

Florida DUI 101: If I'm pulled over for a DUI, should I consent to a breath test?

By: Eric Roper

This is perhaps the most often asked question of a criminal defense lawyer by friends and family members. Of course, the first advice I give when asked this question is to avoid drinking and driving in the first place. Aside from putting your personal safety and the safety of others at risk, an arrest and conviction for driving under the influence can lead to significant criminal penalties, skyrocketing insurance premiums, and suspension of your driving privileges. However, even the most law-abiding people can make mistakes. If you find yourself under arrest for DUI, there are some things you should know and the decisions you make will directly affect how the case proceeds.

Typically, if an officer suspects a driver of being under the influence, the officer will attempt to gain information from the driver about whether the driver has been drinking alcohol. You are under no legal obligation to answer these questions but you will have to comply with the officer's request for your license, proof of insurance and registration. You should know that any statement you make to the officer either during the stop or after your arrest can and will be used against you in court. The officer may also ask the driver to consent to perform certain field sobriety tests (FSTs) which may also be videotaped. Poor performance of the FSTs is often damaging evidence in defending a DUI case but you do not have to agree to perform the tests. If you do agree to perform the tests, make sure you inform the officer of any physical limitations or disabilities which may affect your performance.

If the officer believes there is probable cause to make an arrest, the driver will be taken into custody and transported to a facility where a breath test may be administered. The decision whether or not to consent to such a test is complex and depends on several factors. If you agree to the test and your result is over the statutory limit for impairment (.08 in Florida), the government will have a much stronger case in court. Refusing the test may make it substantially more difficult for the government to prove guilt but it does not guarantee an acquittal and carries with it certain consequences you should be aware of.

First, Florida, like most other states, has what is known as an implied consent law. Pull out your driver's license and look at the small print on the front. In exchange for the privilege of driving on the public highways, drivers grant their consent to "any sobriety test required by law." What this means is that if you refuse to do so, the state will administratively suspend your driving privileges for failing to comply with the law. This suspension is separate and apart from any other suspension which may be handed out by the court if you are convicted. For a first refusal, your driver's license will be suspended for one year. For subsequent refusals, the time goes up to 18 months and may result in an additional criminal charge. Finally, the law permits the government to argue in court that your refusal to provide a breath sample is evidence of your guilt. Considering these consequences of a refusal, it is often still in your best interests to refuse to submit to the test given the improved odds of winning an acquittal at trial.

After an arrest, if you blow a .08 or greater or you refuse the test, your driver's license will be administratively suspended. You have the right to challenge this suspension by requesting a formal review hearing before the DMV but you must request this hearing in writing within 10 days of the arrest. An experienced criminal defense lawyer can represent you at this hearing and may be able to

get your license back. This hearing may also provide the opportunity to obtain the evidence which will be used against you.

For more information on Florida DUI laws or if you have been arrested for DUI, call for a free confidential consultation with an experienced Jacksonville criminal defense lawyer.