

ASKED TO
STEP OUT OF MY CAR.
DOES IT MEAN
I'M GOING TO JAIL?

Info That May Be Helpful If You Have Been Charged
With DUI In South Carolina

Greg McCollum, Esq

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INFO THAT MAY BE HELPFUL IF YOU HAVE BEEN
CHARGED WITH DUI IN SOUTH CAROLINA

BY
Greg McCollum

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TESTIMONIALS

“I totally agree when other clients who have stated he is the best in Myrtle Beach. I spoke with several top attorneys in the area. I knew immediately there was no competition and Greg was the one I must hire. He is so confident, knowledgeable, and knew exactly how he would handle the situation. I have placed all our concerns in his hands and have no anxiety or fears about the situation any longer. So far the case has gone exactly as planned, actually better than I could have expected, and I am so at ease with the charges. My health is poor and I do not need any stress whatsoever. I cannot state enough how much at ease we are now. I think one of his main goals is to let the client know that he is in control and there is no need to worry. He will let you know upfront what the situation is and what he can and will do. He is also easily accessible to speak with any time. His office staff are all wonderful as well. I would not expect any less though, I'm sure he manages his office in the same manner that he manages his cases. His knowledge, expertise, and integrity are impeccable. You cannot go wrong with Greg and I was not willing to risk my loved one going to jail or prison. That is why I chose Greg and am so glad I did.”

- Donna

“I am very pleased with Greg and his staff here at this office!! The staff that handled my case was great and I am very pleased with the outcome of my case! I recommend this office for any and all criminal defense needs.”

- A Former Client

“If you find yourself in need of the BEST lawyer for criminal defense, this is your man. Greg is one of the most respected attorneys in this area. The judges have the utmost respect for his knowledge of the law, and it is very obvious in the courtroom. I could have been convicted and thrown in prison but due to the knowledge of his trade Mr. McCollum had my charges thrown out of court by the judge not the jury. If it’s not obvious to you, I have my life and career to be thankful to this attorney. He is the best; he doesn’t need a big poster or a full page ad in the Yellow Pages. His record speaks for itself. Thanks Greg McCollum!”

- Greg H.

“I can say without a doubt that there is no one you would rather have on your side more than Greg. Unfortunately in my circumstance I did not come to Mr. McCollum first, and I believe only by the grace of God was I led to him. The entire office is completely devoted to the case and you will be kept well informed of the process. If you find yourself caught up in circumstances beyond your control, especially if you are innocent, this is the team you need to retain. Greg is not only a good (excellent) lawyer, he is a good man. If you need representation, first appeal to God, then hire Greg and his team. You will not regret it.”

- A Former Client

“Cannot say enough about how great my representation was. I got DUI charges dismissed. What a relief that was!”

- A Former Client

“The McCollum Defense Team did an outstanding job for me! They worked together as a team on my case and made me feel comfortable and confident. This defense team kept me out of having to go to jail. Dean Mureddu was excellent!! He came to court with me and handled everything! I highly recommend Greg McCollum’s defense team!!”

- William Pokorny

“My daughter was arrested and charged in N. Myrtle Beach for underage possession by a policeman using less than legal tactics. Greg was willing to listen to the facts of the case and make suggestions as to how we could best achieve a fair resolution. His knowledge and guidance were invaluable and his fees were very fair compared to other legal work I have had done.”

- Andy

“Greg McCollum is an awesome attorney. His office is very professional. He has a very reliable team that gets very effective results for their clients. I would highly recommend him for criminal defense!”

- A Former Client

“Greg gave me good advice, explained every detail and his staff kept me informed. Never had to go to court. Resolved with no driver’s license penalty. Was a great experience. His office handled everything.”

- Jim

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AUTHOR INTRODUCTION

Greg McCollum is the mangaging partner of the Complete Legal Defense Team located in Myrtle Beach, South Carolina. The Complete Legal Defense Team defends the accused who have a lot to lose. Prior to going into private practice, Greg worked for



over five years as a felony court prosecutor. He successfully prosecuted hundreds of cases in Horry and Georgetown counties. He has tried cases of every type of crime imaginable, from murder cases to every type of assault--sexual assault, robbery and kidnapping, as well as every type of drug case from trafficking to possession.

In 1994, Greg was selected as the first prosecutor for the newly formed centralized DUI Jury Court in Horry County, and served as the prosecuting attorney in Horry County for every highway patrol DUI case made in the greater Myrtle Beach area. As

a prosecutor and a defense attorney, Greg has gone to trial in over two hundred cases, including over one hundred DUI trials.

Greg lives in Myrtle Beach with his wife and three children. He is a parishioner of Saint Andrew Catholic Church and former member of the First Methodist Church in Myrtle Beach. He has served on numerous boards and committees including the Grand Strand YMCA, Myrtle Beach area Chamber of Commerce, the Small Business Council, the Children's Museum of South Carolina, the South Carolina Criminal Defense Lawyers Association and others. Formerly he coached the Myrtle Beach High School mock trial team and currently coaches under ten-year-old girls' soccer. He serves on the Public Defender Selection Committee and is past chairman of the Horry County Democratic party.

Greg graduated from Clemson University and the University of South Carolina School of Law. He grew up in a small town, Easley, South Carolina and lived in New York City for three years working for Columbia Pictures. In 1988 he began practicing criminal law in the Myrtle Beach area as a public

defender, and then as a prosecutor, before opening a criminal defense practice. He is recognized as one of the top criminal defense lawyers in the Myrtle Beach area.

HOW IS A DUI DEFINED IN SOUTH CAROLINA?

DUI is defined as driving a motor vehicle while one's ability to safely drive is materially and appreciably impaired to such a degree that it would be unsafe for the person to be driving.

What Are The Top Misconceptions About Being Arrested On DUI Charges?

In South Carolina, if you refuse the breath test, the police take your driver's license as a part of the arrest process. When you get out of jail, typically, the next morning, you don't have your car because it was



towed to an impound lot. Most people's cellphones are dead and they don't have a phone charger. They don't know where their car is, and they don't have a driver's license. Many young people and college students drive a car registered to a parent. When the young person goes to the towing company which was called by the police to tow the car, the towing company will not release the car except to the

registered owner. Many times the registered owner is a parent who lives in another state. The towing company will not release the car without a power of attorney authorizing the child to possess the car. Additionally, it is likely the child must present a valid driver's license for identification and proof that they are authorized to drive. Needless to say, this creates stress on the person arrested and on family members who are anxious to help. If your license is suspended because of a breath test refusal, a test result of .15 or higher, or for a drug test refusal, you are given a letter sized blue form necessary to request a hearing to contest the validity of the driver's license suspension. This is important because once a hearing is requested, you will become eligible for a temporary driver's license. For some inexplicable reason, the South Carolina Department of Motor Vehicles insists on receiving the original form. Some people do not realize they have the form because it is given at the time of the breath test, which is usually several hours before the bond hearing.

You will need this form to get your license back. This can be very confusing, and most people don't is

most desirable, they receive an application for a route restricted license in the mail, which is something that we do not want them to apply for at that time. There is a lot of confusion about what happened to them and what the next step is. Of course, it is very disorienting for someone to go out to dinner, or go out the night before and have everything change, literally overnight, where now they don't have a license, they can't go to work, they don't know what to do and are given several legal documents which are confusing and seem contradictory.

How Public Will Someone’s Arrest And Prosecution Be For DUI Charges In South Carolina?

It’s public knowledge and it is embarrassing. There are mugshots in the newspaper and online. The local newspaper and the local TV stations all have space on their websites for the public

to see who has been arrested. It is called mugshot Monday and is a form of entertainment for



many people. The mugshot paper is on the newspaper rack in all the convenience stores. People going in to get their coffee in the morning may see you on the front page. People log on to the county jail website and see who was arrested the day before. The records are public; they are out in the public domain. Many times your friends, co-workers and friends from church see you in a jail issue jumpsuit. Eventually, if everything works out the mug shot photos are taken down. If your case is dismissed or you are found not guilty at trial, your the public records are taken down and the files are expunged and removed.

COMMON MISTAKES THAT ARE DETRIMENTAL TO A DUI CASE

One of the things we see is that the person who is being arrested believes they have done nothing wrong, and sometimes they haven't. Maybe they were stopped because they left the turn signal on, or they pulled out of a parking lot at night without turning on the car headlights. Sometimes they are pulled over for other reasons. Once confronted by police they think they can explain their way out of it, and they think more talking and explaining helps. This is rarely true. There is an old saying, "even a fish wouldn't get caught if he kept his mouth shut." One of the side effects of alcohol is that a person becomes more emotional and more talkative. The best practice is to be courteous and say as little as possible. Everything you say can and will be used against you.

People also think they can pass the field sobriety tests. Field sobriety tests are divided attention tasks and physical balance exercises. They really are not tests at all. Typical field sobriety tests are standing on one leg and counting aloud by one thousands

such as one thousand one, one thousand two and so on up to one thousand thirty. Another standard field sobriety test, is walking on a line or imaginary line while placing your feet heel to toe and counting aloud by one thousands. Try to do this sometime. Think about doing it on the side of a highway at night with cars speeding by and bluelights flashing. Add to that the knowledge that if you do not do it well, you will be handcuffed and taken to a jail. If you do well on the balance tests, many times the officer asks if you are satisfied with the result. Often people think they should do it again and keep doing it until they start to lose their balance. Trying to do too much, trying to talk your way out of it, talking too much, telling stories and trying to get the officer on your side is not always a mistake, but most of the time it is.

What Is The Process After Someone Is Pulled Over On Suspicion Of DUI?

In South Carolina your car stop is videotaped and audio recorded. The camera films your car as the patrol car follows you. When you stop your car after you see the blue lights flashing and the police officer

or South Carolina Highway Patrol Trooper walks to your car, he or she is wearing a microphone which records everything you say. Additionally, all police officers in the Myrtle Beach area are equipped with a body camera; these cameras record both video and audio, so what you say is recorded.

Once you pull over, the officer will approach you and ask for your license and registration; if the officer smells alcohol or saw you leaving a bar, he or she will ask you



questions about drinking, such as where have you been? How long have you been out? Have you had anything to drink? If you are not asked to step out of the car, there is a chance that you will be issued a ticket and allowed to leave. If the officer smells alcohol or you look like you have been drinking or have bloodshot eyes, you will be asked to step out of the car. In my opinion, once the officer asks you to step out of the car, you are going to jail.

There is no upside for the officer to ask you to get out of the car and do field sobriety tests, then put

you back in the car and let you leave. If a person has had anything to drink at all, the officer is looking to gain evidence to take that person into custody. Typically, you will be asked to do three field sobriety tests, which include the Horizontal Gaze Nystagmus test where you are supposed to



follow a pen with your eyes as the officer observes whether your eyes twitch at a certain angle. Another test is standing on one leg and holding the other leg out while holding your arms by your side, and the third test is walking heel to toe along a line nine or ten steps then turning and walking the same number of steps the other way while counting aloud.

These tests are typically performed at night on the roadside with blue lights flashing as cars speed by. Once the officer is satisfied he has enough incriminating evidence, he'll ask you to turn around and put your hands on the patrol car. You are then handcuffed behind your back and put in the patrol car. Usually the highway patrol will put you in the

front seat. Police officers from Horry County or Myrtle Beach or North Myrtle Beach or Surfside or Georgetown will put you in the back seat because they have a cage or wall between the back seat and front seat. While you are in the police car you will be videotaped from the beginning until you get out of the car at the jail. Myrtle Beach, North Myrtle Beach, Surfside, and Conway will take you to the jail in that town or city. The Highway Patrol and Horry County will take you to J. Reuben Long Detention Center, which is the county jail.

A tow truck will be called while you sit in the police car. The police will then take your car keys and do a thorough search of the passenger compartment and trunk of your car. They will call a tow truck to tow your car; while they are waiting for your car to be towed, they will search your car with a flashlight, getting down on their hands and knees, looking under the seats, checking the glove box and other compartments in the car.

They'll take the keys and open the trunk to search it thoroughly until such time that the tow truck driver arrives. When the tow truck arrives, you will be driven to jail where they will offer you a breath test.

IS IT MANDATORY TO ADHERE TO BREATH, FIELD SOBRIETY TESTS?

In South Carolina, our law only provides for one breath test. We do not have any roadside breath tests. In terms of the field sobriety tests, the walk and turn test, along with the others: no one has to do those. There is no legal requirement to do them. The only things you are legally required to do, pull over and stop immediately if you see flashing blue police lights, state your name if the officer asks, hand the officer three documents: drivers license, insurance card and vehicle registration. Additionally, if the officer asks you to step out of the car you are required to do so. If you don't have a license, police can arrest you for no license; if you don't have insurance, they can arrest you for no insurance; if the vehicle is not registered and you don't have a registration card, they can arrest you for that.



Those are three things that you are required to provide. In general, you are required to identify

yourself for practical reasons; you have to do that. If the officer asks you to step out of the car, you are required to do so. If you don't do that, they are going to call for backup, drag you out of your car and arrest you. You have to be cooperative: you have to get out of the car, you have to identify yourself, and you have to show that you are not a threat to the officer. What you don't have to do is anything else. You don't have to answer questions beyond that, and you don't have to do any of the field sobriety tests.

In most instances, if you refuse the tests, the officer is going to get frustrated and will arrest you, but in my opinion, once you are out of the car and the officer suspects that you have been drinking, you are going to jail regardless of what you do or refuse to do. One thing that you should be aware of is that the law states that you cannot be penalized in court for enforcing a fundamental right guaranteed by the United States Constitution. You have the right to remain silent, so if you tell the officer that you do not want to answer questions or you are going to remain silent, the police cannot talk about that later in your trial. If you say you want a lawyer before you answer questions, the police cannot say later in

court that you asked for a lawyer and refused to answer questions because the courts have said that the right is worthless if you are going to be penalized for exercising it. It is called a Doyle violation, after the United States Supreme Court decision and the South Carolina Supreme Court has affirmed the decision as well.

Are The Standardized Field Sobriety Tests Admissible In Court?

In South Carolina, if you are going to trial, the field sobriety tests will always be admissible, unless there is something wrong with the video, or there is some legal reason for it to not be valid, such as the officer did not follow the right procedure; in those cases, sometimes the tests can be suppressed. In terms of the field sobriety tests themselves, as long as there is not some other reason for suppression, such as an invalid stop or improper videotaping procedure, those field sobriety tests are admissible and are shown in a jury trial in South Carolina so that the jury can determine for themselves whether or not you look like you are intoxicated.

What Role Does The Breathalyzer At The Police Station Play In A DUI Case?

There are some time frames where the breathalyzer has to be offered. For a conviction of driving with an unlawful blood alcohol concentration, it has to be offered within two hours of the arrest and for a DUI within three hours. In that situation, you are transported to the local jail or a county detention facility where they have the Data Master, which is the breath test machine.



Once you are transported to jail and under arrest, they take you inside the jail, take the handcuffs off and put you inside a room. It's a very small room where you stay in a certain spot where they turn on a different camera, and videotape you for the second time. The officer will explain to you that you can take the test or refuse it. Then there are certain things that they must do. They have to advise you of your rights, about the test itself and what will happen if you don't take it. They must say you are being video recorded. The officer must look into your mouth to make sure

that you don't have anything in your mouth, including any dental work that can be removed. If this is the case, you are required to remove it. You cannot have gum or anything else in your mouth.

The officer is required to observe you on videotape for 20 minutes. This is a 20 minute observation period where during that time, you cannot leave the room or go off camera; if you need to use the restroom or, generally, they will not let you go, so you have to stay in there for that period of time. Once that 20 or 25 minutes is up, the officer will tell you that you have two minutes to blow into the machine. You will be given a mouthpiece; and as you blow in, you will hear a beeping turn into a steady hum, and at some point the machine will accept that breath sample and when it does it makes a sound as the breath chamber closes. The machine produces a printed document with the breath test reading shown as the subject sample which is shown as a decimal point such as .08 or another number depending on the result.

CAN SOMEONE REFUSE BREATH TEST IN SOUTH CAROLINA?

You do have the right to refuse the breath test. In South Carolina, if you refuse the test your drivers license is suspended and the officer seizes your license. Note that when you hand your drivers license to the officer on the side of the road the officer does not give it back to you. You only get it back if you take the breath test and your sample is .14 or lower.



If you refuse the test, or blow .15 or above the officer will give you a notice of suspension which allows you to request an administrative hearing to see if the suspension procedure was properly followed. The notice of suspension form is a blue 8 1/2 by 11 inch letter size document. Keep it. You will need it to request a hearing and get a temporary alcohol drivers license, so you can drive while you are waiting on your breath test hearing which will be about two months after the hearing is requested.

Can Someone Be Asked To Give A Blood Test Instead Of A Breath Test In South Carolina?

Once you take a breath test, you have an absolute right to get what is called an independent test. If you ask, the officer is required to take you to a local hospital to have blood drawn at your request so you can have an independent lab test for alcohol. If you obtain a blood sample the person who draws the blood will get two vials of blood, one for you and one for the officer, who will have the blood tested for alcohol and drugs. The additional test will be used against you in court if it shows alcohol and or drugs are present. Keep in mind a drug includes prescription drugs you may be taking under a doctor's care as well as illegal street drugs.

We see instances where someone asks on video for an independent test and the officer does not transport them to the hospital. If for whatever reason the officer does not honor the request for an independent blood sample, most likely the DUI case will be dismissed. The jails are not able to draw blood so a person must be transported to a hospital emergency room. It is inconvenient and time

consuming. Sometimes the officer just does not do it.

Is A Warrant For A Blood Test Issued If Someone Refuses A Breath Test In South Carolina?

The United States Supreme Court recently ruled a search warrant is required to draw a persons blood sample. At this time, November 2016, we are not seeing search warrants for DUI cases. Blood tests, however, are common when a person is hospitalized as a result of being in a automobile accident. If the alleged driver of the vehicle is suspected of being under the influence of alcohol or drugs the officer will ask the hospital personnel to obtain a blood sample. Under South Carolina DUI law, a medically licensed person must make a determination that the person is physically unable to provide a breath sample. The reason may be the person's mouth is injured, they are unconscious or they have been admitted to the hospital and cannot be taken to jail.ite, the police officer shows up at the hospital and asks the person to give a blood sample.

If the person does not consent to it, then the officer writes a refusal, which has the same consequences as

refusing to take a breath test. In many instances the hospital draws blood for medical purposes. The hospital tests for alcohol as part of the emergency treatment plan. Use of that blood sample is complicated and sometimes it is not admissable in court.



HOW ACCURATE ARE BREATHALYZER MACHINES AT THE STATION?

Police agencies and courts rely on breath test machines being accurate. The manufacturers insist that they are accurate. Everyone generally concedes that a blood test is accurate and the better test. In science for a thing to be scientifically valid the same experiment must produce the same result everytime. Some jurisdictions obtain multiple samples to measure for variations in the test result. Scientists and chemists advise testing three samples. Whether you get two samples or three, they will not be exactly the same test result. If the sample readings are not close there is a problem with the test. South Carolina DUI law requires just one breath sample and one reading so we never know if the test is accurate. What we have seen over the years is some people may have a low reading and appear so drunk they cannot stand up and can barely speak. We also see people with high blood alcohol readings who look, act and speak completely sober. In general, if the person looks good on the video, the jury will disregard the breath test and find them not guilty.

There are so many factors to take into consideration and all experienced DUI lawyers will tell you the same thing about the tests not appearing reliable based upon video evidence which contradicts the breath test results.

The breath test is given the same way whether the person is young or old, big or small and whether the person drinks regularly or rarely. Alcohol affects people very differently based on the person's size, what they have eaten, their diet, their health, how tired they are and how much sleep they have had and so on. The breath test readings are not as consistent as you would expect them to be.

What Are Some Defenses That Can Be Derived From Breath Tests Or Field Sobriety Tests?

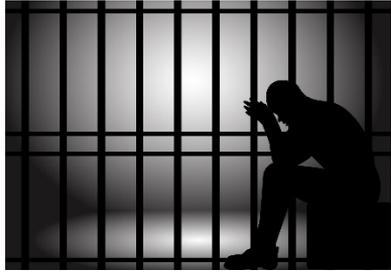
In South Carolina, police are required to maintain their Data Master for blood alcohol testing. They have to be certified to run the machine. They have to get current on that, including a refresher course every couple of years. Most have been trained in the Police Academy for purposes of DUI detection. Some of them have more training than others. It's not that extensive: they are just taught to look for certain

clues, so they are looking at someone to see if they are oriented at that place and time, in other words, where they are.

Is the person emotional, talkative, unsteady on their feet, speaking with a thick tongue or fumbling for the driver's license and registration, which is something anybody does when they are stopped by law enforcement. There are probably 50 things that we can count out that we have all heard and they have testified to. That's basically what they are looking for. It's the certain physical attributes to determine if somebody is impaired in their opinion.

HOW SOON CAN YOU GET OUT OF CUSTODY IF ARRESTED ON DUI CHARGE?

In almost every instance, you will spend a night in jail, depending on what time you went in. If you were arrested at 4 o'clock in the afternoon, you are probably going to go to a



bond hearing the next morning around 9:00. If you are arrested at 3:00 a.m., you are either going to bed or a bond hearing at 9:00 a.m. or 3:00 or 4:00 p.m.

What Can An Attorney Do To Assist A DUI Client That Is In Custody?

Maybe some time in the past you had to go pick up someone, or you knew the right person to call to get someone released from jail. I've certainly gone to the Myrtle Beach jail in the middle of the night to help somebody I knew get out; it's happened a couple of times. Myrtle Beach and North Myrtle Beach may release you under certain circumstances; that is, if everything that could go right went right, you knew somebody and the officers allowed it.

They are still required to keep you for at least four hours, but the issue of having a special circumstance in South Carolina is where our own Supreme Court ruled that it should not be done anymore. I'm not sure why, but the Court ruled that if a special circumstance was made for one person, for example, if a judge were called in the middle of the night to post bond for someone, then the court ruled that the judge had to post bond for everybody. That was the end of that several years ago. The most likely thing that is going to happen is that you are going to stay in jail until the 9:00 a.m. bond hearing.

When Does Someone Have A First Appearance In Court After They Have Been Released?

If their license was suspended for refusing to take the breath test or for blowing a 0.15, then they have 30 days to request a hearing.

But also on the ticketed stub that was issued on the DUI, in the fine print,



there is a court date. This court date is going to come up more quickly than that 30 day period.

Sometimes people confuse the dates. In addition, in South Carolina, if a person were also charged with what we call a felony or a serious misdemeanor, they've got three other court dates, which are in a different courthouse in a different town. It's very confusing. In Myrtle Beach, your court date comes up fast, and you can probably have a court date there within five days. It's very important that you figure out when your court date is, and you almost need a lawyer to figure it out for you.

After Getting Out Of Jail, Is It The Best Time To Retain An Attorney?

You need help because for most people, their first reaction is that they want to get their car back. Now their car may be in another town in another tow lot. Just to handle that is very problematic. In Myrtle Beach, additionally, we have a lot of young people coming in; a lot of young people go to college here from out of state. What I've found is when they go to get their car back, many times, the towing companies won't give them the car because it is not registered to the child: it's registered to the parent.

When you can't get your car back, you need a power of attorney. No one is walking around with a power of attorney in their pocket. So, it just can seem very frustrating. That is one of the main things that people deal with after they find somebody to post bond and bond them out.

At that point, many of them don't even have a driver's license; so even though they just went to



the towing company and paid several hundred dollars to get their car back, they can't drive it. The towing companies won't let them leave because they want to see their license and they know they don't have one.

Then the situation is that if you can't get your car out of the towing lot, you are paying daily for it and racking up more fees for the towing company. That is just the beginning of the nightmare that people are experiencing after getting arrested. If they've lost their license, if their driver's license has been suspended, even if they are out of state and their out of state license is valid, it's still very important

to start requesting that temporary license as quickly as possible.

A client will come and meet with us on Monday morning if they have been arrested over the weekend; we use FedEx to send that application in to the state capital at Columbia and get the process started, so we are usually able to get someone's temporary license back within a week to 10 days, and that's about as quickly as it can be done. You have all those issues to deal with as a result of a license suspension due to DUI, and they happen immediately.

WHAT ARE DRIVER'S LICENSE CONSEQUENCES ASSOCIATED WITH A DUI PROCEEDING?

If you come into our office as quickly as possible, once we have been retained to help you, at that point there is an administrative fee of \$200. We take \$200 from you, and we put the temporary license application in a FedEx package and send it out the next day to Columbia, South Carolina, to the Department of Motor Vehicles (DMV), and that's where the administrative hearing is held. Once they receive it, they schedule a hearing so that we can contest a breath test, and they will send that over to the Department of Motor Vehicles and the Department of Public Safety.



Then once you're entered into the system, you will get what's called a temporary alcohol license or temporary driver's license. This usually takes a week from your being entered into the system. At that point you can go to the local DMV and get that license by paying a \$150 fee. That license is issued,

and you can finally drive. This has all happened in the course of a week or 10 days, and we've gotten you your temporary alcohol license in hand, and now you can drive while we wait for the administrative hearing to contest the breath test.

When Does The Administrative Hearing Take Place? What Actually Happens There?

The administrative hearing for the loss of your license takes place about three months later. Fortunately, by the time we are on the way to the hearing, we've taken care of your court dates coming up for the DUI. Three or four months later, one of the lawyers here at the Complete Legal Defense Team will go to the administrative hearing for you. You could go to it, but honestly, the way the process works, we don't require you to go when you are in that emotional position. It's just a procedural hearing.

In those instances, many times and for whatever reason, there is not enough evidence presented, and the administrative hearing officer rules in our favor based on a lack of evidence. Then, our client is eligible to get their driver's license back. We get their driver's license back to them, and all this happens

while we are waiting for the DUI trial to come up. Of course, in South Carolina, we have a right to a jury trial, so we request a jury trial, in most cases, unless we can work it out sooner.

We request a jury trial and wait for it. In that instance, what you have avoided, with our representation at the administrative hearing, provided we are successful, is attending ADSAP, which is a series of alcohol driving classes. Enrollment costs \$2,500, and you would have to go to classes once a week for six months or more. The other thing that you have avoided is having to pay for and install an ignition interlock device in your car, which is a breath test machine that is attached electronically to the ignition of your car that you have to blow into for the car to start.

Who Is Required To Have The Ignition Interlock Device Installed In South Carolina?

In South Carolina, the interlock device is required for the first offense if you have a DUI and you refuse the breath test, if you blow too high or if you lose at the administrative hearing



for having refused or blown too high. You are required to have it installed in your own car, and you pay for it.

Are There Any Laws That Address Drivers With A BAC Level Below The Legal Limit?

If you are below the legal limit and are suspected of being impaired, then they will ask you to provide a urine sample. Many times, we see a situation where someone takes a breath test, and they blow nothing. It's just zero alcohol in their system. Then the officer, for whatever reason, perhaps if the person is acting suspicious or not acting right, will require a urine sample. Many times, people refuse to give a urine sample because they say, "I just got arrested and proved that I am innocent by passing the breath test so why do I have to go and take another test?" In that situation, the officers write them up for refusal, and everything that happens to you for refusing the breath test now happens for refusing to provide a urine sample.

DO YOU SEE MANY CASES OF PRESCRIPTION DRUG-RELATED DUI?

We see prescription drug involvement mostly in three instances. This happens either when someone refuses a breath test and are then asked to give a urine test, when the officer is arresting the person and they discover that they have prescription drugs or illegal street drugs, or the person volunteers information about their own medication. The officer will then start asking, “Have you taken any medication? How much have you taken?” and that sort of thing. If someone has taken prescription medication or street drugs and they go in and take the breath test and they blow over the so-called legal limit, then they usually don’t go any further.



They’ve got their breath tests, they’ve got the DUI arrest, and they are not looking for anything else beyond that. If you take the breath test and you blow over 0.05, they really can’t require you to take a drug test. It’s usually in refusals that we see prescription drugs being brought up as evidence. If

they give you a blood test or usually with a urine screen, they can tell what is in your blood. There is a level as to how much is in there, and then they start arguing over how that can impair a person.

Are Drug-Related DUI Cases Harder To Defend Than An Alcohol-Related DUI Case?

I don't know if they are harder to defend; they are just different. We have had many cases where someone was taking drugs for some kind of psychological condition, and we have seen people who seemed really in a state of temporary insanity or, for a lighter term, out of their mind. It seemed like they were grossly intoxicated, but ultimately they were just having some kind of psychotic break for which they had been treated by psychiatrists, and even if what they did was extremely dangerous, such as driving on the wrong side of the road at night, there was no impairment. It was just mental illness or a mental disease.

For most people who are prescribed a medication, the medical providers, doctors or pharmacists will tell you that those people have been prescribed that drug for a reason. The reason that it's prescribed is to

make them go back into more of what we would call a normal state. For people who are required to take prescription drugs, those drugs fill a need in that person whereas somebody who doesn't need those drugs and takes them recreationally to get high is what makes them unsafe to take them while driving.

In those instances, certainly you must have an expert who can be able to explain that. That's what can be different about it. Almost all prescription drugs, it seems, have warning labels, saying that they should not be mixed with alcohol. So that is always an issue that is raised by the prosecution: you took a prescription, but you mixed it with alcohol, and those two things together equal intoxication.

PENALTIES ASSOCIATED WITH DUI CHARGES IN SOUTH CAROLINA

A DUI first offense can land you up to 30 days in jail as a maximum; but if you blow over a 0.15 on the breath test, then that penalty is jacked up to a mandatory minimum of 30 to 90 days in jail. That becomes a big factor and is one of the reasons why many people argue that it is better not to take a breath test. To take a blood test and to blow a 0.16, all of a sudden you are facing 30 to 90 days in jail. If you had the exact same case and refused the breath test, then you are looking at up to 30 days in jail. There are some minimum penalties, two, three or five days in jail, depending on the breath test results, and this is all for a first offense DUI.



What Are Some Factors That Could Enhance Or Aggravate A DUI Charge In South Carolina?

One big factor is if you have a prior DUI in the past 10 years in this state or another, then that means you are looking at a mandatory minimum of five

days or up to one year in jail. For a second offense DUI, you also lose your license for one year with no provisional license. Depending on the breath tests and the like, those penalties can increase, along with the minimums.

The other thing that is the biggest factor we have seen and certainly handled in a lot of these cases is that in South Carolina, if you are involved in an accident and



someone is injured, including a passenger in your vehicle, a pedestrian or a passenger in another vehicle, if someone is injured and it is serious enough, this is called grave bodily harm.

Grave bodily harm could see the defendant charged with a felony with a sentence of up to 15 years in prison. If you take the same factors and someone is killed as a result of the accident, whether a pedestrian, a passenger in your car or another car, then the penalties are up to 25 years in prison without the possibility of parole. That would be a charge of vehicular homicide.

Does South Carolina Have A Diversion Program For First Time DUI Offenders?

In general, there is no diversion program. According to state law, DUI charges are not eligible for pretrial intervention. In some instances, we see situations where the prosecutor is willing to alter the charge and refer it to pretrial intervention. This doesn't happen very often. There are drug courts for different types of offenses, but these do not apply to DUI. So it's pretty much all or nothing for a DUI charge. Either you are going to be convicted of a DUI after a plea or a trial, or you are not. The DUI is either going to be dismissed, or you are going to be found not guilty of it.

DO MOST DUI CASES SETTLE PRIOR TO TRIAL OR DO THEY GO TO TRIAL?

Generally speaking, the court systems are very busy here. There are the DUI courts, the summary court and the central jury court: all these DUI courts have a lot of cases to deal with, and so there are a lot of negotiations that happen here. Certainly, in Myrtle Beach, in many instances, if you mount the right kind of defense and do the right things, many times the prosecution will reduce the DUI and basically dismiss the ticket in exchange for another ticket or warrant being issued for a second offense. That's the way it is done.



Typically, they will make an offer, or we will request it or reach a plea agreement with them so that the DUI is dismissed or the client is found not guilty, and then a warrant is issued for an offense, such as reckless driving, which is a 6 point moving violation with a fine of \$445. Honestly, for the cases that we handle, and we handle a lot of these cases, that's what happens over 90% of the time. For first offense

DUIs probably 90% of our cases are dismissed with a plea or fine paid for reckless driving, and in most of those instances, we can do that without first having to appear in court. We call it plea by affidavit.

We have our client sign a one page affidavit and submit that to court. Once that is handled, the DUI is dismissed, and the person receives points on their license and gets an insurance penalty for a moving violation, which is not a DUI. It's really a very good outcome, and many times, we'll have a case that we think that if we went to trial on, we could win. First, we don't know that. We never know that with certainty. Many times, people who have a weak DUI case are offered a reckless driving, and our advice is always that if it were us and we were offered that to stay out of court, not have a day-long trial, not risk a DUI, not risk a jail sentence and not have the public humiliation and all of that by being in court in front of everybody, or a jury, we always recommend that the person take the reckless driving.

In some rare instances where we have evidence that there was actually no reason for the police to pull the car over, sometimes we have that on videotape,

and sometimes we are able to make motions to the court or to the prosecutor to get that reduced to something else, even a lesser traffic violation, but the majority of the DUI cases that we handle end up with a reckless driving.

WHEN WOULD TAKING A DUI CASE TO TRIAL BE FEASIBLE?

We take a case to trial when there is no other alternative. A case will go to trial where the prosecution says that they are not going to dismiss it and are going to set it for trial. We talk to the client and tell them that there is no upside at all for them to take a plea. We have been retained to try the case, and we are willing to try the case. Another thing is where there may be some embarrassment or something similar, there is just no reason not to try it, or there is no reason not to contest the case. Sometimes clients want to go to trial; sometimes for a variety of reasons they do not.



How Do You Advise Clients That Want To Plead Guilty To A DUI Offense?

Don't do it. Don't plead guilty to get it over with because it's not going to be over then. If you had a high reading on the breath test, you just might get an ignition interlock device. You might also have to go to the ADSAP classes. The person is going to have

a DUI on their record for 10 years, and of course, they may have to pay a high fine in getting it over with in that regard.

Depending on what happened with the breath test, there could be other penalties and other suspensions on top of that. So it's not a good idea to do that. Sometimes people think that when they hire a lawyer, they have to do a lot. That's what we do; we do everything. You are our client, and we need to find out what happened once we are retained and on the case. You, as the client, really don't have to do anything other than to make sure that we can reach you and keep you informed.

Why Is It Important To Retain An Experienced DUI Attorney To Resolve A DUI Case?

The importance of having an experienced DUI attorney is just the fact that you know what to do and the prosecution knows you know what to do. In our situation, we may have tried more DUI cases than even the prosecutors have, and certainly the prosecutors that have been in the prosecution office for several years,



they've tried innumerable DUIs, but sometimes prosecutors go in and out of those positions. Sometimes they are entry level positions, and they may only stay there for a year or two. In that instance, they know who will try the cases, and some lawyers are gun shy; they are not willing to do it.

They have anxiety in doing it; and if they do try a case, they don't know all the things that they can raise or the ways that they can argue to a jury for an acquittal. The prosecutors are very attuned to who the lawyers are: the lawyer's track record, the lawyer's willingness to fight for the client and the lawyer's ability. The prosecutors are very good at sizing up the other lawyers, just as the lawyers are very good at sizing up the prosecutors. If you have an experienced DUI lawyer who is confident and able, has the talent and the skill set and the ability and the experience to win your case, you are just in a lot better position to negotiate.

Cases get negotiated much more quickly with a better outcome when the prosecution knows that the person who is defending you will stand behind the case and go to fight if they have to, and many

times that keeps the trial from ever taking place. Many times it triggers the negotiations and the settlement because of what could happen and what your lawyer is capable of doing without actually having to go to trial.

ATTORNEY GREG MCCOLLUM'S EXPERIENCE IN HANDLING DUI CASES

I have handled DUI cases in the Myrtle Beach area since 1988. I worked for about five and a half years as an Assistant District Attorney and had a limited number of DUI cases to prosecute; in fact, I was prosecuting much more serious cases. I left the



DA's office after five years and established the centralized DUI courts in this county. At that time we had a backlog of about 600 DUI cases so we set up a specialized DUI-specific court in the central jury court and prosecuted DUIs exclusively there for just under two years. After that, I entered private practice, which was about 23 years ago. We have defended DUIs since that time, along with other types of offenses.

How Have The Laws Pertaining To DUI Charges Evolved Over The Years?

Certainly, the focus on DUIs has intensified over the years, and the breath test or the blood alcohol level has gone down substantially. This means that when I first started practicing, to get the inference of a

drunk driving charge required a 0.12; then it was dropped to a 0.10, and now it's down to 0.08. Of course, now they are trying to drop it further.

What Cities And Counties Do You Serve?

Of course, we serve Myrtle Beach, as well as North Myrtle Beach, which is a separate municipality, along with Surfside Beach, Murrell's Inlet, Pawley's Island, Georgetown and other towns in the county, such as Conway, Longs, Loris or Aynor, and also sometimes outside the county, for example, Florence.

HOW DOES YOUR FIRM GENERALLY ASSESS AND DEFEND A DUI CASE?

The first thing that we are going to do is find out who you are. We are going to find out what special needs you have. For instance, commercial airline pilots, medical doctors, truck drivers and engineers have one



thing in common: licenses to practice their trade. A DUI could affect your livelihood and your career, like a school teacher. The list goes on and on. We want to know what is important so that we are protecting it in the right way.

The other thing that we want to know is just basically the circumstances. What happened? Why were you pulled over? Did the police follow the proper procedure? In South Carolina, we have strict videotaping statutes. We have all the requirements that must be met. In many instances, it's a fail for the prosecution and a fail for the state because they did not follow proper procedure. There could be something that someone else wouldn't even notice, but we would pick up on that and raise it with the

prosecution, and that's enough to get a plea negotiation. We look at that, and we want to know everything about the case, everything about our client and find out what we can do to help them.

We want to know if they are on medication, what it's for and their medical history, which can be extremely relevant. Perhaps you had less of a reaction time due to knee or back surgery, or maybe you suffered a seizure or stroke. We want to find out everything about our clients and the facts of the case so that we can do all that can be done to help that person get the best possible results, put the DUI charge behind them, move on with their lives and get back to where they were before the arrest.

Are Outside Experts Ever Needed To Effectively Defend A DUI Case?

In South Carolina, someone may blow above a 0.08. They are not arrested or charged with driving under the influence or a DUI; instead they are charged with this other law called driving with an unlawful alcohol concentration. Sometimes, it's called DUAC. In those cases, somebody from the state lab is

required to come in and explain how the machine works for the breath test machine.

They have to put that in evidence to prove that the machine is working properly. In those types of cases, it's recommended that if you are going to trial, we have an expert testify about the issues with the machine. With any scientific instrument, there are always many things that could go wrong, which do, and things that it doesn't measure accurately. We do recommend that someone have an expert in those types of cases.



HOW OFTEN ARE YOU ABLE TO HAVE DUI CHARGES DROPPED, DISMISSED OR REDUCED?

If we are talking about a DUI first offense in South Carolina and there are no other accompanying charges, I would say at least 80% to 90% of the time, we are able to have the charges reduced so that the actual DUI case is dismissed.

How Is Hiring A DUI Attorney Different From Retaining A Public Defender Or Self-Representation In A DUI Case?

It is just impossible to try your own DUI case. A person may be able to negotiate with the prosecution and derive some sympathy or maybe get a break. In terms of the Public Defender, their office is very limited in this county. They were not available for the last 15 or 20 years at all. Now they have a very limited contract where they are able to represent some people. In those cases the biggest issue is not the quality of representation necessarily but more so being eligible for it. Almost everyone who has a car, a driver's license and a job is not going to be eligible for a public defender.

What Sets Your Firm Apart In Handling DUI Cases In South Carolina?

One of the main things that sets us apart is that we do only DUI and criminal defense cases. While we handle a lot of major felony cases, very serious crimes, we also concentrate on DUI. We have an in house DUI counsel, Dean Mureddu. He is the member of the DUI Defense Lawyers Association and the National College of DUI Defense. He stays abreast of all DUI developments. He attends seminars, meets with people who teach the science of DUI and learns from other lawyers throughout the country, the best DUI lawyers in America.



He is part of that, and they all get together to study the science and the effects to ultimately learn from each other. They learn from law enforcement, professors and medical doctors. He has the ability to stand up in front of a jury and to negotiate with the prosecutor. He has the experience: he has tried probably over 100 DUI cases to a jury in his legal career with over 20 years trial experience. He has

also tried murder cases and others, but what he really likes to do are DUI cases.

He has the track record, the talent, the ability and the training to be a good DUI lawyer. Many times people just don't have the resources or have that level of ability to do what needs to be done. I'm very proud of that, and that is something which I think sets us apart and distinguishes us. If you talk to our clients, you'll find out the same thing: they are extremely happy. This comes from our ability to help people.

DO YOU HAVE ANY DUI CASE STUDIES THAT YOU WOULD LIKE TO SHARE?

There are certainly many stories that we can talk about where someone blew a 0.21, and they went to trial and were acquitted. Someone was in an accident, and they were acquitted. They had a serious felony DUI charge, and we proved that they were not driving the vehicle. There are too many to even enumerate.

The best story that I can tell or the best thing that I can tell is how relieved our clients are who thought that it was hopeless, who



thought they were going to lose their driver's license, who thought they might go to jail.

How relieved and how grateful they are when we tell them that their DUI case has been dismissed or reduced and they are able to get on with their lives, going back to being the good, productive, law-abiding people that they were prior to just one night or one day when they were charged with a DUI. The greatest story would be just the relief that we provide to our clients, how happy we can make them

and how much stress we can take away from them to put them back on the road to success. That would be my best version of the most memorable thing. That happens here every month and sometimes every week.

DISCLAIMER

This publication is intended to be informational only. No legal advice is being given, and no attorney-client relationship is intended to be created by reading this material. If you are facing legal issues, whether criminal or civil, seek professional legal counsel to get your questions answered.

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