

NAVIGATING YOUR

DUI



SOUTH FLORIDA

ATTORNEYS CAREY MELDON &  
TANNER DEMMERY



**MELDONLAW**  
*You Matter Most*

*A DUI Guide For:*

# **NAVIGATING YOUR DUI SOUTH FLORIDA**

*A DUI Guide For:*

# **NAVIGATING YOUR DUI SOUTH FLORIDA**

- Two Common Mistakes Made After a DUI Charge.
- Know Your Rights During a DUI Arrest.
- Potential Consequences of a DUI Charge.
- What It Can Take To Be At Or Over .08%, The Legal Limit.
- How a DUI Charge Can Be Proven By the State of Florida.
- Ways a DUI Conviction May Be Avoided.
- Why the Formal Review Hearing Can Be An Important Part Of Avoiding a DUI Conviction.
- Why an Attorney's Experience in DUI Defense is an Important Factor in Avoiding a DUI Conviction.

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If you are reading this book because you have just been arrested for DUI, then you are facing a serious life altering event and need to make some important decisions immediately!

**This is why:**

- A DUI, in Florida, is a mandatory criminal conviction!
- A conviction means that you are guilty of the crime and that your DUI record cannot ever be sealed, or expunged; it can affect your present and future employment, admission to graduate schools, military options, and insurance rates.
- A DUI conviction can cause your annual insurance rates to go up as much as \$3,000 to \$5,000 for the next 3 to 5 years.
- You have only 10 days to appeal your civil (DMV) driver's license suspension.
- You may not be able to drive for any purpose, including work or school, for a certain period of time.

**Two important things you should do at this point are:**

1. Hire a qualified and experienced legal team to represent you.
2. Do it ASAP.

# About This Book

This book is based on Carey Meldon's years of DUI defense experience. The intent of this book is to educate the reader on possible ways to avoid being charged and convicted of DUI in South Florida.

**This book is NOT intended to give legal advice nor to encourage drinking and driving!**

*This book is intended to:*

1. **Define what DUI is, how it is proven and how to avoid being charged with it.**
2. **Educate the reader about the amount of alcohol in drinks** and what it takes to be at or over the legal limit of .08%.
3. **Give the current facts and realities** of what a person charged with DUI could be facing if he or she decides to drink and drive in South Florida.
4. **Describe the seriousness of a DUI charge** in Florida and the potential life long consequences of a **DUI conviction**.
5. **Explain two common mistakes made by people that have been charged with DUI** - Mistakes that often negatively affect the outcome of their case and consequently - their lives.
6. **Explain a person's rights during the various stages of a DUI arrest.**
7. **Explain some of the legal challenges to a DUI charge.**
8. **Discuss why an attorney's experience in DUI defense is an important factor when it comes to avoiding being convicted with DUI.**
9. **Give the reader criteria to look for when evaluating a DUI lawyer.**

*This book is dedicated to preserving  
the rights of the accused.*



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# Part I

## **The DUI Charge**

# Chapter One

## What is DUI and How Can A DUI Charge Be Proven?

### What is DUI?

- **DUI stands for Driving Under the Influence.** It is defined as the act of driving or being in actual physical control of a vehicle (including a motorcycle, bicycle, boat, and other vehicles) when your normal faculties are impaired by alcohol or drugs (legal or illegal), or when you have a breath or blood alcohol level of .08 or higher.
- **DUI is also known as:** driving while intoxicated (DWI), drunk driving, operating under the influence, drinking and driving, and impaired driving.
- States have different criminal titles for the act of operating a vehicle while impaired, such as DWI. In Florida, there is just one crime, DUI.
- **In Florida, DUI is a criminal offense that also has civil consequences.** See Chapter Six, *What You Are Facing If You Have Just Been Arrested for DUI in South Florida*, for more information.

## How can a DUI charge be proven?

In Florida, in order to be convicted of DUI, it is necessary for the prosecutor to prove that you were driving or in actual physical control of a vehicle while you either:

1. **Had an unlawful blood alcohol content (BAC); of .08% or higher.** This can be proven by:

**Breath Testing results.** Breath Testing machines convert alcohol in the breath to the level of alcohol in the blood. Breath testing can be done on the road or at the jail.

**Blood test results.** Blood is sometimes drawn at the crash site or the hospital, if you are in an accident.

2. **Or, your normal faculties were impaired by alcohol and/or drugs** (prescription, OTC, or illegal.)  
This is can be proven by:

**Police officer observations.** This is primarily a subjective determination based on factors such as: driving patterns, behavior, field sobriety testing, statements made, evidence of drinking or drugs, and/or the smell of alcohol or marijuana.

**Urine Test.** This is often requested if there is a low breath test result and a urine test can detect drugs in the body.

**Admissions by the defendant,** statements made about drinking and/or drugs consumed.

**Alcohol and/or drugs seized** from the defendant or the vehicle: illegal, prescription, or OTC.

# Chapter Two

## How to Avoid a DUI Arrest

The best way to avoid a DUI arrest is to not consume alcohol or drugs and drive.

*Here are ideas to accomplish this:*

1. **Don't drink** alcoholic beverages, or take drugs, if you are going to be driving.
2. **Walk** to the bar or restaurant.
3. **Decide on a designated sober driver** before drinking, and stick to the plan.
4. **Ride the bus, call a Lyft or Uber.**
5. **Keep \$20 in your pocket for cab fare and keep it away from other spending money.**
6. **Drink at home.**
7. **Call a friend or family member** to come get you if you have been drinking.
8. **Carry your cell phone** when you go out.
9. **Plan a safe way home before you go out.**

# Chapter Three

## Effects of Alcohol on the Body

DO NOT DRIVE if you have been drinking or taking drugs. More than half of all Florida accidents in which someone is killed involve a driver who has been drinking or taking drugs.

### **Before drinking and driving, remember:**

- **The first thing affected after drinking alcohol is a person's judgment.** This means that you may think you can drive safely when you can't.
- Alcohol can also affect your vision and reduces your alertness and response time.
- **Alcohol affects you differently at different times.** If you are upset, overtired, or have an empty stomach, drugs or alcohol may have a stronger effect on you.
- **Physical exercise, black coffee, fresh air, and cold showers DO NOT effectively help sober someone up.** Only time will help.
- **It takes over one hour to cancel the effects of one "drink"** (see the next page for what one drink equals). This means it takes more than 4 hours to cancel the effects of 4 "drinks".

- **Mixing drugs and alcohol can produce a strong reaction**, no matter if the drugs are prescribed by your doctor or are over the counter medication.

### **Alcohol and/or drugs can:**

- Affect your judgment.
- Slow down your reactions.
- Make you think you are driving well when you are not.
- Make it harder for you to concentrate and judge distances.
- Affect your vision.

### **One “drink” equals:**

- 1 oz. shot of 80 proof vodka, tequila, rum, etc
- 3 oz. glass of wine
- 12 oz. beer

### **How much alcohol it takes to make you “impaired” depends on several factors:**

- How many ounces of alcohol you have consumed.
- How quickly you drank it.
- How much you weigh.
- How much food is in your stomach.



***For example:*** If you weigh 140 pounds and have 3 “drinks” in an hour, your blood alcohol level will likely be at .08%, the legal limit. If your stomach is empty, or if you are tired, on medications, or emotional, less than 3 drinks in an hour can have a significant effect on you. Please see the Blood Alcohol Chart in Appendix 4 for more information.

***Important information:***

- **Remember:** It is the number of ounces of alcohol in a drink and not the number of drinks that makes the difference.
- **Warning:** Not all drinks are the same. A mixed drink may have 3 ounces of alcohol in it, (the equivalent of 3 drinks). A martini typically has 2½ to 3 ounces of alcohol in it, depending on the restaurant or bar.
- **Warning:** If you have one martini, it can take over 3 hours to cancel the effects of the one drink!
- **Beware:** Of martini night specials!
- **Beware: Energy drinks mixed with alcohol** have been shown to put a person at an even higher risk for high blood alcohol levels, impaired driving, and other risky behavior.
- **Warning:** You can be convicted of DUI if the State can prove that your “normal faculties” were “impaired” even if your breath alcohol level is below the .08 legal limit.

# Chapter Four

## The Typical Course of Events in a DUI Arrest:

*Typical stop scenario:* Before the police officer turns on the lights and siren in their police cruiser and requests that you pull over, —

- The officer most likely saw something out of the ordinary in the way you were driving your vehicle.
- Or maybe with the vehicle itself, and because of this, decided to check you out.
- Or maybe, you were in an accident.
- Once pulled over, the officer will ask to see your driver's license, vehicle registration, and proof of insurance.
- If the officer is suspicious, or thinks he or she smells alcohol on your breath, the officer will ask you if you have been drinking.
- Once this question is asked, you are in danger of being arrested for DUI!

**From the initial stop until the next afternoon, generally this is what occurs in a DUI arrest: You will be:**

1. Asked to step out of the car.
2. Asked some further questions (e.g. how much have you been drinking and where?)
3. Asked do to some Field Sobriety Exercises (FSE).
4. Given FSE (if you consent to them).
5. Arrested and handcuffed.
6. Offered a breath test to be done at the station or with a mobile unit on site.
7. Put in the police car (your vehicle will be towed or turned over to a passenger).
8. Taken to jail.
9. Asked once again to take the breath test.
10. Asked some more questions (including “trick” questions to help convict you, even if you are innocent).
11. Given the breath test (if you consent to it).
12. Turned over to the jail staff.
13. Put in a cell.
14. Appear in front of a judge, the next morning.

15. Probably be released, by the judge, on your own recognizance with special conditions (conditions such as: curfew, no driving, no alcohol consumption).
16. Be released that afternoon (unless the judge sets a high bond).

**And this is only the VERY beginning of your ordeal!**

# **Chapter Five**

## **Know Your Rights During a DUI Arrest**

Discussed below are five important events in a DUI arrest that generally occur once you are stopped by the police officer up to the time that you are put into the jail cell for the night. Each event is described along with what rights you have at that particular time.

### **Event #1. The police officer asks if you have had anything to drink.**

- By the time the officer asks you this question; your DUI investigation is already underway.
- The officer already felt he or she had “probable cause”, or a legal reason, for stopping you.
- From the moment the officer has been in contact with you, he or she has been looking for any and all possible signs of drinking or drug use to support his or her suspicions, such as: odor of alcohol or marijuana on your breath or in your car, slurred speech, bloodshot eyes, unsteadiness on your feet, and others.

- The officer will also be looking in your car for any signs of alcohol or drug use.

*When the officer asks you if you have been drinking:*

**You have the right to remain silent** and to not answer the officer's questions. (However, if you know you have not been drinking you should say so.)

**Event #2. The police officer asks you to do some “simple tests” or “exercises.”**

- After more questioning by the officer he or she will then ask you if you would like to do some “simple exercises” to determine if you have been driving under the influence.
- These “exercises” are often referred to as Field Sobriety Exercises (FSE). See the Appendix for more information on FSE.
- Heads up - these tests are difficult to do under ideal conditions! FSE are not scientific “tests” at all; they are only exercises that are subjectively graded by the officer. Most of the time, even if someone scores 90% on these “tests”, the officer will arrest the driver for DUI.

*When the officer asks you to do these “tests”:*

- **You have the right to refuse to do these exercises.**
- **You have the right to ask to speak with your attorney.** After you have been stopped but before you are arrested, there is debate among legal scholars as to when you are entitled to speak with an attorney. Our advice is to ask right away and let your attorney sort it out later.
- **Note:** It is important to ask to speak with your lawyer ASAP. Because when you do so, the police officer should stop asking you questions. This can help keep you from making incriminating statements. Also, if the officer does not allow you to speak with your attorney, it will show that the officer was not respecting your constitutional rights, which may look unfair to a jury.
- **Note:** The officer probably will not allow you to speak with an attorney until you are booked into the jail.
- **You have the right to ask the officer if you are free to leave.** If you do not know if you are under arrest or not, just ask the officer if you are free to go. If you are not free to go, the officer probably intends to arrest you very soon and is only trying to get more evidence for his or her case against you.
- **You have the right to remain silent!**

**Event #3. The police officer asks you to take a Breath Test.**

- After the police officer has decided that you failed the FSE, you will then be arrested and asked to take a breath test either on site or at the jail.

- **Note:** You must be arrested **BEFORE** the officer can legally ask you to take the breath test.
- Please see Appendix 2 for more information on breath testing.

***When the officer asks you to take a Breath Test:***

**You have the right to refuse to take a breath test.** The State will probably be allowed to use your “refusal” against you if your case goes to trial. (If you have previously refused to take a breath test there may be additional criminal penalties for a 2<sup>nd</sup> refusal).

**You have the right to ask to speak with your attorney.** After you are arrested you have the right to and should request to speak with an attorney before making any other statements.

**If you have had nothing or very little to drink, it may be wise to take the Breath Test.** Be careful as you may feel sober and still be over the legal limit.

**If you decide to submit to a breath test,** you have the right to request an independent blood test. If you do so, the police officer has a duty to render reasonable assistance to give you timely access to a telephone and phone book to arrange this blood test.

**Event #4. You are put in the police car and taken to the jail.**

- The police officer may have part or all of the events up to this point recorded on video and may also have a video camera on you in the patrol car.



- On the way to the station, the officer may engage you in conversation, with the camera running, trying to get you to make incriminating statements that will damage your case.

*In the patrol car:*

**You have the right to remain silent.**

**You have a right to a copy of any video taken during your arrest.** (This video is evidence that can help or hurt your case.)

**Event #5. At the police station.**

- The police officer will ask a number of “trick” questions, designed to get you to make more incriminating statements.
- This usually occurs in the Breath Testing Room.
- These questions often start off simple and then they lead you down a path until no matter what you say or how you answer, it will hurt your case!

*At the police station:*

**You have the right to remain silent and refuse to answer any questions.**

**You have the right to ask to speak to your attorney.**

**Note:** After being arrested, once you ask to speak with your attorney, the officer should stop asking you questions. If the officer continues to ask questions, you should continue to ask to speak with your attorney.

**It is generally okay** to give the officer your identification information (name, address, date of birth, etc.) but, we suggest you not answer any questions about the facts of your case.

# Part II

## **The DUI Conviction**

# **Chapter Six**

## **What You Are Facing If You Have Just Been Arrested for DUI in South Florida**

If you are arrested for DUI in South Florida, you are facing two potential penalties:

- 1. DUI Criminal Conviction**
- 2. Driver's License Suspension by the DMV**

Here is a description of these potential consequences: (A penalty chart can be found in the appendix.)

- 1. DUI Criminal Conviction: This is serious, more serious than many felonies and can affect the rest of your life! And, it will not go away no matter how much you try to ignore it!**

*Here is why:*

- **Florida law does not permit the judge to withhold an adjudication of guilt!**
- **This means if you plead “no contest”, “guilty” or are “found guilty”** by a judge or jury of the charge of DUI, the judge has no choice but to convict you and you will have a DUI criminal conviction on your record for 75 years.
- **In most criminal cases in Florida, the judge has the discretion or ability to keep a conviction off your record, but not with a DUI conviction.**
- **This criminal conviction can never be sealed or expunged.**

**This means:**

- **This DUI conviction** may have to be reported to certain employers, the military, graduate schools, and to your insurance company.
- **Your insurance rates will go up**, costing you as much as \$20,000 over the next 3 to 5 years! This is due to a 2007 Florida law that requires increased auto insurance requirements for anyone with a DUI conviction.
- **This DUI conviction can lead to increased penalties** if you are ever charged with a second DUI (even if it is 15 to 20 years later).
- **A DUI conviction can also mean:** Jail time and/or probation, DUI School, fines and court costs, community service, driver's license suspension, an ignition interlock device

placed on your car, impoundment of your vehicle and the Victims Impact Program.

- **A DUI conviction is also reported nationwide**, it will always be on your driving record, and no matter what state you move to, it will likely follow you.

***Important Information:***

- **You need experienced legal representation TODAY! Why today?**
- **Your arraignment**, your next required court appearance, is coming up soon and your lawyer can appear for you. Florida law permits an attorney to file a "not guilty" plea on your behalf.
- **A DUI legal team needs time to review the details and investigate your case.** DUI cases are often won based on details. It is important to start the investigation ASAP as details and evidence at the arrest scene can change, and witnesses can become difficult to locate.
- **There are some deadlines** (as soon as 10 days after your arrest) that if missed can adversely affect your case.
- **An experienced DUI legal team can guide you** so that you do not make any of the common mistakes that, once made, may make it nearly impossible for you to recover from.
- **DUI cases are complex and more complicated** to defend than many felonies. Not all criminal defense lawyers do DUI defense. The more DUI cases a lawyer has handled, the more experienced a lawyer becomes at DUI defense.

**2. Driver's License Suspension:** At the time of your arrest, the police officer likely took your drivers license and gave you a DUI citation. This citation acts as your temporary driver's license for 10 days. After these 10 days your license will be suspended for 6 months to 1year, for a first offense. **You have 10 days to challenge or waive the right to challenge.**

- **During these 10 days and only during these 10 days,** you have the right to challenge the suspension by requesting a Formal Review Hearing (FRH) or waive the right to challenge.
- **Important:** On July 1, 2013, the legislature made the following significant change to the laws involving DUI. **Under the new law,** a client can now choose to “waive” their right to a review of their administrative driver's license suspension and, if otherwise eligible, they can get a “business purpose only” (aka hardship) driver's license immediately. However, if a driver has previously incurred an alcohol-related suspension prior to the most recent DUI, he or she may not be eligible for this immediate hardship license.
- **Remember:** You must file your application for a FRH within 10 days of your arrest. It is written in the fine print of your citation. (The officer or the judge probably did not tell you about this right.)
- **If you file your application within 10 days, you will be granted a FRH** (usually within 30 days) and given a temporary business and/or school driving permit for 4 to 5 weeks.

- **If you fail to challenge the suspension within 10 days,** you will lose your right to a FRH and your driver's license suspension starts immediately!
- If you win your case at your FRH, the Department of Motor Vehicles will give you back your driver's license without limitations.
- **If you lose your FRH,** you will get the same amount of "hard time" and you can get a restricted license for the balance of your 6 months to 1 year driver's license suspension, with the ability to drive to work and school. To become eligible for a restricted license you must register for and complete the DUI School.

*Important information:*

- **The FRH can be an important part of winning your Criminal DUI case!** Because, even if you lose your FRH, this hearing gives you and your lawyer the chance to obtain valuable evidence and testimony months before your criminal case is ready for trial. The information obtained from the FRH may lead to successful plea negotiations or a "not guilty" at trial. It is like a "mini" trial.
- **The FRH is sometimes won on technicalities and having an experienced DUI lawyer with you is an important factor in winning your hearing and your case.**
- **Public Defenders are not allowed to represent you at Formal Review Hearings (FRH).**
- **Some attorneys do not do Formal Review Hearings, or they charge extra for them.**



# Chapter Seven

## Two Mistakes That Can Be Made After Being Charged With DUI

During our over 50 years of combined experience defending people accused of Driving Under the Influence we have seen people make mistakes. Often, these mistakes negatively affected the outcome of their cases and consequently, their lives.

*These mistakes generally fall into two categories:*

- 1. Waiting too long before hiring an attorney to represent them.**
- 2. Not hiring an attorney experienced in DUI defense.**

### **1. Waiting too long before hiring an attorney:**

People that have been arrested for DUI have been through an ordeal. They have been arrested, handcuffed, put in jail, had a sleepless night, and appeared in front of a judge. The great majority of the time, they are embarrassed, tired, and scared. Often, it feels like a nightmare that they just want to wake up from. Here are some scenarios:

- **Some wish** it will just go away so they do nothing for a while.
- **Others know** they have a serious problem but have no idea how to solve it, so they wait and do nothing for a time.
- **For some others**, the thought of talking with their family, their parents or even their spouse and revealing their DUI arrest may seem too difficult, so they do nothing for a time and/or try to deal with it on their own.

However, inaction or poor decisions early on in a DUI case can make it more difficult to win. Basically, DUI is a nightmare that will not just go away.

**Here are some of the problems with waiting too long to hire legal representation:**

- **DUI cases are often won based** on the details surrounding the stop, the Officer's investigation and/or the breath test.
- Details require time and experience to investigate and examine.
- **Evidence can get stale and details can change.** For example: Roadside conditions can change daily, witnesses can become difficult to locate and memories fade.
- **There are only 10 days to file a challenge of the civil (DMV) driver's license suspension.** If no application is filed, then "hard time", time during which the person cannot drive, even to school or to work, will result.

- **The challenge of the civil (DMV) driver's license suspension, the Formal Review Hearing, may be an important factor in winning the criminal aspect of a DUI case and avoiding a DUI conviction.**
- **A lawyer can represent the accused at the arraignment,** which means the case gets worked on earlier and the person arrested may not have to attend the hearing and miss another day of work or school.
- **Mistakes can be made without legal representation** that may adversely affect the outcome of a case, making it more difficult to get the charges dismissed or plead to a less serious offense.

*What you can do to increase your odds of getting a better outcome in your DUI arrest:*

- **If you are reading this because you were just released from jail, you need to call an experienced DUI lawyer right away.**
- If you have been putting off dealing with your DUI arrest, it is still important to call an experienced criminal defense/DUI attorney **ASAP.**

## **2. Not hiring the most qualified or experienced attorney:**

Often, people who have been arrested for DUI are too embarrassed or afraid to talk to their parents or spouse about their arrest and the financial situation they are in. They don't want to borrow money, so they look for the least expensive attorney, thinking all lawyers are the same.

*Factors to consider if you are thinking of basing your choice for legal representation solely on price:*

- **The public defender:**

1. Some people stay with the public defender, if the judge appointed one, only to find out that no one told them that the public defender cannot represent them at the civil (DMV) driver's license suspension hearing (Formal Review Hearing). So valuable representation is lost.

2. **It is common for the public defenders with the least legal experience to be assigned** to misdemeanor cases (including DUI); they have an overwhelming case load and are just learning their way around the court house.

- **The least expensive lawyer:**

1. Many people call around to find the least expensive attorney, rather than the most experienced, with the sole criteria for their choice being the amount of the fee.
2. They fail to realize that **the most significant financial costs of a DUI conviction are not the attorney fees, but**

**rather the increased insurance bills and the effect on employment, future education, or military plans.**

3. Some of these low cost attorneys do not represent their clients at the Formal Review Hearing, or they charge extra, and may not have the experience to give you the best chance of winning the FRH.
- Often by the time people realize that they made a mistake in their choice of attorney, it is too late, and the damage is done.
  - **Experienced representation is an important factor in a DUI defense. The more DUI cases a lawyer has handled, the more experienced a lawyer becomes at DUI defense.**

*What you can do to increase your odds of getting a better outcome in your DUI arrest:*

- **Hire the most experienced DUI legal team in the city/county where you were arrested.**

# Chapter Eight

## Ways a DUI Conviction May Be Avoided; Possible Legal Defenses

If you were arrested for DUI, there are a number of legal challenges that may result in your case being dismissed by the judge or the prosecutor. Listed below are five legal challenges to a DUI:

1. **Probable Cause or Reasonable Suspicion:** Did the police officer have a lawful reason to stop you? The officer must have a legal reason to stop you, for example: speeding, careless driving, crossing into the other lane of traffic, making a wide turn, or driving with your headlights off, to name a few.

***Note:***

Just because the officer said he or she had a legal basis to pull you over, does not necessarily make it true. You are entitled to an independent evaluation by a judge. Many cases have been completely dismissed because it was proven that the police officer did not have a legal basis to stop you in the first place.

2. **Jurisdiction:** Did the police officer have the right to make a stop in the location where he or she stopped you? Every

police officer has a certain jurisdiction, the place where they are authorized to act as a law enforcement officer. For example, a police officer from Gainesville cannot come to Fort Lauderdale and stop or arrest anyone; it would be outside of his or her jurisdiction.

3. **Field Sobriety Exercise Conditions:** Were the conditions under which the Field Sobriety Exercises (FSE) were given, conducive to proper testing? The purpose of the FSE is to prove that a person is impaired. However, these exercises may be unreliable even if given under perfect conditions. Please see Appendix 1 for more information on FSE.

*Note:*

It is important to document the conditions under which your FSE were performed. For example: Was the ground level? Was the area well lit? What type of surface were they given on? What were the weather conditions at the time? If it can be shown that the conditions were less than ideal, it means that the "results" are not reliable evidence.

**This is another reason it is important to hire experienced legal representation ASAP, as road conditions can change.**

4. **Breath Test Admissibility:** Can the results of the breath test (BT) be used as evidence against you; are they admissible in court? The purpose of the breath test is to measure a person's blood alcohol content at the time he or she was driving.

However, there are many reasons that breath test results may be kept out of court, such as, if it can be shown that the breath test machine was not working properly or that the breath test was not administered according to the rules. Please see the Appendix 2 for more information on the breath testing.

***Note:***

There are many problems associated with breath testing. Hiring experienced DUI legal representation will greatly increase your chances of keeping the breath testing results from being admitted in court, which could lead to a “not guilty” verdict for DUI or a plea to a lesser charge.

Even if they are admitted into evidence, a skilled attorney can argue to a jury that they are unreliable tests and should not be used to convict you of DUI.

**5. The Quality of the Police Officers and Their Investigation:**

Who was the arresting police officer and was the investigation done properly? There are many issues a skilled attorney will evaluate when researching the officer’s experience, history, and the quality of his or her reporting or investigation, such as:

- Does he or she write the same report for every DUI arrest?
- Has the officer been disciplined or fined by any police agency?
- Does the judge have respect for the reputation or for the truthfulness of the officer?



- How does the officer act in the courtroom?
- Does the officer make a good witness on the witness stand, or are they argumentative with the defense attorney?
- Can the officer admit when he or she has made a mistake or does he or she fight with the defense attorney?

***Note:***

This is another reason to hire local and experienced legal representation.

# **Chapter Nine**

## **What to Look For In a DUI Defense Attorney**

Choosing legal representation for a DUI charge is probably THE single most important decision to make after your arrest.

Remember:

- Just because you were charged with DUI, does not mean that you are guilty of DUI. Police officers make mistakes. A DUI arrest is only an accusation. There are winning defenses to a DUI charge.
- DUI is a crime that not all criminal defense attorneys know how to competently handle. In fact, DUI is more complicated to defend than many felonies.
- DUI involves complex technical issues not found in most criminal cases. The breath testing machine, field sobriety exercises, probable cause for the arrest and police procedures are complicated and require extensive, up to date, and regular education and experience.

- The more DUI cases a lawyer has handled, the more experienced a lawyer becomes at DUI defense.... Experience can give you the best chance of success.

**Here is a list of some of the primary criteria you should use in evaluating a DUI lawyer.**

- How long have they been a criminal defense attorney?
- How long have they been representing DUI defendants?
- How often do they handle DUI cases?
- Does the attorney have experience in representing DUI defendants at the DMV's Formal Review Hearings? Do they charge more for this?
- Does the attorney have a statewide reputation in DUI defense?
- Does the attorney get referrals from other attorneys throughout Florida?
- Does the attorney get referrals from prior DUI clients?
- How many DUI cases has the attorney actually tried to a jury?
- How successful has the attorney been at trial?
- How successful has the attorney been at getting excellent plea negotiations?
- Has the attorney won major pretrial issues in DUI cases?

- Does the attorney have an experienced, knowledgeable, informative, and courteous team working with him or her on every case?
- Has the attorney been selected by well respected organizations to lecture on DUI defense?
- Has the attorney written any books or publications on DUI defense?
- Do you feel comfortable with the attorney?
- Does the attorney work out of a professional looking office?
- Have you researched the attorney on line?
- Does the attorney belong to the Florida Association of Criminal Defense Lawyers?
- Does the attorney belong to the National Association of Criminal Defense Lawyers?
- Does the attorney have a professional website that describes the important criteria listed above?

*Additional information:*

**The long term costs of losing your DUI case and being convicted of DUI in Florida, will far outweigh the short term savings of retaining the least expensive lawyer.**

It is important to select a lawyer who will give you the best chance of success.

**A Law Firm that is experienced in DUI defense does not have to charge the highest fee.** This is because they work on DUI cases every day and do not have to “reinvent the wheel” on every case. DUI lawyers with experience have a knowledge base and should know many of the possible tactics to avoid a conviction.

**If on the other hand, an attorney charges a low fee,** it can mean they do not expect to devote much time to the case. Abraham Lincoln once said, “A lawyer’s time is his stock in trade.” It is important that your lawyer plans on spending the time necessary to give you the best chance of success.

Many law firms, including Meldon Law, will work out financing terms on the total DUI representation fee.

# Part III

## **The Appendix**

# **Appendix 1**

## **Information About Field Sobriety Exercises**

### **What Field Sobriety Exercises are:**

- Field Sobriety Exercises (FSE) are a set of divided attention tasks given on the roadside, such as: walking on a straight line, standing on one leg while counting out loud, and touching your finger to your nose with your eyes closed.
- The intended purpose of these exercises (or “tests” as they are sometimes incorrectly referred to) is to prove that a person is impaired.
- These exercises are then “graded” by the police officer as they are performed. However, the “grading” is almost entirely subjective on the part of the officer. Whether you pass or fail is largely based entirely on the officer’s personal observations and impressions, not on any objective criteria.

### **What you should know about them:**

- By the time the officer asks a person suspected of driving under the influence of drugs or alcohol to do these roadside exercises, the officer has probably already decided the person is guilty of DUI, the officer is just looking for more evidence

to support his or her decision, which in turn affects his or her ability to be objective in “grading” the exercises.

- In reality, these FSE’s may be unreliable even if given under perfect conditions and are somewhat meaningless when it comes to proving DUI, no matter how well trained the officer is in assessing the results.
- In fact, roadside sobriety exercises have little or no scientific validity at all. In addition, many things can make conditions less than perfect. For example, road and weather conditions, lighting, type of footwear or clothing, and safety considerations, are just a few things that can negatively affect a person’s performance.
- The police manual also says that these exercises are unreliable if a person has an injury, is overweight, or is older.

***Know your rights about performing them:***

**Beware: Do not let the police officer trick you** with his or her roadside sobriety exercises; you will probably flunk, even if you score 90% and even if you are not impaired.

Remember:

- **You have the right** to refuse to do these exercises.
- **You have the right** to remain silent.
- **You have the right** to ask the officer if you are free to leave.
- **You have the right** to ask to speak with your attorney before doing them.



If you have been arrested for DUI and performed Field Sobriety Exercises, it is extremely important to hire an attorney experienced in DUI defense ASAP so that the actual location of the “testing” can be examined. Roadsides can change. For example, grass can be mowed or overhead lighting repaired. It is important to have an expert examine or video tape a suspicious testing site without delay.

**Note:** DUI cases are often won on the little details of the case. Don't let the details get lost by waiting too long to hire a lawyer.

# **Appendix 2**

## **Information on Breath Testing**

### **What is the purpose of breath testing:**

- The purpose of a breath test is to measure a person's Blood Alcohol Content (BAC) in a less invasive way than drawing blood.
- There are machines that police officers use to do this. The CMI Intoxilizer 8000 is the breath test machine that is currently used in Florida.
- Basically, these machines are set up to work in this way - when a person exhales, or “blows”, into the machine, through a mouthpiece attached to a tube, the machine is supposed to measure the amount of alcohol in the breath, and convert it to the BAC in the bloodstream.
- However, this machine has never been scientifically proven to be 100% accurate 100% of the time and there are some serious problems with it.

***Here are some of the problems with breath testing:***

- The breath testing machine is just a machine and one that breaks down sometimes and needs to be sent back to the manufacturer for repairs.
- The manufacturer of the machine, CMI, refuses to disclose the computer software program which operates the machine. So there is no way to evaluate if the machine is based on sound scientific principles.
- The breath testing machine utilizes averages, averages for the entire population. An average is not an accurate representation for an individual, and may overstate or understate a person's actual BAC.
- The breath tests are usually administered at the jail. It could take you one to two hours to get to the jail from the time you are first pulled over by the police, or are in an accident. This test is supposed to reflect the BAC at the time of driving, not the BAC at the jail. By the time a person arrives at the jail his or her BAC level could be increased or decreased.
- The machine must be accurately calibrated, if not, it may be registering an inaccurate reading.
- The breath testing machine may not distinguish between alcohol in the mouth and alcohol in the lungs. Residual alcohol in the mouth can result in a mistakenly high reading.
- Other factors affecting the results of breath testing can be: belching, hiccupping, or vomiting prior to testing, the

temperature of the breath, and health conditions such as diabetes, to name a few.

### **Other Important Information on Breath Testing:**

- **Remember:** You must be arrested before taking the breath test. Even if you have not been drinking and you take and pass the breath test, you are under arrest and the arresting officer cannot un-arrest you. However, a low breath test result will go a long way towards proving that you are innocent of DUI.
- Once you are under arrest you have the **right** to speak with your attorney.
- Asking to speak with your attorney before you make the decision to take or refuse to take the breath test is a good idea.

*Here is why:*

- 1. If the officer allows you to speak with an attorney (which is rare), follow your attorney's advice.**
- 2. If you are not permitted to call your lawyer, the officer will have to explain to a jury why you were denied your right to counsel.** Most people consider this unfair. It may also help explain why you decided to refuse to take the breath test. (Why would you want to take a test that has been proven to be unreliable without talking to a lawyer first?)

- **Remember:** The prosecutor can prove a DUI case in either one of two ways:

1. **You were driving or in physical control of a vehicle in Florida with an unlawful BAC** (over .08%).
- or
2. **You were driving or in physical control of a vehicle in Florida while impaired by alcohol or drugs.**

Without a breath test as evidence to prove your BAC level, the prosecutor is limited to proving your case by the second theory only i.e., you were driving or in physical control of the vehicle while impaired. Many times the prosecutor will realize that a jury is unlikely to convict you of DUI based on the “flimsy” evidence that the police officer has assembled. (This is more common when you look normal on the video and have not made any incriminating statements.)

- In some cases the prosecutor may be willing to drop the DUI charge in exchange for a plea to a reckless driving charge. Reckless driving is not as serious a charge as a DUI. If you get this plea offer it is usually wise to accept it unless you have a good chance to get the whole case dismissed or you are willing to “roll the dice” on a jury trial.
- An experienced attorney will increase your chances of getting the best pretrial plea offer or a not guilty verdict after a jury trial.

- Even if the breath test is admitted into evidence, a skilled and experienced DUI lawyer may be able to prove to a jury that the results are not reliable and do not meet the burden of proof required for a DUI criminal conviction (proof beyond and to the exclusion of every reasonable doubt).
- An experienced attorney who is updated on the latest technology and cutting edge defenses should know how to check the history of the breath test machine used in your case and what to look for. For example: If the machine has a history of making mistakes or breaking down and needing repairs, then why should it be trusted?
- **Beware:** The police officer may tell you that your driver's license will be automatically suspended if you refuse to take the breath test. The officer, more than likely, will intentionally fail to inform you that you can challenge the suspension and possibly get your license back; he or she wants you to take the breath test to obtain more evidence against you.
- If you have not been drinking, or have had very little to drink, then it may be wise to take the breath test. **Warning:** You may feel sober and still be over the legal limit.
- **Warning:** If you have previously refused to take a breath test, there are additional penalties for a second refusal.

### *Should you blow or not blow?*

**To “blow” or not to ‘blow’?** This is probably the most commonly asked question of any DUI defense attorney. No one wants to be convicted of DUI based on unreliable evidence, so here are our suggestions:

**Yes, Blow – If** you have had nothing or very little to drink, but remember your judgment may be impaired and/or your alcohol level may be over the limit and you may feel sober. If you do submit to a breath test, you have the right to have the arresting officer assist you in obtaining an independent blood test.

**Don’t Blow – If** you have been drinking. **Warning:** you may face additional penalties if you refuse to take the breath test especially, if you have previously refused a breath test. However, if you do not take the breath test, it may be more difficult for the prosecutor to prove you are guilty of DUI, particularly if you look sober on the video.

# Appendix 3

## DUI Terminology

**Actual Physical Control:** Means that you are physically in or on the vehicle and have the capability to operate the vehicle, regardless of whether he or she is actually operating the vehicle at the time. Some factors that officers may consider to determine if someone is in actual physical control are, the location of the keys, is the vehicle running or operable and location of the driver.

**Chemical Test:** A test of a person's Breath, Blood or Urine to determine alcohol content or the presence of drugs.

**Field Sobriety Exercises:** A series of standardized physical/mental tests given to a person that law enforcement believes is under the influence. This series of tests may include the walk and turn, one leg stand, touching your finger to your nose and reciting the alphabet.

**Ignition Interlock Device:** A breath alcohol analyzer connected to a motor vehicle's ignition. In order for the vehicle to start a person must blow into the analyzer, which measures the breath alcohol concentration of the person. If the breath sample exceeds the fail point on the interlock device, the vehicle will not start.

**Implied Consent:** A person who accepts the privilege to drive in the state of Florida is deemed to have given his or her consent to



submit to an approved chemical test. Meaning if you are lawfully arrested by an officer who has reasonable cause to believe that you had been driving under the influence, then you have consented to taking a chemical test of your breath, blood or urine for the purpose of determine breath alcohol content or for drugs. The administration of a breath test does not preclude the administration of another type of test.

**Miranda Warnings:** You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to speak to an attorney and to have that attorney present during any questioning. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish. You can decide at any time to exercise these rights and not answer any questions or make any statements.

These warnings apply if you are in custody and are being interrogated by law enforcement. For the purpose of a roadside DUI investigation, Courts have deemed that a person is not in custody and therefore Miranda Warnings do not have to be given, except in certain instances. Also it is important to know that even though you are under arrest you are not entitled to have any attorney presence when being asked to submit to a chemical test.

# Appendix 4

## Florida DUI Conviction Penalties

	<b>1<sup>st</sup> Conviction</b>	<b>2<sup>nd</sup> Conviction</b>	<b>3<sup>rd</sup> Conviction</b>
<b>License Revocation</b>	At least 180 days (up to 1 year)	At least 5 years, if within 5 years of 1 <sup>st</sup> conviction	At least 10 years, if within 10 years of 2 <sup>nd</sup> conviction
<b>Fine *</b>	At least \$500 (up to \$2,000)	At least \$1,000 (up to \$4,000)	At least \$2000 (up to \$5,000)
<b>Imprisonment *</b>	Up to 6 months	At least 10 days if within 5 years of 1 <sup>st</sup> conviction (up to 1 year)	At least 30 days if within 10 years of 2 <sup>nd</sup> conviction (up to 5 years)
<b>Probation</b>	Up to 1 year	Up to 1 year	Up to 5 years
<b>Community Service</b>	At least 50 hours		
<b>DUI School</b>	Must complete 12-21 hour substance abuse course for first conviction. The DUI school can require further psychosocial evaluation and treatment, if deemed necessary, without going back to court for approval	Advanced DUI School	Advanced DUI School
<b>Ignition Interlock Device *</b>	Up to 6 months (6 month minimum for BAC over .15)	At least 1 year (2 year minimum for BAC over .15)	At least 2 years
<b>Impounding Vehicle</b>	10 days	30 days if 2 <sup>nd</sup> within 5 years	90 days if 3 <sup>rd</sup> within 10 years

\* Fines and Imprisonment are higher if Blood Alcohol Level is .15% or higher or if a minor is in the vehicle. (Fines: **first conviction** - minimum \$1000 to maximum \$2000, **second conviction** - minimum \$2000 to maximum \$4000, **third conviction** - minimum \$4000 to maximum \$5000. Imprisonment: 9 month maximum on first conviction and 1 year maximum on second conviction. Interlock time also increased.)

\*\* Penalties for DUI causing serious injury or death are **much more severe.**

# Appendix 5

## Blood Alcohol Chart

### Approximate Blood Alcohol Percentages

#### Body Weight

Drinks* In One Hour	100 lbs	120 lbs	140 lbs	160 lbs	180 lbs	200 lbs	220 lbs	240 lbs
1	.04	.03	.03	.02	.02	.02	.02	.02
2	.08	.06	.05	.05	.04	.04	.03	.03
3	.11	.09	.08	.07	.06	.06	.05	.05
4	.15	.12	.11	.09	.08	.08	.07	.06
5	.19	.16	.13	.12	.11	.09	.09	.08
6	.23	.19	.16	.14	.13	.11	.10	.09
7	.26	.22	.19	.16	.15	.13	.12	.11
8	.30	.25	.21	.19	.17	.15	.14	.13
9	.34	.28	.24	.21	.19	.17	.15	.14
10	.38	.31	.27	.23	.21	.19	.17	.16

\* One (1) “drink” is equal to 1 oz of 80 proof liquor, which is equal to:

- 1 oz vodka, rum, tequila
- 12 oz beer
- 3 oz wine

**Remember:** A martini has 2 ½ to 3 ounces of alcohol in it, depending on the bartender. Mixed drinks usually have more than 1 oz of alcohol. **All drinks are not the same.**

**Warning:** This chart is only a guide and is not sufficiently accurate to be considered legal evidence. The figure you calculate is an average. No food in the stomach, fatigue, medications, and other physical and emotional conditions may cause your actual blood alcohol concentration level to be higher.

*This chart was developed by U.S. Department of Transportation, National Highway Traffic Safety Administration.*

# Appendix 6

## 10 Additional Interesting Facts About Florida DUI Law That You Should Know

- **Florida law allows for you to request an Independent Blood Draw if you submit to a breath test.** If the law enforcement officers do not allow you timely access to a telephone and a phonebook then the breath test results could be suppressed and your case may even be dismissed if the Court finds the police officer acted in bad faith.
- You can be arrested and convicted of a DUI while riding a bicycle.
- **Florida law does not automatically suspend your license if you refuse to complete field sobriety exercises, only if you refuse to submit to a breath test.**
- **Law enforcement officers can lawfully stop your car when you have an expired tag, headlight out, improperly tinted windows, etc...** Once they stop your car, if they smell alcohol they will probably ask to step out of the vehicle to perform some field sobriety exercises.
- **Law Enforcement Officers are trained to observe whether you fumble around with your license, vehicle registration,**

**and automobile insurance information as a possible sign of DUI.**

- **If you refuse to submit to a Breath Test after being arrested for Boating Under the Influence (“BUI”), the Department of Motor Vehicles cannot suspend your driving privileges.** However, the Criminal Court may suspend your license if you plead to or are found guilty of BUI.
- **If you submit to a breath test, a law enforcement officer is required to observe you for twenty minutes in order to insure that you do not put anything in your mouth or vomit.** If you regurgitate or vomit, the officers should not allow you to submit to a breath test until twenty minutes have passed.
- **You may be able to ask a Court to dismiss your case if you have a well-founded fear and belief that a life-threatening emergency had occurred that necessitated you driving a vehicle while under the influence of drugs or alcohol.** At the very least, this may be a legal defense you can raise in front of a jury.
- **If you are involved in an auto accident with property damage, you are obligated under Florida law to stay and cooperate with the accident investigation.** Unless the Law Enforcement Officer “switches hats” by informing you that he or she has concluded the accident investigation and is now commencing a criminal investigation **and** reads you the Miranda Warnings (i.e. You have the right to remain silent...), any statements that you make may be

privileged and therefore could not be used against you in your criminal case.

- If the Officer reads you your Miranda Warnings and you invoke your right to remain silent (“I do not wish to answer any questions”), then the officers should not interrogate you further unless you reinitiate contact with them.



# Part IV

## **About Our Firm**

# About Our Firm

## The DUI Defense Team at Meldon Law:

### About us:

- **The fee we charge for our services** in representing people charged with DUI allows us to invest the time and resources necessary to give our clients a better chance at winning their case. Our fee includes the civil DMV Formal Review Hearing.
- **We do not take short cuts** in our office. We want to give our clients the full benefit of our Team's criminal and civil defense experience.
- **The DUI Defense Team at Meldon Law has over 50 years of combined experienced in Florida courts defending the rights of individuals accused of DUI and other criminal charges on a regular basis.**

### Here is an overview of The Team:

#### Jeffrey Meldon, Attorney:

- Over 30 years of experience in DUI defense in Gainesville, Florida.

- Lectured around the state of Florida on the topic of DUI defense to other lawyers, for the past 17 years.
- Past Chairman (1999-2000) and member of the Florida Bar Traffic Court Rules Committee from 1992 to 2002. (The committee that helps write the rules regarding DUI trials.)
- Chairman and lecturer at the Florida Bar DUI Seminars for 12 years.
- Chairman and lecturer for Lorman DUI Seminars.
- Served on the Florida Bar Rules of Judicial Administration Committee and the Florida Bar Civil Procedure Rules Committee.
- Volunteer teacher for the University of Florida Law School Trial Advocacy and Appellate Programs.

**Carey Meldon, Attorney:**

- Assistant State Attorney for 4 years.
- Has personally handled thousands of criminal cases ranging from misdemeanors to capital felonies.
- Was a member of the 7<sup>th</sup> Circuit State Attorney's special crimes prosecution unit, giving him extensive courtroom experience.
- His interest is in trial practice involving DUI and other criminal cases.

- Member of the Florida Association of Criminal Defense Lawyers.
- Member of the National Association of Criminal Defense Lawyers.
- Florida Bar Traffic Court Rules Committee member, 2010 to present.
- Florida Bar Traffic Court Rules Modernization Sub-Committee member, 2010 to present. (The committee that is rewriting the Traffic Court Rules.)
- Lorman Seminar Lecturer, “Florida DUI Update,” July 29, 2010.
- Rossdale Group Webinar Lecturer, “Criminal Law & DUI,” August 11, 2010
- Member of the Florida Justice Association
- Member of the United States District Court for the Northern District of Florida
- Member of the National College of DUI Defense
- Member of the James C. Adkins
- Jr. American Inn of Court
- Member of the Florida Bar
- Member of the Traffic Court Rules Committee

*Technical issues can often be the difference between winning and losing a criminal DUI case or the civil DMV license suspension. Hiring an experienced DUI team will give you the best chance of recognizing these technical issues, and identifying the legal defense that can make the difference between winning and losing.*

Contact Us Today @ 1 800 373 8000 to ***Find Out More About Our Team and How We Can Help You***

# Contact Us

You can contact the DUI Defense Team of Jeffrey Meldon, and Carey Meldon, at Meldon Law at:

**1 800 373 8000**  
**MeldonLaw.com**

**Meldon Law is located at:**

1 East Broward Blvd. Suite #700  
Fort Lauderdale, FL 33301

## **Warning**

The information in this book is solely for educational purposes. It is not intended to give legal advice for any individual case. Every case is unique!

WA

# A DUI GUIDE FOR SOUTH FLORIDA

This book, written by experienced DUI defense criminal trial lawyer Carey Meldon and Tanner Demmery, members of the National College of DUI defense (NCDD). Gives insight into what a DUI charge is and ways the state can prove the charge and possible legal defenses.

Florida DUI Criminal Defense Attorneys, at Meldon law have over 50 years of combined experience in representing individuals charged with DUI in Florida. They are trial lawyers and members of both the Florida and the National Association of Criminal Defense Lawyers.



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