

DUI Factoids: The Breath Test for Blood Alcohol Content

By statute, persons driving on Virginia highways are deemed to have consented “to have samples of his blood, breath, or both blood and breath taken for a chemical test to determine the alcohol, drug, or both alcohol and drug content of his blood, if he is **arrested** for violation of § 18.2-266 (Blood Alcohol Content – “BAC”-- of 0.08 or higher, **or** while intoxicated by alcohol or drugs) , 18.2-266.1 (under 21 years old driving with a BAC of 0.02 or higher), or subsection B of § 18.2-272 (driving after forfeiture of license) or of a similar ordinance within three hours of the alleged offense.” One’s unreasonable failure to submit to such a test is a civil violation that upon conviction will result in the suspension of one’s license to drive in Virginia for one year. However, a second or subsequent conviction for unreasonable refusal to submit to the blood or breath test is a criminal offense.

Once charged with suspicion of DUI based on probable cause in the officer’s judgment as a result of one’s driving, voluntary admission of alcohol consumption, voluntary performance on field sobriety tests (FSTs), and /or the results of a voluntary preliminary breath test (PBT), the person is taken to the police station for further processing and the administration of a breath test. Virginia uses the Intoxylizer 5000 breath testing machine to determine the amount of alcohol in the blood of one under arrest for DUI. Although a blood test is more accurate, by statute it need not be administered unless the arresting officer has reason to believe the driving impairment is due to the presence of drugs, or a combination of alcohol and drugs.

Rarely, the blood test is offered if the person is physically unable to perform the breath test. The breath test is not as accurate as examining the blood itself for the concentration amount of ethyl alcohol in the blood, and can produce false results. It is based on the principle that blood in the lungs will become infused in one’s breath, and by determining the amount of ethyl alcohol in a person’s breath, the concentration of ethyl alcohol in the person’s bloodstream can be accurately calculated.

However, the test must be properly administered to give an accurate reading. Sometimes, residual alcohol remains trapped in the mouth and can render the tests inaccurate because the machine is not only measuring lung breath, but possibly, contaminated mouth breath. Other factors that can produce inaccurate readings on the Intoxylizer 5000 are listed below.

• The Temperature of Your Breath

The breath test works on the assumption that your breath is 34 degrees centigrade. Studies done with this equipment have shown that the real average breath temperature for people who have been arrested on a DUI/DWI is closer to 35.5, with some as high as 37. This alone would mean that the result of the test would be between 10 and 20 percent higher than it really is.

• How Fast Your Body Eliminates the Alcohol

Everyone has a different metabolism, but the breath test assumes that everyone is the

same. This means that a person whose body gets rid of alcohol slower will have a higher BAC than someone with a faster metabolism, even after having the same amount to drink. Breath testing assumes that the person is “post absorptive.” This means that the test assumes that the person is no longer absorbing alcohol into the blood. If you have a slow metabolism, you might still be absorbing alcohol by the time you take the test. If so, it will read your BAC as significantly higher than it actually is. If you know or suspect that you have a slower than average metabolism, you may eventually argue that your metabolism skewed the result of your test.

- **Belching, Hiccupping or Vomiting Prior to a Test**

Time is the most important factor here. A person should not be tested for at least 15 minutes after belching, hiccupping or vomiting, as this increases the amount of alcohol on the breath. The officer is required to constantly observe you to ensure that you have not belched, hiccupped or vomited within 15 minutes of taking the test. Constant observation is a rule that the officer must follow. If it is not followed, the results of the test may be called into question.

- **Problems in Mouth, Such as Blood, or Dentures**

If there is any blood in your mouth when you take the test, it may increase the BAC result. If you have dentures, which trap alcohol in the mouth, it may skew the test result.

- **Other Chemical Compounds in Your Mouth**

Strictly speaking, the breath test does not detect alcohol (ethyl alcohol). It detects *part* of the alcohol molecule called the methyl group. The significance of this is that the breathalyzer will also register other compounds besides alcohol, other compounds that are commonly found in human breath. If any of these compounds are present, it will result in an inflated and inaccurate BAC reading.