

Choices Facing Clients Accused of Drunk Driving

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Practices law in Tiverton, and, with the other attorneys in his office, often defends those accused of driving while under the influence.

As a practicing attorney, you may receive a telephone call from a friend, a neighbor, or a relative who has just been arrested for suspicion of driving while under the influence. He or she is in the police station and wants your advice. What do you say while on the telephone?

I. Ensure the telephone call is confidential and on an unrecorded telephone line.

- a. R.I. Gen. Laws § 12-7-20 states:
 - i. Any person arrested under the provisions of this chapter shall be afforded, as soon after being detained as practicable, not to exceed one hour from the time of detention, the opportunity to make use of a telephone for the purpose of securing an attorney or arranging for bail; provided, that whenever a person who has been detained for an alleged violation of the law relating to drunk driving must be immediately transported to a medical facility for treatment, he or she shall be *afforded the use of a telephone as soon as practicable, which may not exceed one hour from the time of detention. The telephone calls afforded by this section shall be carried out in such a manner as to provide confidentiality between the arrestee and the recipient of the call.**
- b. *State v. Brown* 898 A.2d 69 (RI 2006) states:
 - i. It is true that "in order to enjoy the benefit mandated by 12-7-20, a suspect must be informed of his or her right to a confidential telephone call," *Carcieri*, 730 A.2d at 15.
- c. *State v. Carcieri* 730 A.2d 11, 15 (RI 1999) states:
 - i. We conclude that a suspect is entitled, at minimum, to a telephone call free of charge on an unrecorded line, provided that the call is "for the purpose of securing an attorney or arranging for bail."

II. Ask the following questions:

- a. How much have you had to drink?
- b. What type of alcohol?
- c. How big were the drinks?
- d. How much alcohol was in the drinks?
- e. When was your last drink?
- f. Over what period of time were the drinks?
- g. When did you last eat?
- h. What did you eat?
- i. Do you believe you are under the influence of alcohol now?
- j. Do you believe you were under the influence of alcohol while you were driving?
- k. Do you believe the alcohol affected your ability to drive?
 - i. See *State v. Holland* 711 P2d 592 at 594 (Ariz. 1985)

III. Will the client be afforded the opportunity to be examined by his own physician? If so, when? How? Will the police bring the client to the hospital?

- a. R.I. Gen. Laws § 31-27-3 states:
 - i. A person arrested and charged with operating a motor vehicle while under the influence of narcotic drugs or intoxicating liquor, whatever its alcoholic content, shall have the right to be examined at his or her own expense immediately after the person's arrest by a physician selected by the person, and the officer so arresting or so charging the person shall immediately inform the person of this right and *afford the person a reasonable opportunity to exercise the right,** and at the trial of the person the prosecution must prove that he or she was so informed and was afforded that opportunity.
- b. R.I. Gen. Laws § 31-27-2(c)(6) states:
 - i. The person arrested and charged with operating a motor vehicle while under the influence of intoxicating liquor *was afforded the opportunity to have an additional*

*chemical test.** The officer arresting or so charging the person shall have informed the person of his right and afforded him or her a reasonable opportunity to exercise this right, and a notation to this effect is made in the official records of the case in the police department. Refusal to permit an additional chemical test shall render incompetent and inadmissible in evidence the original report.

IV. Can a urine sample be obtained in the station?

V. Is the client being videotaped? If not, why not?

VI. Have field sobriety tests been conducted in the favorable conditions of the police station? If not, why not?

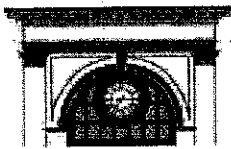
VII. Can the client be released? What are the telephone numbers of the Bail Commissioners? See R.I. Gen. Laws § 12-10-1; § 12-10-2; § 12-7-12.

- a. § 12-10-1 states:
 - i. The district court shall be open at all times for the transaction of criminal business.
- b. § 12-10-1 states:
 - i. The fee for the justices of the peace shall be fifty dollars (\$50.00) paid by each individual who appears before him or her; provided, that when a special session is requested between the hours of 11:00 p.m. and 8:00 a.m., the fee shall be arranged between the defendant and the justice of the peace but shall not exceed two hundred dollars (\$200). Justices of the peace shall have immunity for any actions taken pursuant to the provisions of this section.
- c. § 12-7-12 states:

* *emphasis added by author.*

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- i. The officer in charge of any police station may release any person in his or her station who has been arrested without a warrant;
 1. Without requiring the person to appear in court, when the officer is satisfied that there is not ground for making criminal complaint against the person or when the person has been arrested for drunkenness but in the judgment of the officer need not be brought before a magistrate; or
 2. If the arrest is for a misdemeanor, upon that a person signing an agreement to appear in court at a designated time.

VIII. Closing advice to client:

- a. Do not admit anything to police.
- b. Ask to speak with attorney by name.
- c. Request an immediate physical examination by a doctor.
- d. Request an immediate blood test at the local hospital.
- e. Request an immediate release from police station.
- f. Request the Bail Commissioner list and telephone numbers. ☞

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