

# ask an ATTORNEY



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**S**pring is here and summer is on the way. Lake Havasu City is a destination where having a good time is easy. This city is built around people enjoying our beautiful lake... with that, for some summer enthusiasts, comes drinking. Unfortunately, some people make the wrong decision to drive after they have been drinking and end up getting a DUI, hurting themselves or even worse... someone else. Veteran summer enthusiasts that choose to make alcohol part of their festivities have benefited themselves and their community by designating a responsible and sober driver before the drinking even starts. The following questions might help you preserve some of your legal rights in the unfortunate event you get "stopped" by Lake Havasu City Police Department or the Mohave County Sheriff.

## **Do I have to perform a field sobriety test (FST) if an officer asks me to?**

The short answer: no. If an officer suspects "impairment," they can ask you to step out of your vehicle and you are required to get out. The officer will request an FST if there is any indication of impairment. The police officer has several test options available: finger-to-nose; walk and turn; horizontal gaze nystagmus; one-leg-stand; heel-to-toe walk; reciting of the alphabet; hand pat; and fingers-to-thumb.

The FSTs are used as additional evidence against you if you are arrested; however, there is no legal penalty for declining to take an FST. This is different from being asked to provide a breath sample. *More details on this in the following paragraph.* Politely declining the FST could be a valid option for the driver to take. The problem: most people are under the influence of alcohol and believe they can pass the FST because of the false sense of confidence alcohol can provide... aka "liquid confidence." In the event you are stopped and asked to perform an FST, you have the legal option to state to the officer: "I respectfully decline."

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## **If I get stopped by an officer: Do I have to perform a chemical test (breathalyzer or blood)?**

The short answer: yes. However, there is 1 qualifier: the chemical test must take place *after* you have been arrested. Prior to arrest, the officer may ask the driver to submit to a breathalyzer test to determine his or her blood-alcohol concentration (BAC) if they have a reasonable suspicion the driver is impaired to the slightest degree. A driver is permitted to decline to take a preliminary breath test on the roadside. However, if the driver is arrested

on suspicion of impaired driving and transported to the police station, hospital or mobile police station, they are required to take a chemical test. The decision whether or not to submit to a chemical test after you have been arrested is a serious choice. If you say "no," two things will most likely happen: 1) the police officers may obtain a warrant to draw your blood and 2) your license will be suspended for one year through the Motor Vehicle Division (separate from the criminal proceedings).

Driving in Arizona is a "conditional privilege," not a right. One of the conditions is called the implied consent law. In order to obtain a driver's license in Arizona, you give your implied consent to chemical testing. This means it is mandatory for a driver, who has been lawfully arrested, to submit to a blood or breath test to determine their alcohol level. If you refuse to submit to a chemical test, your

driving privilege will most likely be automatically suspended for one year, but it will not affect the criminal proceeding.

The DUI laws in Arizona have become very strict over the past few years. The Arizona Revised Statutes have been amended to allow a police officer to charge you with a DUI for being "impaired to the slightest degree."

***Don't take a chance... Don't drink and drive please! Every criminal arrest is different. If you have been arrested, contact an attorney to determine what your legal rights are.***

