

WHAT TO DO (AND NOT DO) IF YOU ARE PULLED OVER FOR SUSPICION OF DUI

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There you are, on your way home from dinner out with friends, when suddenly, you see those flashing blue lights behind you and you realize you are being pulled over. Almost at the same moment, you realize that you had a few glasses of wine with dinner, and an after dinner drink ..and that maybe .. just maybe .. it could be enough tooh my God..a DUI??

Your gut tightens into a knot. What do I do? What should I say? Can this be happening?

As you pull over, the cruiser focuses a blinding white searchlight on you as you fumble in your glove box for your license and registration. You start to sweat, as you fumble through your purse or wallet. Oh God....is my registration expired? My inspection? What if he asks me to get out of the car? Will he ask me to blow a breathalyzer? Can I say no? Wait, don't I have to? Can I call my lawyer first? Oh no, oh nooooo.....

After what seems like an eternity, the officer approaches, and you roll down your window. "Good evening" he says, with a cheerful smile. "Whew." You breathe a sigh of relief. You start to relax. He seems like a regular guy. He'll see I'm not that bad. As long as I cooperate I'll be fine. I'll just be straight with him and.....

Wrong. Two hours later, you are sitting locked in a jail cell, the glare of overhead fluorescent lights searing your brain as you realize that the nightmare of a DUI arrest has finally come true – and *this* time it's not the other guy. A thousand thoughts flash through your mind, over and over. Will my boss find out? Will I lose my job? Do I need a lawyer? That'll cost a fortune! Will they cancel my insurance? My rates will go sky high!

And the worst thought of all: could I actually go to jail? Like, a real *jail sentence*? Me? I'm not a criminal! What will my family say? Of God no, please tell me this is a dream!

Of course, it isn't a dream. Each year this exact scenario happens to thousands of drivers all over the country, and certainly throughout the mid-Atlantic region of DC, Maryland and Virginia – and you just became the latest statistic.

So what are your rights when you are pulled over anyway? Just exactly what are you *required* to do, and what not? *Knowing* the difference can make *all* the difference, so listen up.

Following are some concrete pieces of advice that I give my clients – though usually – for them – it is too late. It doesn't have to be for you.

RULE #1. IF YOU ARE PULLED OVER, KEEP YOUR MOUTH SHUT.

In most cases, you may or may not have a good idea as to why the officer pulled you over. It may be because you were speeding, did a “California” rolling stop at a stop sign, or some other possible violation of the motor vehicle laws. Regardless of why, there is no reason to ask the officer, so don't. He will tell you in good time. All that matters is that you've been stopped. Everything you say and do from this moment onward could make the difference between a conviction and an acquittal, so take a deep breath and get a hold of yourself.

Officer's Question: Know why I stopped you?

Your Answer: “No.”

Officer's Question: Had anything to drink tonight?

Your Answer: “I have nothing to say officer.”

Officer's Question: Your license and registration, please.

Your Answer: Silently hand them over. Say nothing.

Officer's Question: Where are you coming from?

Your Answer: “I have nothing to say officer.”

Question (Angrily): You're not being very cooperative! I smell alcohol, and think you've been drinking! Maybe I should just lock you up right now! Is that what you want? You're drunk! That's why you won't talk to me, right?

Your Answer: Same answer officer.

While adhering to this advice may be difficult to say the least, particularly if the officer becomes visibly angry, there is absolutely no “up side” to engaging the officer in conversation. For example, if you tell him “dinner with friends,” you've just set yourself up for the inevitable next question: “So you had drinks with dinner? How much have you had?”

If you admit to having had any alcoholic beverages at all, you have just “testified against yourself” and proven half of the officer's case against you for DUI. You've admitted to having consumed alcohol, and he no longer has to prove it.

Congratulations. You've just proven 50% of the state's case against you. You have also just given up your Constitutional right not to testify against yourself.

Aside from any admission that you make, if you *have* had anything to drink, speaking unnecessarily will permit the officer to 1) smell the odor of alcohol on your breath, and 2) be able to assert that your speech is “slurred,” “slow,” “thick” -- you pick the adjective. Most DUI arrest forms filled out by arresting officers after the fact contain “check boxes” that indicate “slow,” “thick” or “slurred speech,” on the part of the defendant. In fact, I’ve never seen a single arrest report when one of these boxes *wasn’t* checked. **SO DO YOURSELF A FAVOR AND SAY AS FEW WORDS AS POSSIBLE.** If the officer has decided to arrest you, there is absolutely nothing you can say that will change his mind. Nothing. Fervent pleas by you for “a break,” tears, excuses based on financial or medical problems, sick relatives, relationship issues, you name it, the officer has heard it all a thousand times and he (or she) isn’t interested. **KEEP YOUR MOUTH SHUT.**

RULE #2. YOU ARE NOT REQUIRED TO PERFORM FIELD SOBRIETY TESTS. DO NOT PERFORM THEM UNDER ANY CIRCUMSTANCES, NO MATTER WHAT THE OFFICER TELLS YOU.

Next to admitting that they have consumed alcoholic beverages, this is the biggest mistake that drivers make when pulled over. Many police officers will “order you” to do various things, as if they have every legal right in the world to make you do it. When it comes to having you perform field sobriety tests, **THEY DON’T.** In my experience from having discussed this with numerous officers after the fact, if an officer directs you to perform field sobriety tests, the chances are, he has already decided to arrest you, so there is absolutely no “up side” to performing them.

If he’s made up his mind to arrest me then why ask me to perform the test?

Because the officer wants you to build the case against yourself. That’s right. By performing so-called “Standardized Field Sobriety Tests” (otherwise known as “SFSTs”), the officer will record your performance, and will seek to admit that as evidence 1) to support his legal position that he had “probable cause” to legally arrest you for DUI, and 2) that you were actually legally under the influence of alcohol, and therefore guilty of the offense charged.

The three most common field sobriety tests are 1) the so-called “HGN” or Horizontal Gaze Nystagmus Test; 2) the “walk and turn” test, and 3) the “one-legged stand” test. While these three are the only tests that are formally sanctioned by the National Highway Traffic Safety Administration (NHTSA”), there are many other similar tests that are commonly used by the police in various jurisdictions, including reciting specific portions of the alphabet; counting backwards; touching thumbs to fingers sequentially, and on and on.

If you are confident person, and believe that you haven’t had “that much” to drink and are “fine,” you may have no fear of attempting these tests. Think you can pass?

Unlikely. Why? Because there is no objective “pass” or “fail” standard that you can possibly meet. What??

That’s right. Incredible as it may seem, there are no standardized, objective criteria for either “passing” or “failing” a field sobriety test. There are only identifiable “clues” of impairment, and the identification of those “clues” is a completely subjective process. In other words, it’s entirely up to the officer, and if that officer has already decided that you are guilty of DUI, and you agree to perform the tests, 99 times out of 100 you are going to “fail” the test (i.e. demonstrate multiple “clues” of impairment) in the eyes of that officer.

RULE # 3. YOU ARE NOT REQUIRED TO PREFORM ROADSIDE PORTABLE BREATHLYZER TESTS. DO NOT PERFORM THEM UNDER ANY CIRCUMSTANCES, NO MATTER WHAT THE OFFICER TELLS YOU.

Many officers are extremely adept at convincing wary drivers that it’s okay to blow into a portable breath analyzer (otherwise known as a “PBT”) because it “can’t be used in court,” etc. In reality, however, this statement is misleading. While the PBT results themselves are not admissible in court strictly as to the precise level of blood alcohol in your system (because these devices are notoriously inaccurate), the results *are* admissible if your lawyer attempts to challenge the sufficiency of the officer’s “probable cause” under the Constitution to arrest you. In many cases, the officer may not have sufficient probable cause, at least not without some PBT results. So the same answer applies here. **Do not blow into one of these devices at the scene for any reason.** The results can only hurt you.

RULE #4. IF YOU ARE NOT ARRESTED, BUT ARE ISSUED A SUMMONS FOR A TRAFFIC INFRACTION, YOU MUST SIGN THE SUMMONS IF YOUR SIGNATURE IS REQUIRED, THUS CONFIRMING YOUR AGREEMENT TO COME TO COURT IF NECESSARY.

If the officer gives you a ticket, regardless of whether you agree with the charge, be polite, cordial, and sign where indicated. Do not cop an attitude (no pun intended) and refuse to sign anything put in front of you. There is nothing wrong with signing under language indicating that you acknowledge receiving the ticket, and agree to come to court if you are required to do so.

RULE #5. IF YOU ARE ARRESTED FOR DUI, YOU ARE LEGALLY OBLIGATED TO BLOW INTO A BREATHALYZER AT THE STATION IF ASKED TO DO SO. FAILURE TO COMPLY IS A CRIME IN AND OF ITSELF.

In most states (including DC and Virginia, where I happen to practice), it is a crime to refuse to give a breath sample once arrested for driving under the influence. Why? Because under the law, your decision to obtain a driver’s license and operate a motor vehicle in any given state means that you have, by legal implication, *already given*

your consent to be tested under such circumstances. Hence, it is legally referred to as “implied consent.” In most states, failure to give a breath sample into a breathalyzer (not the little roadside PBT device I was mentioning above) can subject you to fines and/or imprisonment, and most assuredly, a suspension of your license for a considerable period. In Virginia, for example, those convicted of “refusal” face a mandatory 12 month loss of license, with no opportunity even for a restricted license to drive to and from work.

RULE # 6. THE ABSOLUTE BEST WAY TO AVOID A DUI CONVICTION IS TO NEVER, EVER, DRINK AND DRIVE. CALL A CAB. CALL A STRETCH LIMO FOR THAT MATTER. IT IS FAR CHEAPER THAN A DUI CONVICTION, AND A LOT SAFER.

And if you are charged with a DUI, refusal, or both?

Ultimately, if you are faced with a DUI charge, a refusal charge, or both, you should contact an attorney *as soon as possible*. If you cannot afford one, and qualify in your particular state, court appointed counsel will be provide to you at no charge. Make an appointment to see your lawyer immediately, before your memory dims about the specific facts surrounding the circumstances of your arrest. Every detail counts, and your lawyer should interview you at length as soon as possible following the date of the incident. The less you can remember in detail about the incident, the less information your lawyer will have to defend you.

**** The information provided in this booklet is for informational purposes only, and does not constitute providing legal advice. Please contact an attorney for the full extent of your rights and responsibilities.**

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