

## DUI Q&A for South Carolina Drivers

It seems that most people in South Carolina have the same basic questions about DUI. Here is a simple list of questions and answers that might make the subject matter easier to understand. Remember...An arrest is NOT a conviction.

### **1. Is it illegal to drink beverages and drive in South Carolina?**

NO. In South Carolina, it is not illegal to consume alcoholic beverages and then drive a vehicle. To be convicted of DUI, a judge or jury must be unanimously convinced beyond every reasonable doubt that your ability to drive was both materially and appreciably impaired by excessive alcohol consumption. Mere proof of a person's consumption of alcoholic beverages is not enough for a DUI conviction.

### **2. If I register over .08 on the breathalyzer test, am I automatically guilty of DUI?**

NO. The breathalyzer reading is simply a piece of evidence a judge or jury can consider during the trial of the case. Our office is familiar with issues related to the breathalyzer machine that may prohibit a reading from being received as evidence during a trial. Under the South Carolina 2009 DUI Reform Act; penalties, potential incarceration or jail time, and fines have been increased based on the breath test results.

### **3. Is it my legal right to refuse to take the field sobriety tests?**

Yes. An officer may be reluctant to advise you of this right, but you do not have to take field sobriety tests.

### **4. Is it my legal right to refuse to take the breathalyzer test?**

Yes. However, a refusal can result in a six month administrative suspension, but **we can help restore your driving privileges**. You must act quickly, however, as time constraints are in place.

### **5. Do I have the right to remain silent when I am stopped for or investigated for DUI?**

Yes. Any person who is the subject of a criminal investigation has the right to remain silent at all times.

### **6. If I am stopped for DUI, am I being video and audio recorded?**

Yes. South Carolina has a mandatory video taping law and everything you say and do from the time you are pulled over until the process is complete is being video and audio recorded.

### **7. How can I get a license to drive (if it was seized or forfeited during your arrest)?**

You must request an administrative hearing within thirty days of your arrest and apply for a temporary license. **Contact our office. We will walk you through the process.**

### **8. How serious is a DUI charge? It was written on the same type of blue ticket that speeding charges are written.**

Under the South Carolina 2009 DUI Reform Act, the consequences of a DUI in South Carolina are some of the strongest in the nation. Penalties and potential jail time have drastically increased. Repeat offenders can face mandatory jail time, as well as mandatory ignition interlock devices being placed on their vehicles for at least two years.

### **9. What is the punishment for a DUI conviction?**

**For first offenders:**

- Fines ranging from \$400 - \$1,000, plus court costs, depending on breathalyzer reading (BAC);
- 48 hours to 90 days in jail;
- Immediate surrender of your driver's license to the court;
- Mandatory completion of a state sponsored alcohol counseling course (if you wish to drive legally again);
- Filing proof of high risk insurance (SR22) with the state for three years (if you wish to drive legally again);
- Six months' suspension of your license.

**For a second offense:**

- Five days to three years in jail;
- One year suspension of driver's license;
- A fine of \$2,100 to \$6,500;
- Filing proof of high risk insurance (SR22) with the state for three years (if you wish to drive legally again);
- Vehicle immobilization required.
- Mandatory ignition interlock device for at least two years

**For a third offense:**

- Sixty days to five years prison term;
- Fines ranging from around \$3,800 to \$6,000 (no suspension to less than \$2,100);
- License suspended for two years, unless preceding DUI was within a five year window, which will result in a four year suspension;
- Motor vehicle forfeited;
- Vehicle immobilization required;
- Mandatory Ignition interlock device for at least three years;
- Filing proof of high risk insurance (SR22) with the state for three years (if you wish to drive legally again);

***A DUI conviction stays on your criminal record forever, and can be used against you for ten years for punishment enhancement if you are charged again.***

**10. What are the "non-judicial" punishments for a DUI conviction?**

These can include travel restrictions outside of the United States, employment difficulties regarding background checks, etc.

**11. Can I have a lawyer to represent me in a DUI charge?**

Yes. This is a serious charge. Your freedom and financial situation could change dramatically if you are convicted of a DUI. I strongly recommend that you retain an attorney experienced in DUI defense. On many occasions, there are legal defenses to a DUI charge that only an experienced DUI defense attorney can spot on your behalf. The attorney who handled your divorce or house closing is most likely not your best option.

**12. I was arrested/charged with DUAC. What's that?**

Driving with an Unlawful Alcohol Concentration (DUAC) simply means the officer perceived a moving violation and a breathalyzer result of .08 or higher was obtained. The penalties are the same as a DUI.

**13. Can't I enroll in Pre-Trial Intervention (PTI) and have this removed or expunged off my record?**

No. This is not an option for a DUI or a DUAC charge.

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