

## **LICENSE AND DRIVING CRIMES**

The law has a special place for crimes committed in the car. Some of the longest mandatory jail terms are reserved for this category. From DUI to Driving While License Suspended, a person can actually serve half a year in jail for simply getting behind the wheel. And by “mandatory” jail, the law requires the judge and prosecutor to both ask and issue this jail term. Although the public may approve, it is strange that there is no mandatory jail term, none whatsoever, for someone who is convicted of misdemeanor assault no matter how many times they commit it. This is, in fact, true for most non-driving crimes. Some felonies do not require jail on the first conviction and many higher courts do not impose it.

## **LOSING YOUR LICENSE**

Beyond jail, losing your license can be the most significant and immediate consequence of any criminal driving offense. Depending on the crime and circumstance, an individual can lose their driver's license anywhere from thirty days to their lifetime. They then risk the additional crime of Driving While License Suspended which, if caught, will extend their suspension even further, make a more serious crime, or make them a Habitual Traffic Offender which carries some of the harshest mandatory jail.

## **THE DEPARTMENT OF LICENSING (DOL)**

The D.O.L. is a central player in these crimes. Not only does the Department initiate the actual suspensions, it can also reissue a license with early reinstatement, issue occupational and restrictive permits to drive, and even forgo suspensions under special circumstances. The Department is also instrumental in correcting false and erroneous suspensions caused by the court sending incorrect information which happens more often than you think.

## **LICENSE SUSPENSION PERIODS AND CRIMES**

The following is a limited summary of the various license consequences for a wide variety of crimes

- DUI: (1st) - 90 days if your BAC is < .15, - 1 year if above .15
- DUI (2nd) - 2 years if your BAC is < .15, - 900 days if above .15
- DUI (3rd) - 3 years if your BAC is < .15, - 4 years if above .15
- DUI (1<sup>st</sup>) and Refused Breath Test – 2 years
- DUI (2<sup>nd</sup>) and Refused Breath Test – 3 years
- DUI (3<sup>rd</sup>) and Refused Breath Test – 4 years
- Driving While License Suspended 1st Degree - 1 year
- Driving While License Suspended 2nd Degree - 1 year
- Reckless Driving (1st - 2nd) - 30 days
- Reckless Driving (3rd) - 1 year
- Racing (1st - 2nd) - 30 days
- Racing (3rd) - 1 year
- Hit and Run Attended - 1 year
- Eluding Police - 1 year
- Felony Involving a Vehicle - 1 year
- Unattended Child in Running Vehicle - 1 year
- Reckless Endangerment in Construction Zone - 60 days

- Vehicular Assault - 1 year after release from jail / prison
- Vehicular Homicide - 2 years after release from jail / prison
- Minor in Possession of Alcohol (Age 13-17) (1st) 1 year or till age 17, the longer
- Minor in Possession of Alcohol (Age 13-17) (2nd) 2 year or till age 18, the longer
- Minor in Possession of Drugs (Age 13-20) (1st) 1 year or till age 17 the longer
- Minor in Possession of Drugs (Age 13-20) (2nd) 2 year or till age 18, the longer

### **FELONIES THAT ARE NOT DRIVING OFFENSES**

You can also get your license revoked for at least a year even if you are convicted of the following crimes that are not vehicular crimes but merely felonies where “a motor vehicle is involved.” Unlike the driving crimes, this phrase is a loose legal definition:

Assaulting a Police Officer

Reckless Endangerment First Degree

Malicious Mischief First Degree

Burglary First Degree

Residential Burglary

Burglary Second Degree

Vehicle Prowl First Degree

Theft 1st and 2nd Degree

Taking a Motor Vehicle

Possession of Stolen Property 1<sup>st</sup> and 2<sup>nd</sup> Degree

Felony Involving a Vehicle

Trafficking Stolen Property

Assault 1<sup>st</sup> and 2<sup>nd</sup> Degree

Kidnapping 1<sup>st</sup> and 2<sup>nd</sup> Degree

Escape 1<sup>st</sup> and 2<sup>nd</sup> Degree

Signal Preemption Device

## COMMERCIAL DRIVERS LICENSE SUSPENSIONS

The government has a much lower tolerance for offenses that occur in a commercial vehicle. The license actions are much more severe and include lifetime revocations:

DUI (1<sup>st</sup>) – 1 year, 3 years if hazardous materials are involved

DUI (2<sup>nd</sup>) - Lifetime

HIT & RUN OCCUPIED VEH (1<sup>st</sup>) – 1 year, 3 years if hazardous materials are involved

HIT & RUN OCCUPIED VEH (2<sup>nd</sup>) - Lifetime

FELONY INVOLVING VEH (1<sup>st</sup>) – 1 year, 3 years if hazardous materials are involved

FELONY INVOLVING VEH (2<sup>nd</sup>) - Lifetime

VEHICULAR ASSAULT (1<sup>st</sup>) – 1 year, 3 years if hazardous materials are involved

VEHICULAR ASSAULT (2<sup>nd</sup>) - Lifetime

VEHICULAR HOMICIDE (1<sup>st</sup>) – 1 year, 3 years if hazardous materials are involved

VEHICULAR HOMICIDE (2<sup>nd</sup>) - Lifetime

MANSLAUGHTER (1<sup>st</sup>) – 1 year, 3 years if hazardous materials are involved

MANSLAUGHTER (2<sup>nd</sup>) - Lifetime

DRIVING WITH CDL SUSPENDED (1<sup>st</sup>) – 1 year, 3 years if haz materials are involved

DRIVING WITH CDL SUSPENDED (2<sup>nd</sup>) - Lifetime

FELONY INVOLVING DRUGS – Lifetime on 1<sup>st</sup>

RAILROAD CROSSING – (1<sup>st</sup>) 60 days

RAILROAD CROSSING – (1<sup>st</sup>) 120 days

RAILROAD CROSSING – (3<sup>rd</sup>) 1 year

## LICENSE REINSTATEMENT

There are numerous reinstatement requirements and some paperwork needed to reinstate one's license following a suspension or revocation. The complexity depends on the crime. These can include an alcohol assessment, alcohol drug information school or the first 60 days of treatment if needed, proof of special insurance - an SR-22 Insurance Certificate, reinstatement fees, driving

examinations if the suspension is 1 year or longer, and proof of an installed ignition interlock under DUI and now some Reckless Driving and Negligent Driving Convictions – despite their underlying proof.

### **OUR LEGAL ASSISTANCE TO CHALLENGE YOUR LICENSE SUSPENSION AND COMMERCIAL LICENSE SUSPENSION**

Under many circumstances, an individual can either petition for “early reinstatement,” challenge their administrative suspension, or correct a faulty suspension from incorrect court information.

**The Law Office of David C. Mason** has developed various affordable products that can help you fight your suspension, or correct faulty ones. We have unique experience as both prosecutors and paralegals who worked in coordination with the court clerks, prosecutors and judges to not only produce the evidence and convictions but also supply and maintain this computer information. **PLEASE CONTACT OUR OFFICE FOR A FREE CONSULTATION.**

### **THREE BASIC LEVELS OF NON –COMMERCIAL LICENSE SUSPENSION**

There are three basic levels of license suspension or revocation for non-commercial vehicles in Washington State. Each level carries with it its own pre-conditions, lengths, punishments, and reinstatement requirements

**DWLS 3rd DEGREE** is driving while your license is suspended for the least serious statutory reason. It is a simple misdemeanor with a maximum punishment of 90 days in jail and \$1000 fine. There is no fixed period of suspension time and thus, a person can get their license reinstated at any time by solving the underlying reason for suspension. This suspension can occur for the widest variety of reasons. These include:

- Failure to provide proof of state required alcohol or drug treatment
- Failure to provide proof of insurance
- Failing to respond to a traffic infraction
- Failing to respond to appear at a criminal hearing
- Failing to pay on a traffic infraction or criminal fine
- Failing to respond properly to an uninsured accident
- Failing to act in another state that would be grounds to suspend in Washington
- Failing to reinstate one's license after a suspension for DWLS 2nd

**DWLS 2<sup>nd</sup> DEGREE** is driving while your license was suspended for significantly more serious circumstances and includes convictions for the following:

- DUI: (1st) - 90 days if your BAC is < .15, - 1 year if above .15
- DUI (2nd) - 2 years if your BAC is < .15, - 900 days if above .15
- DUI (3rd) - 3 years if your BAC is < .15, - 4 years if above .15
- DWLS 1st Degree - 1 year
- DWLS 2nd Degree - 1 year
- Reckless Driving (1st - 2nd) - 30 days
- Reckless Driving (3rd) - 1 year
- Racing (1st - 2nd) - 30 days
- Racing (3rd) - 1 year
- Hit and Run Attended - 1 year
- Eluding Police - 1 year
- Felony Involving a Vehicle - 1 year
- Unattended Child in Running Vehicle - 1 year
- Reckless Endangerment in Construction Zone - 60 days
- Vehicular Assault - 1 year after release from jail / prison
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- Minor in Possession of Drugs (Age 13-20) (2nd) 2 year or till age 18, the longer

Unlike DWLS 3<sup>rd</sup>, if an individual is convicted of DWLS 2<sup>nd</sup> Degree, their actual suspension period becomes extended by an additional year as a result of the conviction.

It is this reason alone to seek counsel to avoid this conviction and avoid the “Habitual Traffic Offender status as it carries severe punishment. There are a number of legal techniques that may save you from this conviction and additional suspension. **PLEASE CONTACT OUR OFFICE FOR A FREE CONSULATION**

## **HABBITUAL TRAFFIC OFFENDER**

### **DRIVING WHILE LICENSE SUSPEND IN THE FIRST DEGREE**

DWLS 1<sup>st</sup> has the longest mandatory jail term of any gross misdemeanor, even DUI. A person can actually serve at least half a year in jail from merely driving while their license was suspended. If you are caught driving in this category, you face ten days for your first conviction, 90 for the second and half a year for the third.

Becoming a Habitual Traffic Offender or HTO is actually easier than you think. This does not require multiple convictions for DUI or serious driving crimes but can merely result from three convictions for driving with a suspended license in a five year period. It can even result form an accumulation of traffic tickets. Three of the following convictions will place driver in this status:

Vehicular homicide as defined in RCW [46.61.520](#);

Vehicular assault as defined in RCW [46.61.522](#);

Driving or operating a motor vehicle while under the influence of intoxicants or drugs;

Driving a motor vehicle while his or her license, permit, or privilege to drive has been suspended or revoked as defined in RCW [46.20.342](#)(1)(b);

Failure of the driver of any vehicle involved in an accident resulting in the injury or death of any person or damage to any vehicle which is driven or attended by any person to immediately stop such vehicle at the scene of such accident or as close thereto as possible and to forthwith return to and in every event remain at, the scene of such accident until he or she has fulfilled the requirements of RCW [46.52.020](#);

Reckless driving as defined in RCW [46.61.500](#);

Being in physical control of a motor vehicle while under the influence of intoxicating liquor or any drug as defined in RCW [46.61.504](#); or

Attempting to elude a pursuing police vehicle as defined in RCW [46.61.024](#);

Twenty or more traffic infractions which the law defines as:

separate and distinct offenses, singularly or in combination, in the operation of a motor vehicle that are required to be reported to the department of licensing other than the offenses of driving with an expired driver's license and not having a driver's license in the operator's immediate possession. Such convictions or findings shall include those for offenses enumerated in subsection (1) of this section when taken with and added to those offenses described herein but shall not include convictions or findings for any nonmoving violation.

## **LEGALLY CHALLENGING A HABITUAL REVOCATION**

**The Law Office of David C. Mason** provides various affordable products that can help you fight your HTO suspension. This includes your right to present evidence, double check the accuracy of the court records, and make certain the action is within the definition of the statute. We have had surprising success revealing incorrect information sent from the various courts as many charges are “amended” or changed at last minute plea bargains but may be reported as they were originally charged.

## **RECKLESS DRIVING**

A notorious Washington Judge once remarked that “reckless driving has got to be one of the most overcharged crimes in the criminal justice system.” When he made that remark, **David C. Mason** was a young prosecutor and wondered what he meant. After twenty two years in the system, on both sides of the aisle, we see what he means.

RCW 46.61.500 defines reckless driving as a operating a motor vehicle in a “willful or wanton disregard for the safety of persons or property.” This can include the driver's very own safety and property. No other cars or property need be involved.

Notice, unlike DUI, this crime actually requires “a criminal mind,” a “mens rea” or “evil” intent. Thus, a mere mistake on the roadway or mere “negligence” may not prove the government’s point, but this does not stop police officers from citing it on a daily basis for merely rolling through stop signs, taking wide turns, or exceeding the speed limit.

RCW 46.61.530 also defines reckless as racing a motor vehicle by willfully comparing or contesting relative speeds.

### **Blocking Another Car**

RCW 46.61.655 indicates that any person who prevents the free and unhampered operation of another individual's operation of a motor vehicle on the public highway is also guilty of reckless driving. Notice how this sentence seems to contradict the necessity of an “evil” intent. If you turn and make another car wait, have prevented their “unhampered operation?” Like DUI, these questions are usually left to the discretion of prosecutors and jury panels.

### **Simply Speeding**

In another twist, Washington law also contradicts itself by stating that operating a motor vehicle above the speed limit under any of these three circumstances is prima facie evidence of the crime. Notice however that that a driver can be guilty of any of these scenarios without breaking the speed limit. Recent federal caselaw however, has begun to challenge and overturn this presumption indicating (rationally) that it contradicts the requirement for a “willful” and “wanton” state of mind.

### **LOSING YOUR LICENSE, SR 22 INSURANCE, & NO CANADIAN VACATIONS**

Losing your license is the most immediate effect of a reckless conviction. You must then obtain an expensive SR- 22 Insurance Certificate for years. This crime also scores toward making you a “habitual” traffic offender and worse, can bar you from Canada for at least five years.

### **ATTEMPTING TO ELUDE A POLICE VEHICLE**

Like the misdemeanor Reckless Driving, this felony is one of the most over charged crimes. Many cops arrest young drivers for merely driving fast and “taking too long” to pull over. This charge requires much more evidence however including “willful” reckless driving plus “willfully eluding” the police.

### **Serious Consequences**

Unlike reckless driving however, a conviction for Attempt to Elude involves more than a suspended license and carries significant, lifetime consequences including making you a felon, removing your right to possess firearms, employment restrictions, and losing the right to vote (for some time). It also **revokes your driver’s license for one year.**

**RCW 46.61.024 Defines this Felony:**

(1) Any driver of a motor vehicle who willfully fails or refuses to immediately bring his or her vehicle to a stop and who drives his or her vehicle in a reckless manner while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a class C felony. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such a signal shall be in uniform and the vehicle shall be equipped with lights and sirens.

(2) It is an affirmative defense to this section which must be established by a preponderance of the evidence that: (a) A reasonable person would not believe that the signal to stop was given by a police officer; and (b) driving after the signal to stop was reasonable under the circumstances.

### **How Long Should It Take?**

Notice the word “**immediately**” in the statute. This is where the overcharging occurs. Although the law supplies “an affirmative defense,” this only means the defendant must prove that in court after he’s charged. This does not stop an officer’s ego or a young prosecutor for indicting a driver merely for speeding and not taking the first exit. Our office has seen that fact pattern many times. These issues are usually left to jurors as the lawyers battle over the time of day, the traffic, the visibility, the condition of the road, the police vehicle, the signal or siren, and whether any reasonable driver could hear or see that car far behind them.

**The Law Office of David C. Mason had a recent success** when the jury acquitted his client even though he was driving 110 miles per hour for a long stretch of road with the cop behind him. On cross examination, the key officer finally admitted that the driver “probably wasn’t aware” he was back there.

### **Sometimes the Officer is Reckless**

Often times, young (and middle aged officers) will respond by driving in a “reckless” manner themselves. Some officers enjoy the chase, others are angered and some don’t think through the difficult traffic when they accelerate up to 100 miles per hour, much faster than the “offending” driver. As a result accidents occur and the arrested driver is usually blamed. A careful comb through the evidence can reveal something altogether different.

**The Law Office of David C. Mason had success in a recent high profile accident case** where a state trooper rolled down an embankment and blamed the entire accident on the young motorcycle drivers. The prosecutors later dismissed the case entirely after multiple drivers came forward criticizing the Trooper’s behavior and a legal demand into his own personnel file revealed similar, serious behavior.

<http://www.king5.com/news/local/Wash-trooper-injured-rollover-crash-100406494.html>

**If you have been charged with any driving crime or are at risk of losing your license,  
PLEASE CONTACT OUR OFFICE FOR A FREE CONSULTATION**