

Must I Take a Chemical Test When Stopped for Drunken Driving?

Driving Under the Influence of alcohol or drugs is a serious criminal offense, and one of only a few that requires mandatory incarceration upon arrest. If you are found guilty of drunk driving, you are subject to time in jail, loss of license, fines, court costs, and other penalties.

Any person who drives in the State of Tennessee is deemed to have given consent to a test for determining the alcohol or drug content of their blood, provided the test is administered at the direction of a police officer who has reasonable grounds to believe that the person was driving while under the influence of an intoxicant or drug. The arresting officer may choose whether to administer a blood, urine, or breath test. This is called the Implied Consent Law.

Prior to requesting the suspected driver to submit to a test, the officer must advise him or her that refusal to submit to the test will result in a revocation of the driver's license by the court. The officer must further advise that under certain circumstances, you may be required to drive only a vehicle equipped with an ignition interlock device. Failure of the officer to advise the driver of these consequences may prevent the court from imposing certain penalties associated with the refusal.

It's important to know that there are a few circumstances where the officer does not need your consent to test your blood, like when the vehicle you are driving is involved in a wreck. Also, if you refuse to give consent, the officer can obtain a warrant to take your blood without your consent and test it anyway.

These tests are designed to determine the amount of alcohol or drugs present in your bloodstream. The test results can be used against you in court as evidence of your intoxication. Evidence of a blood-alcohol level of 0.08% or higher would be sufficient to convict a person of DUI, even if he or she appeared sober and was driving normally. Evidence of a blood-alcohol level of 0.20% or higher may automatically lead to more time in jail if convicted of DUI. Even lower blood alcohol levels are permissible for underage drivers and those driving commercial motor vehicles.

You may request to contact your attorney prior to taking the test; however, the police do not have to wait until you've consulted an attorney before requesting the test. The police are further not required to honor your request to speak to an attorney prior to deciding whether to submit to a chemical test. You do have the right to have a blood or urine sample tested by a laboratory of your choice at your own expense. You also have the right to receive and review any chemical tests the officer or state performs. Even when you refuse to take the test offered by the arresting officer, the police may not interfere with your attempt to obtain an independent sample.

If you are found to have violated the Implied Consent law, the trial court can revoke your driving privilege for twelve (12) months. In deciding whether you have violated the Implied Consent law, the court must consider three things. First, the officer must have had reasonable grounds to believe that the driver was driving under the influence. Second, the officer must have properly advised the driver of the legal consequences for refusing to take the test. Finally, the driver must have failed to submit to the test when requested. Of course, there may be other issues in your particular case, and you may want to consult an attorney for more specific advice.

Remember that you are not required by law to take the test, but your refusal to do so may subject you to a revocation of your driver's license and the officer may end up getting you tested anyway. The results can be used against you in a court of law if you are tried on charges of driving under the influence. Should you refuse to take the test, that refusal may likewise be used as evidence. If you have refused to take the test, your license may be suspended *even* if you are later found not guilty of the Driving Under the Influence charge.

Should I Fight a Traffic Ticket?

If you have received a traffic ticket that you feel you did not deserve, you may wonder whether it is worth your time to go to court or if you should simply pay the fine. Many people who receive traffic tickets view them as difficult to fight and do not bother to go to court. However, it is best to consult with an attorney before simply paying a traffic ticket. Payment of a traffic ticket is an admission of guilt and will result in a guilty judgment. Other consequences of a traffic ticket conviction include points on your driving history, possible license suspension, and increased automobile insurance premiums. In addition to speaking with an attorney prior to deciding whether to fight a traffic ticket, you may also want to speak with your insurance agent to determine the consequences to your insurance premiums.

People normally associate traffic tickets with the ordinance violations heard in municipal (city) court or traffic court in General Sessions Court. However, motor vehicle offenses also include misdemeanor crimes for which you can be arrested, such as Reckless Driving and Driving on a Suspended License.

A city ordinance violation—for example, failure to stop at a stop sign—is punishable by a fine only but no imprisonment. Drivers charged with a violation are not placed under arrest, but instead are given a ticket, which serves as a summons to court. A driver who receives a ticket has the option of mailing payment of costs and a fine to the court in lieu of a personal appearance, or appearing in court on the designated date to contest the charge or plead guilty to the violation. There may be a hearing before the judge, but no jury trial. Cases are heard in the municipal court for the city or town where the violation occurred.

Except for city ordinance violations, a person who is charged with a traffic offense has the same rights as any accused person. You are entitled to be represented by an attorney if you like and an attorney may be appointed by the court for those who cannot afford one. In fact, if you are charged with a misdemeanor or felony, you should seriously consider consulting with a lawyer. As to city ordinance violations, you have no right to a jury trial or a court-appointed attorney because there is no possibility of going to jail or prison. You may, however, seek to have an attorney represent you for an ordinance violation.

If you cannot afford an attorney, but you still feel that you are innocent of the act of the traffic violation or that there are unusual circumstances in your case, you have the option to present your own case. Before you go to court, prepare your case. Check the law you are accused of violating to make certain you understand it. Most laws are available online free of charge or in the County's law library. If pictures will help your case, bring them to court. Also, if they will help your case, bring any witnesses, especially people who were in the car with you at the time of the alleged violation.

Make your defense in as clear and simple terms as possible. Avoid legal terms that you do not understand. Just tell your own story the way you see it. Tell the truth, present your case as carefully as you can, and carefully listen and answer any questions the judge may have.

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