

# DO I HAVE TO TAKE A BREATH TEST IF ARRESTED FOR A DUI?

A White Paper  
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# DO I HAVE TO TAKE A BREATH TEST IF ARRESTED FOR A DUI?

If you asked 10 people whether they have to take a breath test when stopped on suspicion of DUI, you will get a wide variety of answers: Maybe. No. Absolutely. All of the above.

The fact of the matter is, it is not illegal to **refuse to** take a breath test when you have been stopped by the police. Does that surprise you?

If it does, perhaps you will be even more surprised to learn that you can not only refuse to take a breath test when you have been stopped on suspicion of DUI, but you also have the right to refuse to do any field sobriety exercises or tests and you do not need to answer any of the officer's questions. How can that be?

If you are unsure as to your rights when it comes to sobriety testing during a DUI stop, you are not alone. There is a reason the Internet is filled with wild tales of how to handle yourself during a DUI stop.

*Instead of relying on sensationalistic websites, you can depend on the answers provided in this legal white paper. Our ultimate goal is to prevent you from having a DUI on your record for the rest of your life.*

To do so, we address several considerations to provide you with a better understanding of the DUI process. These considerations include the role of the police officer, your options after arrest and unique concerns that arise should you refuse to take a sobriety test or breath test on more than one occasion.



## **BUT THE POLICE OFFICER DIDN'T TELL ME I COULD REFUSE TO TAKE A SOBRIETY TEST!**

As an initial consideration, let us look at the role of the police officer. An officer is under no legal obligation to tell you that you do not have to take the field sobriety exercises or the breath test. By the same token, the officer cannot do or say anything to lead you to believe that the test is required.

As a matter of fact, you can refuse to perform any sobriety tests as well as any field exercises (e.g., walking a straight line). Unfortunately, too few people understand this point.

Because they do not understand their rights when they have been pulled over, people make the common mistake of attempting to think their way through things on the spot. Normally, in a frenzy, they weigh doing a sobriety test versus not doing a sobriety test.

*The fact of the matter? The officer will normally only request that you submit to a breath test after having arrested you. The officer cannot reverse the arrest or somehow undo it. In other words, whether you blow or not, you are arrested.*

For that reason, you can save yourself much unnecessary trouble by following one simple rule: Once you get stopped, you should refuse any and all tests and demand to speak to an attorney. While there is no right to have an

attorney present during a DUI investigation and before taking a breath test, you are also under no obligation to answer any questions without an attorney. Therefore, when a cop asks you how many drinks you had, ask for an attorney. Do not say or do anything that will give a judge or a jury evidence against you.

You may have been told, however, that there is a 50/50 chance that you will get a judge who will simply throw out the breath test (meaning the judge will not consider it as evidence in your case). This claim is based on the fact that the technology used to measure your breath alcohol level is notoriously unreliable.

Nevertheless, if you do decide to take a breath test, you could be making a mistake. On the 50 percent chance that a judge does accept the test, it will be difficult for your attorney to overcome that evidence.

By refusing to perform a test or an exercise, you give yourself an advantage during the DUI legal process. We turn to that process now. If you do decide to take a breath test you also have the option of demanding that you are given a blood test as well.



## HOW THE DUI PROCESS WORKS: YOU BEGIN DEFENDING YOUR RIGHTS IMMEDIATELY



When you refuse to perform a sobriety test or field exercise, you give your future attorney a better opportunity to protect your rights when you have been arrested on suspicion of DUI. Consider: Without any test or exercise results, there is that much less evidence against you. Your attorney, as a result, can focus all efforts on defeating the DUI charges against you.

If you refuse the breath test, the process of defending your rights has begun. The law imposes an automatic driver's license suspension. Your refusal will also be used against you as an indicator that you are conscious of your guilt. However, if you refused to take a breath test, it could help your attorney in beating the case at trial.

*While your attorney challenges the suspension against you, you can get what is called a "hardship license." You will be able to use this hardship license for the length of the suspension if you qualify.*

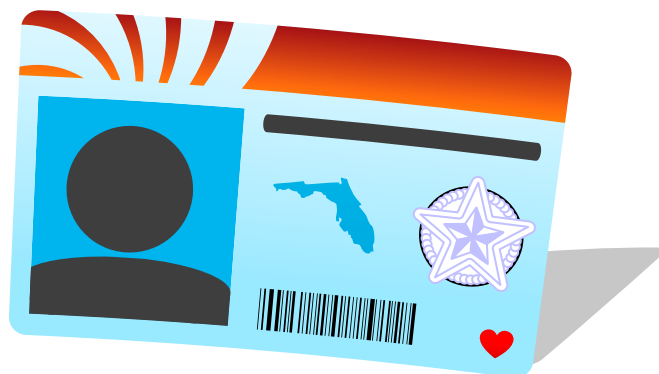


## THE DUI PROCESS INVOLVES ADMINISTRATIVE LAW AND CRIMINAL LAW

These actions that you and your lawyer take to handle the suspension of your license are not related to criminal law. Instead, they fall under a noncriminal type of law called administrative law.

The distinction between criminal law and administrative law can help you understand that the DUI process moves forward on two separate tracks. The administrative track has to do with the suspension of your license.

In handling the administrative aspects of your case, you will deal with several entities without ever going to court or seeing a prosecutor. Getting a hardship license involves the Department of Moving Vehicles (DMV), the Florida Safety Council and a DMV hearing officer.



## THE DUI PROCESS MOVES FORWARD ON TWO SEPARATE TRACKS







## YOU ONLY HAVE 10 DAYS TO PROTECT YOUR RIGHTS!



Under the administrative laws of Florida that govern the DMV, your suspension takes place immediately. At that point, your DUI citation itself serves as a temporary license for 10 days.

This 10-day time frame is absolutely critical for several reasons. You have this 10-day window to hire a lawyer and get a hardship license or a DMV hearing for yourself.

If you let the 10-day period expire without doing anything, you automatically lose your license for six months to one year. If you have a previous refusal and you refuse again, you are facing an 18-month suspension. You also must wait 30 days if you took the breath test, or 90 days if you refused, before you can even submit the application for a hardship license.

### WHAT YOU NEED TO DO WITHIN 10 DAYS OF YOUR ARREST TO SAVE YOUR LICENSE

During the 10 days after your arrest, you must take several steps to save your license. Make no mistake about it: This 10-day deadline is firm.

First, you can take advantage of what is commonly referred to as the waiver option. Under this option, you do not challenge the suspension of your license, but you are able to get a hardship license by following a simple process. Keep in mind that the waiver option is available only for a first-time DUI and you cannot have taken any prior breath tests.

You will need to enroll in the DUI course offered by the Florida Safety Council. When you do so, make sure you get proof of enrollment. As with everything else,

you must enroll within that critical 10-day window after you have been arrested.

Once you have proof of enrollment (and still within your 10-day time frame), take it to the DMV, which will issue you a license you can use for the entire suspension.

You do have another option. During your 10-day period, you can request a hearing with a DMV officer. At that point, you will receive a temporary license meant to last you until the hearing. The hearings are normally scheduled 30 to 45 days out.

This second option has a major drawback, though. If you lose your hearing, you must wait either 30 days or 90 days from the date of the hearing until you can submit an application for a hardship license.

## **IF YOU ARE STOPPED A SECOND TIME, REFUSE TO TAKE THE SOBRIETY TESTS. AGAIN.**

Refusing to submit to field sobriety exercises or tests is not a reason for an officer or the DMV to suspend your license. Therefore, there are no adverse consequences to refusing to perform field sobriety exercises if you believe you are impaired.

Refusing to take a breath test on a second occasion triggers a different set of rules.

The reasons for doing so are the same. You do not want to provide the prosecution with any evidence.

How are the consequences different? When you do not submit to a breath test for a second time, your choice will be referred to as a second refusal. Your first refusal will be referred to as a prior refusal. Your license in this situation will be suspended for 18 months instead of only 12 months. Additionally, you can be charged with a separate 1st degree misdemeanor for a second DUI refusal

## **THE DUI PROCESS HAS STRICT RULES AND HIGHLY TIME-SENSITIVE DEADLINES**

As you can see, to properly defend your rights when it comes to DUI, you must be vigilant and alert. That means knowing your rights under criminal law as well as timeline requirements under administrative law.

In the meantime, stay away from sensationalistic approaches you find on the Internet.

## **WHAT CAN AN ATTORNEY DO FOR YOU?**

Perhaps you think an attorney can help you keep all of these timelines, deadlines and requirements straight. That is true. An experienced attorney can also provide you with knowledge of how police officers operate, the rules they follow, the rights they violate and the common mistakes they make. These mistakes can often form the basis of a successful defense in a DUI case.

When it comes to the DUI process, however, of equal importance is an attorney's command of the personalities and practicalities involved. An experienced attorney can provide you with the road map you need to anticipate hidden pitfalls both in and out of the courtroom. Preventing surprises can often be one of the best services an attorney provides.

An experienced attorney can help you understand how your case might be affected by a particular DMV hearing officer, for instance, or a particular judge or prosecutor. An experienced attorney can also help make sure that your knowledge of the deadlines and timelines is up to date and informed by any recent changes in state statute or case law.

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