

CHARGED WITH DUI IN COLORADO?

(USEFUL INFO REVEALED TO HELP FIGHT YOUR
CASE)

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ATTORNEY INTRODUCTION

This book is taken from a recent, live interview with Paul D. Stuber, a DUI defense attorney in Boulder, Colorado.



Instead of simply stating the DUI law and its penalties, Paul speaks plainly about what good people charged with DUI face, common misconceptions, and how to best defend their case with the help of a private attorney.

Who is Paul Stuber? (About This Attorney)

Paul: My name is Paul Stuber, and I've been practicing since 1982. I have my own office in Boulder, Colorado. I have been operating under my own shingle, here, since 1983. About a third of my practice is dealing with DUI-type misdemeanor criminal defense work. Probably another third of my office, I deal with bankruptcy issues. I also handle with estate planning.

Interviewer: You mentioned you were in Boulder, which I know is a smaller town that is a little bit away from Denver, but do you attract clients from the

Denver area, or do you primarily practice just in Boulder?

Counties and Cities in Colorado Served

Paul: I work primarily in the north area, not too much in Denver proper. It's pretty concentrated with the attorneys' downtown. But, I deal with more of the outlying areas of Adams County, and Weld County, Larimer County and Boulder County.

Interviewer: What are some of the cities that are in the counties you mentioned?

Paul: Well, most of my practice is in Boulder, and that includes Louisville, Lafayette, and Longmont, which are the other major cities in Boulder County. Broomfield County is close by and I didn't mention that before, but that used to be part of Boulder County and it split off into its own a few years back. Broomfield is the main city in Broomfield County.

There's also Westminster in that area. But, you go to Adams County; it is mostly the Brighton/Thornton area. And, in Weld County, I mostly deal with the people who are closer to me in Weld County, rather than all the way up into Greeley, but I deal with people who are in Erie, primarily, in Weld County. In Larimer County, it's Berthoud, and Loveland, and Fort Collins.

BRIEF OVERVIEW OF COLORADO DUI PENALTIES

Interviewer: Today we're going to talk exclusively about DUIs. When someone's been arrested, charged, and released, what are some of the first things they need to figure out? Do they even need a lawyer to help them? How serious might their case be?

Paul: Well, first of all, you don't *have* to have an attorney represent you on anything. You can defend yourself on any kind of charge, if you like. DUI charges are serious because they can carry up to a **year in jail**. Having representation



probably makes sense. If you haven't been involved in the system, it gets pretty confusing, and you need to make sure that somebody is there to protect you, and also so that you get the right results.

If you have been arrested for DUI before then you're dealing with much more serious consequences. Then it becomes even more important to have somebody look over your case, to make sure the prosecution is fulfilling his or her obligation, in order to make sure

you get proper treatment in court.

DOCUMENTATION

Interviewer: When people have been arrested for a DUI, first of all, is it important for them to note down what happened before, during, and after their arrest?



How might this help them when they speak to an attorney, in order to get their defense going?

Cooperating with Police

Paul: Well, it's very important to get the information. Your story is probably going to be a bit different than the one that is in the police report. It's really good to have both, to try to figure out, really, what was going on. What's most important if you get stopped is to **cooperate** with the police and not make the situation any more aggravated for you than it could be.

I've represented some people who have wound up having large bonds and staying in jail for quite a while once they first get arrested, just because they tried to run off, or they were argumentative, or were doing

things that caused trouble.

I had one client who ripped a turn signal off of the police vehicle, and he wound up getting a felony charge out of it, where he would not have had such a serious problem if he had just cooperated.

Don't Volunteer Information

That being said, cooperating with the police *doesn't* mean giving them extra information. It's best to have your license, registration, and insurance available, and give it to them, because they will ask that of you when they first make contact.

It's best **not** to go into full stories. If they are asking you questions, it's best to answer as minimally as possible, and not make any admissions. It's not necessary. The police will ask you to do voluntary roadside maneuvers. If you believe you can pass those, fine. I have heard of people passing the roadside maneuvers and the officer letting them go.

Interviewer: I see.

Chemical Tests (blood, breath, urine)

Paul: But, if you think there is any trouble with that, probably the best thing to do is say you want to just have a chemical test done. If you believe that the chemical test will be over a 0.2, or even over a 0.17, which is basically twice what an intoxication level is

considered in this state, then it may be better **not** to take the test at all.

Refusing the Chemical Tests

When it comes to court, if you refuse a test, you lose your license for a year. So, it's a pretty substantial penalty to pay for not taking the test. The courts basically assume that your blood alcohol level must have been that high for you to refuse to take the test and the result will be that losing your license for a year.

Blood Alcohol Levels and Penalties

That is a substantial penalty. However, if you have over a 0.08, you can lose your license for **nine months**. You can get reinstated early after one month, with an interlock device, but with a 0.17 blood alcohol level, you have to have an **interlock device** for two years. If it's over a 0.2, there's mandatory jail time.

Interviewer: One aspect you mentioned earlier is that you want your clients to be cooperative with the police, but not talk *too* much. Do you find that people think they can talk their way out of the situation, and then they end up getting themselves in more trouble if they divulge too much to the police officer about what happened?

Use Your Judgment When Talking to the Police

Paul: I find that people can get themselves into more trouble by talking more with the officers. On the reverse side, they get into trouble by not saying anything at all. You have to walk the fine line there. Also, of course, it depends on how much you have been drinking. If you are impaired or not, if you think you can pass these tests, and then by all means, be as forthright as you can be.

ROADSIDE MANEUVERS/STANDARD FIELD SOBRIETY TESTS

Interviewer: When you say the tests, is that when they ask you step out of the car and walk a straight line, or touch your finger to your nose, that kind of stuff?



Paul: Well, they don't do the touch the finger to the nose test as much anymore. They've refined those roadside maneuvers. Now, they really are *only* testing people on the things that they think that they did well, and they don't realize what the police officer is really looking for. There's something other than what is obvious, in the roadside test.

The Horizontal Gaze Nystagmus Test ("follow my pen with your eyes")

The primary test is called the horizontal gaze nystagmus test. This is where they have you look at a pen, or a penlight, or something in front of you, without moving your head and move your eyes from side to side. The idea is that this will stimulate a nystagmus, which is the jerking of the small muscles of the eyes that will indicate that you are impaired.

The example I use is that if you hold your hands together really hard, and push them really hard together, they start to vibrate. It's the same sort of thing with your eyes. Their muscles are always pulling against each other. If you have had alcohol in your system, it will start to do that vibration early on.

Field Sobriety Tests (no such thing as "passing")

The science is pretty strong on that test. It's important to mention that the person taking the test can't tell whether they are passing or failing.

Interviewer: I see.

Paul: As far as the mobility tests go, for example, the walk and turn, passing or failing is pretty obvious. If you fall over, you've failed it. But, mostly what they're trying to do is give you a complex set of instructions and see if you can remember them, and then repeat them.

Interviewer: Are these called the standard field sobriety tests?

Paul: That's right.

Chemical Tests

Interviewer: You mentioned chemical tests. Is that the portable breath machine, on the roadside, that they ask you to blow into?

Paul: There's the portable breath test, which is not very reliable. It's really a screening tool. You can choose to do that, or not. It really is not something that is often part of the criminal case itself. The idea *is* if it records something high enough, then they'll take you to the police station do a real breath or blood test.

At the station, they will use the Intoxilyzer 5000 EN machine, which is standard for Colorado. If the result comes out low enough, they'll probably let you drive yourself home.

Blood Alcohol Levels and Being Charged

Interviewer: So, the national limit is 0.08, so far as I know. At what levels do you think they might let you go, versus not letting you go?

Driving While Ability Impaired

Paul: Well, the problem is in Colorado, actually, there

is another charge. It's called the **driving while ability impaired**, which doesn't get much press and I don't know why. The blood level on that one is 0.05. It's actually much **lower** than the standard throughout the country. You can get a **substantial ticket** while driving while ability impaired at a 0.05 blood alcohol level.

Interviewer: How would you compare that charge to a DUI, which is .08 and above, is that right?

DWAI—Reduced Penalties

Paul: That's right, and there are different variations on the DUI itself, but it's a lesser-included offense, or less severe. The benefit that we have by having that here in the state is that often we can use that in plea bargains. It carries about **half the penalties** of the DUI charges.

Other Levels and Penalties

Interviewer: Let me clarify. If someone blew like a 0.11, you may be able to reach a plea agreement? So, there's a break point at 0.05, that's a DWAI. There's 0.08, which is a traditional DUI. Then above that, you said the next point is 0.17?

Paul: Yes, 0.17. The Motor Vehicle Division deals with that differently, and that level's penalties will result in longer suspensions.

Interviewer: I see.

Paul: At a level of 0.2, there's **mandatory** jail time. There's a 10-day minimum mandatory jail sentence.

Interviewer: If you're convicted, right?

Paul: That's right.

DUI CHARGES CAUSE TWO CASES AGAINST YOU: (CRIMINAL CASE + DMV CASE)

Interviewer: When people are arrested, is it true that they're not just facing a criminal charge, but they're also facing DMV problems in regards to their license being suspended?



Paul: That's right. In the state of Colorado, they're very **different** and **distinct** areas. The Department of Revenue holds the Division of Motor Vehicles, and since this has been considered a privilege, not a right, to have a driver's license, they oversee license suspensions and revocations at an administrative level.

The judge has nothing to do with a driver's license in the criminal courts. Obviously, though, if there are convictions that a judge renders, that can relay to a suspension with the Motor Vehicle Department.

Administrative Hearing

But, if you have a blood alcohol level that is over a 0.08, there's an administrative hearing that can be requested through the Department of Revenue Division of Motor Vehicles. This hearing is where an administrator determines whether or not you should have your license revoked.

Your Criminal Case and DMV Case Are Handled Separately

It is completely *separate* from the criminal case. If an attorney can get the criminal case dismissed, the dismissal still may not have *anything* to do with the driver's license. Again, on the reverse side, we can get the driver's license hearing and prevail on that, and keep the driver's license, and it won't have **any impact** whatsoever on the criminal case.

Interviewer: People need to be aware the moment they are arrested, both of these events are ongoing and they both need to be addressed.

You Must Act Promptly to Avoid a License Suspension

Paul: That's right. In fact, there is a time frame automatically applied on the suspension. If the result of the breath test is over 0.08, then you have 7 days from the date of the arrest to request a hearing, in person, at the DMV.

If you just let that go, your license is **gone**. You have to go into the DMV, request a hearing within those seven days, and then they give you another piece of paper that acts as your license until that hearing. If you don't address this through the proper channels, you'll lose your license, even though the *court date* on the *ticket* hasn't arrived yet.

Interviewer: Even though you haven't even gone to court, and you haven't been convicted, if you don't request this administrative hearing, you'll lose your license for a minimum of how long?

Interlock Devices

Paul: Typically, it's a nine-month revocation, right now, but the rules keep changing. But, right now, it's a nine-month revocation. You can get an early reinstatement after one month of no driving **with** an **interlock device** installed in the car.

Interviewer: An interlock is a small breath test machine that you have to blow into to start your car and keep it running, right?

Paul: That's correct.

Interviewer: Can you explain?

How Long Is The Device Installed For?

Paul: The ignition interlock also has to be hooked up to a computer once a month at the shop where it was installed, so that the information can be sent to the DMV. They're looking to see if there was any times where the car wouldn't start for you, if there were ever a **hot test**. If you go for four months **without** a hot test, they will send a letter saying you can get that removed, and this will actually shorten the suspension.

Interviewer: A hot test means you had alcohol in your breath when you blew into it?

Paul: That's correct.

How Does the Ignition Interlock Device work?

Interviewer: All right. If you have an ignition interlock and you blow into it, and you have alcohol in your breath, will the car start? Will you be able to drive, or will it automatically lock you out?

Paul: your vehicle **will not** start. Plus, periodically, while you're driving, it asks for a breath test. The device will give you time to be able to pull over if you are uncomfortable driving while doing the breath test.

Interviewer: I see.

False Readings With the Breathalyzer

Paul: But, you have to be careful. One of my client's did fail. It wasn't an interlock device, but it was an in home detention Breathalyzer, and he failed because he had just eaten a teriyaki dinner. You have to be careful. Teriyaki, in its true form, is made with the alcohol Saki. If you had just eaten some of that, and there is residue in your mouth when you blow into the device, some of that alcohol would go through into the Breathalyzer.

The reason we have a 20-minute waiting period before you can use a Breathalyzer is because it takes 20 minutes for the mouth to be completely clear of what they call, mouth alcohol.

Interviewer: That's good to know.

Paul: There's no way of checking to see that you've been waiting for 20 minutes since you consumed anything before you start your car. That issue could be there. I have not seen it yet, but I *have* seen it with the home detention Breathalyzer.

COMMON MISTAKES PEOPLE MAKE WHEN CHARGED WITH DRIVING UNDER THE INFLUENCE (DUI)

Interviewer: We talked about some mistakes that people make when they've been arrested that makes their case worse, but what are some of the most common ones you see that hurts people's ability to defend their case?



No Right to Representation at the Time of Arrest

Paul: Well, our Supreme Court has decided that you **do not** have the right to counsel right at the time you are being arrested on a DUI. One of the biggest problems that I've seen, are people saying, I can't decide if I'm going to take a breath test or not, without talking to my attorney.

Refusal Results In An Automatic Suspension

They won't give you that opportunity. They'll just say, that's a refusal, and then you **lose** your license for a year, and you don't have any way of proving that your

blood alcohol level wasn't that high after all. And, I've had a number of people who have said, "I haven't had hardly anything to drink. This is really wrong. I need to talk to an attorney before I can go with this." And they say, "Well, sorry, you don't have that right, right now. Once we've booked you and put you in jail, then you can call."

Then they wind up spending time in jail, and they don't have a blood test or a breath test to prove that they really didn't have that much to drink. It gets to be a really bad situation because then, not only did they lose their license for a year; it's also assumed that their blood alcohol level must have been very high for them to have refused the test.

Interviewer: When you say, refused the test, you're specifically talking about the Breathalyzer at the police station, not the one on the roadside, right?

Paul: That's correct. Yes, either a blood test or a breath test at the station.

Interviewer: Okay. Any other mistakes people make that hurt their case?

Medical Marijuana

Paul: Lately, there's been an issue with medical marijuana. People seem to think that if they have a medical marijuana card, that smoking will not be a

problem. It's the same as with alcohol. Alcohol is legal to drink, you just can't drink too much and then drive. Marijuana is legal for them to smoke with their card, but if they've been smoking, that doesn't mean that they *can't* be arrested for driving under the influence of drugs.

DRUG-RELATED DUIS

Interviewer: What percentage of the DUI cases is due to drugs nowadays?

Paul: It's probably still less than 10%, of the cases that I deal with, but they are on the rise. The problem is there is confusion about that right now, because people think they are all right, but they have to be more careful about when they choose to drive.



Interviewer: Actually, is there a law that addresses if someone has metabolized marijuana or other drugs in their system, but maybe they haven't used drugs that day? Would they still be charged with a drug related DUI?

Blood Tests for Drug Levels

Paul: Well, getting charged and being convicted are two different things, of course. I've dealt with a number of these, and we've become more sophisticated now with the blood tests. It's important to get a blood test if you're being charged to know what the levels are. We have active THC and non-active THC levels.

THC Levels

The state legislation tried recently to establish a level like as we have with alcohol, which is 0.08. They tried to establish a level of the certain number of nanograms of active THC in the blood recently. That did not pass. That's *good and bad* for people who are being charged with this, because I've had people who have been convicted with just 3 nanograms of active THC in their blood system.

It doesn't take very much ingesting to do that. However, it doesn't take all that long for the levels to decrease in active THC. The testing, just to see if there are any levels at all could last for a couple of weeks. But, that's why they had to narrow this to what is considered the active THC level.

Be Careful When Admitting You've Been Drinking

Interviewer: That's interesting. Is there a particular story that you hear from people that come into your office, such as, "I only had two beers," or something

along those lines?

Paul: Well, that is pretty common to say that. The problem is when an officer smells alcohol on your breath and asks if you've had anything to drink; you've got a dilemma there. One, you **violate** Miranda rights by saying incriminating evidence. Or, should you not say anything? If you say that you haven't been drinking at all, and there's alcohol on your breath, and it shows anything on a test, then you're lying to the officer, and that doesn't help you either.

What To Say When You Are Questioned

That's why I think most people will try to minimize it, and just say they've only had two beers. If they've had eight beers, they said they've had two beers. That's why that line has appeared. But, the thing is to say, "I haven't had anything to drink for two hours," something along that line, if that's the case.

Interviewer: That's a good point.

Paul: Or, I've only had one drink in the last four hours, or since dinner. It may be better to make that sort of a statement, so that you're not lying to the officer and you're also not incriminating yourself.

Interviewer: You said earlier that people might get into more trouble by not saying anything. Why would that happen?

Silence Is the Same As a Refusal

Paul: Well, if you do not choose a test, you have to actively respond to that question if you're going to take a blood or breath test. If you do not say anything, it winds up being considered a refusal, and they take your license away for a **year**.

Typically, if you are not cooperative, you're going to be classified **as non-cooperative**. This has it's own consequences. The officer will usually just say, "Okay. Sit in the cell and wait until you feel like cooperating." They have the right to do that.

It's usually best to follow along with what rules you can for that period of time that you're being arrested *to minimize the penalties* you're going to face through that night. Because, there have been times where people **would not** have served any jail time at all had they just cooperated, and waited, and we dealt with the case in court later. Instead, because they were not being cooperative with the police, they wound up staying two nights in jail before they could even had a bond hearing.

What Approach Will Work To Your Benefit?

Interviewer: What if you just say, "I'd rather not answer. I'd rather speak to an attorney?" Will they say, "You don't have the right to one right now." If you just say, "I'd rather not answer the question," is that not being cooperative?

Paul: It depends on your approach. If your deciding whether you are going to take a blood or a breath test, then they would consider even that approach as not cooperating. If the police are just trying to get a history of what your night was like, and how much you've been drinking, and where you've been, then that's perfectly all right to not answer.

Interviewer: I see.

Paul: But, you wouldn't just stare at them with your mouth closed. You would respond like you were saying, in a polite tone, and say that you would rather not answer those questions.

PLEADING GUILTY WITHOUT REPRESENTATION

Interviewer: Do you encounter people who say, "I can't take anymore? I just want to get it over with. I'm just going to plead guilty." What's wrong with doing that?

Paul: Well, obviously, I don't usually see those people because those are the people who don't want to hire an attorney to represent them. If you just go in and plead guilty, you would lose **any advantage** that you would have as far as offering a plea bargain, and, most likely would wind up with a much more **severe sentence** and higher classification of conviction. That's not the way to go.

Interviewer: There's no mercy of the courts on which you can throw yourself?

Paul: No. It doesn't really work that way anymore. We have a system, even though a lot of it doesn't make sense, and we have to play under the rules of that system for the best advantage for the people being charged.

Interviewer: I see.

Pleading Guilty or Not Guilty

Paul: For instance, one thing that bothers me in our

system. Right now, when you are being asked to enter a plea, you're asked to enter a plea of either guilty or not guilty. That's always bothered me because I've had a number of clients that say, "Well, I can't say I'm not guilty. I just want to work out the best plea bargain I can." I say, "Well, we have to enter a not guilty plea." My preference would be if we could have the law say, either plead guilty or not plead guilty. Are you pleading?

Interviewer: I see the difference.

Paul: Are you guilty, or are you not pleading guilty, instead of saying not guilty. I think you should say, "I'm not pleading guilty."

SELF-REPRESENTATION, PUBLIC DEFENDERS AND HIRING A PRIVATE ATTORNEY

Interviewer: I understand. It makes sense. If you were to contrast trying to defend yourself on a DUI case, versus going for a public defender, versus hiring a private attorney like you, what are the good and bad of those three scenarios?



Paul: Well, first of all, most likely you're not familiar with how the system goes, and what the games are that are being played, and how you can work it to make sure that it *works out best* and to your advantage. Having representation makes sense.

Public Defenders

Public defenders are usually pretty good attorneys. They are very much overwhelmed with what they've got to do, and can't spend much time for you. But, you'd also have to **qualify**, and it's becoming more and more difficult these days to qualify for a public defender.

Interviewer: Qualifying, meaning you have to be pretty

much at the poverty line?

Paul: You basically have to be indigent to be represented by a public defender on a DUI.

Private Attorney

Interviewer: Please explain about hiring a private attorney.

Paul: Now, a private attorney that is if they are familiar with this area of law enough, will know the judges, will know the DAs, and will know the process. A private attorney will also be able to read the reports and see if there's a problem.

Blood Tests and Time Limits

I just recently had a case where the police officer had written down the reporting time of when he *came* to the scene, not the reporting time of when the *last driving* occurred. Because we have issues of time, especially with motor vehicles, you have to have the blood test within two hours of the driving. Everyone thought it was *within* the two hours because it was based on the observation of the DUI officer who was called to the scene later, when in fact it was really *more than* two hours from the time of driving.

You need to be able to have your radar focused on all these different nuances, in order to protect the rights of the person being charged. It can make a big difference

in their case. If you're not familiar with the process, you won't be able to find an aspect that will improve the client's defense.

Public Defenders Cannot Address the Civil Part Of a DUI Case

Interviewer: One thing you mentioned earlier is when you are charged with DUI, you also have an administrative hearing, and the license penalties that are noncriminal. Can a public defender even address that side of your case, or can they only address the criminal side?

Paul: No, they wouldn't be involved in that at all. There are no public defenders in the DMV hearings.

Interviewer: That's important to know because might people think they could just get a public defender, but they're forgetting about the license side. They can even win, possibly, with a public defender, but still lose their license. Is that right?

Paul: That's right. Usually, that's beyond the time frame anyway. But, because the DMV hearing typically happens more quickly than the court case does, by the time you would even be getting a public defender, it would probably be too late for the DMV case.

What to Look for When Interviewing Attorneys

Interviewer: In terms of private lawyers, I'm sure that people interview several of them when they're deciding which one to hire. What would tell you that someone is the right lawyer for you, or maybe not the right one? What signs should they look for when they're interviewing lawyers?

Paul: Well, it's important to be able to get along with the person who is representing you. It's **very important** for have them have experience in DUI law, and it's just as important to have them be familiar with the judges and the associate district attorney who are handling those cases in that county.

Interviewer: I see.

Paul: It would be a good idea to ask them what their experience is in DUI, and what they're experience is with that county. You need to see if you're going to be able to get along with them and if they take the time to make sure all your questions are answered. Also, know that they're going to be dealing with you *directly* and they won't be having you deal with assistants and paralegals.

Interviewer: You want to ask the attorney, "If I hire you, you're the person that I'm going to see at all stages of my case? Am I going to be passed off to the paralegal or someone else in the organization?" Is that right?

Experience Counts

Interviewer: Is it a common mistake to think, "My uncle Bob does real estate law, so he can probably handle this DUI case"? Is it much better to have an attorney that handles a lot of DUI cases and that DUI cases make up a large part of their practice?

Paul: Well, you have to have an attorney that at least can recognize what parts of a police report would be harmful for their defense, and what parts are helpful, and know how to talk with the District Attorney's. The plea-bargaining is usually just one-on-one with the DA and the attorney for the defendant.

Sometimes the offer that's being made is **not** a good offer, and sometimes it is a good offer. How are you going to be able to recognize if what's being offered is a good offer or not, if you haven't had the experience to see what really has happened in the past?

An Attorney Can Help Mitigate Penalties

Interviewer: That makes sense. Paul, I know that you can't say with any certainty, but ballpark, how often are you able to get some or all of a prison sentence mitigated and fines reduced?

Paul: Well, I would say that in almost every case, I am able to make sure that my client's get the best treatment. I make sure that they're going to get the lightest penalty that would be possible for their

situation. The only times that I've seen the other side of it, is when I've had people come to me after the fact, and say, "Is this Okay? What happened? Then, it's more difficult to come back into court and say, "We need to have things modified." The idea is to deal with modifying penalties in the beginning. Judges don't want to review these sorts of things. I have seen it where people have gone in on their own, and have not done as well as they could have. That's very frustrating.

PLEA BARGAINING

In plea-bargaining, though, there are negotiations that go back and forth. Typically, the DA wants to win on something. So, what you've got to do is try to find what it is that would satisfy the DA's office that's not going to be as detrimental to my client.

Interviewer: Is it this a negotiation that people wouldn't even be aware of if they didn't have an attorney helping them? It is hard to swim up stream, right?

Paul: That's right.

Alternatives to Jail and Heavy Fines

Interviewer: Are there alternative punishments to jail, or to some of the other penalties, like subversion programs, or you mentioned ignition interlocks, or home detention? How do those come into play, and what can you do to help facilitate them?

Paul: That's where a lot of the personal knowledge is a real benefit. I've had a number of clients that would rather just be done with it as soon as they can, so they're just going to do some straight jail time in order to accomplish that.

I've had others that will do whatever it takes. This might include many hours of community service or

work crews or electronic devices, in order to stay away from being in jail overnight. There are many alternatives. Straight jail time is usually only in the **multiple offense** category, even though there is **mandatory jail time** for first offenders who are over a 0.2 blood alcohol level.

We often have different alternatives that are more attractive than just straight jail time. The first is work release, where you spend the nights in jail, and are released during the day to go to work and to class.

In-Home Detention

The most popular alternative is **in-home detention**, where you wear an anklet device and to hook up another device to your phone line that is programmed to monitor your presence at certain times of the day. If it can't "read" you, it calls you in, saying you're not there. Because that's a fairly easy undertaking, usually the judges will order **twice as much** time for those kinds of detentions.

Work Crews

There are also **work crews**, which we use to call work-enders. They were on the weekends but now they have them any day of the week. This is where you work on some sort of a project in the morning until the afternoon. It could be anywhere from working in gardens or picking up trash to helping shelve books at the library. There would be various jobs that a work

crew would be doing.

Interviewer: It's like community service, right?

Paul: It's similar to community service. Although with community service you work directly with whomever the beneficiary is of the community service, such as the Humane Society. With the work crews, you actually work with the Sheriff's Department. That's considered a day of jail, from morning to afternoon on a workday.

WHAT YOU NEED TO KNOW ABOUT YOUR DUI CHARGE

Interviewer: What are the top few misconceptions people have when they first speak to you about their DUI charges?

Paul: Well, That's a good question. I usually encourage people when I first meet them to start taking education and therapy classes. This is because you will be ordered by the court to take those classes anyway, and if you start them ahead of time, it helps you in two ways.



One, it shows that you're taking this matter **seriously** when you attend the classes. Two, because it takes a while to finish a series of classes, you would get a head start your **probation**, and you may be able to end probation earlier.

However, you hear all kinds of stories. I've heard a number of these stories that go from one extreme to the other. "This guy had his fifth DUI and never did any kind of jail time," and "This guy only had one glass of wine, and wound up spending three months in jail, straight."

There's always *more to* the story than what you hear. I always think of that when I see the news on any case that I've been involved with. If there's anything on the news, or in the paper, they only tell a very small portion of the story, and it *always* is skewed whichever. I find this very bothersome, because there's so much more to the story that they obviously don't have the time to report.

THE DUI PROCESS

Interviewer: Is there anything else you wanted me to ask you about the DUI process and people that I haven't asked you that you feel is important?

Paul: Well, I think, is important just to understand the whole process. We've already talked about the two sections. We've talked a little bit about the DMV portion of it, but we really haven't talked directly about what happens in the court case itself.

The Court Case

You are often released, just with the ticket. Sometimes people have bond, and if they have bond, then they have to follow whatever the restrictions are on that bond. Then they make sure that if they have to do a breath test, that they **do** them. Any missteps that you have in the early stages of this will look really bad when it comes to trying to work out a **plea bargain**.

There's a **return date** on that ticket, and if you hire an attorney before that date, you don't have to go to it. The attorney will enter an appearance and a plea, and will cancel that date. The return date on the ticket is not something you have to take off work for, if you hire an attorney. Then, depending on the county, an attorney will set up a pretrial conference.

Pretrial, Case Management and Disposition Dates

In Boulder County, we do not have to have the defendant be present at all for the **pretrial**. That's another date that they would not have to take off of work in order to attend, and the attorney would then go and meet with the DA to work out a deal.

If a deal is to be reached, then we set up a **disposition date**. If a deal can't be reached, we set up a **case management conference date**, where we will either set it for trial or we will try to resolve what other issues that are still up in the air. As an example, one of the issues might be if the blood test results did not come back in time.

If you do a blood test, in this state, because of budget cuts, it takes about a **month or so** before we get the results back. Sometimes, if you want, we can hire an independent lab to run the other samples.

When they do a blood test, they draw blood for two vials, one for the defense, and one for the prosecution. The prosecution, then, sends it off to be tested right away. The other one is still being reserved for us, if we need it.

Right to a Speedy Trial

If there are delays, we run into an issue, which is called the **right to speedy trial**. You have a six-month period of time where they have to have the trial set,

unless you have waived that right. That sometimes puts them under a time crunch, which can aid in plea-bargaining.

HOW LONG BEFORE A DUI CASE IS RESOLVED?

Interviewer: With a typical DUI case, what's the ballpark on how long it could last, from short to long?

Paul: I've had them from the time of the arrest to a resolution in court in as short as three weeks, and as long as two years. So, it depends. Obviously, if it's going to be more than six months, we have to waive our right to a speedy trial. There has to be some reason that we've chosen to delay things. Some people prefer to delay and some people prefer to have it dealt with right away. There are tools that we can use to help accommodate that.

It doesn't change much with the DMV, though. They're pretty much set on their own time frame, which reminds me of one other thing.

Make Sure the DMV Has Your Correct Address

With the DMV, you have to make sure that you have your correct address on file. It can't be that you just put in a card at the post office indicating a change of address. You actually have to go down to the DMV and change your address with them directly, because

any notification that they send to you will say on the envelope, "Do not forward." If it gives you a timeframe that says you have to request a hearing within a certain period of days, and that letter doesn't get to you, you may wind up having your **license revoked**, and you don't even know about it.

Interviewer: I see.

Paul: I've had people be rudely aware of that because a brake light was out.

DRIVING WHILE YOUR LICENSE IS SUSPENDED

Interviewer: What's the penalty if you're driving under a revoked or suspended license after you have been charged with a DUI, and you've been pulled over? What will happen?

Paul: Well, there's **jail time** for driving under revocation. It's **mandatory** if the driver has been driving under revocation based on an



alcohol conviction. There's an additional one-year of suspension that's tacked on to whatever your suspension is right now with the DMV, so it's pretty serious.

Interviewer: As a point of interest, what's the highest alcohol level you've ever seen? What's the most number of DUIs someone has had that you worked with?

High Blood Alcohol Contents

Paul: I've had a number of people that had been over a 0.3, which is rare because most people would not be able to even function, or be able to stand up at that sort of level. I did have one who was a 0.52 in one of his tests, and he was one that I had to reschedule a couple

different hearings. I represented him on three different DUIs.

Interviewer: That's pretty high.

Paul: I had to reschedule a couple of them because he showed up *after* he had been drinking. He had such a drinking problem, he could not start the day without two or three shots of vodka. I don't know what his blood system would be like if was alcohol-free. It may be very difficult for him.

Interviewer: That's the highest I've ever heard, maybe a world record. I don't know?

Paul: Is that right? I'm pretty sure he was a Vietnam vet. This was 25 years ago, but he was a Vietnam vet helicopter pilot, who never really left the war when he came back.

Interviewer: That's unfortunate.

Paul: He had some issues. I don't know if I'd ever seen him sober.

Interviewer: Yes. That's an extreme case.

Paul: Yes, that's what you asked for. Right. Typically, people who score over a 0.2, realize that they should not be driving.

Interviewer: At that point, you're so intoxicated, it should be obvious to you that you should not drive.

Paul: Right. The real danger is people that don't *recognize* that. I find that there are two different types of alcoholics that I've dealt with. One is like the kind I told you about, with the guy who had the very high level. People who drink every day, and have created this great tolerance to it, but they need to keep drinking even more and more, just to get anything out of it. That's what you typically think of as an alcoholic, and actually those people usually seem to function pretty well.

The ones that are the real problem are the ones that after they have their first drink don't really have any kind of restraint on having the next four or five. Maybe they only drink a couple times of year, but when they do, they don't know how to control it.

That's where people get into the biggest trouble because they just aren't able to control themselves. Most often they really aren't recognizing what their condition is. That's where they get into the biggest trouble.

COLORADO'S CONSENT LAW

Paul: One of the things we did not mention is what we call the **consent law**. And, that's what that first DMV hearing is about. In Colorado, it has been implied that you're driving on the streets in the State of Colorado, you have **already consented** to having a blood or a breath test.

That's why if you say nothing at all, they take that as a refusal and you can be penalized for it. You don't have the right to say no, and not have anything held against you on it. You've already **consented** to blood alcohol level content test.

Interviewer: That's an implied consent, right? By virtue of you getting your driver's license, you're already pre-agreeing because it's a privilege, you're agreeing to take these test, as a **condition** of having your license.

Paul: That's right. It's true even, if you don't know it, for example, if you've come from another state.

Interviewer: That's interesting.

Paul: I always found that interesting.

Interviewer: I find the whole DUI area to be violating the constitution in a whole number of ways, but it seems they keep happening more and more and more.

Paul: I know. We're having our rights infringed on more and more. But, the thing is anytime you've got an election coming up, the one who's running for office doesn't want to be the one who made it easier for drunk drivers. They want to be the one that can stand on saying, "I've got a strong criminal law record here, and I will make it harder on drunk drivers." I don't see it ever getting any easier. It seems to be getting much tougher on people.

CONTACTING THIS ATTORNEY

Interviewer: Now that people have read this publication, this book, and they're now convinced that they want to see you for a free initial consultation, what's the best way for them to get in touch with you?

Paul: Well, it's usually pretty easy to get a hold of me on the phone. Do you want me to give you my phone number right now?



Interviewer: I just didn't know if you had a preferred method of phone versus website versus email versus something else.

Paul: No. Emails, and the website, and directly on the phone, anyway is fine. I'm usually pretty easy to get a hold of.

Interviewer: All right. Is there any closing statement you want to make so people reading this, it's important for them to know?

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This publication is intended to be informational only. No legal advice is being given, and no attorney-client relationship is intended to be created by reading this material. If you are facing legal issues, whether criminal or civil, seek professional legal counsel to get your questions answered.

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