

To Blow Or Not To Blow?

The question every DUI attorney is asked.

I am constantly asked by lawyers and non-lawyers alike what to do if they get arrested for DUI. Specifically, I am asked, “*Should I blow into the machine or should I refuse?*” There is no simple or easy answer, rather a set of choices, none of which are great, and each with distinct outcomes. Hopefully, this article will give an overview on the consequences of taking or refusing a breath test.

When an individual is arrested for DUI, it triggers two separate cases. First, there is the CRIME of DUI – usually a misdemeanor charge for a first time offender. The second case is the DHSMV’s (Department of Highway Safety and Motor Vehicle) administrative suspension of your driver’s license.

After a DUI arrest, the DHSMV will review if the driver took the breath test or refused.

- If you blow over the legal limit (0.08), the DHSMV will begin the administrative process of suspending your license for 6 months.
- If you blow under 0.08, the DHSMV does not suspend your license.
- If you refuse to blow, DHSMV will begin the administrative process of suspending your license for 12 months.

An individual can challenge the suspension of their license, but he/she must request a formal hearing within 10 days of your arrest.

If your license is suspended, you can apply for a hardship permit after a period of absolutely no driving. If you blow over, your license is suspended for 6 months but you may qualify for a hardship permit after 30 days of no driving. If you refuse, your license is suspended for 1 year but you may qualify for a hardship permit after 90 days of no driving.

In the criminal DUI case, the breath test results are used by the State of Florida as evidence to try and prove the person is guilty of DUI. Some criminal defense attorneys advise their clients to refuse the breath test in an effort to limit the State’s evidence against them and force the State to try and prove DUI under the theory that the person’s normal faculties were “impaired” by the alcohol. But, even without an objective number of a breath test result, a refusal to take the test can be admitted into evidence to argue that the person refused because they knew they had too much alcohol in their system and they did not want the jury to see the results.

This article is not to be used as legal advice, but is simply a very general overview of the consequences of taking or refusing the breath test. Any person accused of DUI should strongly consider immediately consulting a criminal defense attorney who practices in the area of DUI law to get specific legal advice in relation to their individual case.