

Driving Under The Influence

Written by Administrator

Wednesday, 20 August 2008 10:11 - Last Updated Monday, 20 September 2010 22:55

What do I do if I have been pulled over by a member of Law Enforcement?

You are not required to answer any questions. A polite "I would like to speak with a lawyer before I answer questions" Or "My lawyer always said 'be polite and keep my mouth shut'" are good replies.

The most important thing is never lie about anything! It will only damage your credibility in court. It is always your right to speak to a lawyer. Do not make any further statements until you have had the opportunity to do so.

Do I have to Attempt the "field sobriety tests?"

NO!!! Unlike blood and breath testing, submitting to "field sobriety tests" is strictly voluntary, The police officers will tell you so. In many respects, these tests are designed for failure and unless you are being videotaped the ONLY evidence that you passed or failed is the officer's opinion. This is often a no-win proposition.

Many of the several tests the officer might ask you to take, Such as the alphabet test, the finger-to-nose test, the finger-count test and the standing balance (usually administered along with the finger-to-nose test) are scientifically proven to not correlate to legal intoxication.

According to the National Highway Traffic Safety Administration (NHTSA), the only tests that have been shown to have some relevance to establishing legal intoxication are the One Leg Stand, the Heel-to Toe and the Horizontal Gaze Nystagmus (HGN).

HGN - In this test the officer has you follow a penlight (or finger or pencil) and attempts to estimate the angle at which the eye begins to jerk ("nystagmus" is medical jargon for a distinctive eye oscillation). If this occurs before 45 degrees, it theoretically indicates a blood alcohol concentration over .05%. The smoothness of the eye's tracking is also a factor, as is the type of jerking when the eye is as far to the side as it can go.

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This test has been shown to be subject to a number of different problems, not the least of which is the non-medically trained officer's ability to recognize nystagmus and estimate the angle of onset, and make what amounts to a medical diagnosis that is best left to neurologists and ophthalmologists. Even under laboratory conditions, this test has only been established of be accurate in predicting a blood alcohol content above .10% 77% of the time. This test won't show up EVEN if there is a video, so The only evidence on if you passed or not is the officer's recollection.

One Leg Stand - In this test you will be asked to stand on one foot for approximately 30 seconds, while the officer looks for four things:

Do you sway while balancing?

Do you use your arms to balance?

Do you hop?

Do you put your foot down?

According to NHTSA if you are unable to satisfactorily perform this test by doing two or more of the above, there is a 65% probability that you have a blood alcohol concentration of .10% or more.

Heel-to-Toe - In this test the officer is required to find a visible line. You will be asked to stand on this line in a heel-to-toe position while receiving instructions. The officer will have you walk on this line for nine steps, heel to toe, turn, and walk nine steps back. The officer will be looking for eight things:

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Can you balance during the instruction phase?

Do you start the test too soon?

Do you stop while walking?

Do you touch heel-to-toe each step?

Do you step off of the line?

Do you use your arms for balance?

Do you lose your balance on the turn, or do you turn incorrectly?

Do you take the wrong number of steps?

These tests are simply additional evidence to use against you in court. While an arrest may be avoided if the tests are taken and successfully completed, the tests are so subjective (what appears to be "swaying" to one officer may not be to another) that the best action may well be to politely decline until you have had the opportunity to talk to a lawyer.

Obviously, refusing the tests will definitely heighten the officer's suspicion and may result in an immediate arrest. Regardless, if you have been drinking, submitting to "field sobriety tests" is a momentous decision that will likely affect your case adversely.

Should I have to take a portable breath test (PBT)?

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NO!!! The results of the PBT are not admissible in trial; driver is rarely informed of that. Refusal to submit to the test. The fact of a refusal of a PBT is not admissible at trial, and you will not lose your license or suffer any other sanctions for refusing a PBT. You should REFUSE the PBT and normally take the test at the station.

Accordingly, there is a critical difference between the PBT and the "official" breath test that will be requested after arrest at the police station, known as the BAC Machine. Do not confuse the two tests! You do not have to submit to the PBT on the street. But if you refuse to take the test on the BAC MACHINE at the police station you will face at least a one-year license revocation.

Some people think that because they took a breath test on the street that they don't need to take another one at the police station because the difference is not adequately explained to them. Don't make the same mistake! If arrested for DUI, ask to speak to a lawyer immediately.

Does the officer have to read me my rights? What if he/she doesn't? Do I have the right to talk to a lawyer?

Almost everyone is familiar with the "Miranda rights" From TV. But when those rights must be read depends upon the facts and circumstances of each case. Generally speaking, the officer must read you your rights when you are arrested. If the officer fails to do so, the prosecution cannot use any statements you make in response to questions.

In Washington, the rule has been expanded from the original Miranda rule, which simply provided that a suspect has the right to remain silent and not answer questions until talking with a lawyer. As a result of a court rule adopted by the Washington State Supreme Court, an arrested person has the right to talk to an attorney for any purpose, not just to find out whether or not to answer questions. This is particularly important in DUI cases, because it means an arrested person can talk to an attorney to find out whether or not to take a breath test, as well as other things he or she should or should not do while in custody, or after release.

Failure to advise a person of the Miranda rights typically does not result in dismissal of the case. The remedy is suppression or exclusion of evidence obtained after the violation of the suspect's

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rights

It is a fact of life that most people do waive their rights and agree to talk to the officer. That is usually based on a mistaken belief that being cooperative will help their case. It is imperative that you ask for a lawyers help at this stage. Ask the officer, " Gee, I guess I need to talk to a lawyer to help me with this, Can you put me in touch with one now?"

My EMERGENCY ON CALL NUMBER is 360-419-9998 DAY or NIGHT.

Since you have the absolute right to decline police questioning, your silence cannot be used against you in court nor can the fact that you ask to speak to a lawyer.

Do I have to take a breath test at the police station?

You do have the right to refuse to take the official breath test, but the consequences can be severe, and you can, and probably will, still be prosecuted for DUI. In Washington, there are three official sanctions:

Your driver's license can be suspended for a minimum of one year, or substantially longer if you have prior DUIs.

The fact of refusal can be introduced into evidence as "consciousness of guilt." In other words, the prosecutor will claim that you refused because you knew you would flunk the test.

A test refusal will increase the mandatory minimum sentence that the judge must impose if you are found guilty.

If you refuse the test the Department of Licensing (DOL) will revoke your license for at least one

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year. Prior DUIs can increase the revocation to two years. There is no occupational license allowed, and you will be required to file proof of financial responsibility (high risk insurance) for three years after reinstatement.

You are entitled to a hearing before DOL revokes your license, but only if you request it by way of a hearing request form provided by the officer within 30 days of the date of arrest, and pay \$200, which can be waived if you are indigent.

Refusals increase the mandatory minimum sentence that must be imposed in the event of a conviction. In fact, the courts treat a test refusal the same as if the test result was over a .15 alcohol concentration! The fine will increase, the jail time will increase, the additional license suspension resulting from a conviction will increase, and you will be required to install an ignition interlock device in your car.

The DOL's license revocation will stand if you are unsuccessful in the administrative hearing regardless of the outcome of the criminal prosecution. Even if you are found not guilty, you will still lose your license for refusing the test!

It is usually easier to deal with a breath test in trial result than to successfully contest the revocation, so in most circumstances it is advisable to take the test. However, you should always call a lawyer if you are arrested for DUI.

The Anatomy of a DUI Stop

An officer must have a reasonable suspicion to believe you have violated some law in order to make a traffic stop. Random stops and "Sobriety Checkpoints" are not legal in Washington.

According to the National Highway Traffic Safety Administration (NHTSA), the following is a list of symptoms, and the percentage chance that a driver at night is legally drunk:

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Turning with a wide radius - 65%

Straddling center or lane marker - 65%

Appearing to be drunk (e.g. slouching in the seat, gesturing erratically or obscenely, eye fixation, tightly gripping the steering wheel, face close to the windshield, drinking in the vehicle, head protruding from the vehicle) - 60%

Weaving - 60%

Driving on other than designated roadway - 55%

Swerving - 50%

Slow speed (More than 10MPH below speed limit) - 50%

Stopping (without cause) in traffic lane - 50%

Following too closely - 50%

Drifting - 50%

Tires on center or lane marker - 45%

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Braking erratically - 45%

Driving into opposing or crossing traffic - 45%

Signaling inconsistent with driving actions - 40%

Slow response to traffic signals - 40%

Stopping inappropriately (other than in traffic lane) - 35%

Turning abruptly or illegally - 35%

Accelerating or decelerating rapidly - 30%

Headlights off - 30%

However, the officer does not have to observe any bad driving to pull you over. A burned out license plate light or headlight is sufficient legal justification to stop your car.

As he/she is pulling you over, the officer will continue to observe your driving for anything unusual: responding slowly, swerving abruptly, stopping suddenly or striking the curb when pulling over.

When you are pulled over, you should immediately retrieve your driver's license, registration and proof of insurance before the officer approaches your window and asks for these documents. Roll your window down. If the officer witnesses you fumbling for your paperwork, or

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having difficulty with the window (due to nervousness or unfamiliarity with the car) he will undoubtedly attribute these actions to intoxication rather than stress. Have everything ready! Also, do not take off your seat belt.

Understand that the officer's goal in every Traffic stop is to gather evidence. He will be using all of his senses to collect evidence against you, and will do very little to gather or record evidence that will help you.