

CHARGED WITH A DWI?

(Helpful Guide to Navigate Your Case)



Bowen Law Group
101 S. Woodrow Lane, Suite 102
Denton, TX 76205
(940) 213-0630
<http://www.BrentBowen.com>

Written by: Brent Bowen, Esq.

Charged With a DWI?

(Helpful Guide to Navigate Your Case)

By Brent D. Bowen, Esq.

DISCLAIMER:

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.

Bowen Law Group

101 S. Woodrow Lane, Suite 102

Denton, TX 76205

(940) 213-0630

www.brentbowen.com

Client Testimonials

“Brent has recently been my attorney, taking me to trial and winning. Trial lawyers are a special breed who think quickly on their feet and I can say without a doubt this guy is one of the best.

If you’re serious about winning, DO NOT LOOK ANY FURTHER!” – J.R.

.....

“Brent Bowen had my attention and confidence upon our first meeting. He was knowledgeable and kind and gave me the assurance I needed that my case was in the right hands. Thank you so much. I would use Attorney Bowen again.” – A Client

.....

“Brent Bowen did a great job on my case. He handled my legal issues with professionalism and dignity, what helped to bring a case to successful result. I recommend Brent Bowen as your legal counselor.” – Alex

.....

TABLE OF CONTENTS

Attorney Introduction:.....	6
Is There a Typical Scenario When a Driver Is Arrested for DWI?	7
Requesting the Administrative License Revocation (ALR) Hearing	8
How Long Will a Driver’s License Be Suspended for a First Offense DWI?	11
Some People Hesitate about Hiring a Lawyer for Financial Reasons	12
Are There Common Misconceptions about a DWI Charge?	14
Attorney Bowen’s Advice: It Is NOT Possible to Talk Your Way out of a DWI Charge	17
Can You Refuse to Perform the Field Sobriety Tests?	19
What Not to Say to a Police Officer during a DWI Stop	21
How Much of the Police Stop and DWI Arrest Process Is Videotaped?	22
Are You Recorded during the Breath or Blood Test?	24
When Viewing the Police Video Recordings, Attorney Bowen Commonly Observes People Talking Too Much	26
Is There a Public Defender System Available in Texas and Is This a Viable Option to Defend Your DWI Charge?	29
Can You Afford NOT to Retain an Attorney to Defend a DWI Charge?	31

Different Road Surfaces Can Produce Different Results on the Field Sobriety Tests.....	32
Why Are DWI Convictions So Expensive in Texas?	34
High Blood Alcohol Levels Can Result in an Enhanced DWI Charge, Which Are Subject to Increased Fines	36
Are the Majority of DWIs Alcohol-Related or Drug-Related?	38
Is the Majority of Drivers Receiving DWIs First-Offenders or Repeat Offenders?.....	41
How Do DWIs Affect Drivers under the Age of 21 and Commercial Drivers?	45
The Potential Penalties for a First and Second Offense DWI	47
Advice from Attorney Bowen If You Have Received a DWI in Texas	51
Attorney Bowen Has Been Recognized as One of the National Trial Lawyers “Top 100 Trial Attorneys”	54

ATTORNEY INTRODUCTION:

Brent D. Bowen graduated with a B.A. in Political Science from Baylor University after playing football for two years at Samford University in Birmingham, Alabama. As a fourth generation attendee, he received his Juris Doctorate from Washburn University in May 2002. While at



Washburn University Brent was a member and competed as an oralist in the Moot Court Competition held at Fordham Law School.

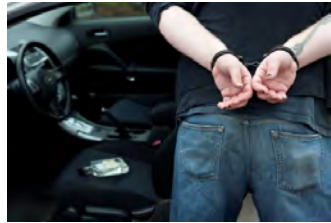
Brent is a well rounded and experienced attorney beginning his career practicing as a third year bar card attorney for Shawnee County District Attorney's Office handling bench and jury trials. Brent has held past positions in the Johnson County Attorney's Office as an Assistant County Attorney, Denton County District Attorney's Office as an Assistant District Attorney, Jackson & Hagen as an associate attorney, Bowen & Lloyd, PLLC, as partner. In 2008, Brent joined his wife in practice and formed Bowen Law Group in which he is the managing partner.

IS THERE A TYPICAL SCENARIO WHEN A DRIVER IS ARRESTED FOR DWI?

Interviewer: When you see new clients, is there a typical back story on how they received the charges?

DWIs Are Prevalent in Close Proximity to Areas with as Large Concentration of Bars and at Major Sporting Events

Attorney Bowen: Typically, yes. Because we are here in Denton County we have the Texas Motor Speedway and occasionally when the races are here we will get DWIs from that event.



There are a couple of different bar districts in the county. One is over next to University of North Texas. At the University they have what is called Fry Street and so we obviously see a lot of DWIs occurring Fry Street. There are a couple of clubs down in Lewisville and restaurants up in Frisco, and so you will see DWIs from those areas as well.

Do Some People Feel This Charge Does Not Warrant Retaining an Attorney?

Interviewer: When this happens to someone, what is their typical reaction? Do they immediately call an attorney or do they think they do not need one?

Individuals That Received a DWI Have 15 Days in Which to Request a Hearing about Their Driver's License at Motor Vehicles

Attorney Bowen: A lot of my clients, they end up playing around on the computer and so they see that they only have 15 days to request a hearing on their driver's license. We have University of North Texas as well as Texas Women's University, so we have two big colleges here in Denton.

Attorney Bowen Advises That Clients Should See an Attorney 3 to 5 Days following a DWI Charge

Frequently, if someone's son or daughter gets arrested for DWI, mom and dad are on the phone pretty quick trying to find an attorney. I try to get clients in my office within at least 3-5 days of them being arrested for DWI.

REQUESTING THE ADMINISTRATIVE LICENSE REVOCATION (ALR) HEARING

Interviewer: As soon as someone is arrested, they are already on a short fuse. You said they have 15 days to contest losing their driver's license?

If You Do Not Request the ALR Hearing within 15 Days, Your License Will Be Suspended 40 Days from the Date of the DWI Arrest

Attorney Bowen: Yes. In Texas you have 15 days to request a driver's license hearing or Administrative License Revocation hearing or ALR for short. If you do not request that within the first 15 days then your driver's license will be suspended 40 days from the date of the arrest.



If you do not do anything, your license is suspended in 40 days from the date of the arrest. If we request a driver's license hearing that is the only due process hearing to challenge the facts behind the DWI and challenge the license suspension. Sometimes that hearing may be in 40 days or it may be 60 days from the date of the arrest. It is hard to tell sometimes.

Do People Tend to Disregard Requesting the Hearing?

Interviewer: Do you find that people actually just disregard the hearing because they feel their license will be suspended no matter what they do?

In Texas, a DWI Has Two Parts, a Civil and a Criminal

Attorney Bowen: They obviously do. The driver's license is technically civil so I tell people there are two parts to a DWI case, there is the civil driver's license part and then

there is the criminal DWI. By statute they are separate and independent of one another.

Attorney Bowen Finds the Police Officer's Testimony at the ALR Hearing a Valuable Resource for the Criminal Trial

I also explain, though, to my clients that the ALR is very important. Some people say, "Oh, my license is going to get suspended anyway." I subpoena the officers for those driver's license hearings, and that is very important because we can then use the officer's testimonies, lock them down as you will, for trial.

I have won countless jury trials because of how we locked down the officer at the ALR meeting, or at least use his testimony from the ALR hearing against him in trial.

Interviewer: So the hearing is important whether you win it or not because you are getting a peek at what's ahead and what the prosecution will say happened and how to defend your client?

Attorney Bowen: Correct. The officers typically, are not as prepared for the ALR hearings sometimes as they should be, and they have not been prepped, as you would, by the District Attorney's office and so they come in and they just testify to what they remember and that can be very helpful later on.

HOW LONG WILL A DRIVER'S LICENSE BE SUSPENDED FOR A FIRST OFFENSE DWI?



Interviewer: If someone doesn't even bother to contest the ALR hearing, what will happen to them, let us say it is their first-time DWI arrest? How will long will it be suspended for?

Refusing to Undergo a Breath or Blood Test Will Result in a 6 Month License Suspension; a Blood Alcohol Level of .08 or More Will Result in a 90 Day Suspension

Attorney Bowen: On a first time DWI arrest if you refuse a breath test, which means if the officer asks you for a breath or blood test and you said, "No, you didn't want to take it," then your license on a first offense would be suspended for 6 months or 180 days.

Attorney Bowen Has Had Great Success in Obtaining Occupational License for His Clients

If you actually take the breath test and your blood alcohol concentration comes back at a .08 or more, your license is suspended for 90 days. Now, even though you have those license suspensions, in most cases we can get you an occupational license.

I try to explain to my clients, there is really not a day that will go by that you cannot drive. You just may have to drive on a hardship license for part of that time.

Interviewer: I am sure a lot of people are very afraid of not having their license for a period of time.

Attorney Bowen: They are. A lot of clients are very concerned. There is not a lot of public transportation here in Denton County, so they are very concerned about, "How am I going to drive when this is going on?"

I have found it's fairly easy to get clients an occupational license, which is a hardship or a work permit license. Clients can still continue to drive.

SOME PEOPLE HESITATE ABOUT HIRING A LAWYER FOR FINANCIAL REASONS

Interviewer: In general, how often do you hear from people, "Do I even need a lawyer for a DWI, can't I just handle this on my own?"

Attorney Bowen: I think because of the economy, there are many people trying to figure out how to handle the charge on their own, but for the most part a lot of my clients, because of DWI and the stigma behind it, when they are calling they are looking to hire an attorney.

Texas Courts Can Impose a Minimum Jail Sentence of 72 Hours in Jail for a First Offense

They need someone to help guide them through the process and go through the system. In Texas, there can be a minimum jail sentence of 72 hours in jail on a first offense DWI. Because of that possibility of jail, a lot of people want to hire an attorney to help them go through the process.

Attorney Bowen Has Had Great Success Having the Mandatory Minimum Sentence Thrown out or His Clients Are Placed on Probation in Lieu of the Sentence

Interviewer: How successful have you been in getting the mandatory minimum jail sentence either thrown out or reduced?

Attorney Bowen: Most of the time I can get that really thrown out or have the client placed on probation. Most of the judges have been really good about interpreting that, as long as we opt for probation you don't have to do the minimum 72-hour on a first offense. Most of the time, my clients are given probation.

ARE THERE COMMON MISCONCEPTIONS ABOUT A DWI CHARGE?

Interviewer: How educated are people about this charge? What kind of misconceptions do they have, that are typical about the whole process?

Attorney Bowen: I think a large number of people, when they call, they say, "Well, I've got a DUI or driving under the influence case only." In Texas, DUI, driving under the influence is designated for minors only.

Some People Mistakenly Believe They Were Charged with the Lesser Offense of DUI

Basically, in Texas DUI is any detectable amount of alcohol for someone under the age of 21 and that is a Class C or ticket offense in Texas. A lot of people call and say, "Well, I have a DUI," and I try to educate them. In Texas even if you are under 21, but you are arrested and taken to jail, typically, you are arrested for DWI or driving while intoxicated. A lot of people have that misconception.



In Texas, a DWI Charge Is Not Eligible for Deferred Adjudication

The hard part, I think, for some people is that in Texas we have what is called deferred adjudication or probation without conviction. On DWI cases the legislature specifically prohibits you from doing deferred adjudication on DWI. Our only options are either to go to jury trial, hope for the DA to reduce it, which does not happen very often, or just take a plea bargain from the state.

Do Most DWI Cases Resolve before Trial or Go To Trial? Attorney Bowen Strongly Believes in Preparing for Trial in a DWI Case

Interviewer: What are your best strategies for obtaining a favorable result in a DWI case? Do you come up with arrangements for plea bargains, or do you have to go to trial most of the time?

Attorney Bowen Receives Favorable Plea Bargains from the District Attorneys because They Know He Is Always Prepared to Go To Trial to Defend His Clients

Attorney Bowen: I think No. 1 is you have to be willing to go to trial. I have tried probably 100 cases here in Denton and so the prosecutors typically know that I am ready, willing and able to go to trial. If they do not give me an offer that I think is a really good offer, or reasonable offer, I would rather just go to trial and let a jury or judge decide.

I think when the prosecutors know you are willing to take a case to trial, their plea bargain agreements are much more reasonable, and then you can go from there.

Often Times, the Video Recording of the DWI Arrest Is Helpful to Negotiate Plea Bargains with the District Attorney

Much of how I prepare a defense comes down to the videotape. How did the client look on video? Most clients they talk too much on videotape, and they kind of talk themselves into the DWI by not just being quiet and just answering just the basic questions for officers.

If you have a good videotape you can get a charge of DWI sometimes reduced to lesser offense. At least you can get a really good probation offer, one that my client can live with.

A lot of times I will tell clients, unless you look really bad on tape why not go to trial. You do not have a whole lot to lose in Denton by going to trial.

You Will Not Face Additional Penalties in the Denton Area from Opting to Go To Trial

Interviewer: Do people get punished more severely because the judge feels that they wasted the court's time from the trial, or is it not like that?

Attorney Bowen: It is not. I would not say it is really like that punishment-wise in terms of increased punishment if you go to trial. If you go to trial and you lose then the fine might be a little higher and the probation may be a little bit longer, but at the end of the day that turns into money, dollars and cents.

If You Go To Trial, You Will Incur Attorney Fees and Probation and Fines If You Are Convicted

Obviously, the longer you are on probation the more money you will have to spend. Probation involves a monthly probation fee. For me, what I tell people, it comes down to money. If you go to trial it is going to cost more. There is a trial fee involved for me, but there are also the penalties in terms of a higher fine and longer probation.

ATTORNEY BOWEN'S ADVICE: IT IS NOT POSSIBLE TO TALK YOUR WAY OUT OF A DWI CHARGE

Interviewer: You mentioned the mistake of talking too much on the video. What do they say that hurts their case, and what other mistakes do they make that hurt their case?

Attorney Bowen: I think a lot of people try to explain their way out of the DWI. You are not going to explain

your way out of the DWI. If the officer thinks that you have been drinking and driving, he is going to do the Field Sobriety Test.

In Texas, the Police Base Their Decisions on the Results of the Field Sobriety Tests

He is typically going to base his decision on your performance of those tests. Unless you have a legitimate medical issue or you have a medically documented bad back, bad knees, bad legs, something like that, or arthritis where it is documented with a physician, you are not really going to be able to talk your way out of performing the Field Sobriety Test.

Interviewer: For people that do not know, the Field Sobriety Test means the coordination tests where you walk the line and follow a pen with your eyes?

The Police Use Three Standardized Field Sobriety Tests

Attorney Bowen: Correct. The police use three standardized Field Sobriety Tests. That's the Horizontal Gaze Nystagmus, which is the eye test where they take the pen and go back and forth across your face. There is the Nine-Step Walk-and-Turn test, which is where you walk heel-to-toe on an imaginary line. Then there is the One-Leg Stand where you raise your foot 6 inches off the ground and it is supposed to remain there for 30 seconds.

When they perform those tests, most people think, "Oh, I passed or failed them." Technically they are not even graded as a pass or fail. They are just supposed to evaluate your performance on the test and then they have what is called decision points. There is nothing written in the training manuals about passing or failing those tests.

CAN YOU REFUSE TO PERFORM THE FIELD SOBRIETY TESTS?

Interviewer: Are those tests voluntary or can you refuse them?

If You Refuse to Perform the Tests, It Is Likely the Police Will Obtain a Warrant to Test Your Blood Alcohol Level with a Blood Draw



Attorney Bowen: You can refuse the tests. You can decide if you don't want to do those Field Sobriety Tests, you definitely have the right to do that. The downside of that is, at least in Denton County, in most counties actually now in Texas they will get a warrant for your blood at that point in time. You can refuse the test but it is going to result in a warrant.

Attorney Bowen Feels the Field Tests Are Not Designed to Be Successfully Completed by Drivers

Interviewer: Have you ever seen people pass the tests, or are you doomed to fail the Field Sobriety Tests?

Attorney Bowen: I definitely think they are set up to fail. Case in point, on the walking test, there are eight possible clues, and some of those clues could be observed multiple times. With the walking touching heel-to-toe, you are instructed to take 9 steps. There are 18 possible times you could miss heel-to-toe.

If you just step off 1 time that is considered one clue of the 8 clues. Additionally, if you step off the line that is 1 clue and so again you have 18 possible times you could step off the line as you are walking. I have even had some officers say that they stepped off the line and missed heel-to-toe, and even though that should be, in my opinion, counted as 1 clue, they counted it as 2.

Officers Need to Only Observe 2 Clues to Render a Decision to Arrest a Driver for DWI

The decision point is where the officer makes the decision that it is indicated that this person is intoxicated, and only 2 are needed. If you exhibit 2 clues of the 8 clues on that walk-and-turn test, that is enough for them to justify your arrest for DWI.

Obviously, somebody could just be having a bad day and make that one misstep and they are now at the decision

point for that officer to arrest. They are definitely set up to fail.

WHAT NOT TO SAY TO A POLICE OFFICER DURING A DWI STOP

Interviewer: Touching back to people talking too much, when they decide to try to get out of the arrest, what do they typically say?

I Only Had One Drink after I Took My Medication...

Attorney Bowen: Sometimes they try to reason with the officers. The most common thing I have seen lately is to tell that officer, "Well, I only had one drink, but I'm talking medication. My doctor prescribed me this medication." They think the use of their prescription drug somehow nullifies the fact that they may be intoxicated.

In fact, the opposite is true, it actually hurts us and hurts our case because you can



legally take a prescription and legally consume alcohol but still be convicted of DWI, if the officer believes or can prove, or the state can prove, that you are intoxicated by the introduction of drugs and alcohol into your system. This misconception I have heard lately is, 'Oh, I just took my cold medicine,' or even a regular prescription drug.

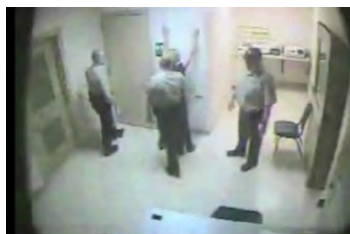
Talking Too Much and Volunteering Information without Being Asked

People tend to over-explain their actions and make a lot of excuses, and they just keep talking. I think their credibility is hurt, because during almost every DWI, 99% of police stops are video recorded. That doesn't look well on tape. Later on when you are in front of a jury and they are hearing this person try to explain away everything, I think it leads to credibility issue with jurors and they tend not to believe people.

HOW MUCH OF THE POLICE STOP AND DWI ARREST PROCESS IS VIDEOTAPED?

Interviewer: Okay. When you say someone is on videotape, the traffic stop is on videotape, or is it the entire time they are in custody is videotaped?

The Police Cars Now Have Digital Cameras Installed Which Can Record the Entire Police Stop



Attorney Bowen: The evolution is interesting. I have been practicing for a long time. When I first started handling DWIs, the police cars had the old VHS system. When the officer would hit his lights, it would trigger the VCR to turn on and by the time the tape actually loaded

and recorded the subject was sometimes even out of the car by that point in time.

Now, most of our police agencies have the digital cameras that are like your DVR at home. If you have ever used your DVR at home and you missed the first minute or two of your favorite show, when you hit record, it will back to those two minutes or so you missed.

The new cameras work very similar to that. The camera is technically always on, kind of like your DVR, and it is always recording. Once the officer hits his lights or sometimes his record button, it actually will back record typically 45 seconds to a minute before the officer actually activates his light.

The Extensive Video Can Support or Disprove the Officer's Version of the Arrest

We see a great deal of the driving facts are captured on videotape now, either confirming or disproving the officer in terms of what he may or may not have observed of the subject. Everything from typically 45 seconds to a minute before the officer turns his camera on, through the arrest and even transportation to the jail is all captured on video camera.

Some Officers Wear a Body Camera during the Police Stop

The newest thing just on that topic, as well though, is a lot of the agencies have now gone to body cameras where they have a camera on their shoulder or lapel and so not only is their car recording, now the camera on their shoulder or lapel is also recording the subject as they are interacting with them and talking with them, and even doing some of the Field Sobriety Tests.

Interviewer: They should assume they are on video anytime they are in interaction with the police?

Attorney Bowen: Any time you are talking with the police, there is a good chance everything you are doing is being recorded.

ARE YOU RECORDED DURING THE BREATH OR BLOOD TEST?

Interviewer: What about when people end up at the station and have to undergo the blood or breath tests, are they on video as well?

Blood Tests Are Typically Administered at a Hospital

Attorney Bowen: Typically, the police station is typically not equipped for blood tests. Most of the blood draws are done in a hospital because



they need to be done in a sanitary place. Those typically are not video recorded; however, a lot of times the officer will leave their body microphone on so you can hear the conversation inside the hospital.

You can't see it but you can hear it. Additionally, like the Frisco Police Department, they now have a blood draw room in their police department. It is my understanding that room is video recorded so they do videotape the withdrawal of blood.

Breath Tests Are Administered at the Police Station

In terms of the breath test, most police departments have what we call the Intoxylizer Room or the testing room. That room is typically just a regular room in the station that has an Intoxilyzer 5000 or a blower in it. The machine is normally kept in a big wooden case.

The Intoxilyzer looks like an old typewriter, but it is under lock and key. Only the operator is supposed to have a key to that unit. Those tests are typically video recorded. All the breath testing done in that room is video recorded for the most part.

What is also interesting about that testing room is there is normally a square box that is taped together to show you where to put your feet together, as well as a line. That line, we always say, could also be used for controlled

Field Sobriety Tests to be done, but they are rarely ever done inside the jail in a controlled environment.

WHEN VIEWING THE POLICE VIDEO RECORDINGS, ATTORNEY BOWEN COMMONLY OBSERVES PEOPLE TALKING TOO MUCH

Interviewer: What have you learned about common mistakes people make when you watch these tapes?

Attorney Bowen: Like we talked about earlier, the most common mistake No. 1 is just talking too much. Mistake No. 2 is really trying to be too honest. Just answer the officer's questions as short and sweet as possible. I believe most people experience a little guilty conscience and want to just keep talking and talking.

Don't Volunteer Too Many Details and Try to Answer the Officer's Questions as Succinctly as Possible

Normally the officer is just looking for, "Where are you coming from?" and "Where are you headed?" Another big thing that people do not realize is a lot of times the officer will say, "Well, when did you have your last drink?"

For some reason they want to tell the officer, "Hey, I drank hours and hours ago." Actually, that is not helpful. It is not helpful at all because after you stop drinking; alcohol continues to be absorbed into your system, so

your blood or breath alcohol concentration continues to go up.

If you told the officer, "Hey, I drank an hour or two ago," then you are now at your highest point you are going to be. So when the officer breath tests you, it is difficult for us to try to prove that you may have been less or under the point of intoxication at the time of driving in Texas.

Don't Falsely Claim You Have an Impairing Medical Condition

The best answer you can give an officer is, "Officer, I just drank. I just drank my last beer 5, 10 minutes, or 20 minutes before you pulled me over." That is actually one of the best answers you can give. A lot of people try to claim they have these medical conditions that they may not have. They make things up.

A lot of times they will say, "Well, I have poor balance." That is fine but I had a client the other day who said he did not know if he was diabetic. Well, you should typically know if you are diabetic. A client today said, "Well, I think it might be epileptic." I think, again, you are going to know if you have epilepsy or not before you do these tests.

I think sometimes they are trying to be joking around. I think the biggest problem is just people talking too much.

They end up incriminating themselves even though they think they are trying to talk themselves out of it, they are really incriminating themselves later on.

I have one going on right now where the officer said my client said that he was drunk. "How was he supposed to get home? That's not what is on tape, or at least what I hear, but that is going to be an argument that we are going to have to get into with the judge. Had he just not said anything at all, it would just be a nonissue.

Attorney Bowen Advises Undergoing the Field Sobriety Tests

I do not think you are ever going to be able to talk your way out of a DWI. It is just better to answer the questions as short as you can. I recommend clients do the Field Sobriety Test. I would much rather someone do the Field Sobriety Test and then refuse a specimen of breath or blood and fight that case than you refusing everything and then being compelled to give blood sample that is really high.

Attorney Bowen Has Experience both Prosecuting and Defending DWI Cases and This Brings a Comprehensive Perspective to This Cases

I know when I was a prosecutor, honestly I did not mind trying cases that were total refusals because, one, as a prosecutor I had nothing to lose by trying it. I would

argue to the jury, "Well, of course he did not take anything, he knew he was drunk."

Attorney Bowen Feels That Performances on the Sobriety Tests Are Highly Defensible

In this county, in Denton County, that works for some juries, and it worked for me as a prosecutor. I typically recommend to clients, "Go ahead and take those tests. We can explain away your performance on those tests for the most part."

I would rather do that than defend against a blood test result, because a lot of jurors tend to believe the blood results, although we are doing a lot more studies now on the accuracy of the blood tests.

IS THERE A PUBLIC DEFENDER SYSTEM AVAILABLE IN TEXAS AND IS THIS A VIABLE OPTION TO DEFEND YOUR DWI CHARGE?

Interviewer: Is there a public defender system, and do people try to say, "To save money, I'll just get a public defender."

Denton County Does Not Offer Public Defenders; They Use a System of Court-Appointed Attorneys

Attorney Bowen: Some counties in Texas do have a public defender system. In Denton County we do not. In Denton County many of the



attorneys in the community will sign up to be on the list for court-appointed attorneys, and you are on a court-appointed attorney list. There are certain qualifications you have to meet to get on that list. For misdemeanors, and DWI is a misdemeanor, the requirements are fairly low.

There Is Eligibility Criteria to Meet in Order to Qualify for a Court-Appointed Attorney

You can request for a court-appointed attorney and you have qualified financially under state guidelines; for example, how many dependents you have and how much money you make.

You May Not Be Appointed an Attorney in Time to Request the ALR Hearing

My concern on a DWI, though, is you are not going to get a court-appointed attorney typically within those 15 days. You will miss some deadlines you may not know about or realize that had you gone ahead and hired an attorney and there is a lot more that attorney can do for you.

There are two ways for you to get an appointed attorney. One, you are sitting in jail and cannot afford to bond out, then you get appointed or, two, you go to court and you fill out the paperwork in the court to be appointed.

That may be 30, 60, 90 days from the date of the arrest before you actually get a court-appointed attorney. A lot of time has gone by and a lot of issues the attorney could have worked on to help you have already passed.

CAN YOU AFFORD NOT TO RETAIN AN ATTORNEY TO DEFEND A DWI CHARGE?

Interviewer: What do you think makes people hesitate about calling an attorney for a DWI charge?

A DWI Conviction Is an Expensive Endeavor

Attorney Bowen: I think the first concern is the cost, obviously. DWIs can get expensive. I think there are the new billboards that I have seen in Texas or at least in the Dallas/Fort Worth area that advertise, "DWI is going to cost you,"



I think the figure of \$17,000 is what it now says on the billboards, \$10,000-17,000. So I think the cost is the primary reason.

People Are Embarrassed about the DWI Charge

I think, too, people are just scared. I think they are embarrassed at some point and they just do not know what to do. I do not think they understand the attorney is there to help them and put them in the best possible position to overcome these charges. To me getting a case early on and being able to work a case after it just happens is a lot more beneficial than waiting for the last minute.

Many Times, Attorney Bowen Will Visit the Scene of the Arrest and Document What the Area was at the Time of the Arrest, Not Months Later

For every DWI client, we try to go to the scene of the arrest and document that area. Is there a slope in the pavement? What does that road look like? That road may be under construction when you were there but, guess what, by the time we go to court in a month or two that construction is done or changed.

DIFFERENT ROAD SURFACES CAN PRODUCE DIFFERENT RESULTS ON THE FIELD SOBRIETY TESTS

I try to go out and at least observe the area. If we do not have time to videotape it, at least go out there and make sure we have a mental note and document how is that

location? What does it look like? What does the surface look like?

If you are performing a Field Sobriety Test on a gravel driveway versus concrete that can skew the results and the same premise applies if you are doing it on a city street. People do not understand that city streets are coned.

City Streets Tend to Be Sloped

They are designed for the water to run off to the sides to go down the gutters. If you are performing your Field Sobriety Test on the side of a coned road, there is a slope there and the slope is there on purpose for the water to run off. You want to document those slopes and document those road conditions because those are definitely going to affect your performance on the Field Sobriety Test.

Interviewer: So people may be doing the Field Sobriety Test, for instance, not on a level surface.

Attorney Bowen: Correct. There may not be a level surface around to do them on. They may do them uphill or downhill. I have seen several videotapes, even in a parking lot, there may be several cracks and loose gravel that you are trying to walk on, loose concrete that you are

trying to walk on, that is going to affect your performance on those tests.

WHY ARE DWI CONVICTIONS SO EXPENSIVE IN TEXAS?

Interviewer: You said you saw a billboard. I have seen stats like that, too. A DWI costs \$15,000-20,000 if you are a convicted. An attorney will charge you a third or less with at least the likelihood you will some or all of the charge reduced?

A DWI Conviction in Texas Includes a Fee for the Driver's Responsibility Surcharge

Attorney Bowen: Yes and no. I think they are trying to include some attorney's fees when they say \$20,000. In Texas we now have what is called the driver's



responsibility surcharge. What that means is, if you are convicted of DWI, even a first offense DWI, you have to pay \$1000 a year for 3 years to maintain your driver's license.

So you are looking at \$3000 surcharge if you plead guilty or are found guilty. It increases to I believe, \$1500 if your blood alcohol level is a 0.16 or more, and I think it is \$2000 for a second DWI, a year surcharge.

This Surcharge Is Mandatorily Imposed and Can Cost as Much \$2,000 a Year

Now you are looking at \$4500 on a 0.16 or more DWI. And you are looking at \$6000 for a DWI second surcharge. Those apply to Austin and those apply throughout the state. The judge has no control over those. The district attorney has no control over them. It is purely a governmental agency that assesses those penalties.

Would You Rather Pay an Attorney or the State to Maintain Your Driver's License?

That has honestly increased the number of trials we are having since 2003. This is because people would rather pay an attorney \$3,000 to go to trial than pay the state \$3,000 to keep their driver's license.

Once you pay the surcharges you still have fine and court costs. That could run you anywhere from \$1,000 to \$2,000 dollars. Then you have your probation fees that can run you another \$1,000. Then the classes you have to take can run you another \$500 to \$1,000.

An Attorney Works to Mitigate the Penalties, Including the Fines Associated with a DWI Charge in Texas

The costs definitely add up quickly. The \$10,000 to \$20,000 range is not unrealistic but, yes, an attorney can definitely help you mitigate those costs and put you in the

best possible position to mitigate those costs. One of the penalties we negotiate is the fines. The fine ranges on a first offense misdemeanor DWI, the fine range by law is \$0-2000. We can help negotiate that fine down as low as possible.

HIGH BLOOD ALCOHOL LEVELS CAN RESULT IN AN ENHANCED DWI CHARGE, WHICH ARE SUBJECT TO INCREASED FINES

In Texas now we have an enhanced first-offense DWI, which means if your blood alcohol or breath alcohol concentration is a 0.15 or more it is a Class-A misdemeanor. A Class-A misdemeanor fine can run up to \$4,000. DWI second is also a Class A misdemeanor, so again \$4,000. Again, we can negotiate those fines as well.

Interviewer: I was going to ask you, what other factors will enhance DWI that makes the penalties more severe? Is it only when the blood alcohol reading above 0.16?

Attorney Bowen: Actually, it is a 0.15 by statute. The criminal range of 0.15 or more enhances it from a first offense to a Class B to a Class A. It is just that the additional charges kick in at 0.16.

Having a Child in the Car at the Time of a DWI Will Enhance the Charge and Is a Felony

Additionally, if you have a child in the car it makes the charge a DWI with child in the car which is a state jail felony, and so if it is a first-offense DWI, but you have a child 14 or younger in your car, that is now a felony. You can have a felony for a first-offense DWI if you have got a child in the car.

Accidents Causing Injuries or Death Are Felonies and Will Enhance the Charges

The other DWIs or intoxication offenses are intoxication assault where someone is seriously injured in a DWI accident. That is a third-degree felony which carries with it a range of punishment of 2-10 years.

Finally, you have intoxication manslaughter where someone is killed in a DWI accident, and that is a second-degree felony so it carries a range of punishment of 2 to 20 years in prison.

Traffic Infractions in Conjunction with a DWI Do Not Usually Enhance the Charges

Interviewer: What about if you are speeding or another traffic infraction is involved?

Attorney Bowen: Traffic infractions typically do not. Unlike some states, Texas treats DWIs as a normal criminal charge. Prior traffic-type offenses really do not affect the DWI.

I know in some states the DWIs are handled more in the traffic court so they do look at your driving record. In my experience in North Texas, for the most part, and Denton and Collin Counties, they are just looking at this as a criminal charge.

If you have a prior DWI or a prior marijuana charge or prior theft, those might enhance your penalty somewhat. But having a bad driving record, other than being a headache for me to get you an occupational license sometimes, does not really affect the punishment range for a DWI.

ARE THE MAJORITY OF DWIS ALCOHOL-RELATED OR DRUG-RELATED?

Interviewer: What percentages of cases are due to alcohol versus illegal drugs or prescription drugs that you see?

Attorney Bowen: I would say probably 85-90% of our cases are alcohol or alcohol-only-type offenses. We are starting to see more and more drug offenses or drug DWIs in terms of people taking their prescription medication.



There Are a Rise in the Number of DWIs That Are Both Alcohol- and Prescription Medication-Related

The problem is normally they are taking their prescription medication and they are drinking alcohol and so it is a combination effect or what they call a synergistic effect. We are starting to see more of those because I think more people are taking medication. I have probably seen less than a dozen drug-only DWIs. Normally there is some combination of drugs and alcohol.

Texas Is Not a Medical Marijuana State

Something that is not really going to affect Texas as much as it is going to affect, I think, Colorado and Washington State, are the marijuana DWIs, where the driver is only under the influence of marijuana. I do not know how you are going to prove, at least quantitatively, that they are intoxicated on marijuana. There is no 0.08 on marijuana, so it is going to be curious on those states how they are going to deal with marijuana.

Interviewer: Don't worry, they just assume that even if you haven't metabolized it in your system, that you are intoxicated. They take care of that in most states.

Attorney Bowen: I know in Georgia, the state Supreme Court said, "It is unconstitutional to have any marijuana in your system because you are impaired."

It Is Possible Some States Make Pass Law with Zero Tolerance for Drivers Using Marijuana

They have found it unconstitutional but, yes, it is going to be curious to see what states do with that and how the defense attorneys challenge that, if they do have a state that passes a law for zero tolerance for marijuana and driving.

Marijuana metabolite can show in your system for up to 30 days, so that means you have to sit on the sidelines or ask for rides for 30 days? That is going to be a really hard thing to prove or disprove.

Interviewer: You do not see many cases like that yet but I am sure they are coming.

Many States Lack Lab Facilities That Can Quantify Intoxication from Marijuana

Attorney Bowen: They definitely are coming. I think what is interesting in Texas is there is very few labs who can quantitate the marijuana in a blood specimen, to say how high or how low the marijuana is so that we can then coordinate those metabolites showing from yesterday, a week ago or how they are showing up. It has been very difficult.

I actually have a case going on right now and it has been very interesting to see how the state is going to prove intoxication with marijuana only.

Interviewer: Texas does not have medical marijuana? Is it even on the ballot or is it just not even on the horizon?

Attorney Bowen: I think it would far off on the horizon. Texas is a pretty conservative state. At least in North Texas area, especially, you are not going to see a lot of legal marijuana use.

IS THE MAJORITY OF DRIVERS RECEIVING DWIs FIRST-OFFENDERS OR REPEAT OFFENDERS?

Interviewer: Have you seen more first-time offenders or multiple offenders? How is it different for people once they have gotten their first conviction and they are on to their second or third time?

Many of Attorney Bowen's Clients Are First Offense DWIs

Attorney Bowen: I definitely see a lot of first-time offenders. I do not know what the current stats are. At one point we were filing in Denton County probably about 50-75 DWIs a month. Most of those are first-time offenders. Again, with the colleges here, we get a lot of college students.

We are also the bedroom community for Dallas and Fort Worth and so you have a lot of corporate-type people, pilots, American Airlines, Southwest Airlines, and they may go have a drink in Dallas or even Plano and then

they are driving home to Denton or Frisco or some other cities in the area. They are first-time offenders and they just maybe had one too many or maybe they did not have one too many, but the officer thought they had one too many.

Depending on the Video Recording, Attorney Denton Recommends Most First Offense Clients Opt To Go To Trial

We get a lot of first-time offenders. I try to recommend to the clients that on a first-time offense if you look good on videotape, let us go to trial. Again, you are only risking financial means in terms of going to trial. On the second DWI the penalties increase to a minimum of 30 days in jail up to a year in jail, 365 days in jail. You are risking, obviously, on a second offense, some actual jail time.

The Penalties in Texas Escalate for Subsequent Offenses

It depends, too, how close in time are the DWIs. It used to be in Texas, until 2009, if you got DWI and avoiding any others for 10 years, they could not come back and use that DWI to enhance the penalties, but that law was repealed in 2009.

DWIs Received Twenty or Thirty Years Ago Will Still Be Counted as a First Offense

Now any DWI that you have ever had can now be used against you. For a short time, I was seeing professionals, men in their late 40s and early 50s and even beyond that had just received a DWI now, but maybe they had not had a DWI in 20 or 25 years.

I had one client who had been almost, I think, 30 years from his last DWI and this year he received a DWI. The prosecutor is using those DWIs from when he was 19-20 years old to enhance this current DWI and make it a felony charge. For a short time I was seeing a lot of those.

Attorney Bowen Feels Strongly That Going to Trial to Defend a First Offense DWI Is Well Worth the Effort

I try to educate people that there is no longer any grace period. After the 10 years, they can still go back and haunt you. For my young college student clients, I try to explain to them why they should go to trial, because if you ever get another DWI for the rest of your life, they are going to use this one against you.

If you go in and just plead guilty because, "Ah, it's my first offense, they'll be nice to me." That is true, but then you are 35, 45, 55 and they are going to use that against you to make your punishment range higher.

Interviewer: That is true. How often do you see people not come see you and now it is their second and this

offense creates a problem because they did not take the first one seriously and they just pled guilty or did not fight hard enough?

It Is Likely to Have a Jail Sentence Imposed on a Second DWI Offense

Attorney Bowen: It definitely happens. It happens a lot, actually. Many people who come in for DWI second, I ask them about their DWI first and they say, "Well, you know, the attorney told me this, or that, or we didn't think it was that important to fight it." I think you are much better off spending money and energy and time fighting that first one. This is because during the second one a jury or even the judge is much more likely to put you in jail.

I have talked to a lot of clients who they thought the first one was not that big of a deal. The attorney for some reason that did not think it was that big a deal, and now I am trying to clean up the mess on a second where they are looking at some real jail time.

Interviewer: Out of curiosity, what is the most number of DWIs any of your clients have had?

Attorney Bowen: I had one client where I think we documented 9 DWIs. He was actually enhanced to 25 to life for DWI.

Interviewer: That is a severe penalty.

Attorney Bowen: I actually had one gentleman who had gotten out on parole. I obtained for him an occupational driver's license and he was on DWI No. 5 and I got the judge to grant him an occupational license.

Attorney Bowen: That was kind of funny. The judge wasn't real happy with me, but I got a letter from his parole officer and because of the letter from the parole officer, they gave him an occupational driver's license.

HOW DO DWIS AFFECT DRIVERS UNDER THE AGE OF 21 AND COMMERCIAL DRIVERS?

Interviewer: You mentioned the rules of DWI are different for people under 21 and I am sure for people with commercial driver's licenses. How is it different for them?



Drivers under the Age of 21 Will Face a License Suspension and Are Required to Install an Ignition Interlock Device

Attorney Bowen: If you are under 21, you can still get a DWI which means they have to prove that you were intoxicated. Intoxication is defined in Texas as not having

your normal mental or physical faculties because of alcohol level of 0.08 or more.

If you are under 21 and you get a DWI there is a mandatory license suspension and a mandatory ignition interlock that has to be installed in your car if you are going to drive.

Even on a first offense DWI, if your blood alcohol or breath alcohol is a 0.15 or more, you have to have an ignition interlock device on your vehicle while you are on probation.

Commercial Drivers May Be Prohibited from Holding a Commercial License for 2 Years

Commercial driver's license, their standard, if I remember correctly, is a 0.105 you can no longer work as a commercial driver. There is typically a two-year commercial license suspension on a DWI.

You are prohibited from operating commercial vehicle typically for two years if you get a DWI if you are holding a commercial driver's license.

There Are a Number of Commercial Drivers in the Denton Area

Interviewer: Because of where you are in Texas, do you have many commercial drivers that drive through that area?

Attorney Bowen: We do have a lot. Some of the DWIs we do see they are in their personal vehicle. I do not think I have ever had DWI where they are actually in a big rig truck. We do not really see those for the most part. I think they do a pretty good job of educating commercial drivers about that.

They do drug test quite a bit and alcohol test commercial drivers in Texas and around the state. Normally the DWIs I get are people who are in their own personal vehicle and then they were at a party or had too much to drink.

I had one client who his parents had just passed away so he had a little too much to drink to grieve and decided to get behind the wheel of his car. Those are unfortunate but there is not a whole lot I can do. You can get a hearing on the commercial license but it is very difficult to obtain.

THE POTENTIAL PENALTIES FOR A FIRST AND SECOND OFFENSE DWI

Interviewer: Can you provide an overview of the penalties for a first time and a second time DWI?

Penalties for a First Offense DWI Include Fines, Probation, Community Service and a Drug and Alcohol Evaluation

Attorney Bowen: A first-offense DWI, in Denton is typically given probation. The maximum probation is 2 years. On average, the fine ranges are typically less than \$1000 on a first-offense DWI. Community service hours are involved, and you normally have to do typically around 40 hours community service on the first-offense DWI.



You have to take a DWI education class, which is basically a defensive driving class for DWI offenders. You have to undergo a drug and alcohol evaluation. If it recommends rehab, you are ordered to do a rehab program. That is just to determine if you have a drug and alcohol problem.

Being Proactive: Attorney Bowen Recommends Clients Voluntarily Undergoing the Drug and Alcohol Evaluation

Honestly, for me, I would normally have my clients do that ahead of time. We have already done that by the time we go to plea and that actually helps me to obtain a better plea bargain with the state. This is because I can actually show them a clean evaluation and that this is a true first offense. It helps prove that my client is not an alcoholic.

We can get more favorable agreements or plea bargains worked out because we have done that ahead of time.

Interviewer: It makes perfect sense. It shows some good faith. They are making sure that they do not have a problem, or if they do they are getting treated.

Attorney Bowen: Correct. That goes a long way with the prosecutor. I would personally rather make someone do drug treatment now before they are on probation, or at least evaluate and make sure they need it, because they are much more willing to do it now before the court orders them to do it.

Once the court orders them to do it and they do not do it then the judge can impose severe penalties. I really encourage my clients and we try, as a matter of course, to have everyone undergo drug and alcohol violation before we clear their case.

First DWI Offenders Also Attend a Victim Impact Panel

The last mandatory class you have to do on DWI first is what is called a Victim Impact Panel, and it is basically a program that Mothers Against Drunk Driving puts on to educate people about the reality of DWI accidents.

Your License Will Not Be Suspended If You Receive Probation for a First Offense DWI

In Texas if you receive probation on a first-offense DWI there is not an additional license suspension. There is only a license suspension if you do not receive probation on DWI. If you wanted to have jail time, which can be punishable up to 6 months in jail, or sometimes we plea bargain the time down to a few weekends and there is a license suspension and we can get you an occupational license for that.

A Second DWI Offense Is Subject to 30 days up to a Year in Jail

On a DWI second, the penalty range is again a minimum 30 days up to 1 year in jail. There is a mandatory jail sentence depending on what the lapse in time is between your first and your second offense. There is a mandatory 5 days in jail on DWI second. Most of our Denton judges require 30 days in jail.

They can do that work release on weekends or nights, but basically the judge's idea is they want to deter you from getting another one. They want to make you do some jail time to kind of make sure you are not going to do another one.

You have to do the same classes and the drug and alcohol evaluation. Instead of doing the DWI state education class, you have to do the repeat offender class. Judges, typically, they can suspend anywhere from 1 year to 2

years on DWI second. It just depends on the judge. Some judges will only do a year. Some judges will do the full 2-year suspension. We can obtain for you an occupational license for most circumstances on DWI second.

Two DWIs within 5 Years Will Result in a Mandatory One Year License Suspension

If you have 2 DWIs within 5 years, which means you get first one and within 5 years you got a second one, then it is a 1-year hard suspension. You cannot drive. You cannot even get an occupational license for that first year. There are waiting periods where you could not drive when you have a repeat DWI offense.

ADVICE FROM ATTORNEY BOWEN IF YOU HAVE RECEIVED A DWI IN TEXAS

Interviewer: What do you see your clients do? What do you tell them to do? Try to live a normal life while their case is ongoing or to get through the whole thing without going insane or losing sleep, worrying too much?

Learn from Your Mistake

Attorney Bowen: What I tell clients is, "It is important, don't let the DWI arrest define who you are. You've made a mistake. Let's learn from this mistake." I like to have clients go ahead and go do their drug and alcohol

evaluation, and then if It's a first offense then just let me deal with it from there.

Do NOT drink and Drive after Receiving a DWI

Obviously, I recommend they do not drink from this point on. The reason being is this, if you pulled over again and maybe you have only had one drink but the officer pulls up and sees that you just got arrested. Chances are you are going to jail.

The officer can error on the side of caution for public safety and chances are you are going to jail. I recommend they do not drink, but live their life. Again, do not let this define you. Luckily, at least in Denton County, I can have you file a waiver appearance or I can appear on your behalf on some settings, so you do not have to take off work and show up for court.

If You Retain Attorney Bowen, He Can Appear in Court on Your Behalf

That is not true in some other county, like Tarrant and Collin County. There are some settings I can waive appearances for. That is another good thing why you have an attorney, is so you do not have to take off work. The attorneys can help minimize your time off from work. There are some days you will have to take off but we

definitely want you working and want you to learn from this and move forward as fast as you can.

Why Should You Consider Retaining Attorney Bowen's Firm to Defend a DWI Charge?

Interviewer: Is there any other personal statement you want to make to people reading this? What makes you different? What special services do you provide that other attorneys may not provide?

Attorney Bowen Recommends Services for Clients That Are in Need

Attorney Bowen: I think we try to see what our clients' needs are. Maybe this is a true first offense and so there is not a whole lot we need to work with those clients on, but if they are drinking a lot heavier now because they have maybe a death in the family or divorce, something like that, we definitely want our clients to get help.

I have a number of counselors I work with and we try to get clients into a program with a counselor and make sure that they do not need any additional help. Again, those things are things I can then show to a judge or prosecutor later on to get a better result at the end.

Also, when we go to trial, we use that counselor as a mitigating witness to prove punishment evidence, to show you have learned from your mistake and you have

already done a rehab on your own or counseling on your own.

ATTORNEY BOWEN HAS BEEN RECOGNIZED AS ONE OF THE NATIONAL TRIAL LAWYERS “TOP 100 TRIAL ATTORNEYS”

I have been doing pretty much DWI since I first started practicing law as a third year prosecutor in Kansas. I have handled DWIs, not necessarily just exclusively, but criminal defense DWIs since 2001 really. I am a member of the National College for DUI Defense. I have also been recognized as one of the National Trial Lawyers top 100 trial attorneys.

That gets back to having an attorneys that are willing to try your cases and are willing to effectively try cases. I have tried DWI 0.18 breath test case and obtained a not guilty verdict. I have tried refusal cases and received not guilty verdicts.

It Pays to Retain an Attorney with Extensive Experience in the Area of DWI Defense

I tried a DWI blood case with alcohol and drugs and received a not guilty verdict. You need to have an attorney who is well versed in DWI, because it is a complicated area of the law. With the National College for DUI Defense, there are so many good papers they

produce and studies and CLEs that they have put on, that it is a great benefit to be a member of this group. They are training you how to be a better DUI attorney. They are very important.

DISCLAIMER:

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.

Bowen Law Group

101 S. Woodrow Lane, Suite 102

Denton, TX 76205

(940) 213-0630

www.brentbowen.com

CHARGED WITH A DWI?

(Helpful Guide to Navigate Your Case)

"Brent has recently been my attorney, taking me to trial and winning. Trial lawyers are a special breed who think quickly on their feet and I can say without a doubt this guy is one of the best. If you're serious about winning, DO NOT LOOK ANY FURTHER!" – J.R.

"Brent Bowen had my attention and confidence upon our first meeting. He was knowledgeable and kind and gave me the assurance I needed that my case was in the right hands. Thank you so much. I would use Attorney Bowen again." – A Client

"Brent Bowen did a great job on my case. He handled my legal issues with professionalism and dignity, what helped to bring a case to successful result. I recommend Brent Bowen as your legal counselor." – Alex