



DWI Misconceptions

We all know that DWI is a serious traffic offense in which you can receive a jail sentence for up to one year. However, there are several misconceptions about DWI charges/penalties that warrant an explanation. For example, some people think that when you get pulled over for a DWI the best thing to do is refuse any tests requested by the police officer. The rationale is that if the police officer cannot determine your Blood Alcohol Content (BAC) level they cannot convict you of DWI. Also, some people think that past driving record cannot be used against them and are surprised when the prosecutor brings this up in court to enhance punishment.

Let's set the record straight. While this article does not attempt to explain all the nuances of DWI law, for the non-lawyers there are two important factors to consider when charged with DWI: your BAC level and your driving history.

In addition, different states have slightly different DWI laws. For example, in Maryland BAC level of 0.07 or greater is all you need for a DWI charge and if your BAC is 0.08 or greater you will be charged with DUI which carries a greater penalty. In Virginia, there is no DWI and DUI distinction. Instead, if your BAC level is 0.08 or greater, you will be charged with drunk driving which in Virginia is a DWI offense. Due to inherent limitations in writing an article, I will only focus on Virginia DWI law.

In Virginia, if you are convicted of DWI and your BAC level is between 0.08 – 0.14, you will incur penalties that can include a jail sentence for up to one year, a driver's license suspension for one year, mandatory attendance at Alcohol and Safety Action Program (ASAP), probationary period for one year, and a minimum fine of \$250 with up to a maximum fine of \$2,500. If your BAC level is between 0.15 – 0.20, the penalty increases with the most significant consequences being that you will incur a mandatory jail sentence of 5 days which the court cannot reduce or ignore. In other words, if you are convicted of DWI and your BAC is 0.15 – 0.20, you will be sentenced to 5 days in jail, no matter what. Additionally, if your BAC level is 0.15 or greater you will be required to install an ignition interlock system on your vehicle for at least 6 months. Once this device is installed, you will have to blow into the device before starting your vehicle and you will be subjected to random tests while driving. A BAC level of more than 0.20 will incur a mandatory jail sentence of 10 days in addition to fines, license suspension, ASAP, probation, and interlock system.

Thus, because BAC level plays such an important role in determining your DWI penalties a common misconception among drivers is that you should always refuse to take the breath test. However, while an individual may refuse to take the breath test there are serious consequences attached to that action. First, even without a breath test result a person can be found guilty of drunk driving based on police officer's observance of intoxication. For example, even without a breath test if the police officer observes a driver weaving between lanes, who can barely stand



up when told to get out of a car, who has blood-shot eyes, slurs in his speech, has trouble understanding police instructions, and has a strong odor of alcohol, the likelihood of a court finding that person guilty of DWI is pretty high, especially if the officer tells the court that the reason there is no BAC result is because the driver refused to take the test.

In addition, a refusal to take a breath test will result in an automatic suspension of one's driver license for one year with no right to ask for a restricted license. This point is particularly troublesome to lot of drivers who need to drive to work and what makes the refusal statute so potent. In other words, under circumstances in which a breath test is conducted, even if a driver is found guilty of DWI, the driver can ask the court for a restricted license. The court will review the application for restricted license and may permit the driver to use the vehicle for a limited purpose to commute to work, school, medical appointments, or picking up kids at school or daycare. However, in refusal cases the driver cannot ask the court for a restricted license and none will be given. Therefore, it is not uncommon to have cases in which a person will be charged with both DWI and a refusal charge, and later the attorney will negotiate with the prosecutor to have his client pled to DWI if the prosecutor will drop the refusal charge.

[This is first of a two part article on DWI. Part two will talk about the importance of one's driving history in determining DWI penalties].