer may ask someone to blow into the PBT to determine whether or not there's evidence of alcohol consumption.

Finally, a person pulled-over is not required to submit to any field sobriety testing. However, sometimes good performance on roadside tests can be the difference between winning a DWI or getting convicted.

Do Officers Consider Disabilities When Administering Roadside Tests?

The short answer is no. Police officers may document what they know about a person's physical disabilities. Unfortunately, officers rarely take those factors into account when scoring the sobriety tests. Remember, the officer is hoping to develop probable cause to justify an arrest. Once the arrest occurs, the officer is permitted to request breath or blood samples. That is their endgame. They want to obtain chemical test results. As a result, the officer does not generally take disabilities into consideration, although as a defensive issue, we can raise those disability issues down the road to discredit their opinions about intoxication.

Roadside tests are generally admissible in court. Although officers may incorrectly administer the tests, judges will permit them to testify about their administration in scoring the tests and allow them to state an opinion about whether they believed the person was intoxicated based on

those test results. However, we will zealously challenge the officer's incorrect administration of any field sobriety test to shed doubt upon their opinion about intoxication.

How Does The Officer Proceed If Someone Refuses Roadside Tests?

A police officer will typically arrest someone after they refuse to perform the roadside tests. That does not mean the person should attempt to perform the tests. It means the person should expect to get arrested, regardless of whether they perform them or not. When a person refuses to submit to the tests, the officer will continue their investigation. I've heard officers testify that a person's refusal to submit to tests was evidence of intoxication in-and-of itself. But remember, the officer is only interested in establishing probable cause and they will twist the facts any way they can to establish it. Please refer back to our discussion about what to do when you're being investigated for DWI.

CHAPTER 3

THE PROCESS AFTER DWI ARREST



After the arrest, the police officer will read you a number of important forms. In Texas, we call these the statutory warnings or DIC-24. Police cannot request a breath or blood sample until these warnings are given. After requesting a sample, if you decide to submit, the officer will take you to either the police station for a breath test, or take you to the hospital for a blood draw. After samples are collected, you are taken to the county jail where you are booked in for DWI, which is a bondable offense.

In many instances bonds are preset. Sometimes, though, the person must wait until the next morning when a magistrate judge sets the bond. This usually happens if the person refused to submit to a chemical test. Once the bond is set, then the person can bond out of jail. Their lawyer generally has little impact on this process, or how quickly they make bail.

Additionally, the jail has policies regarding when they will release a person on bond. Jail staff won't allow a person to bond out until they blow under 0.08. They typically use a PBT to make that determination. But once the person has detoxed and is under the 0.08 limit, they are free to bond out at their convenience. They can hire a bondsman or they can pay a cash bond to accomplish this. A cash bond will be refunded to them once their case is ultimately concluded in court.

Implied Consent Law

We discussed the implied consent law earlier. In Texas, when someone obtains a driver's license from the Texas Department of Public Safety, they give their implied consent to provide a breath or blood sample upon proper request of an officer. The proper request occurs after the

officer develops the appropriate probable cause for the arrest and after they read the suspect the statutory warning (DIC-24). If the person refuses to submit to a breath or blood test, the Department may attempt to suspend their driver's license based upon the implied consent law. If the person does provide a sample and they fail by testing at 0.08 or above, the implied consent law also permits the Department to suspend their driver's license for a test failure.

Contacting An Attorney Before A Chemical Test

Under Texas law, you do not have the right to legal counsel prior to submitting to a chemical test. If you ask for a lawyer the officer will refuse your request. Regrettably, a driver is on their own when it comes to making the decision whether to submit to a breath or blood test. Please refer back to our discussion about what to do when you're being investigated for DWI.

Driver's License Consequences For Refusing or Failing A Chemical Test

Once an arrest occurs and the statutory warning is properly read to the suspect, a refusal to voluntarily submit to testing will initiate what is called administrative license revocation, or ALR. For an alleged refusal, a person's

driver's license may be suspended for 180 days. For an alleged test failure, their license can be suspended for 90 days. In either case, a person receives a notice of suspension, or DIC-25, before the suspension occurs.

The notice explains their right to fight the suspension. After the notice is given, a person usually has 15 days to request a hearing to defend against the suspension.

Meeting With a DWI Attorney Within The First 15 Days

You should meet with a qualified DWI defense attorney immediately after your arrest. Important time limits apply at this time. I recommend all potential clients meet me personally within 15 days of their arrest. Since they will make a significant investment in legal services, I want to ensure we talk in-person before they decide on legal counsel. Further, I must evaluate potential clients to decide whether I want to accept the representation, or not. It's a two-way street. We might spend an hour or two together during our first meeting. Later meetings are at the client's discretion.

The majority of my DWI defense work involves the evaluation of the prosecutor's case. It calls for the investigation of police reports, audio information, video,

forensic testing, and other related evidence. However, I always make opportunity for clients to visit anytime they desire, whether it's a phone consultation or office meeting. I have always entertained an open-door policy.

Are DWI Arrests Public In Texas?

A DWI arrest is public record. In general, the booking records and court files can be accessed on the Internet if someone knows where to look. However, these cases rarely get any media attention in our community, unless it's a high-profile case, or if someone was seriously hurt or killed. Consequently, most DWI arrests don't make the news. But an official background check by an employer, for example, may find the records.

Can I Get My DWI Arrest Record Expunged?

Expungement is the process of destroying your arrest records. Destroying your DWI arrest would be possible in only two circumstances. First, if the prosecutor dismissed your DWI case, and you were not convicted of any other offense arising from the DWI arrest, you could get an expungement. Second, if a jury found you not guilty after your DWI trial, you could get an expungement then,

as well. As you can see, expunging a DWI arrest record can occur only in very limited situations in Texas.

However, a new law which became effective on September 1, 2017 would permit a person to seal their DWI arrest records under certain circumstances. Sealing your record is different from expunging it. Sealing is accomplished through a process called non-disclosure and means that the government agencies who possessed records relating to your arrest like the police, the prosecutor, the court, and others would be prohibited from releasing your arrest records to the public. The records would not be destroyed, but public references to your arrest would be curtailed by the order of non-disclosure. I explain this process in detail with potential clients visiting me about their DWI case.

CHAPTER 4

THE ALR HEARING



After a DWI arrest, you generally have two problems. First, you have an ALR problem. ALR is administrative and concerns only your driver's license. Second, you have a DWI criminal case problem. Significantly, those cases are distinct from each other. Defending each is different, the rules are different, the courts are different, and the prosecutors are different.

In ALR, once a refusal or test failure occurs, you generally have 15 days to request a hearing. That timeline

is unforgiving. If a request for hearing is not made timely, then your license will be suspended automatically without an opportunity to defend.

Do All DWI Attorneys Represent Their Clients At ALR Hearings?

The most aggressive DWI defense lawyers will defend the ALR for a number of important reasons. The first reason we defend the ALR is to protect our client's driver's license from suspension. A six month or 90-day suspension can be burdensome on them, especially if they drive for work or to attend school. Consequently, our first priority is to protect their driving privileges. The second reason we defend the ALR is to obtain discovery. In addition to obtaining police reports from the ALR prosecutor, we have the ability to subpoena officers to attend the hearing. We question them and extract information from these police officers, well before the DWI prosecutor has a chance to prepare them. This can be strategically advantageous to our clients. This is why we regularly defend all our ALR cases.

Are People Successful At ALR Hearings?

In a reasonable number of cases we win the ALR hearing. There are two ways this occurs. First, we can win based on the merits of the case. For instance, if the officer did not have reasonable suspicion to stop, if they didn't have probable cause to arrest, or if the proper forms were not read to the person before requesting samples, then it's possible to avoid the driver's license suspension. The second opportunity for victory is for a failure to appear. Once an officer is subpoenaed and they fail to appear for the hearing, the ALR prosecutor is compelled to dismiss the ALR case. In my experience, we've won more cases based on failures to appear than we've won on the merits. This is why we routinely subpoena officers to attend the ALR since many officers simply don't like to come. If they don't come, we win! Our clients are always happy about that end result.

Impact Of An ALR Hearing On the DWI Prosecution

The outcome of the ALR hearing only has an indirect impact on the criminal DWI prosecution. For instance, if we win the ALR because of a defect in the police officer's report, the DWI prosecutor will simply fix the problem. But often,

there may be favorable facts we develop at the ALR to which the officer has testified under oath. They are now locked into those facts. Often those circumstances can help us defend the DWI case. In this situation, the outcome of the ALR directly affects the DWI defense.

Occupational and Hardship Licenses

As it relates to DWIs, there are two types of licenses that may be available for persons who get into trouble. First is the occupational driver's license. This is an essential need driver's license. For example, suppose a person's license is suspended following the ALR hearing, but they still need to drive to work or school. The occupational driver's license may be available for them. But this license is limited in scope. Under the occupational license, a person can only drive during limited times of the day and for limited purposes. They are also limited geographically. But if an essential need is established for work, for school, or for performance of other essential household duties, the occupational license is available. It does include additional expenses, though. It often requires a person to get an interlock device installed in their car. The person applying for the occupational license must also obtain high risk liability insurance. In Texas, we call this the SR-22. These

are additional expenses that must be incurred to obtain an occupational (or essential needs) license.

There is a second kind of hardship license a person can get, but it doesn't apply until after the DWI case is concluded. It is called an interlock-restricted license. If a person's license gets suspended because of a DWI conviction, under appropriate circumstances, the court may grant an interlock-restricted license. This permits the person to drive 24 hours a day, 7 days a week for any reason, provided they have an interlock device installed in their car and they maintain the SR-22 insurance during the suspension period. This license is not limited to any geographic locations and can be used anywhere in Texas.

CHAPTER 5

THE PROCESS AFTER A RELEASE ON BAIL



After you leave the jail on bond, your paperwork explains little about what to do next. You'll leave the jail with bond paperwork, the ALR statutory warning (DIC-24), and maybe a notice of suspension (DIC-25). However, once you make bail there are no court dates yet, unless you were also issued a class C misdemeanor ticket. Court dates come later by standard mail. In general, people don't have much information to work with at all. This is why it's vital

to seek out qualified legal counsel immediately to assure your rights are protected.

Your lawyer will make sure you don't miss any deadlines or make any mistakes in the defense of either your ALR or DWI case.

Additional paperwork a person might leave the jail with is called conditions of bond. In an appropriate case, the magistrate judge who set bond will also set conditions of bond, like reporting monthly to a bond supervision officer, installing an interlock device in your car, submitting to a curfew, or other related restrictions. The bond conditions are very important, but sometimes difficult to understand. This is another important reason to hire legal counsel quickly to help you understand your responsibilities.

Use Of Ignition Interlock Devices While on Bond

After installing an interlock device, each time you blow into the device to start your car, information is recorded on a computer microchip inside the interlock device, including your photograph. Once a month, you are required to have the interlock device maintained by the provider and all information recorded on the device is downloaded. That information is forwarded to the judge who ordered the

interlock and to the local prosecutor. If someone is not complying with the interlock requirements, or if they are consuming alcohol and trying to start their car, then both the judge and the prosecutor will know about it. It's critical to know that every time you blow into an interlock device, both the judge and the prosecutor will see the results.

Considering the costs, it will depend upon a person's financial means. To get the interlock device installed usually costs around \$200. Then there is a monthly maintenance fee, which costs around \$85, or so. Over the course of time, while the DWI is pending, it can get very expensive to maintain the interlock device as a condition of bond.

CHAPTER 6

AGGRAVATING FACTORS FOR A DWI CHARGE



Several circumstances may aggravate the seriousness of a DWI. If the chemical test registered 0.15 or higher, that fact may increase the potential punishment. Prior DWI convictions are aggravating factors, as well. If a person has any prior convictions, those may enhance the possible penalties in the case. Furthermore, if the prosecutor can prove someone has two, or more, prior DWI convictions, they can be charged with a DWI felony offense. In that case, they may face potential prison time.

Other possible aggravating circumstances that come into play may include whether or not there was an accident, or whether or not there were any injuries caused by the intoxicated driver. Also, how a person interacts with the police, hospital staff, and jailers during the contact could cause problems. Additionally, underage passengers (less than 15 years old) can turn a misdemeanor DWI into a felony charge. Further, if a person possesses a concealed handgun license and they possess their weapon in the car while they're driving while intoxicated, the person can be charged with unlawfully carrying a weapon, which is another misdemeanor offense. I've seen this happen on a number of occasions.

Lastly, a prior criminal arrest record of any kind may affect the defense of a DWI since a prosecutor will take a criminal record into account when they evaluate their case. A prior alcohol related offense, even public intoxication, may have a very serious impact upon the defense because prosecutors can use prior convictions to enhance punishment in the current case. Prosecutors will always consider priors when they communicate plea offers to the defense lawyer in a DWI.

CHAPTER 7

SENTENCING FOR DWI CONVICTIONS IN TEXAS



Clients hire us for results. Consequently, we work hard to achieve the best result possible for each client. Sometimes a DWI can be won because of an illegal traffic stop or an illegal seizure of evidence. Sometimes the prosecutor's case is unpersuasive and the jury finds our client not guilty. Other times, a DWI may be negotiated to a lesser charge.

Considering the case, one of our principal objectives may be to obtain a reduction. Obstructing a highway is a common reduction charge. Reckless driving and deadly conduct may be charges used to negotiate a satisfactory plea bargain, as well. Nevertheless, my first objective is to identify ways we can win the case, or avoid a conviction. My next objective is to obtain the most favorable plea offer possible from the prosecutor. That doesn't mean we will accept it, though. It simply means we get to the prosecutor's bottom-line during negotiations. At that point we decide whether to make a deal or request a jury trial.

DWI First Offense

Admittedly, sometimes a DWI conviction is unavoidable because of the poor facts in the case. In Texas, a first conviction is a misdemeanor offense and there are principally two sentencing options. The first option is probation. On probation, any jail term is suspended and the person is assigned to community supervision. The minimum length of probation is six months and the maximum is two years. For a DWI first offense, the maximum fine is \$2,000, plus court costs. If a person is placed on probation, they can expect to meet monthly with a probation officer, and they will have

to take special DWI offender classes and complete community service. Additionally, there will be an interlock device requirement during the probationary period.

In Brazos County, probationers must also contact the community supervision department each day to determine if they're selected for a random urine screen. During the probation, a person is not allowed to consume alcohol or possess alcohol, and they are not permitted to visit places where alcohol is the principal source of income for the establishment. This includes places like bars and night clubs. Also, the person may be expected to pay restitution if any is owed. The Department of Public Safety also assesses surcharges against the person's driver's license for 3 years after a DWI conviction, even if the sentence is probated.

Someone under 21 years of age will get an additional driver's license suspension after conviction, even though they were placed on probation. Persons 21 years or older will not. And generally speaking, a person will not spend any more time in jail, although six months in jail time hangs over their head during the course of their probation in case they fail to comply with any of their probation conditions.

Another possible sentencing outcome for a first DWI is what we call the Electronic Monitor program (or house arrest). Many times EM is a viable, and actually a preferable, option to probation. Probation is very time consuming, but often the EM option can be much more advantageous. Under the EM program, a person is sentenced to jail time. However, the jail sentence is served under house arrest with an electronic monitor on their ankle. They get to sleep in their own bed and eat their own food during the time they serve on house arrest.

The monitors include a GPS tracking device and, in some cases, an alcohol detection device called SCRAM. While on house arrest the person can go to work, go to school, and they are permitted to perform other essential household duties. Otherwise, they've got to be confined inside their home.

There are very strict Electronic Monitor rules. The judge can revoke the electronic monitor privilege, and the person would have to serve real jail time, if they violated any of those strict rules. Of course, the person must pay for the EM device, which usually costs around \$20 a day. Lastly,

house arrest will result in an additional driver's license suspension, even for persons over 21 years of age.

DWI Second Offense

Next is what we call a DWI second. That means the person was convicted once before for DWI and now they are being prosecuted for the second DWI. Probation is definitely an option here as well, although the probation conditions are more stringent. In addition to what we talked about earlier for a first DWI, under a second conviction the maximum fine is increased to \$4,000. Under a DWI second, there is a mandatory driver's license suspension occurring after conviction, even for probation sentences. There are also three mandatory days in jail that must be served, even if the person is granted probation. Lastly, there is a full year of real jail time hanging over the person's head while they are on probation in case they violate any probation terms. House arrest is also an option for a DWI second. It's much the same as described earlier for a DWI first offense.

DWI Felony

Once a person is convicted two prior times for DWI, they face felony prosecution after arrest for a third DWI. With felony offenses, probation can be an option with

similar conditions. But with a felony DWI, the person's maximum fine is now increased to \$10,000, plus court costs. There is a mandatory driver's license suspension, a mandatory 10 days in jail as a condition of probation, and between two and 10 years of state prison time hanging over their head. This is very serious. For a felony DWI, there is no house arrest option, it's either probation or prison time upon conviction for a DWI felony.

CHAPTER 8

COLLATERAL CONSEQUENCES OF A DWI CONVICTION



Generally, people know that trouble with the law will cause them problems in many different areas of life. We call those collateral consequences. In fact, collateral consequences may be unlimited in scope. A person may face problems with their employment because of the conviction, or they may face problems getting licensed by a state agency. Let's say they're a plumber, a dental hygienist, or a registered nurse. DWI convictions can affect whether a person can be licensed, or re-licensed, for those professional careers. Certainly insurance

premiums will go up for someone convicted and we've already talked about the driver's license suspensions. I think people are most surprised by how much this all costs in time and money resources. In addition to hiring the best DWI defense lawyer you can afford, we're talking thousands of dollars in fines, thousands of dollars in surcharges, and perhaps thousands in interlock fees and high-risk liability insurance. This can be a financial nightmare for many.

What Can I Do To Help My DWI Case?

The first thing you must do is hire qualified legal counsel as quickly as possible. With a good lawyer, you'll be made aware of the important deadlines we discussed earlier. You can begin developing defense strategies, mitigation activities like counseling and random drug screens, and other related tasks. Only a qualified DWI defense attorney can adequately help you. People must also take advantage of the ALR hearing process as an investigation tool.

Another thing you can do to help yourself is to deactivate, or delete, all of your Internet social media accounts. Prosecutors and their investigators will look you up on websites like Facebook, Twitter, and Instagram. We

don't want them investigating you on those websites because they'll use things you post there against you. They'll identify your friends and call them on the phone to ask about you.

Next, you must remain silent. The only person you can speak freely with is your lawyer. If you talk to your parents, to your roommates, to your best friend, to a coworker, even text messaging or emailing, those statements can be used against you in court. So it's critical you remain silent and speak only to your lawyer about the facts of your case.

Next, you must stop drinking, stop bar hopping, and stop any kind of risky behavior. The worst thing you can do when you're in trouble is to get in trouble again. Ending those behaviors are a really, really important aspect of protecting yourself.

We also talked about the possibility of counseling to help you develop the appropriate skill set to say no when drinking opportunities arise and to help you abide by all your bond conditions ordered by the court after being released from jail. This is important since we can use your performance on bond conditions as a mitigating factor. These are some things you can do to help your DWI case.

Pre-Trial Counseling Or Treatment

Whether you attend counseling or Alcoholic Anonymous is a strategic decision. I do not recommend this without first consulting a qualified DWI defense attorney. For some folks, counseling and related services are an important support system they need to abstain from drinking or bar hopping while the DWI case is pending. It's vital you eliminate any risk you might get into trouble again. If you have trouble abstaining from the use of alcohol, then counseling may help you say no when drinking opportunities and temptations arise.

When I recommend counseling, another important factor is making sure that fact remains absolutely confidential. I don't want anyone, except my client and maybe their parents, to know they are attending counseling. Counseling records can be subpoenaed by the State and used against you. There is no patient privilege. Consequently, it's critical your actions remain secret. Occasionally, we may reveal those facts to a prosecutor, but only after much thought and deliberation. Generally, I don't want the prosecutor to know anything about you until we decide it's strategically important. This is because prosecutors tend to spin information to suit their need. I rarely want to give them any ammunition to do it!

What Can Your Law Firm Do To Assist Me In My DWI Case?

There is a long list of ways our law firm can help you. First and foremost, our goal is to defend each case to obtain the best result we can, whether that is a reduction of charges, a dismissal, or whether we contest the case all the way to jury trial. How we do that is utilizing my scientific knowledge and legal training to best effect. My Minor in chemistry and quantitative analysis makes me uniquely qualified to defend these highly scientific and technical cases. We evaluate every fact and we exploit every flaw in the prosecutor's case.

We investigate the initial stop for potential suppression issues and we examine opportunities to suppress incriminating statements you made to the police. In particular, we evaluate how the officer administered the field sobriety tests. As we mentioned earlier, many sobriety tests are standardized and the officer is required to give specific instructions and specific demonstrations before you're asked to perform. In many cases, the officers omit particular demonstrations, or they admit instructions. Consequently, we exploit those flaws. Of course, we evaluate every case for probable cause. We evaluate all searches and seizures, and in particular, search warrants

which might be used to obtain your blood sample. We look deeply into the breath testing and blood testing procedures for any problems, whether they are scientific, sample handling, or chain of custody issues and any other legal problems that might apply.

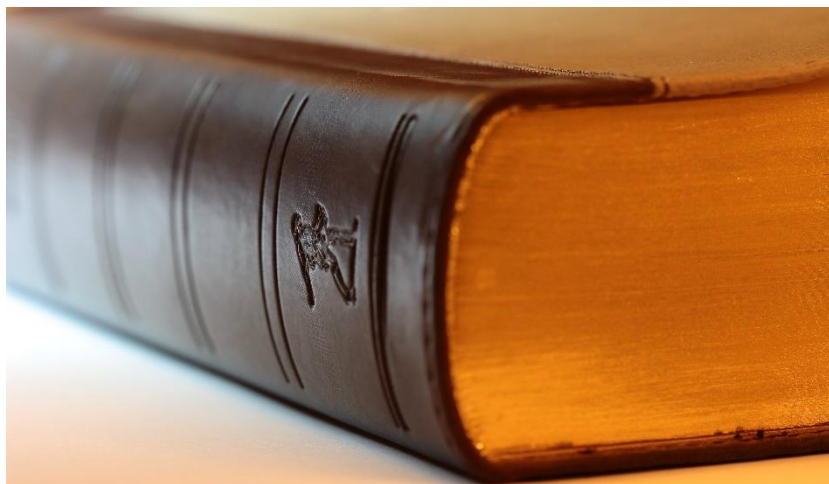
Another important task we perform is critically evaluating the blood draw procedure. This means we investigate the phlebotomy essentials used in obtaining your blood sample. I believe the blood draw is the weak link in all blood test cases. Rarely have I seen a registered nurse obtain a blood sample according to site preparation principles set out in phlebotomy training textbooks. We are well-versed in phlebotomy basics and we look for flaws to exploit there, as well.

Of course, we participate in defending your ALR. We also negotiate for the best plea bargain possible. Our end game is to determine the prosecutor's bottom-line and see if we can work a deal that might include charge reductions or dismissal. Lastly, we are prepared to take any DWI to a jury trial. In my practice, we use an under-utilized approach to trying jury trials. In most cases, with your consent, we choose the jury to assess punishment if you are convicted. Through a number of

sophisticated trial tactics, we can obtain a reasonably defense-friendly jury who often decide a punishment result far superior to anything the prosecutor was willing to offer you in the case. Finally, we can assist you with obtaining an occupational driver's license or an interlock restricted driver's license when appropriate.

CHAPTER 9

THE STUDENT CONDUCT CODE



There is a University rulebook called the Student Conduct Code. The Student Conduct Code is, in many ways, similar to our Texas Criminal Code, but has some very significant differences. If a student is arrested on campus, and sometimes even off-campus if the case is serious enough, the University will seek to discipline them. First, the University will make allegations against the student for violating whatever section of the student code they believe evidence supports a violation. The student can face, in rare cases, expulsion or suspension from the school.

The most common result, though, is called conduct review or probation. In any case, the critical aspect of our University defense is to prevent clients from saying anything to officials that might incriminate them in DWI court. Remember, everything a student says to anyone can be used against them in a court of law. Any papers they sign can be used against them. So, if a Texas A&M or Blinn College student gets into trouble on campus, they will be prosecuted by the Universities for student conduct code violations. I regularly agree to serve as legal advisor to my clients when they are prosecuted there. As they go through the University discipline process, I make sure they protect themselves by remaining silent when necessary and by not signing papers that can later be subpoenaed by a State prosecutor.

CHAPTER 10

WHAT SETS YOUR FIRM APART IN HANDLING DWI CASES?



There are four things setting us apart from other DWI defense firms. First, I've seen just about everything in the way of criminal charges and DWI, both from a prosecutor's point of view and from the defense during my 27 years of experience. Second is our work ethic.

Since we do not accept every client who interviews with the firm, we maintain a small caseload which frees up time to invest in your case. We spend whatever time is necessary to

obtain the best result possible under the circumstances. Third, my scientific education in chemistry, and my interest in science, make me well suited to DWI defense. This is especially true when cross-examining prosecutor experts, technical witnesses like nurses and phlebotomists, and when questioning property technicians. Lastly, our pure enjoyment of people and our desire to make a frightening process smoother and easier is something setting us apart. Beginning with the first person who answers the phone, all the way through case conclusion, our goal is to help the client in any way possible. We are deeply concerned about their welfare. This is what sets us apart.

High Priority on Customer Service

I set a high priority on customer service. Without excellent customer service a lawyer will not attract many clients. Our phone is answered 24 hours a day, 7 days a week. After hours we have an answering service taking calls. For an urgent matter my service will contact me at home or locate me on my cell phone. I return those calls promptly. Further, I regularly meet with clients on the weekend, or after hours, to suit their schedule. Excellent customer service is important to me and I instill that into my staff members, as well. We know this is a stressful time for clients and we allow them to take the

lead. If they need more time with us, then we make that possible. We make ourselves available at the client's convenience for personal or phone consultations.

WHAT'S THE NEXT STEP?

Your next step is to schedule an in-person appointment with a well-qualified and experienced DWI defense attorney. There are ALR deadlines and bond conditions to sort through quickly.

Counseling must be considered and mitigation opportunities identified. The sooner you have retained the DWI defense lawyer of your choice, the sooner you can begin preparing a defense against these damaging and stigmatizing charges.

INDEX

A

ADMINISTRATIVE LICENSE REVOCATION · 27

AGGRAVATING FACTORS · 39

ALR HEARING PROCESS · 48

ALR STATUTORY WARNING · 36

B

BONDABLE OFFENSE · 25

C

CHEMICAL TEST · 23

CLASS C MISDEMEANOR · 17

CLASS C MISDEMEANOR TICKET · 36

CRIMINAL RECORD · 40

D

DRIVING UNDER THE INFLUENCE · 17

DRIVING WHILE INTOXICATED · 40

DWI FELONY OFFENSE · 39

F

FIELD SOBRIETY TESTS · 51

H

HIGH-RISK LIABILITY INSURANCE · 48

HORIZONTAL GAZE NYSTAGMUS · 22

I

INTERLOCK-RESTRICTED LICENSE · 35

M

MITIGATING FACTOR · 49

O

ONE LEG STAND · 22

P

PATIENT PRIVILEGE · 50

PERSONAL CONTACT PHASE · 21

PHLEBOTOMY · 52

PLEA OFFERS · 40

R

REASONABLE SUSPICION · 18

S

SCRAM · 44

SELF-REPRESENTATION · 20

STATUTORY WARNINGS · 25

STUDENT CONDUCT CODE · 54

T

TEXAS CRIMINAL CODE · 54

TEXAS IMPLIED CONSENT LAW · 19

W

WALK AND TURN · 22

NOTES

Over The Limit? **Under Arrest!**

DWI Survival Guide For People Living In And Around Bryan & College Station In Texas



Stephen Gustitis, Esq.

People arrested by the police come from all walks of life. They are young and they are old. They may be advantaged or disadvantaged. I have helped teachers, doctors, students, police officers, soldiers, immigrants, professionals, and the average working man and woman . . . not just the hardened criminal. I represent good people, people who really need my help, people

who may have simply made a mistake. Getting arrested is a complex problem and helping people navigate those frightening and dangerous waters has been rewarding to me. I'm also good at it. It's the reason I have focused exclusively on criminal defense.

I've concentrated on criminal law for over 25 years and I am a Board Certified expert in the field. I've been tested by fire in every manner possible, trying the most complicated criminal cases imaginable. For over 20 years I've represented more than 5,000 clients since starting private practice in 1994. My AVVO rating is 10 (Superb) and I was selected to the Texas Super Lawyers (Thomson-Reuters Service) in 2011 and 2012. I have extensive trial experience while being a member of the National College of DUI Defense. I also know how prosecutors think having worked for the district attorney early in my career. Equally important is my appeal experience. My unique combination of legal and scientific expertise gives me a special advantage when advising you on the best course of action when you're confronted with criminal charges.

"Mr. Gustitis is an outstanding leader in his profession. The moment I met him to discuss our case, I knew we had chosen the very best who possesses both expertise and quality as an individual. He is very patient and attentive, answering every question and is thorough in his explanations of realistic strategy without the fluff or bluff. He is kind and genuinely cares about providing the best outcome for his clients. He is always punctual, well prepared and sporting a warm smile that let's you know he's got this. You can place your trust in Mr. Gustitis, worry free, you won't find a better attorney with his qualities, this one is in an A class all his own."

-Shelly

"Mr. Gustitis was very polite and professional in our initial interview and explained our situation in detail. He was able to settle the case to our satisfaction although it did take longer than we expected. While I do not hold that against him, that is the reason for 4-star instead of 5-star. I would not hesitate using him again on other legal matters."

-Morris

Stephen Gustitis **Criminal Defense Attorney**

102 East 26th Street
Bryan, Texas 77803
(979) 823-9111
www.gustitislaw.com



Price: \$14.95