

EMERGENCY CHECKLIST

THE 10-DAY COUNTDOWN

A Florida Lawyer's Guide to
Beating the DUI Odds

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PART I: THE DEFENSE FOUNDATION

Introduction: A Word from the Author

To My Future Client,

If you are holding this book, you are likely going through one of the most stressful periods of your life. I know the feeling. The prosecution wants you to believe that your case is an open-and-shut matter of "numbers" and "police reports." I am here to tell you that they are wrong.

As a Board Certified Criminal Trial Lawyer, I've spent my career finding the cracks in their "perfect" cases. Whether it's a breathalyzer machine that hasn't been calibrated, an officer who skipped a step in a roadside exercise, or a stop that violated your Constitutional rights, there is always a path forward.

At my firm, **dui2go**, we don't just "process" cases; we deconstruct them. We use the same intensity I bring to my cycling trips—focus, endurance, and a refusal to quit—to fight for your driver's license and your reputation. In this book, I've laid out 100 of the most critical questions I've answered over the decades. We are in this together. Let's get to work.

Sincerely,

W.F. Casey Ebsary

Attorney at Law

dui2go.com

Chapter 1: The Critical 10-Day Window



When someone calls me after a DUI arrest in Florida, the first thing I ask is simple:

“How many days ago were you arrested?”

Because in Florida, the most important part of your case may happen before you ever step into a courtroom.

Under Florida law, you have only **10 days** from the date of arrest to request a Formal Review Hearing with the Florida Department of Highway Safety and Motor Vehicles (DHSMV). If you miss this deadline, you lose your right to challenge the administrative suspension of your driver’s license.

That suspension begins automatically — regardless of what happens in your criminal case.

This is why I call it **the Critical 10-Day Window**.

Why the 10 Days Matter

Florida DUI law operates on two completely separate tracks:

1. **The Criminal Case** (handled in court)
2. **The Administrative License Suspension** (handled by DHSMV)

The administrative suspension is triggered under **Florida's implied consent law**, found in § 322.2615 and § 316.1932 of the Florida Statutes. You can review the statutory language directly here:

- Florida Statute § 322.2615 (Administrative Suspension)
<https://www.justia.com/law/florida/statutes/title-xxiii/chapter-322/section-322-2615/>
- Florida Statute § 316.1932 (Implied Consent Law)
<https://www.justia.com/law/florida/statutes/title-xxiii/chapter-316/section-316-1932/>

If you blew over a .08, or if you refused a breath test, your license is immediately subject to suspension.

Unless we act — fast.

You can verify administrative hearing procedures directly at the official DHSMV website:

<https://www.flhsmv.gov/driver-licenses-id-cards/education-courses/dui-and-iiid/>

The Moment the Clock Starts

The 10-day countdown begins the day you are arrested.

The officer likely issued you a **Notice of Suspension**. That document is not just paperwork. It is your temporary driving permit — valid for 10 days only.

After that?

If no hearing is requested, the suspension automatically goes into effect:

- **6 months** for unlawful breath alcohol level (first offense)
- **1 year** for refusal (first offense)

The refusal suspension length is specifically addressed in Florida Statute § 322.2615 and § 316.1932 (linked above via Justia).

The 10-Day Strategy Table

Here is how I approach those first 10 days with my clients:

Milestone	Action Required	Goal
Day 1	Preserve evidence; record your memory of the stop.	Accuracy for defense.
Day 2–5	Hire counsel; request the DHSMV Formal Review.	Save your driving privilege.
Day 10	Deadline for Administrative Hearing request.	Stop the automatic 1-year suspension.

What I Do Immediately in a DUI Case

When someone hires me within the 10-day window, I move quickly.

First, I File the Formal Review Request

We formally demand a **DHSMV Formal Review Hearing**. This stops the automatic suspension from taking effect until the hearing is resolved.

That buys time.

Time is leverage.

Second, I Subpoena the Arresting Officer

The administrative hearing gives me a powerful tool:

I can subpoena the officer and cross-examine them under oath — before the criminal case progresses.

That testimony becomes discoverable.

That testimony locks them in.

That testimony often reveals weaknesses.

In many cases, this early testimony is the first crack in the prosecution's foundation.

Administrative vs. Criminal: Two Separate Battles

Many people assume, “If I beat the criminal case, I automatically get my license back.”

That is not always true.

The administrative suspension is civil in nature and governed by Chapter 322 of the Florida Statutes. The criminal DUI charge is prosecuted under § 316.193.

You can review the criminal DUI statute here:

Florida Statute § 316.193 (Driving Under the Influence)
<https://www.justia.com/law/florida/statutes/title-xxiii/chapter-316/section-316-193/>

These proceedings are independent.

I defend both.

Chart: What Happens If You Miss the 10-Day Deadline

Scenario	Result
No Formal Review Requested	Automatic suspension begins
First-Time Blow Over .08	6-month suspension
First-Time Refusal	1-year suspension
Second Refusal	18-month suspension + misdemeanor charge

Missing the deadline removes one of the most strategic early opportunities in your case.

I do not let that happen when clients call me in time.

The Strategic Value of the Formal Review Hearing

Many lawyers treat the administrative hearing as an inconvenience.

I treat it as discovery.

During the hearing, I examine:

- Whether the officer had **lawful cause** to stop you.
- Whether there was **probable cause** for arrest.
- Whether breath testing procedures complied with Florida Administrative Code.
- Whether implied consent warnings were properly read.

Each of these issues can impact both the administrative and criminal sides of the case.

And sometimes, if the officer fails to appear, we win the administrative hearing outright.

Flow Chart: The First 30 Days After Arrest

Arrest → 10-Day Temporary Permit → Formal Review Requested → Hearing Scheduled → Evidence Subpoenaed → Officer Testimony Preserved → Criminal Case Strategy Refined

This early process often shapes the entire defense.

What If You Already Missed the Deadline?

If you are reading this after the 10 days have passed, do not panic.

While the Formal Review option may be lost, we can often:

- Seek hardship reinstatement.
- Attack the criminal case directly.
- Challenge breath testing reliability.
- Suppress unlawful stops.

I explain more about my background and approach on my bio page:

<https://dui2go.com/about/>

And if time is critical, contact me immediately here:

<https://dui2go.com/contact/>

Frequently Asked Questions About the 10-Day Window

Does requesting the Formal Review guarantee I keep my license?

No. It guarantees a hearing. But that hearing gives us leverage and opportunity to challenge the suspension before it becomes final.

What is the difference between a Formal Review and a Waiver Review?

A Formal Review allows us to subpoena witnesses and present evidence. A Waiver Review does not. I almost always prefer a Formal Review because it creates discovery opportunities.

Can I get a hardship license if I request a Formal Review?

Not immediately. If we pursue a Formal Review, hardship eligibility depends on the outcome. Strategy matters here, and I advise clients individually.

What happens if the officer does not appear?

If properly subpoenaed and the officer fails to appear, the hearing officer may invalidate the suspension. That can mean immediate reinstatement.

Embedded Video Resource

On DUI2Go.com, I discuss early defense strategy and license issues in several videos, including my overview of Florida DUI defense strategy. I recommend reviewing those resources to understand how quickly early mistakes can impact long-term consequences.

You can explore my DUI defense video library here:

<https://dui2go.com/>

My Philosophy on the First 10 Days

I have defended DUI cases across Florida for decades. I am Board Certified in Criminal Trial Law — a distinction earned by fewer than 1% of Florida attorneys.

The first 10 days are not about paperwork.

They are about positioning.

When we act immediately, we:

- Preserve testimony.
- Freeze evidence.
- Challenge probable cause early.
- Protect your ability to drive.
- Signal to the prosecution that this case will be defended aggressively.

Momentum matters.

Final Thoughts: The Clock Is Real

If you remember nothing else from this chapter, remember this:

You have 10 days. Not 11. Not “about two weeks.” Ten calendar days.

Florida DUI defense begins the moment the handcuffs come off.

If you or someone you love has been arrested, I encourage you to learn about me here:

<https://dui2go.com/about/>

And if you are inside that 10-day window, contact me immediately:

<https://dui2go.com/contact/>

Because in DUI defense, the first battle is not in the courtroom.

It is against the clock.

Chapter 2: The Anatomy of a Stop



Why Every Florida DUI Case Begins With One Question: *Why Were You Stopped?*

When I defend a DUI case under Florida Statute § 316.193, the prosecutor’s burden begins with proving you were “**Driving or in Actual Physical Control**” of a vehicle while impaired.

You can review the full DUI statute here:

Florida Statute § 316.193 (Driving Under the Influence)

<https://www.justia.com/law/florida/statutes/title-xxiii/chapter-316/section-316-193/>

But before the State ever reaches impairment, breath tests, or field sobriety exercises, I force them to answer a more fundamental constitutional question:

Did the officer have lawful authority to stop you in the first place?

If the stop was unlawful, everything that follows can collapse.

The Constitutional Foundation: Reasonable Suspicion

The Fourth Amendment protects us from unreasonable searches and seizures. A traffic stop is a seizure.

In Florida, law enforcement must have **reasonable suspicion** that a traffic infraction or crime has occurred before activating emergency lights.

Reasonable suspicion is not a hunch.

It is not a guess.

It must be based on specific, articulable facts.

When I examine a DUI stop, I ask:

- What traffic violation was observed?
- Was it actually a violation?
- Was the dashcam activated?
- Does the video match the officer's report?

Often, the answer to those questions tells me whether the stop will survive scrutiny.

“Driving or Actual Physical Control”

Under § 316.193, the State must prove either:

1. You were driving, or
2. You were in “actual physical control” of the vehicle.

The term “actual physical control” has been heavily litigated. Florida courts interpret it broadly. Sitting in the driver’s seat with the keys accessible can sometimes qualify — even if the vehicle is not moving.

That interpretation is based on appellate case law across Florida, including decisions from the Florida Supreme Court.

This is why I analyze:

- Engine status
- Key location
- Vehicle position
- Whether the vehicle was operable

Because control is not always as obvious as the State suggests.

The Stop Comes First

Before we even debate impairment, the prosecutor must prove the stop was lawful.

Here is how I break down every DUI stop:

Issue	Question I Ask	Why It Matters
Traffic Infraction	Was there an actual violation?	No violation = no stop.

Issue	Question I Ask	Why It Matters
Observational Basis	What did the officer claim to see?	Vague claims weaken the case.
Video Evidence	Does bodycam/dashcam confirm it?	Video often contradicts reports.
Duration of Stop	Was it prolonged improperly?	Extended stops may violate the Fourth Amendment.

If the stop fails, the case may be suppressed.

And suppression changes everything.

Pretextual Stops: Fishing Expeditions

One of the most common DUI scenarios involves what we call a **pretextual stop**.

An officer claims:

- Broken taillight
- Tag light out
- Brief lane deviation
- Rolling stop

But what they are really doing is looking for signs of DUI.

The United States Supreme Court has held that pretext alone does not invalidate a stop if a legitimate traffic infraction occurred. However, if the violation did not actually happen, the stop becomes unlawful.

That is why I:

- Measure lane deviations.
- Examine lighting equipment compliance.
- Compare vehicle code requirements.
- Analyze the officer’s vantage point.

If the stop was a fishing expedition unsupported by facts, I challenge it.

Chart: Common DUI Stop Justifications

Claimed Violation	Defense Question
Failure to Maintain Lane	Was there danger or just a momentary drift?
Broken Equipment	Was it truly defective under Florida law?
Speeding	Radar calibrated? Visually estimated?
Anonymous Tip	Was it corroborated?

Each justification must stand on its own legal foundation.

The “Failure to Maintain Lane” Myth

In Florida, momentary lane drifting — without creating a safety hazard — does not automatically justify a stop.

Officers sometimes use this as a generalized DUI trigger.

I examine:

- Road conditions
- Wind conditions
- Construction zones

- Whether any other vehicle was affected

Video evidence frequently reveals normal driving behavior exaggerated in reports.

Anonymous Tips and DUI Stops

Another common scenario involves a 911 caller reporting a suspected drunk driver.

Under U.S. Supreme Court precedent, anonymous tips must be sufficiently corroborated before justifying a stop.

If police rely solely on an unverified tip without observing erratic driving themselves, I challenge the legality of the stop.

The Fourth Amendment does not yield to speculation.

Flow Chart: From Stop to Arrest

Observation → Traffic Stop → Initial Contact → DUI Investigation → Field Sobriety Exercises → Arrest → Breath Test Request

If the first box fails, everything downstream is contaminated.

The Expansion of the Stop

Even if the initial stop was valid, the officer cannot automatically expand it into a DUI investigation without additional reasonable suspicion.

For example:

You are stopped for speeding.
The officer issues a warning.

If the officer then prolongs the stop without articulable signs of impairment, that extension may violate constitutional protections.

I analyze:

- Odor claims
- Speech patterns
- Red or watery eyes
- Admissions

Are they documented?

Are they visible on video?

Or are they boilerplate language copied into every DUI report?

Bodycam and Dashcam: The Silent Witness

Modern DUI defense is video-driven.

When I obtain bodycam and dashcam footage, I look for:

- Tone of interaction
- Consistency of alleged impairment signs
- Physical coordination
- Roadway behavior

Often, juries believe what they see over what they read in a police report.

And sometimes what they see does not match what is written.

Actual Physical Control: Parked Vehicle Cases

Some DUI arrests occur when a person is asleep in a parked vehicle.

Under Florida law, being in actual physical control may be enough.

But I examine:

- Was the engine running?
- Were keys in the ignition?
- Was the vehicle lawfully parked?
- Could the vehicle move?

These details matter.

The State's burden is not theoretical — it must be proven.

Frequently Asked Questions About DUI Stops

Can police stop me just because it is late at night?

No. Time of night alone does not create reasonable suspicion. Officers must observe a traffic violation or other articulable facts.

If I admit I had a drink, does that justify the stop?

No. The stop must already be lawful before questioning begins. Statements made after an unlawful stop may be suppressed.

What if I turned from a closed bar parking lot?

That fact alone does not justify a stop. The officer must observe a traffic violation or independent suspicious behavior.

Can a minor equipment issue justify a stop?

Possibly — but only if it actually violates Florida traffic law. I review statutory requirements carefully before conceding that issue.

The Motion to Suppress

If I determine the stop lacked reasonable suspicion, I file a **Motion to Suppress**.

That motion asks the court to exclude:

- Observations
- Field sobriety results
- Breath test results
- Statements

If granted, the prosecution's case may be significantly weakened or dismissed.

This is why the anatomy of the stop matters more than most people realize.

My Approach to DUI Stops

I do not assume officers are correct.

I verify.

I compare reports to video.

I compare allegations to statutes.

I compare memory to measurable facts.

I bring decades of courtroom experience to that analysis. You can learn more about my background here:

<https://dui2go.com/about/>

If you believe your stop was questionable, I encourage you to contact me immediately:

<https://dui2go.com/contact/>

Final Thoughts: Every DUI Case Begins With a Flashing Light

The flashing blue lights feel like the beginning.

Legally, they are the battleground.

Before breath tests.

Before field sobriety exercises.

Before courtroom testimony.

I make the State prove that moment was lawful.

Because in Florida DUI defense, the strongest cases often begin with one simple question:

Why were you stopped?

Chapter 3: Accidents and the “Switching Hats” Rule



When a Crash Investigation Turns Into a Criminal DUI Case

If your DUI arrest happened after a crash, your case is fundamentally different from a routine traffic stop.

Accident DUIs involve what I call the **“Switching Hats” Rule** — the moment when a law enforcement officer shifts from investigating a traffic crash to conducting a criminal DUI investigation.

And in Florida, that moment is governed by one of the most powerful defense tools available to me: the **Accident Report Privilege** under Florida Statute § 316.066.

You can review the statute here:

Florida Statute § 316.066 (Crash Reports; Confidentiality; Privilege)

<https://www.justia.com/law/florida/statutes/title-xxiii/chapter-316/section-316-066/>

When used correctly, this statute becomes a shield.

Why Accident Cases Are Different

In a standard DUI stop, you are not required to explain anything.

In an accident investigation, you are.

Florida law requires drivers involved in a crash to provide information and explain what happened. That requirement creates a legal tension:

If you are compelled by law to speak, can those statements later be used to prosecute you?

The answer is generally **no** — unless the officer clearly transitions into a criminal investigation and properly advises you of your constitutional rights.

This protection exists because the legislature recognized that accident investigations serve public safety and insurance purposes — not immediate criminal prosecution.

The Accident Report Privilege: Our Shield

Under § 316.066, statements made to law enforcement for the purpose of completing a crash report are **privileged**.

That means:

- They are compelled by statute.
- They cannot be used against you in a criminal trial.
- They are inadmissible unless certain conditions are met.

The statute prevents the government from forcing you to incriminate yourself while fulfilling a legal reporting duty.

When I defend accident-based DUI cases, this privilege is often central to my strategy.

The “Switching Hats” Moment

Officers investigating accidents wear two hats:

1. Civil traffic crash investigator
2. Criminal DUI investigator

The problem arises when the officer shifts roles without clearly signaling that transition.

Once the officer begins a criminal DUI investigation, they must:

- Clearly communicate the shift
- Stop asking crash-report questions
- Provide Miranda warnings if custodial interrogation begins

You can read more about constitutional protections and interrogation rights on the official website of the Florida Courts:

<https://www.flcourts.gov/>

If the officer fails to clearly “switch hats,” statements made during the crash investigation may be excluded.

Table: Crash Investigation vs. Criminal Investigation

Phase	Officer’s Role	Your Legal Status	Statement Admissibility
Initial Crash Report	Civil Investigator	Required to answer	Privileged
DUI Suspicion Arises	Transitional Phase	Unclear unless warned	Often suppressible
Criminal Investigation Begins	Criminal Investigator	Miranda rights required (if in custody)	Admissible only if voluntary

The gray area between phases is where I focus my defense.

How This Plays Out in Real Cases

Here is a common scenario:

There is a minor fender bender.
 The officer arrives and asks, “What happened?”
 You respond, “I didn’t see the other car. I had a couple drinks earlier.”

If that statement was made during the crash-report phase, it is typically privileged.

But if the officer had already begun a criminal DUI investigation and properly advised you of your rights, it may become admissible.

The distinction is subtle.
The consequences are enormous.

The Miranda Component

The privilege under § 316.066 works alongside the Fifth Amendment.

If an officer has transitioned into a criminal investigation and you are in custody, Miranda warnings are required before interrogation.

If Miranda is not provided after custody begins, statements may be suppressed.

The U.S. Supreme Court established Miranda protections in *Miranda v. Arizona*, and those protections apply fully in Florida DUI cases.

This is why timing matters.

And why I examine:

- Bodycam timestamps
- Tone and language shifts
- Whether the officer said you were “not free to leave”
- Whether field sobriety exercises had begun

Chart: Common Suppression Arguments in Accident DUIs

Issue	Defense Argument
No Clear Hat Switch	Statements remain privileged
No Miranda After Custody	Statements suppressed
Continued Crash Questions During DUI Phase	Violation of § 316.066
Report Language Blurs Roles	Credibility challenge

Accident cases are document-heavy and video-sensitive.

I review every second carefully.

The Compelled Statement Problem

Florida courts recognize that drivers are legally obligated to cooperate in crash investigations.

Because of that obligation, statements given during that phase are not truly voluntary.

The legislature created the Accident Report Privilege to prevent exactly that kind of compelled self-incrimination.

In practice, that means I often argue:

- The statement was required.
- The officer had not switched roles.
- The defendant was not free to refuse.
- Therefore, the statement must be excluded.

When successful, that exclusion can remove admissions that form the backbone of the State's case.

Accident Cases and DUI2Go Strategy

On my website, I explain how DUI defense is often won in the early procedural stages, not just at trial. You can review my broader approach to defending DUI charges here:

<https://dui2go.com/>

In accident cases specifically, I focus on:

- Timeline reconstruction
- Officer report language
- Audio transcript accuracy
- Field sobriety sequencing
- When the DUI investigation truly began

You can read more about my background and experience here:

<https://dui2go.com/about/>

Flow Chart: Accident DUI Timeline

Crash Occurs → Officer Arrives → Crash Report Questions → Suspicion Develops → Hat Switch → Field Sobriety Exercises → Arrest → Breath Test

If the “Hat Switch” is unclear or mishandled, suppression becomes viable.

Frequently Asked Questions About Accident DUIs

If I admit drinking during a crash investigation, is that automatically admissible?

Not necessarily. If the statement was made during the crash-report phase and before a clear transition to a criminal investigation, it may be privileged under § 316.066.

What counts as a “hat switch”?

There must be a clear shift from civil crash questioning to criminal DUI investigation. Courts look at the officer’s words, actions, and whether Miranda warnings were given.

Do Miranda rights apply at every crash scene?

No. Miranda applies only when you are in custody and being interrogated. But the Accident Report Privilege applies even before custody, during the crash-report phase.

What if the officer never clearly switched roles?

That ambiguity often benefits the defense. Courts require clarity before statements lose their privileged status.

Video Resources and Further Reading

On DUI2Go.com, I discuss accident DUIs and procedural defenses in my video resources and educational materials. These explain how early constitutional violations can dramatically alter the outcome of a case.

I encourage you to explore the DUI defense materials throughout the site to better understand how these technical protections operate in real-world cases.

<https://dui2go.com/>

Why This Chapter Matters

Accident DUI cases feel overwhelming because there is often:

- Property damage
- Injuries
- Multiple officers
- Insurance issues
- Emotional stress

In that chaos, statements are made quickly.

But Florida law recognizes that accident investigations are not supposed to be shortcuts to criminal convictions.

The Accident Report Privilege exists for a reason.

And when I defend accident-based DUI charges, I enforce it aggressively.

Final Thoughts: Timing Is Everything

In accident cases, the difference between conviction and dismissal often comes down to one moment:

When did the officer switch hats?

If that transition was mishandled, statements can be excluded.

If statements are excluded, the State's case may weaken significantly.

If you were arrested for DUI following a crash, I strongly recommend you review my background here:

<https://dui2go.com/about/>

And contact me immediately to analyze whether the Accident Report Privilege applies in your case:

<https://dui2go.com/contact/>

Because in Florida DUI defense, what you said — and when you said it — can change everything.

PART II: THE SCIENCE AND THE COURTROOM

Chapter 4: The Truth About the Blow



What the Intoxilyzer 8000 Doesn't Tell the Jury

When someone says, “I blew over a .08, so I must be guilty,” I stop them immediately.

A breath number is not a conviction.

In Florida, breath alcohol testing is typically conducted on a machine called the Intoxilyzer 8000. It is a computer-based

device approved by the Florida Department of Law Enforcement (FDLE) for evidentiary breath testing.

But here is the truth:

It is an aging machine.

It relies on assumptions.

It depends on strict procedural compliance.

And when those assumptions or procedures fail, the number becomes vulnerable.

Under Florida Statute § 316.193 (DUI), the State must prove an unlawful breath alcohol level of .08 or higher. You can review the statute here:

Florida Statute § 316.193

<https://www.justia.com/law/florida/statutes/title-xxiii/chapter-316/section-316-193/>

But I do not accept the number at face value. I audit it.

The Machine Behind the Number

The Intoxilyzer 8000 does not measure blood alcohol.

It measures **deep lung air** and then applies a mathematical formula known as the **partition ratio** — assuming a 2100:1 relationship between breath alcohol and blood alcohol.

That ratio is not universal.

It is an average.

Human beings are not averages.

When I defend a DUI breath case, I investigate:

- Maintenance logs
- Agency inspection records
- Operator certifications
- Simulator solution checks
- Software compliance

FDLE regulates breath testing through administrative rules and inspection protocols. Those rules are publicly available through FDLE’s Alcohol Testing Program resources:

<https://www.fdle.state.fl.us/Alcohol-Testing>

If procedures are not followed exactly, admissibility can be challenged.

The Breath-Test Vulnerability Table

Variable	Impact	Defense Strategy
Mouth Alcohol	Falsely high reading.	Prove GERD or dental work issues.
Partition Ratio	Biological overestimation.	Show physiology differs from the 2100:1 average.
Observation Period	Procedural failure.	Prove the 20-minute rule was broken via video.

Each of these vulnerabilities has changed case outcomes.

Mouth Alcohol: The Hidden Contaminant

The Intoxilyzer is designed to measure alveolar (deep lung) air.

But if residual alcohol remains in the mouth, the reading can spike artificially.

Common causes include:

- GERD (acid reflux)
- Recent vomiting
- Dental appliances
- Recent use of mouthwash
- Regurgitation

This is why Florida requires a continuous **20-minute observation period** before breath testing.

If the officer fails to observe continuously — and the video contradicts the report — the result becomes suspect.

At DUI2Go.com, I routinely request:

- Breath room video
- Intoxilyzer room logs
- Agency observation documentation

Because even a short lapse can matter.

You can explore more about my DUI defense methodology here:

<https://dui2go.com/>

The Partition Ratio Problem

The 2100:1 ratio assumes that 2100 milliliters of breath contain the same alcohol as 1 milliliter of blood.

But real human partition ratios vary widely.

Factors that influence variation include:

- Body temperature
- Hematocrit levels
- Lung capacity
- Breathing patterns
- Medical conditions

If someone's true ratio is lower than 2100:1, the machine overestimates blood alcohol concentration.

That is not speculation — it is physiology.

And juries often understand that averages do not define individuals.

The 20-Minute Rule

Florida Administrative Code requires a 20-minute deprivation/observation period before administering a breath test.

During that time, the subject must not:

- Eat
- Drink
- Smoke
- Vomit
- Regurgitate

The officer must maintain continuous observation.

In practice, I often review video and discover:

- Officer completing paperwork out of view

- Officer stepping out of the room
- Distractions
- Multiple subjects in holding areas

If the 20-minute rule is broken, I challenge admissibility.

Procedural compliance is not optional.

Maintenance Logs: The Paper Trail

The Intoxilyzer 8000 must be inspected monthly and undergo agency checks.

At DUI2Go.com, I regularly subpoena:

- Monthly inspection reports
- Agency inspection forms
- Repair histories
- Error code logs

If a machine shows recurring:

- RFI (radio frequency interference) errors
- Calibration failures
- Simulator tolerance deviations

That information becomes part of the defense narrative.

A breath number without a reliable machine is just a number.

Chart: How I Audit a Breath Case

Audit Step	What I Look For
-------------------	------------------------

Audit Step	What I Look For
Operator Permit	Was the officer properly certified?
Agency Inspection	Was the monthly check valid?
Simulator Solution	Within tolerance range?
Duplicate Samples	Within .020 agreement?
Observation Video	Continuous compliance?

Each step is a pressure point.

Duplicate Sample Requirement

Florida requires two breath samples within .020 of each other.

If the samples exceed that tolerance, the test may be invalid.

When sample discrepancies occur, I ask:

- Was breathing pattern irregular?
- Did the machine produce error messages?
- Was the subject instructed properly?

Inconsistency weakens reliability.

Medical Conditions and Breath Testing

Certain medical conditions affect breath readings:

- GERD
- Diabetes
- Hiatal hernia
- Asthma

- Elevated body temperature

Even anxiety-driven hyperventilation can alter results.

Breath testing assumes stable physiological conditions.

Real-world DUI arrests rarely occur under laboratory conditions.

Flow Chart: From Arrest to Breath Result

Arrest → Transport → Observation Period → Breath Test 1 →
Breath Test 2 → Affidavit of Result → Administrative
Suspension Triggered

Each step must comply with statute and rule.

If one fails, the entire result may be attacked.

Frequently Asked Questions About Breath Testing

If I blew over .08, is the case hopeless?

No. The number is only part of the State's case. Machine reliability, procedural compliance, and physiological factors all matter.

Can maintenance issues really invalidate a test?

Yes. If inspection or calibration requirements are not met, admissibility can be challenged.

What if I have GERD?

GERD can cause mouth alcohol contamination, potentially elevating readings. Medical documentation can support this defense.

Does refusing the test avoid these issues?

Refusal creates separate consequences under Florida's implied consent law and administrative suspension provisions. It also eliminates the breath number — which can change the evidentiary landscape entirely.

The Psychological Impact of the Number

Jurors are conditioned to trust machines.

But machines are only as reliable as:

- Their maintenance
- Their programming
- Their operators
- Their procedural safeguards

When I defend a breath case, I do not attack science.

I attack assumptions.

My Approach to Breath Cases

I do not accept the printout.

I request the logs.
I review the video.
I analyze the physiology.
I compare documentation to regulatory requirements.

My approach to DUI defense — including breath test challenges — is explained in detail throughout my site:

<https://dui2go.com/>

You can learn more about my experience and qualifications here:

<https://dui2go.com/about/>

If you are facing a DUI with a breath result, contact me immediately so we can begin auditing your case:

<https://dui2go.com/contact/>

Final Thoughts: The Machine Is Not the Judge

The Intoxilyzer 8000 is a tool.

It is not infallible.
It is not self-validating.
It is not immune from error.

In Florida DUI defense, the breath number is often treated as the end of the story.

In my courtroom, it is just the beginning.

Chapter 5: The Truth About Refusal



Why Saying “No” Is Not the End of the Case

One of the most common statements I hear is this:

“I refused, so I’m automatically guilty.”

That is not true.

In Florida, refusing a breath test triggers administrative and potential criminal consequences under the implied consent law

— but it also removes one powerful piece of evidence from the State’s case: a breath number.

The law governing refusal is found in Florida Statute § 316.1932 (Implied Consent). You can review it here:

Florida Statute § 316.1932

<https://www.justia.com/law/florida/statutes/title-xxiii/chapter-316/section-316-1932/>

Refusal cases are different from “blow” cases. They require a different strategy. And in many ways, they are more defensible.

What the Officer Must Prove in a Refusal Case

When someone refuses a lawful breath test request, the prosecution cannot rely on a .08 or higher result.

Instead, the State must prove:

- You were lawfully arrested for DUI.
- The officer had probable cause.
- You were read the implied consent warning.
- You refused after being properly warned.

If any one of those elements fails, the refusal evidence can be challenged.

And without a breath number, the case often rests entirely on:

- Driving pattern
- Field sobriety exercises
- Officer observations

That changes the battlefield.

Administrative Consequences of Refusal

Under Florida's implied consent framework, a refusal triggers an administrative license suspension through the Florida Department of Highway Safety and Motor Vehicles (DHSMV).

For a first refusal:

- 1-year administrative suspension.

For a second refusal:

- 18-month suspension.
- Separate first-degree misdemeanor charge.

The administrative process operates under Florida Statute § 322.2615, which you can review here:

Florida Statute § 322.2615

<https://www.justia.com/law/florida/statutes/title-xxiii/chapter-322/section-322-2615/>

As I explained in Chapter 1, you have only 10 days to request a Formal Review Hearing to challenge that suspension.

I outline that process in detail on my website and frequently discuss it in my blog posts at DUI2Go.com:

<https://dui2go.com/>

The Refusal Warning: What Must Be Said

The officer must read you a specific implied consent warning.

That warning must inform you:

- That refusal will result in a 1-year suspension.
- That a second refusal is a crime.
- That your driving privilege will be suspended.

If the warning is incomplete, inaccurate, or confusing, I examine whether the refusal was truly knowing and voluntary.

Bodycam footage often becomes critical here.

I compare:

- What the officer claims was read.
- What the video actually shows.
- Whether interruptions occurred.
- Whether language barriers were addressed.

Procedural compliance matters.

Table: Refusal Case Vulnerabilities

Issue	Impact	Defense Strategy
No Probable Cause for Arrest	Refusal invalid	Attack arrest legality
Defective Implied Consent Warning	Refusal may be suppressed	Compare video to statute
Medical Inability	Not a true refusal	Present medical documentation
Confusion or	Not unequivocal	Challenge clarity

Issue	Impact	Defense Strategy
Ambiguity	refusal	

Refusal must be clear and unequivocal. Silence alone is not always enough.

Was It Really a Refusal?

Florida courts require that a refusal be clear.

If a driver:

- Expresses confusion
- Requests to speak to an attorney
- Asks questions about consequences
- Physically cannot provide a sample

Those facts may complicate the State’s position.

In many cases, what is written as “refused” in a report looks very different on video.

That is why I always obtain:

- Breath room video
- Bodycam
- Implied consent affidavit
- Officer narrative

Documentation must match reality.

The Strategic Reality of Refusal

Many people believe refusing avoids evidence.

In truth, it changes the type of evidence.

Without a breath number, the prosecution must rely heavily on:

- Field sobriety exercises
- Driving pattern
- Officer opinion testimony

Field sobriety exercises are subjective. They are not pass/fail tests.

I discuss the flaws in field sobriety testing extensively throughout DUI2Go.com, including how these roadside exercises are often misinterpreted or improperly administered:

<https://dui2go.com/>

When there is no breath result, these weaknesses become magnified.

The Criminal Refusal Charge (Second Refusal)

If someone has a prior refusal, a second refusal can be charged as a separate misdemeanor offense.

That charge requires the State to prove:

- Prior refusal conviction or adjudication.
- Lawful arrest.
- Proper implied consent warning.

- Clear refusal.

Even then, constitutional challenges may apply.

These cases are technical and evidence-driven.

Flow Chart: Refusal Case Timeline

Traffic Stop → DUI Investigation → Arrest → Implied
Consent Warning → Refusal → Administrative Suspension →
Criminal Prosecution Without Breath Number

Each stage is independently challengeable.

The Jury Instruction Problem

In refusal cases, juries are instructed that they may consider refusal as evidence of consciousness of guilt.

But that instruction does not require them to presume guilt.

I counter this by emphasizing:

- Constitutional rights.
- Lack of scientific number.
- Incomplete procedures.
- Reasonable alternative explanations.

Refusal is not proof of impairment.

It is a choice — sometimes a confused one.

Frequently Asked Questions About Refusal

Is refusal worse than blowing over .08?

It depends. Refusal avoids a scientific number but triggers a longer administrative suspension. Strategically, refusal cases often rely more heavily on subjective evidence.

Can I change my mind after refusing?

Generally, once a refusal is recorded, changing your mind later does not undo it unless the delay was minimal and the officer permits it.

Does asking for an attorney count as refusal?

Requesting counsel before deciding may be interpreted as refusal if it delays testing. But circumstances matter, and video review is critical.

Can medical issues justify refusal?

Yes. If you physically cannot provide a sample due to medical reasons, that may not qualify as a lawful refusal.

My Perspective on Refusal Cases

I do not treat refusal as surrender.

I treat it as a different evidentiary landscape.

Without a breath number:

- The State loses its scientific anchor.
- Officer credibility becomes central.

- Field sobriety reliability becomes critical.
- Video becomes decisive.

In many refusal cases, the defense shifts toward challenging probable cause and the legality of the stop — issues I explore extensively throughout DUI2Go.com.

You can learn more about my background and trial experience here:

<https://dui2go.com/about/>

If you are facing a DUI refusal — especially if you are within the 10-day administrative window — contact me immediately:

<https://dui2go.com/contact/>

Final Thoughts: Refusal Is Not the End

Refusal changes the case.

It does not end it.

It does not automatically convict you.

It triggers legal consequences — yes. But it also forces the prosecution to prove impairment without a chemical test result.

In Florida DUI defense, the absence of a number can create reasonable doubt.

And reasonable doubt is the foundation of freedom.

Chapter 6: High Stakes—CDL and Professional Licenses

For Commercial Drivers or licensed professionals, a DUI is a "career-ender." The legal limit for a CDL holder in a commercial vehicle is just **.04**. We don't just defend your criminal case; we coordinate with your professional boards to ensure your livelihood remains intact.

Professional Reporting Table

License Type	Reporting Window	Potential Impact
CDL	Immediate (Employer)	1-Year to Lifetime Ban
Nurse (RN/LPN)	30 Days	Mandatory IPN / Suspension
Pilot (FAA)	60 Days	Medical Cert. Revocation

PART III: THE 100 QUESTIONS & ANSWERS

Q1: Can I be charged with a DUI if I was on a bicycle or an e-bike?

A: In Florida, a bicycle is technically a "vehicle," and because e-bikes have motors, law enforcement on the Pinellas Trail is paying closer attention. I recommend treating an e-bike with the same caution as a car, as a conviction can still carry heavy fines. We argue the lack of "motor vehicle" classification to protect your record.

Q2: What exactly does "Actual Physical Control" mean?

A: You don't have to be driving to be charged; if you have the keys and the capability to operate the car while sitting inside, you are in "control." We defend these at dui2go.com by proving you were using the car as a safe shelter with no intent to drive. This often involves analyzing where the keys were located at the time of the arrest.

Q3: If I refused the breathalyzer, is my case impossible to win?

A: Absolutely not; refusing the breathalyzer often gives us a cleaner slate because there is no "scientific" number for the jury to fixate on. While refusal leads to an administrative suspension, we argue in court that it was a choice to protect your rights rather than an admission of guilt. We focus the defense on the lack of physical evidence and the subjective nature of the officer's observations.

Q4: Does "Body Temperature" affect a breathalyzer reading?

A: Yes, for every degree Celsius your body temperature is above normal, your breath alcohol reading will increase by about 7%. If you were sweating or had a slight fever during the

stop, the machine's result is artificially inflated. We use weather data or medical records to dispute the accuracy of the final number.

Q5: What is the "Rising Blood Alcohol" defense?

A: This is based on the fact that alcohol takes time to enter your bloodstream; if you finished a drink and immediately drove, your BAC might have been .05 while driving but rose to .09 by the time you blew at the station. We use expert retrograde extrapolation to calculate your actual level at the time of the stop. If we prove you were below .08 behind the wheel, the law says you are not guilty.

Q6: Can I be arrested for a DUI if I was on private property?

A: Yes, Florida's DUI laws apply to the "entire state," including private parking lots, driveways, and gated communities. As long as the area is accessible to the public, [Statute § 316.193](#) remains in full effect. We often challenge these cases by questioning the legality of the officer's presence on that private property in the first place.

Q7: Can a passenger in my car be charged with a DUI?

A: No, a passenger cannot be charged with DUI because they are not in "Actual Physical Control" of the vehicle. However, they can be charged with "Open Container" or "Disorderly Intoxication" if they interfere with the investigation. If your passenger was the actual driver, we use their testimony and video to prove the police arrested the wrong person.

Q8: What is a "Partition Ratio"?

A: The Intoxilyzer 8000 assumes everyone has a 2100:1 breath-to-blood ratio. Science shows this ratio varies wildly

based on body temperature and hematocrit levels. If your personal ratio is lower than the machine's average, the machine will falsely report a higher BAC than what was actually in your blood.

Q9: If I have a medical condition like GERD, can it affect my breath test?

A: Gastroesophageal Reflux Disease (GERD) can cause "mouth alcohol" by bringing stomach gases back into the oral cavity. The Intoxilyzer 8000 is designed to measure deep lung air, not stomach vapors, so GERD can lead to a falsely high reading. We use your medical records to show the jury that the machine wasn't measuring your impairment, but rather a biological hiccup.

Q10: What is the "Observation Period," and why does it matter?

A: Florida law requires a technician to observe you for at least 20 minutes before you blow into the machine to ensure you don't burp, vomit, or put anything in your mouth. If I can show on the jail video that the officer was filling out paperwork or looking away during those 20 minutes, the test results may be suppressed. This is a procedural error that we look for in every single breath-test case.

Q11: Can I be arrested for a DUI for sitting in my car with the AC on?

A: Yes, if you have the keys and are in the driver's seat, you are in "Actual Physical Control" (APC) of the vehicle. Florida law does not require the engine to be running or the car to be in motion. We defend these by showing you had a "Request for Shelter"—proving you were using the car as a safe place to sleep and had no intention of driving.

Q12: If I am a CDL holder, is the legal limit still .08?

A: No, for CDL holders operating a commercial vehicle, the legal limit is much lower at .04. Even if you are in your personal car, a DUI conviction can lead to a "lifetime disqualification" of your CDL depending on your prior record. Because your livelihood is on the line, we take extra steps to [negotiate for a reduction to Reckless Driving](#) to protect your ability to work.

Q13: What is a "Motion to Suppress," and how does it help me?

A: A Motion to Suppress is a legal tool we use to ask the judge to "throw out" evidence that was obtained illegally. If the police stopped you without a valid reason or forced you into a search without a warrant, we argue that the evidence is "fruit of the poisonous tree." If the judge agrees and suppresses the breath test or your statements, the State often has no choice but to dismiss the charges.

Q14: Why did the officer ask me to follow a pen with my eyes?

A: This is called the Horizontal Gaze Nystagmus (HGN) test, which looks for an involuntary jerking of the eye. While officers claim this is "scientific," many factors like caffeine, nicotine, or even the flashing lights of the patrol car can cause nystagmus. I often challenge the HGN results by showing the officer wasn't holding the stimulus at the correct distance or moving it at the required speed.

Q15: Can I get a DUI for taking my own prescription medication?

A: Yes, the law doesn't care if the drug was legal or prescribed; it only cares if your "normal faculties were impaired." If a

combination of your blood pressure meds and an antihistamine makes you drowsy, the state can prosecute you for a DUI. We defend these by focusing on the lack of "Warning Labels" or showing that your driving was not actually impaired by the medication.

Q16: What is "Voir Dire," and why is it important?

A: "Voir Dire" is the process of jury selection where we interview potential jurors to uncover hidden biases. My goal is to find six fair-minded individuals who understand that the burden of proof rests entirely on the State. We use our strikes to remove jurors who believe that an arrest is equivalent to guilt.

Q17: If I choose a jury trial, how many people will decide my fate?

A: In Florida, a standard DUI trial is heard by a six-person jury. These six citizens must reach a unanimous verdict—meaning all six must agree that the state proved every element of the crime. If even one juror holds out and refuses to convict because of the evidence we presented, the result is a "hung jury," which often leads to a favorable negotiation.

Q18: What is a "Judgment of Acquittal" (JOA)?

A: After the prosecution finishes presenting their witnesses, I make a motion for a Judgment of Acquittal, asking the judge to dismiss the case immediately because the State failed to meet its legal burden. I argue that even if everything the officer said was true, it still doesn't legally add up to "impairment." While judges don't always grant these, it is a critical step in preserving your rights for an appeal.

Q19: Can my own "polite" behavior at the jail be used as evidence?

A: Yes, and I love using this to my advantage because it contradicts the officer's claim that your "normal faculties" were impaired. We show the jury the video of you standing straight, answering complex booking questions, and following directions without stumbling. If you are acting like a sober person five minutes after your arrest, it makes the officer's roadside observations look like an exaggeration.

Q20: What are the mandatory minimum fines for a first-time DUI in 2026?

A: Under current law, a first conviction carries a fine between \$500 and \$1,000, but if your BAC was .15 or higher, that fine jumps to a minimum of \$1,000. These fines don't include court costs and the cost of the mandatory DUI school, which can add several hundred dollars to the total. We always fight to have these charges reduced to "Reckless Driving" to avoid these financial hammers.

Q21: Will I have to have an "Ignition Interlock Device" (IID) installed in my car?

A: For a standard first-time DUI with a BAC below .15, an IID is not usually required by statute, though a judge can order it. However, if your BAC was .15 or higher, or if there was a minor in the car, Florida law mandates that you have an IID for at least six months. This device requires you to blow into it to start your car, and we work hard to negotiate terms that avoid this requirement.

Q22: Is "Community Service" always required for a DUI?

A: Yes, Florida law mandates that you perform 50 hours of community service for a first DUI conviction. In some jurisdictions, the judge may allow you to "buy out" those hours at a rate of \$10 per hour. We ensure that any community

service you do perform is logged correctly with the court to prevent a "violation of probation" later on.

Q23: What does it mean to have my vehicle "impounded" or "immobilized"?

A: For a first conviction, the court must order your vehicle to be immobilized for 10 days. This usually doesn't mean it's towed; instead, a service places a "boot" on the tire or takes the keys to ensure the car isn't driven. We can often argue for an exception to this rule if your family has no other means of transportation.

Q24: Can I go to jail for a first-offense DUI in Florida?

A: While the statutory maximum for a first DUI is six months in jail, it is very rare for a first-timer to serve actual jail time unless there was a serious accident. Most first offenses result in a period of probation, but we never take that for granted. I prepare every case as if jail is on the table to force the state into a better deal.

Q25: What is "DUI School," and do I have to go before my case is over?

A: DUI School is a state-mandated education program that evaluates your alcohol use. While you aren't legally required to finish it before your trial, doing so voluntarily can show the prosecutor that you are taking the matter seriously. Often, having the certificate in hand helps me negotiate a reduction because we've already checked a major box for the court.

(Questions 26-40 focus on Pre-Trial maneuvers and PTI eligibility)

Q26: What is a "Pre-Trial Intervention" (PTI) program?

A: PTI is a diversion program for first-time offenders that results in the total dismissal of your charges. Eligibility usually depends on having a clean prior record and no high-speed accidents. We work to get you into these programs early because they offer the most certain path to protecting your future.

Q27: Can I "Expunge" a DUI conviction in Florida?

A: No; under [Florida Statute § 943.0585](#), a DUI conviction is ineligible for expungement. This is why our primary goal is always to avoid the conviction itself, either through a dismissal or a reduction to Reckless Driving. If we get the charge reduced and you receive a "Withhold of Adjudication," you may eventually be able to seal that record.

Q28: What is a "Subpoena," and how do we use it?

A: A subpoena is a court order we issue to compel witnesses, such as the arresting officer, to appear for a deposition. We use these to gather "sworn testimony" before we ever get to the courtroom. If their testimony at trial differs from what they said during the deposition, I can use their own words to impeach their credibility.

Q29: What happens if I move out of state while my DUI case is pending?

A: Moving doesn't stop the legal process; Florida is part of the "Interstate Driver's License Compact," meaning a Florida suspension will follow you. We can often handle many of your court appearances through "Waivers of Appearance," so you don't have to fly back. However, you must remain in close contact with us to ensure you don't miss any mandatory deadlines.

Q30: Can a passenger in my car be charged with a DUI?

A: No, a passenger cannot be charged with DUI because they are not in "Actual Physical Control" of the vehicle. However, they can be charged with related offenses if they are interfering. If your passenger was the one actually driving, we use their testimony and video to prove that the police arrested the wrong person.

Q31: What is "Probable Cause" vs "Reasonable Suspicion"?

A: "Reasonable Suspicion" is the low bar needed to pull you over, while "Probable Cause" is the higher standard needed to actually arrest you. I analyze the officer's report to see if they made the arrest based on a "hunch." If the judge finds that Probable Cause was lacking, the entire arrest can be thrown out of court.

Q32: Will a DUI arrest show up on a standard employer background check?

A: Yes, the moment you are booked into jail, a public record of your arrest is created. Even if the case is eventually dismissed, the "arrest" remains visible unless it is sealed or expunged. This is why we move quickly to seek a favorable resolution so that we can eventually help you clean up the record.

Q33: What is "Retrograde Extrapolation"?

A: This is a scientific calculation used to estimate what your BAC was at the time of driving based on a test taken much later. If you had a "big meal" or drank right before driving, your BAC might have been rising while you were behind the wheel. We use forensic experts to perform these calculations to prove you were legally sober while operating the vehicle.

Q34: Can I refuse a "Field Sobriety Test" (FST)?

A: Yes, in Florida, FSTs are voluntary, and you have the right to politely decline them. Unlike the breathalyzer, refusing the roadside exercises does not result in an automatic license suspension. By refusing these subjective tests, you prevent the state from having video of you "failing" a difficult physical task.

Q35: What is a "Capias" or a "Bench Warrant"?

A: These are orders issued by a judge for your arrest, typically because you missed a mandatory court date. If a warrant is issued, you can be arrested at any time. If this happens, we immediately file a "Motion to Quash" the warrant to resolve the issue without you spending unnecessary time in jail.

Q36: Does Florida have a "Zero Tolerance" law for underage drivers?

A: Yes, under [Florida Statute § 322.2616](#), any driver under 21 with a BAC of .02 or higher will face a six-month suspension. While this is an administrative penalty rather than a full criminal DUI, it still creates a record. We fight these aggressively to protect a student's ability to drive to school and work.

Q37: Can the smell of burnt marijuana justify a vehicle search?

A: In 2026, the law is evolving because the odor of legal hemp is identical to illegal cannabis. Many Florida courts have ruled that "smell alone" may no longer be enough for a warrantless search. We use this legal shift to challenge searches that were based solely on an officer's "nose," potentially leading to the suppression of evidence.

Q38: What is an "Arrestment," and do I have to attend?

A: An arraignment is the formal reading of the charges against you where you enter a plea. For most misdemeanor DUI cases, I file a "Written Plea of Not Guilty" on your behalf, which cancels the need for you to attend. This saves you a day of work and allows us to begin the discovery process without delay.

Q39: What is "Discovery"?

A: Discovery is the process where the State must turn over all evidence they have against you, including police reports and videos. I comb through this material looking for anything that might prove your innocence or contradict the officer. If the State withholds evidence, it is a serious violation that can lead to the dismissal of your case.

Q40: Can I get a DUI while operating a boat (BUI)?

A: Yes, Florida BUI laws under [Statute § 327.35](#) are very similar to DUI laws. While a BUI conviction doesn't automatically suspend your driver's license, it still carries heavy fines and jail time. We defend BUI cases by highlighting that "sea legs" can easily be mistaken for impairment by FWC officers.

(Questions 41-50 address serious injury and felony charges)

Q41: What constitutes "Serious Bodily Injury"?

A: Under [Statute § 316.1933](#), serious bodily injury involves a substantial risk of death or serious personal disfigurement. If the other driver just has a "sore neck," we fight to keep the charge as a misdemeanor. However, if there's a broken bone, the State will push for a third-degree felony, which carries up to five years in prison.

Q42: Can I be charged with a felony for my third DUI?

A: Yes, but only if your third arrest occurs within 10 years of a prior conviction. If your previous DUIs were more than a decade ago, the third one is typically a misdemeanor. We meticulously audit your driving transcript to ensure the State isn't "overcharging" you with a felony based on an old or out-of-state conviction.

Q43: What is "Vehicular Homicide" vs DUI Manslaughter?

A: DUI Manslaughter requires proof of impairment, whereas Vehicular Homicide focuses on "reckless driving" that caused death. Often, the State will charge both. My defense strategy is to show that the accident was caused by mechanical failure or the other driver's negligence—not by your impairment.

Q44: Can police take my blood without a warrant in an accident?

A: Generally, no. Florida police almost always need a warrant to draw your blood unless you consent or there are "exigent circumstances." We analyze the time-stamps on the warrant application to see if the police took shortcuts; if they drew blood first and asked for permission later, we move to throw that evidence out.

Q45: Does "Trenton's Law" affect my refusal?

A: Yes, as of October 2025, a first-time refusal is now a second-degree misdemeanor if you had a prior refusal on your record. Even without a prior refusal, the administrative penalties have stiffened. We now have to be even more strategic at the DHSMV hearing to protect your ability to drive under these harsher guidelines.

Q46: What is a "Mandatory Minimum" sentence?

A: A mandatory minimum is a "floor" that the judge cannot go below. For example, a second DUI within 5 years has a mandatory 10-day jail sentence. My goal in these cases is to negotiate the charge itself down—if we reduce a DUI to Reckless Driving, we can remove that "mandatory" jail time.

Q47: If I am convicted of a Felony DUI, do I lose my gun rights?

A: Yes, any felony conviction in Florida results in the loss of your civil rights, including the right to possess a firearm. This is why we fight so hard to keep your case in misdemeanor court. If a felony is unavoidable, we eventually look into the process of "Clemency," though this is a long and difficult path.

Q48: What happens if I left the scene of a DUI accident?

A: Leaving the scene is a separate and very serious crime that can be a felony if injuries were involved. The prosecution will argue you left because you were trying to "sober up." We counter this by showing you were in shock or felt the area was unsafe—aiming to decouple the "leaving" from the "impairment."

Q49: Can the State use my car's "Black Box" data?

A: Yes, most modern cars have an Event Data Recorder (EDR) that logs speed and braking. The State will use this to show you were speeding, suggesting impairment. We hire our own accident reconstruction experts to interpret that data in a way that supports our defense, such as showing you tried to swerve.

Q50: Is a 4th DUI always a felony?

A: Yes, in Florida, a fourth DUI is a third-degree felony regardless of how much time has passed between the convictions. Even if your first DUI was 40 years ago, that

fourth one carries a potential five-year prison sentence. At this stage, our defense focuses on "Mitigation"—showing your efforts at rehabilitation to avoid the maximum prison stay.

(Questions 51-65 focus on Military and Out-of-State issues)

Q51: Can Florida suspend my out-of-state driver's license?

A: Florida cannot physically cancel a license issued by another state, but they can suspend your "privilege to drive" within Florida. Furthermore, Florida will report the suspension to the National Driver Register, and your home state will likely honor that suspension. We handle these cases by coordinating with the DHSMV to ensure you aren't completely stranded.

Q52: I am active-duty military; will a DUI result in a court-martial?

A: Generally, if the DUI happens off-base, the civilian court will handle the criminal charges, but you will still face administrative action under the UCMJ. This can include an Article 15 or loss of rank. We work to communicate with your command when appropriate to show you are proactively taking responsibility.

Q53: Can I be barred from entering Canada with a DUI?

A: Yes, Canada treats a DUI as a serious criminal offense, and a conviction can make you "criminally inadmissible." If you have a DUI on your record, you may need to apply for a Temporary Resident Permit. My goal is to secure a reduction to a non-alcohol-related charge to avoid these international travel nightmares.

Q54: What is the "Drivers License Compact"?

A: The Compact is an interstate agreement used to exchange information regarding traffic violations. If you are convicted in Florida, the compact ensures that the information is sent back to your home state's DMV. We navigate these rules to help you understand exactly how a Florida case will impact your license back home.

Q55: Can a military member be punished twice for a DUI?

A: While Double Jeopardy prevents two trials for the same crime, the military and Florida are "separate sovereigns." You can be prosecuted in civilian court and still face administrative separation from the military. We aim for a favorable civilian outcome to give your defense team the best possible leverage with your command.

Q56: Do I have to come back to Florida for court if I am a tourist?

A: In many misdemeanor cases, I can file a "Waiver of Appearance" that allows me to represent you without you needing to travel back. However, if your case goes to trial, you will likely be required to attend in person. We use digital communication tools to keep you updated so you only have to travel when absolutely necessary.

Q57: Does a DUI affect my "Global Entry" or "TSA PreCheck"?

A: A DUI conviction can lead to the revocation of these privileges because CBP views it as a violation of their "low-risk" criteria. Even if the case is dismissed, you may have to go through an appeals process. We provide the disposition paperwork you need to prove the case was resolved in your favor to protect your travel perks.

Q58: Can I lose my security clearance over a DUI?

A: An arrest must be reported, and while one DUI isn't always an automatic disqualification, it can trigger a "Security Concern" regarding alcohol consumption. The key is "Self-Reporting" and showing the incident was isolated. We build a defense that emphasizes your overall character to help mitigate the impact on your clearance.

Q59: What is a "Hardship License" for out-of-state drivers?

A: A Hardship License allows you to drive for business purposes during a suspension. If you have an out-of-state license, you must usually apply for this in your home state, but Florida must first clear your "hold." We assist in getting the necessary clearances so you can get back on the road.

Q60: I'm in the Reserves; how does a DUI affect my drill weekends?

A: A DUI arrest can lead to a "flag" on your file, preventing promotions until the case is resolved. If your license is suspended, getting to your drill site becomes a hurdle. We work to resolve your case swiftly so you can maintain your readiness and continue your service without a permanent stain.

Q61: Can I get a DUI on a motorized scooter?

A: Yes, Florida's definition of a "motor vehicle" is broad enough to include motorized scooters. If you are operating one while impaired, you can be arrested for DUI. Because these are often seen as "toys," we argue that the level of danger posed was minimal to push for a reduction in charges.

Q62: Will a DUI lead to deportation for an immigrant?

A: A single "simple" DUI is generally not a crime involving moral turpitude, but a felony DUI or one involving drugs can

trigger deportation proceedings. Furthermore, it can make it harder to renew your visa. We coordinate with immigration experts to ensure our plea negotiations don't inadvertently trigger an ICE hold.

Q63: Can I get a DUI for sitting in my car with the AC on?

A: Yes, if you have the keys and are in the driver's seat, you are in "Actual Physical Control." Florida law does not require the engine to be running. We defend these by showing you had a "Request for Shelter"—proving you were using the car as a safe place to sleep and had no intention of driving.

Q64: Does a "Wet Reckless" look better on a military check?

A: Yes, the military looks at the underlying conduct, but a reduction to Reckless Driving is viewed far more favorably than a DUI conviction. It suggests that the evidence was weak or that you took proactive steps. We aim for this strategic reduction to protect your "Good Conduct" status.

Q65: What if I was arrested in a rental car?

A: Rental companies will typically put you on a "Do Not Rent" list the moment they learn of a DUI arrest. Additionally, your personal insurance may not cover the damage if you were impaired, leaving you personally liable for the car's value. We help you manage the civil fallout while fighting the criminal charges.

(Questions 66-90 focus on Evidence and Suppression)

Q66: What is a "Motion in Limine"?

A: A Motion in Limine is used to keep "prejudicial" or irrelevant information away from the jury. For example, if you

have a prior unrelated record, I file this motion to ensure the jury only hears facts relevant to your impairment. This keeps the trial focused on the evidence rather than a character assassination.

Q67: Can we suppress a breath test for calibration issues?

A: Absolutely; Florida law requires strict inspections of the Intoxilyzer 8000. If I find that the maintenance records show the machine was failing its check tests, I will move to suppress your results. Without a scientifically validated machine, the "number" the State wants to use is legally worthless.

Q68: What is a "Stand Your Ground" motion in a DUI?

A: We occasionally use similar "Immunity" arguments if the driving occurred under duress. If you were driving only because you were fleeing a violent situation, we may file a motion asking the judge to dismiss the case because your actions were legally justified. These are rare, but we explore every possible avenue.

Q69: Can statements be suppressed without Miranda?

A: Yes, but only if you were in "custody" and being "interrogated." Most roadside questioning doesn't require Miranda; however, the moment you are handcuffed, your rights must be read. If the officer continues to grill you after that point without a warning, we move to suppress those admissions.

Q70: What is a "C4" Motion to Dismiss?

A: A "C4" Motion argues that even if all the facts the State has are true, those facts don't actually constitute a crime. For example, if the State can't prove you were the one behind the

wheel, we file this motion to end the case early. This puts the State on notice that their legal theory is fundamentally flawed.

Q71: What happens if the police video disappeared?

A: This is a "Spoliation of Evidence" issue. If the police had a working camera but the footage was lost, we can ask the judge for an instruction telling the jury to assume the video would have helped our defense. In some extreme cases, we may even move for a total dismissal.

Q72: What is the "Hearsay" rule?

A: Hearsay is an out-of-court statement offered to prove the truth of the matter. If a witness told the officer they saw you swerving but that witness doesn't show up for trial, the officer cannot tell the jury what they said. We use Hearsay objections to prevent the State from using "phantom witnesses."

Q73: Can a "Motion to Sever" be used for multiple charges?

A: If you are charged with a DUI and an unrelated crime that happened at the same time, we may move to "sever" the charges into two different trials. This prevents the jury in your DUI case from being prejudiced by hearing about the other charges. Our goal is to ensure you get a fair trial.

Q74: What is "Ineffective Assistance of Counsel"?

A: This is a claim made if a previous lawyer failed to file obvious motions or investigate key evidence. At my firm, we pride ourselves on being exhaustive. We check every box and review every second of video so that you never have to wonder "what if" regarding your representation.

Q75: Can we suppress "HGN" eye test results?

A: Yes, the eye test is highly technical and often performed incorrectly. If the officer didn't hold the pen at the correct distance or moved it too quickly, the "eye jerking" is scientifically unreliable. We use expert testimony to show the judge that the test was a "failure of procedure," not a failure of sobriety.

(Questions 76-100 address Expert Science and Technicalities)

Q76: Who is a "Toxicologist"?

A: A toxicologist specializes in how alcohol interacts with the human body. I bring them in to explain that your blood or breath results don't necessarily prove you were impaired. They can testify about "absorption rates," providing a scientific basis for why the State's numbers might be wrong.

Q77: What is the "Rising Blood Alcohol" defense?

A: This defense is based on the fact that alcohol takes time to absorb; your BAC might have been .05 while driving but rose to .09 by the time you blew an hour later. We use expert retrograde extrapolation to calculate your actual level at the time of the stop. If we prove you were below .08 behind the wheel, the law says you are not guilty.

Q78: Can an expert challenge the "Walk and Turn" test?

A: Yes, we hire physical therapists to testify that a person's natural physiology—such as an inner ear issue or back pain—can cause them to "fail" these tests. They explain to the jury that these are "divided attention" tasks that many sober people cannot perform correctly. This reframes your performance as a physical limitation.

Q79: What is "Mouth Alcohol"?

A: Mouth alcohol occurs when alcohol remains in the mouth or is brought up from the stomach, tricking the machine into giving a high reading. We use experts to review the "slope detector" data from the machine to show the jury that the machine measured a burp, not your deep-lung air. This is a very effective way to discredit a high result.

Q80: Can a "Pharmacologist" testify about my meds?

A: If you are charged with a drug-based DUI, a pharmacologist can explain that your therapeutic levels of meds did not cause "impairment." They can also highlight how different medications interact, showing that the officer's observations were actually side effects. This moves the narrative toward responsible medical management.

Q81: What is an "Accident Reconstructionist"?

A: This expert uses physics to prove that an accident was unavoidable or caused by the other driver. By showing that even a sober person would have crashed, they help us sever the link between your alleged impairment and the accident. This is critical in avoiding felony charges for Serious Bodily Injury.

Q82: Can an expert challenge a "DRE" officer?

A: Yes, we bring in a former DRE instructor to testify that the arresting officer skipped critical steps in their 12-step evaluation. By showing the jury that the officer's "scientific" diagnosis was actually a guess based on an incomplete exam, we can render their entire opinion untrustworthy.

Q83: What is "Fermentation" in a blood sample?

A: If a blood sample is old or stored incorrectly, the sugar in the blood can ferment and create its own alcohol. An expert chemist can analyze the sample for metabolites that prove the

alcohol was created inside the vial, not inside your body. This can lead to the total suppression of blood evidence.

Q84: Can we challenge "Calibration Gas"?

A: Yes, the Intoxilyzer uses a gas canister with a known alcohol concentration to check itself; if that gas was expired, every test that day is suspect. We subpoena the maintenance logs and gas certificates to ensure the machine was operating within the strict tolerances required by Florida law.

Q85: Can lights cause "eye jerking"?

A: Yes, an expert can testify about "Optokinetic Nystagmus," which is eye jerking caused by seeing rapidly moving lights like a police strobe. This provides a perfectly sober explanation for why an officer claimed you "failed" the eye test. It turns the officer's evidence into a product of their own equipment.

Q86: What is a "Partition Ratio"?

A: The machine assumes everyone has the same 2100:1 breath-to-blood ratio. However, science shows this varies based on body temperature and hematocrit levels. If your personal ratio is lower than the machine's average, the machine will falsely report a much higher BAC than what was actually in your blood.

Q87: What is the "Absorptive Phase"?

A: When you drink, alcohol is absorbed into your bloodstream before being eliminated. During this phase, the alcohol concentration in your arterial blood (lung air) is significantly higher than in your venous blood. This can overestimate your actual brain-alcohol levels by as much as 30%, making you appear much more "impaired" than you truly were.

Q88: What is the "Post-Absorptive Phase"?

A: This occurs after your body has finished absorbing the alcohol and is purely "burning it off." Prosecutors prefer this phase because the levels are more stable, making their math look more reliable. We counter this by showing that without knowing exactly when you last ate, the State cannot scientifically prove which phase you were in.

Q89: How does "Body Temperature" affect a breathalyzer?

A: For every degree Celsius your body temperature is above normal, your breath alcohol reading will increase by about 7%. If you had a slight fever or were just sweating in the Florida heat, the machine's result is artificially inflated. We use weather data to dispute the accuracy of the number the State is using.

Q90: What is a "Pathologist" in DUI Manslaughter?

A: A pathologist determines the cause of death. I use them to explore whether the victim had underlying health issues or if the death was actually due to medical malpractice at the hospital rather than the accident. If the crash wasn't the legal cause of death, the Manslaughter charge cannot stand.

Q91: Can a pathologist prove a "Medical Emergency"?

A: Yes; we can have a pathologist review your history to see if you suffered a seizure or mini-stroke while driving. If the crash was caused by a sudden medical event, it may negate the negligence required for a conviction. This moves the case into the realm of a tragic, but non-criminal, medical accident.

Q92: Is "Widmark's Formula" reliable?

A: Widmark's Formula is a mathematical equation used to estimate BAC based on weight. While it's a standard tool, it is "junk science" when applied to an individual because it ignores metabolism speed. We use toxicology experts to show the jury that the State's calculation is a generic guess that shouldn't be used to take away your liberty.

Q93: Does "Hematocrit" change my BAC?

A: Yes; people with lower red blood cell counts (like those with anemia) will have a higher water content in their blood. Since alcohol is attracted to water, their BAC will appear artificially high on a lab test. We highlight these biological differences to show that a .08 for one person is not the same as a .08 for another.

Q94: Can "Vaping" interfere with a breath test?

A: Many vaping liquids contain chemicals like ethanol that the machine can misinterpret as "drinking alcohol." If you vaped shortly before blowing, the machine might give a false high reading. We cross-examine the officer on whether they asked you about vaping during the mandatory 20-minute observation period.

Q95: What is "Slope Detection"?

A: The machine has a "slope detector" designed to sense if alcohol is coming from your mouth versus your lungs. However, it is notoriously unreliable. We subpoena the electronic data to see if the "slope" was irregular, which proves the machine should have aborted the test rather than giving a flawed result.

Q96: How do we challenge "Blood Gas" results?

A: In serious cases, the State measures the gases in your blood via chromatography. We look for "peak overlaps" in the machine's printout where other substances are "hiding" under the alcohol peak, making the total alcohol count look higher than it actually is.

Q97: Can "Dental Work" trap alcohol?

A: Yes; bridges, crowns, and food particles can hold "mouth alcohol" long after your last drink. During the test, this trapped alcohol is blown directly into the machine. We use dental records to show that the 20-minute observation period wasn't enough to clear the alcohol from these "pockets."

Q98: What is "Endogenous Ethanol"?

A: This is alcohol produced naturally by your own body, often due to yeast in the gut (Auto-Brewery Syndrome). While rare, it can cause a person to have a measurable BAC without ever taking a drink. If your history shows unexplained "drunkenness," we explore this medical defense to prove you were sober.

Q99: Why do we look at the "Software Version"?

A: Like any computer, the Intoxilyzer runs on software. Every time the software is updated, it's because the previous version had "bugs." If your test was run on an outdated or glitchy software version, we argue the results are as unreliable as a crashed computer program.

Q100: How do "Preservatives" in vials affect the case?

A: Vials contain Sodium Fluoride to stop fermentation. If the vial was expired or wasn't shaken correctly, the blood can spoil and produce its own alcohol. We check the lot numbers of the

vials used in your case to ensure they weren't part of a defective batch.

PART IV: FINAL RESOURCES

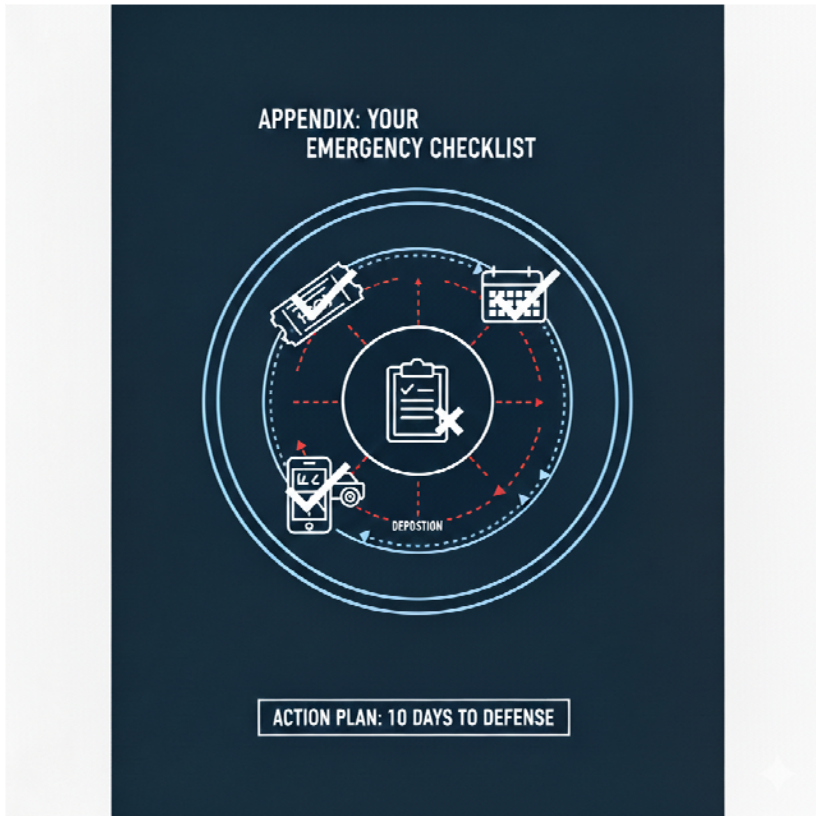
Glossary of Terms

- **APC:** Actual Physical Control.
- **HGN:** Horizontal Gaze Nystagmus (Eye test).
- **Motion to Suppress:** Request to throw out illegal evidence.
- **Retrograde Extrapolation:** Back-calculating BAC.

About the Author

W.F. Casey Ebsary is a Board Certified Criminal Trial Lawyer based in Tampa, Florida. A former Prosecutor and Assistant Public Defender, Casey operates dui2go.com from his office at **2102 W Cleveland St, Tampa, Florida.**

APPENDIX: THE EMERGENCY CHECKLIST



1. **Locate your citation** (it's your 10-day permit).
2. **Request your Formal Review Hearing** (10-day deadline).
3. **Capture evidence** (Photos of the scene/road conditions).
4. **Contact Casey Ebsary** at 813-222-2220 or dui2go.com.

THE DISCIPLINE OF THE DEFENSE: AN AUTHOR'S NOTE

APPENDIX: THE FINANCIAL IMPACT

COURT FINE
COURT FINE
LEGAL FEES
INSURANCE SPIKE
LOST WAGES

THE HIDDEN EXPENSES

APPENDIX: THE 10-DAY STRATEGY TIMELINE

DAY 10
DHSMV (ADMINISTRATIVE)
COURT (CRIMINAL)

PARALLEL PATHS TO DEFENSE

APPENDIX: THE 'SWITCHING HATS' RULE'

✓ CRASH INVESTIGATOR
✓ CRIMINAL INVESTIGATOR

EVIDENCE EVALUATION

APPENDIX: FLORIDA DUI PENALTIES CHEAT SHEET

ESCALATING PENALTIES

2.45%+	✗
0.08%	✗
1 ST OFFENSE 0.08%	✗

TIERS OF CONSEQUENCE

When I am not in the courtroom at the Edgecomb Courthouse or reviewing body-cam footage at my office on West Cleveland Street, you can almost always find me on two wheels. As a dedicated cyclist, I spend a great deal of my time on the **Pinellas Trail**. Whether I'm navigating a long endurance ride or heading out on one of my e-bikes, cycling is more than just a hobby for me—it is a philosophy.

In cycling, there is a concept called "The Line." It is the most efficient, safest path through a difficult curve. Finding that line

requires focus, a deep understanding of your surroundings, and the technical skill to stay upright when the road gets rough.

I bring that same mindset to my legal practice.

Defending a DUI is an endurance sport. It requires a meticulous eye for detail—much like checking your tire pressure and gear ratios before a century ride. Just as a cyclist must be aware of every pothole and blind spot, a Board Certified Criminal Trial Lawyer must be aware of every procedural error and constitutional violation in a police report.

Living in **Seminole** and working in **Tampa**, I see the beauty of our community every day. But I also see how quickly a single interaction with law enforcement can derail a person's life. When I take on your case, I am looking for "The Line"—the strategic path that leads to the best possible outcome for your future.

Whether I am white-water rafting in California or fighting a high-stakes felony charge in a Florida courtroom, I believe in preparation, momentum, and the refusal to coast. When you hire me, you aren't just getting a lawyer; you are getting a teammate who understands that the only way to finish strong is to start with a plan.

I'll see you on the trail—and I'll see you in court.

W.F. Casey Ebsary *Attorney, Cyclist, Advocate*

DON'T NAVIGATE ALONE

YOUR STEP-BY-STEP DEFENSE GUIDE



Filename: DUI2026LuLuTemplate.doc
Directory: F:\Google Drive 2023\Book
Template: C:\Users\Casey\AppData\Roaming\Microsoft\Templates\Normal.dot
Title: Wonder Not
Subject:
Author: Albert Lucas
Keywords: Recovery, Alcoholics Anonymous, 12 Step, Addictions
Comments:
Creation Date: 2/15/2026 11:24 AM
Change Number: 9
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Total Editing Time: 1,508 Minutes
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As of Last Complete Printing
Number of Pages: 89
Number of Words: 15,167 (approx.)
Number of Characters: 77,353 (approx.)