

# Driving Under the Influence

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**D**o you know what to do if you are pulled over for suspicion of driving under the influence? Read on.

## Do I have to perform a field sobriety test (FST) if an officer asks me to?

No. The police officer will request an FST if there is any indication of impairment. The officer has several test options: finger-to-nose; walk and turn; horizontal gaze nystagmus; one-leg-stand; and fingers-to-thumb. The FSTs are used as additional evidence against you; however, there is no legal penalty for declining to take an FST. This is different from being asked to provide a breath sample. *See below.* In the event you are stopped and asked to perform an FST, you have the legal option to state to the officer: "I respectfully decline to take any tests."

## If I get stopped by an officer: Do I have to perform a chemical test (breath, blood, urine)?

Yes. However, there is 1 qualifier: the chemical test must take place *after* you have been arrested. Prior to arrest, the officer may ask the driver to submit to a breathalyzer test to determine his or her blood-alcohol concentration (BAC) if they have a reasonable suspicion the driver is impaired. A driver is permitted to decline to take a preliminary breath test on the roadside. However, if the driver is arrested for impaired driving

and transported to the police station, hospital, or mobile police station they are required to take a chemical test. The decision whether or not to submit to a chemical test *after* you have been arrested is a serious choice. If you say "no", two things will most likely happen: 1) the police officers may obtain a warrant to draw your blood against your will and 2) your license will be suspended for Twelve Months through the Arizona Department of Transportation Motor Vehicle Division (DMV).

## What are the criminal penalties for a DUI?

It is a Class One Misdemeanor to operate a motor vehicle while impaired to the slightest degree, having a BAC of more than .08% or being under the influence of other drugs. There is a presumption of intoxication at trial if your BAC is .08% or more within two hours of operating or being in actual physical control of the vehicle. You can be charged with separate DUI violations if your BAC is above .15% (Extreme) and .20 (Super Extreme). A DUI (Extreme) by Arizona law is punishable by up to 6 months in jail; however, a first time conviction will typically consist of 30 days in jail (approximately \$2,500 in jail fees), \$3,500 in fines, probation for 3-5 years, and alcohol counseling.

Additionally, you will have to comply with the DMV requirements. *See below.*

## What happens to my driving license?

There are two possible violations regarding a DMV suspension. If you provide a breath sample which shows a BAC higher than .08% your license will most likely be suspended for 90 days. Typically, you will be entitled to apply for a restricted driver's license after 30 days of no driving. This is different from the Implied Consent Violation, which is a twelve month suspension. Driving in Arizona is a "conditional privilege" not a right. In order to obtain a driver's license in Arizona you give your implied consent to chemical testing if asked by an officer. This means it is mandatory for a driver who has been lawfully arrested to submit to a blood, breathe, or urine test to determine their alcohol/drug level. If you refuse to submit to a chemical test, your driving privilege will most likely be automatically suspended for twelve months, but it will not affect the criminal proceeding. You have the right to request a hearing for both of the violations mentioned above; however, you only have 15 days from the date of the arrest. If you miss that deadline, the suspension takes effect immediately.

## Will I have to install the ignition interlock device?

Yes. An ignition interlock is a breath-analyzing device slightly larger than a cell phone and is wired to the vehicle's ignition and installed on the vehicle dashboard. Before the vehicle can be started, the driver first must exhale into the device. If the interlock detects alcohol on the breath, the engine will not start. The interlock device is managed through a third party and there are additional costs.

The DUI laws in Arizona have become very strict. *Don't take a chance....Don't drink and drive please!* Every criminal arrest is different. If you have been arrested, contact an attorney to determine what your legal rights are.

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