

A stylized graphic of a classical column in shades of blue and white. The column has a fluted shaft, a decorative capital with a spiral, and a base. The background is a dark teal color with a light blue curved shape at the bottom.

**How to Protect
Your Rights
After a
Fairfax
DWI Arrest**

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How to Protect Your Rights After a DWI Arrest in Fairfax County

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Since 2004, I've been a daily presence in the Fairfax County Courthouse and have handled over 1,000 DWI cases as both a Prosecutor and a Defense Attorney. I have spent the last decade analyzing the legal process and observing the results.

Here are several tips to help you navigate Fairfax County's legal system.

You don't need me to tell you that your DWI arrest in Fairfax County is a serious situation.

No doubt, you're feeling nervous and fearful, especially if you've never been arrested before – let alone been placed in handcuffs or sat inside a jail cell. Now you simply want to make sure you don't lose your freedom.

First off, let me applaud you for learning how the legal process works and taking an active approach to resolving your DWI case. You made a smart decision.

What Happens After Your DWI Arrest?

You might be surprised to know that right now the Fairfax County prosecutor's office isn't doing much planning for your court date. They do very little preparation or research, unless you have a complicated or high-visibility case.

This is one advantage for you that also carries over to your defense attorney. After all, he or she can research issues and only deals with one case a day. Whereas your prosecutor must handle several cases with no preparation on a daily basis.

Now, you may believe you're not guilty. You may even feel like all your charges should be dismissed.

Whatever your situation, I believe you deserve the information you need to make an informed decision about how to best handle your case. So let's start from the beginning ...

In Virginia, a DWI is the same as a DUI.

Unlike in several other states, there's no lesser law. The bottom line is, at some point while you were driving, an officer saw enough evidence to believe you were under the influence of alcohol.

Now you have a decision to make. Should you try to fight the charges on your own, or are you better off hiring an attorney to help you? How do you even begin talking to lawyers about your case?

Here's a suggestion to keep in mind:

Getting guidance from a DWI lawyer is like going to a car mechanic or anybody else who has a strong disparity between their knowledge and your knowledge. So start by doing some background research to determine if the attorney(s) you talk to is credible. In addition, I suggest finding out what punishments you are realistically facing (I'll share some possibilities shortly).

Please understand, though, the Internet offers plenty of false information. Many clients come to me with incorrect insight gathered from message boards and chat rooms. This “advice” only complicates your situation.

Truthfully, attorney websites are one of the only credible sources for DWI information. Virginia’s DWI law is also online (see <http://www.dmv.state.va.us/webdoc/pdf/dmv168.pdf>). You can read the code sections that apply to your case. The legalese may be a little bit confusing, but at least you’ll get background about DWI charge requirements and the required proof.

Possible Punishments

Remember, your punishment for DWI is based on what you’re convicted of –not what you’re charged with. For a “standard” DWI (let’s say for a BAC between .08-.14) with no prior offenses, the minimum punishment you face is a \$300 fine and 30 days of suspended jail time.

Suspended jail time means you don’t go to jail unless you get in trouble or do something else wrong during the year. So, for example, if you commit a robbery in North Carolina and end up going to jail for the crime, you must then come back to Fairfax and serve some or all of those 30 suspended days.

You also, by law, lose your license for a year. You’re usually eligible for a restricted license, though, which lets you drive to work, school or other essential locations (but you can’t drive socially or even to the grocery store).

Your judge may also require you complete the Virginia Alcohol Safety Action Program (ASAP). During this educational series, you learn about the dangers of drunk driving. If you’re a first-time offender, you usually attend 10 hour-long classes over a 10-week period.

Before starting ASAP, a caseworker evaluates your drinking habits. If you demonstrate severe alcoholism or other issues, you may be required to attend additional classes.

Below is a quick rundown of potential punishments for DWI in Fairfax County. Remember, penalties vary significantly depending on the facts of your case and, more importantly, what judge is involved.

- **“Wet Reckless”** – This slang term describes a DWI that is reduced to reckless driving by the judge or prosecutor. This lesser conviction looks better on your criminal record than a DWI. Additionally, you only face six months without your license, as opposed to 12 months and an ignition interlock for a driving while intoxicated charge.

Common punishment usually involves 30 days of suspended jail time, a \$300 fine and, as mentioned earlier, six months without your license and ASAP requirements. A significant legal issue (something the office did wrong or some evidentiary issue) is usually the only way a case gets reduced to wet reckless. What’s more, obtaining this reduction becomes increasingly difficult with higher BACs (e.g., a .08 or .09 is more likely to lead to a wet reckless than a BAC of a .13 or .14).

- **Baby DWI** – If you're under 21, you legally can't drive after drinking any alcohol, regardless of your BAC. While conviction in a standard DWI case is .08, the threshold for a Baby DWI is only .02. Your punishment can include a one-year loss of license and \$500 fine. In some cases, the fine can be eliminated in exchange for 50 hours of community service. Additionally, your judge may require you complete the Fairfax ASAP program and have a restricted license.
- **First DWI, BAC .14 or Below** – For first-offense DWIs, the maximum penalty in Virginia is 12 months in jail and a \$2,500 fine. But the standard punishment for a Fairfax DWI involving a BAC of .14 or below is much less severe.

Generally, you face 30 days of suspended jail time, a \$600 fine (with \$300 suspended), a 12-month loss of license (although you can get a restricted license), and completion of the ASAP program. By law, you're also required to have ignition interlock installed on your car for six months.

- **First DWI, BAC .15 to .20** – If convicted of a BAC in this range, you must serve a mandatory five-day jail sentence. You will also face additional suspended jail time, \$600 fine (with \$300 suspended), 12-month loss of license and completion of the ASAP program. Additionally, your judge may not allow a restricted license until you start the ASAP program and a program evaluator approves the request. The delay in getting a restricted license is not mandatory and will depend on the facts and circumstances of your case.
- **First DWI, BAC .21 or Above** – As a “super drunk” offender, you face a lost license, completion of the ASAP program and ignition interlock requirements. You must also serve 10 days of active jail time and it is likely that you will have to wait a significant amount of time before you get granted a restricted license.
- **Second DWI Within 10 Years, BAC .14 or Below** – Before you can be convicted for a second DWI, the Virginia government must prove your prior conviction. This can often be more difficult than expected, especially if your prior conviction was in another state. Assuming that the government proves your prior conviction, a typical punishment includes 10 days of actual jail time. In addition, there will be a period of suspended jail time and a required \$500 fine.

You also lose your license for three years, with no opportunity for a restricted license within the first four months. In addition, participation in the ASAP program and ignition interlock systems are required.

- **Second DWI Within 10 Years, BAC .15 to .20** – If convicted, you must serve an extra 10 days of active jail time in addition to the 10 days in jail for the repeat offense. Despite the harsher jail sentencing for the higher BAC range, your fine, loss of license, ASAP program requirements and ignition interlock systems are the same as lower BACs – suspended jail time, \$500 fine and a loss of license for three years.

- **Second DWI Offense Within 10 Years, BAC .21 or Higher** – If convicted, you receive an extra 20 days of active jail time (30 total days) and face the same fine, loss of license, ASAP program, and ignition interlock requirements as offenders with lower BACs.
- **Second DWI Within 5 Years, BAC .14 or Below** – State law requires you serve 20 active days in jail and lose your license for 36 months. During this time, a restricted license may be issued after the first year. You also face a \$500 fine, participation in the ASAP program and ignition interlock requirements.
- **Second DWI Within 5 Years, BAC .15 to .20** – You face 30 days of active jail time, in addition to fines, loss of license, ASAP program requirements and ignition interlock requirements.
- **Second DWI Within 5 years, BAC .21 or Higher** – You face an extra 20 days of active jail time (40 days total) and the same consequences as those second-time defendants with lesser BAC levels – fines, loss of license, participation in ASAP programming and ignition interlock requirements.
- **Third DWI Within 10 Years** – Your conviction becomes a felony, bringing with it harsh consequences. While punishments can range from 90 days to five years in jail, you're subject to a mandatory 90-day jail sentence, required to pay at least \$1,000 in fines and have your driver's license suspended indefinitely. In these cases, a restricted license can only be granted after five years and a petition/permission from a judge.
- **Third DWI Offense Within 5 Years** – For this felony offense, you face 180 days to five years in jail (with a mandatory 180-day jail sentence). You're also required to pay a \$1,000 fine and have your license suspended indefinitely. A restricted license may only be granted after five years and a petition/permission from a judge.

*** SPECIAL REPORT FOR ANYONE ARRESTED FOR DWI IN FAIRFAX COUNTY ***

CONVICTION	MINIMUM ACTIVE JAIL TIME	MINIMUM FINES	DRIVERS LICENSE
Wet Reckless	No minimum	\$300	6 mo. suspension
Baby DWI	No minimum	\$500	1 yr. suspension
1st offense, BAC .14 or below	No minimum	\$600 (\$300 suspended)	1 yr. suspension
1st offense, BAC .15 to .20	5 days	\$600 (\$300 suspended)	1 yr. suspension
1st offense, BAC .21 or above	10 days mandatory	\$600 (\$300 suspended)	1 yr. suspension
2nd offense within 10 yrs., BAC .14 or below	10 days	\$500	3 yrs. suspension
2nd offense within 10 yrs., BAC .15 to .20	20 days	\$500	3 yrs. suspension
2nd offense within 10 yrs., BAC .21 or higher	30 days	\$500	3 yrs. suspension
2nd offense within 5 yrs., BAC .14 or below	20 days	\$500	3 yrs. suspension
2nd offense within 5 yrs., BAC .15 to .20	30 days	\$500	3 yrs. suspension
2nd offense within 5 yrs., BAC .21 or higher	40 days	\$500	3 yrs. suspension
3rd offense within 10 years	90 days to 5 years	\$1,000	suspended indefinitely
3rd offense within 5 years	180 days to 5 years	\$1,000	suspended indefinitely

Should You Represent Yourself After a DWI Arrest?

Your mailbox is probably already stuffed with promise-filled pitches from attorneys. In fact, whether in mailed materials or while researching online, you may have even seen one “expert” contradict the other.

Don’t let all these worse-case scenarios and vows to “fight for your rights” cloud your decision-making process. Take time to gather the facts and then make your choice.

Now, I know you’re likely a good person caught in an unfortunate situation. So I want to make sure you understand one truth:

Getting your case dismissed or reduced is NOT as easy as some lawyers want you to believe, especially when you go through the legal process on your own.

How do I know?

I’m a former Fairfax County prosecutor. The reality is, you can represent yourself if you want to. And there are times, for a standard DWI (i.e., first-time offense and a low BAC) where the best possible legal representation will lead to the exact same result as if you went to court by yourself.

Many punishments are required by law – the judge has no flexibility. So if you took the breath test and the machine worked properly and the officer did everything right, there’s likely nothing any lawyer can do to get you out of your conviction.

So yes, you may pay the world’s most brilliant lawyer a substantial amount of money, have him/her prepare in every possible way, and still end up in an identical situation as if you represented yourself.

But even in this circumstance, I believe the risk is worth the reward when you consider what’s at stake. Can you imagine not being able to do a simple task such as driving to the grocery store for a year?

At the very least, you want somebody to review your case and make sure you only accept punishment if the prosecution has all their ducks in a row.

These Defenses Can Work to Your Advantage

Remember, every case is unique – no defense works on an automatic basis.

In any situation where there is a breath sheet (i.e., where you took a breath test), a DWI attorney will try to discredit the result's accuracy. Was that machine tested? Did it work properly? From there, we can figure out if the machine either had a history of malfunction or is otherwise unreliable.

As you can imagine, mistakes happen, making it more difficult for the prosecutor to secure a conviction. Many cases don't have an error with the breath or blood test. So other parts of your case need to be investigated.

Other common defenses in Fairfax County include:

- Reason for the stop
- Administration of the field sobriety tests
- Arrest

A classic scenario for a DWI in Fairfax involves a police officer pulling you over. To protect citizens, the law limits the reasons an officer can stop you. The police must have reasonable suspicion. If you were pulled over for an invalid reason, this finding can improve your case outcome.

When you're stopped and suspected of driving while under the influence of alcohol, officers generally ask you to perform a series of field sobriety tests. These voluntary tests help determine if there is a valid reason for a DWI arrest. Administered based on standards established by the National Highway Traffic Safety Administration, these tests tend to include:

- Horizontal Gaze Nystagmus test
- One-legged stand
- Walk and turn
- Alphabet test
- Number count
- Finger-to-nose test
- Finger count test
- Preliminary breath test

No matter which examinations are performed, law enforcement officials must follow exact standards. Should your officer fail to administer the field sobriety tests according to protocol, this mistake could be a powerful defense to your DWI charge.

In addition, probable cause is a factor. The judge must believe the officer had enough evidence at the time of your arrest to conclude that you were probably under the influence. If the judge doesn't believe sufficient probable cause existed, the case may be dismissed. This is another aspect of your case that can be attacked.

Even your arrest itself is reason for careful exploration. Law officials must ensure an arrest follows regulations to guarantee accuracy of any alcohol test taken at a later time. When the proper steps aren't taken, you can benefit.

All these potential areas need to be investigated because...

Any DWI conviction in Fairfax County is a criminal misdemeanor that stays on your record for life.

What's more, if you didn't agree to take a breath test, you can pick up a separate "refusal" charge. This is not a criminal offense (just a civil offense), so there's no jail time possible on your first refusal. But this charge still presents problems because it shows up on your driving record. Additionally, a conviction for refusal will cause you to lose your license for one year. And unlike a DWI charge, you cannot get a restricted license during a suspension for refusal.

(NOTE: A refusal charge is only a civil offense if you have no other DWIs or refusals on your record. If you have a DWI or refusal in the last 10 years, the new refusal charge is a criminal offense.)

What a DWI Lawyer Does for You

A DWI lawyer representing you helps ensure every element of your case gets a complete review and that you only accept a punishment if the government can prove your case. Also, once in court, your lawyer can meet with the prosecutor that day to negotiate a plea agreement.

Now, most times, plea agreements are fairly standard at a low BAC because everything is mandated by law. But when you get into the higher BACs, there's flexibility and your punishment can be lessened. Either way, with a lawyer, you know all the ramifications and can go with a strategy for the best possible result.

In my situation as a DWI lawyer, I have a unique advantage due to my background as a former prosecutor. I understand prosecutors' pressure points and how the DWI process works on both sides of a case. What's more, I've dealt with all the people and judges at the Fairfax County Courthouse for years. I know what defenses have tended to work in the past with certain judges, and which defenses are unlikely to work.

When evaluating DWI lawyers for your case, look at their background and candidly talk to them to understand what strategies they suggest. No lawyer should ever say anything definitive. The court is a process run by human beings. As such, until you actually hear the ruling, you never know how a person will react to anything.

Keep in mind, too, that what happens in Courtroom A is different from Courtroom B. Many factors go into case results and only a portion of those are within your attorney's control. So anybody who makes guarantees or proclamations is probably not somebody you should believe.

Also, every case is unique. You want an attorney who discusses your specific case and tells you what factors are helpful and hurtful. Anybody who says what they can do or can't do for you before they know your case's facts is not credible.

Here's What to Do Next ...

By reading this far and evaluating each section as it relates to your situation, you've demonstrated a commitment to protecting your rights following a DWI arrest in Fairfax County.

But you're not done yet.

Now is the time to take action because, as you know, your decisions today have a critical impact on your future.

Many people who read this special report won't take any action for whatever reason. Too nervous to talk to an attorney... don't want to deal with the paperwork ... too much effort ... confused where to start ...

Don't fall into this trap. I'm available at any time to answer your questions at (703) 934-0101 or Faraji@FairfaxCriminalLawyer.com. Furthermore, I'll give you a FREE Opportunity Analysis, my step-by-step system for finding opportunities where other attorneys see obstacles.

No pitching. No tricks. No trying to turn over your case to another lawyer. Just more education about how to move forward with your situation.

Fair enough?

Call me now at (703) 934-0101 or visit www.FairfaxCriminalLawyer.com (you'll find many free resources in the Articles section) to schedule your FREE Opportunity Analysis.

Sincerely,
Faraji Rosenthal