



Legal Beat: Refuse the Breathalyzer?

By Mathew B. TullyQ.

One of my buddies was recently pulled over after having a few too many drinks — he lives 5 blocks from the bar and just made a bad call getting behind the wheel. He knew he was going to be over the limit — is

it ever better to refuse a breathalyzer test than to take one when you know it will probably show you're drunk?

A.

Refusing a breathalyzer test may seem like a good idea if you're facing the prospects of a breath test confirming what you already know — that you're legally drunk and were driving. However, refusing a breathalyzer test is unlawful in Virginia and can have negative and severe implications. Additionally, most of the time there is already enough evidence to convict you of driving under the influence, so it won't save you from being charged and convicted. The penalty for refusal varies depending on your past record as it relates to DUIs. For a first offense, refusal is merely a civil offense but carries an immediate license suspension and up to a one-year license suspension from the court in addition to any penalties triggered by the DUI. In addition to the suspensions, if you have a prior DUI conviction or refusal in the last 10 years then it turns into a Class 2 misdemeanor (punishable by up to six months in jail and/or a fine up to \$1,000). If you have two or more such convictions in the last 10 years then refusal is a Class 1 misdemeanor (punishable by up to 12 months in jail and/or a fine up to \$2,500). Those are pretty severe consequences for one decision, particularly in light of the fact that these penalties are on top of any you may receive for the DUI. It is worth remembering that there isn't a requirement that your blood alcohol content (BAC) be a certain level in order to be convicted of a DUI in Virginia. It is illegal to drive while showing any influence of alcohol or drugs that impairs your ability to drive. Evidence of your driving behavior, demeanor, field sobriety tests, and any odors of alcohol will become the basis of determining whether you are under the influence. Additionally, the penalty you receive can be more severe in cases where there is a refusal and a conviction for driving under the influence. While you may be able to avoid the mandatory sentences that relate to higher BAC levels by refusing the test, you would simply be trading one set of penalties for another if you get convicted. Q. My teenage son was arrested from possessing a small amount of pot. What can I do to ensure this arrest does not ruin his life?

A.

Despite changing social and legal attitudes towards marijuana in many parts of America, possession of marijuana is a misdemeanor in Virginia. Even first offenders face possible jail sentences up to 30 days, a fine up to \$500, and a six-month license suspension. This is in addition to the other consequences a conviction can have for your son particularly when it comes to college admissions and federal financial aid. Fortunately, Virginia has a first offender program that allows people like your son to avoid a conviction and have the charges against them dismissed. As long as there are no prior convictions related to drugs, the court can

withhold a finding of guilt, defer future proceedings, and place him on probation. This requires a specific request once the court finds facts sufficient to determine guilt. The requirements of the probation are fairly simple: he will have to complete a substance abuse program administered by the state (often through ASAP, the court-sponsored organization that deals with alcohol and substance abuse issues), remain drug- and alcohol-free, complete 24 community service hours, and have no further violations of law. Additionally, the first offender program carries a six month license suspension as well, but a restricted license is usually available. It is important that your son complete all of these requirements, because the failure to do so can cause the court to convict him of possession. This process needs to be taken seriously, and an attorney can advise your son on the implications and help secure a favorable outcome so there won't be any blemishes on his record.