

## **Cooperating with arresting police officer in DUI situation**

Unfortunately, we find ourselves behind the wheel of a car after a drink or two, three, four or more. I do not condone drinking after driving but it happens, sometimes to good people in a bad or unforeseen situation.

In America, the blood alcohol content to be driving under the influence is .08. It has been lowered a few times over the years but it is now set nationwide at .08. If you are driving or in control of a vehicle with your BAC at .08 or above, you are guilty of DUI. The State does not have to prove you are driving erratically or poorly. Just being over the legal BAC while driving is enough to establish your guilt. This could be on a public road or a public area even if on private property.

If you are pulled over by a police officer, you must cooperate to a point. You must provide him/her with your driver's license and insurance documentation. If you do not have these documents, besides being guilty of other traffic violations, you must give the officer your name, address, social security information and other reasonable biographical information. If in Arizona, all bets are off. They can seek other information. You must provide insurance information if your card is missing or expired. You must also tell the officer if you have minor or handicapped individuals at your home waiting for you who may need care.

You do not have to answer other questions from the officer. Do not be argumentative or an idiot. The officer is doing his/her job. Show him/her respect. You do not have to exit the vehicle, unless an accident is involved, until you are under arrest. You do not have to submit to a breath test, portable or at the station, at all. You will lose your driving privileges for a time by refusing the breath test but you will lose your license if you submit to the test and are over the limit. Always refuse to take the portable breath test. Either way, you do not have to take the breath test, non portable, until you have been arrested. Since you cannot be penalized for refusing to take the breath test until **after you have been arrested** taking the test just provides the police with more evidence against you. You will not be unarrested if you take the breath test and your BAC is under .08

You do not have to answer the "Under the Influence Questionnaire" most police departments use. The police are trained observers. They are taking notes. Every time you open your mouth, evidence is coming out. No matter what you think, you are probably not smarter than the arresting officers, who are trained, working and have not been drinking. The Police Report will quantify the smell of alcohol coming from your breath. Every time you open your mouth the officer is smelling alcohol. It will be characterized as "strong odor of alcohol"

You do not have to perform field sobriety tests, such as the Horizontal Gaze test, tracking an object with your eyes. Do not try these tests. You will likely fail. Rarely does an officer ask a person to perform these tests and then not make an arrest. Do not do the one-leg stand test or the

walk-and-turn test. All of these tests are designed to provide evidence against you for trial. Never say something like, "I couldn't do that if I were sober." Or "I couldn't do that if I hadn't been drinking." In both of these examples, you just admitted to drinking.

Before you are asked to perform field sobriety tests, you should be asked about any injuries or joint problems you have that make ambulation difficult. If you have any ankle, foot, knee or hip problems, let the officer know about it. Do not try to be too medical in your explanation. A bad knee is good enough. Remember, the less talk, the better. Do not fall for the officer good guy routine. He/she is there to arrest you not to pray with you.

When you do exit your vehicle, do not use the inside of the car door for support or leverage. In the Police Report it is written down as "Had to use car door to steady self while exiting vehicle." Do not make jokes or cry. Do not beg to get off. These actions will be written up as "unusual response to situation." The attempt to talk your way out of the situation implies you are guilty since you need a break.

Cooperate without being cooperative.

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