

DRIVING UNDER THE INFLUENCE (DUI)

1. Q. WHAT IS CONSIDERED DRIVING UNDER THE INFLUENCE OF ALCOHOL IN CALIFORNIA?

A. A motorist may be convicted of DUI in California if he/she operates a vehicle while under the influence of an impairing substance or if within 3 hours after driving he/she is found to have a blood alcohol content of 0.08% blood alcohol content (BAC).

2. Q. WHAT CAN I EXPECT IF I AM PULLED OVER FOR SUSPICION OF DUI?

A. The officer will probably ask you to perform several field sobriety tests. You may refuse. However, the officer may then ask you to submit to a chemical sobriety test, which you must take.

3. Q. CAN I CHOOSE WHICH TEST I WANT TO TAKE?

A. Yes. You may choose to take either a blood, breath, or urine test. If you choose a breath test you may also have to submit to a blood or urine test if you are suspected of being under the influence of a drug other than alcohol. You have the right to an additional chemical test which you pay for yourself.

4. Q. CAN THE POLICE FORCE ME TO GIVE A SAMPLE FOR CHEMICAL TEST?

A. You can refuse to be tested but you will lose your license if you do so. Under certain circumstances your commander can give you an order to submit to a blood test. Police may involuntarily extract body fluids, even if you are unconscious resulting from a vehicle accident. The police can frequently prove the DUI charge without a test result by testifying about your driving and performance on the field sobriety tests.

5. Q. WHAT IF I HAVEN'T BEEN DRINKING? WHAT IF I HAVE ONLY BEEN TAKING PRESCRIPTION MEDICATION?

A. Driving under the influence of prescription medication is NO defense to a DUI charge. If you can prove that the prescription medications were the cause of your impaired driving, you might receive a more lenient sentence.

6. Q. WILL I NEED A LAWYER TO HELP ME IF I AM CHARGED WITH DUI?

A. DUI is a serious criminal charge. Conviction may result in jail, fines, the loss of driving privileges, and increased insurance premiums. If you are convicted, your on-post driving privileges will be revoked and you will receive a letter of reprimand from a General Officer. In addition, you can be barred from reenlistment and discharged. If you drive negligently while under the influence and cause an accident which results in an emergency response, you must pay the public agency the costs of its response.

7. Q. IF I AM CHARGED WITH DUI, CAN I BE REPRESENTED BY AN ARMY ATTORNEY?

A. By regulation Army legal assistance attorneys are prohibited from representing person charged with criminal offenses. If your commander recommends your administrative elimination, TrialDefense Service will provide legal counseling.

8. Q. WHERE ARE DUI CASES HEARD?

A. On-post cases are usually heard in federal court by a United States Magistrate Judge. Off-post cases are usually heard in the state court, first before a District Court Judge and then, if a conviction is appealed, by a Superior Court Judge.

9. Q. DOES THE ARMY HAVE TO WAIT FOR THE COURT TO ACT ON MY CASE BEFORE TAKING ACTION?

A. NO. Your driving privileges will be suspended immediately upon arrest and you may receive a letter of reprimand even before you are convicted. Your commander may start separation proceedings against you.

10. Q. WHAT IF I AM ACQUITTED OF DUI OR PLEAD GUILTY TO A LESSER CHARGE?

A. Conviction of DUI is not required to support military administrative sanctions. Each case is carefully reviewed on its own fact and merits. If an acquittal was due to a technical defect (for example, absence of a particular witness at trial) which does not otherwise undermine the evidence of your impaired driving, administrative sanctions may still be imposed. These sanctions will usually only be lifted when it appears that you were not actually driving while impaired.

11. Q. WHAT FURTHER READING CAN I DO?

A. Fight Your Ticket by attorney David W. Brown, chapter 8, Drunk Driving, published by Nolo Press and available in city library reference sections and bookstores; Army Regulations 190-5 and 600-37; California Government Code, section 53150.