

SHOULD I BLOW INTO THE BREATHALYZER OR REFUSE?

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The number one question I am asked. Should I blow into the breathalyzer or refuse? It's not an easy question and there are a lot of factors that go into analyzing what is the right decision.

First, The Law

First, it is not illegal or against the law to consume alcohol and then operate a motor vehicle. It is illegal to consume alcohol to an extent determined by the State of Missouri and then operate a motor vehicle. Therefore, there are certain factors that need to be taken into account whether determining whether to submit to a breath or blood sample in the State of Missouri.

On a first-time offense when the driver took the test and blew over a .08, the General Counsel's Office will pursue and most likely be successfully in suspending the driver's license for thirty (30) days, followed by sixty (60) days of restricted driving.

On a refusal, the license will become revoked for a year. However there may be things we can do to lessen the impact to your driving privileges. This will be explained later.

We use the term "blow" to describe submitting a breath sample, however the officer may also request a sample of your blood. It is law enforcement's decision what type of sample to seek.

You can use simple math to try to guide you on what decision is right. Obviously, there are other factors in play such as body weight and amount of food consumed, but for every drink you consume, you add .02 to you blood alcohol content. For every hour that has passed after you ceased consuming alcohol you can delete .015. In other words, alcohol enters your blood stream faster than it leaves. Since the consequences of not blowing are more severe than blowing, if you feel you will be under the limit, you should submit to the test.

When should you consider refusing?

First and foremost, if you refuse on a first-time offense, there are no guarantees that your license will be suspended for a year. There are many occasions where we are able to save a person's driving privileges on a refusal. We may be able to negotiate a disposition to avoid the suspension/revocation if:

1. It is a first time offense.
2. The arrest occurred in St. Louis County, St. Charles County, Jefferson County or Franklin County.
3. The incident did not include injury or property damage to another person.
4. You complete community service.
5. You enter a plea of guilty on the underlying case.

Second, if you have a prior DWI, you should refuse if you feel you are at, near or above the legal limit.

CONSULT AN ATTORNEY

Always remember, you do have the right to consult with an attorney before making the decision. The State of Missouri requires law enforcement to read 'implied consent.' Basically, this means the driver must be given all relevant information about the proposed test and the options that are available. A full text of the law can be accessed here:

<http://www.moga.mo.gov/mostatutes/stathtml/57700000201.HTML>