



Implied Consent

by John D. Whitaker

When you get arrested for drunk driving you actually have at least two entirely separate legal problems. The first is the drunk driving case. This is a criminal charge and can result in a fine of up to \$750 and/or 6 months in the county jail if you are convicted. The second problem is the implied consent violation. Implied consent concerns your driving privileges. This is a civil action where the State can suspend your driver's license under some circumstances. They call it implied consent because the law says that if you drive a vehicle on a Wyoming public street or highway you have impliedly consented to a test of your blood, breath or urine under specific circumstances.

Under Wyoming's Implied Consent law, if you are arrested for drunk driving, a law enforcement officer is entitled to ask you to take a test of your blood, breath or urine if he has probable cause to believe you were driving or in actual physical control of a motor vehicle on a public street or highway at a time when you were too intoxicated to safely drive.

If you take the test and it shows that you have an alcohol concentration of 0.08% or greater you are in violation of the implied consent law. This is called a *per se* violation, and is punishable by losing your driver's license for 90 days. You can get a conditional driver's permit or what some call a "work permit" allowing you to drive while working or going to school, but there are restrictions placed on where and when you are permitted to drive during the suspension period. Also, you are only entitled to one conditional driving permit in a 5 year period.

You can also refuse to take the test if you want but a refusal is also considered a violation of the statute and automatically results in a 6-month suspension of your driver's license for the first violation. If you refuse the test, your refusal is admissible at your trial. Most juries consider a refusal strong evidence of guilt. Once you refuse, it's over. The police officer need not ask again. Under a refusal suspension, you are not entitled to conditional driving privileges and insurance companies treat refusals just like



drunk driving convictions. As soon as most insurance companies find out that you have a refusal they will cancel your auto insurance policy. This will force you to go to the high-risk insurance market to buy auto insurance. This type of insurance is very expensive. You can get rid of the refusal if you plead guilty to the DUI within 10 days of your arraignment, but that does not give you much time to evaluate any possible defenses.

When you are arrested for drunk driving the police will keep your driver's license. They give you a document which acts as your driver's license, but it is also an advisement

of your rights concerning implied consent. You have the right to request a hearing to challenge the implied consent violation but must do so within 20 days of your arrest. If you do nothing, your suspension begins automatically 30 days after the arrest. If you request a hearing the suspension action is stayed until the hearing. The hearings are conducted by State Hearing Examiners and they are generally telephone hearings. If you lose at the hearing you have a right to appeal to the district court.

There are a number of potential defenses to implied consent violations just as there are for drunk driving charges. Each case is different and must be evaluated on its own merits. You should always consult a lawyer to advise you on implied consent violations but you should know that you do not have the right to talk to a lawyer before you decide whether to take the test. You should also know that when your attorney is negotiating a drunk driving case with the prosecutor, one of the first things they look for is the test result. If you take the test and your blood alcohol is slightly over the limit, most prosecutors will agree to some kind of first offender treatment. If you refused to take the test your chances of making a favorable deal in the DWUI case is slim to none.

Recently I have noticed a huge increase in DWUI arrests. Most of the people we see have no idea about implied consent until they have a problem. The best way to avoid an implied consent problem is not to drink and drive in the first place.

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at jdwtl@mac.com or by calling his office at 307 265-6204. Past Legal Brief columns can be found at Wyoinjury.com