

**TAKE-1**

# **THE DRINKING SOLDIER: DRIVING WHILE IMPAIRED**

**XVIII AIRBORNE CORPS LEGAL ASSISTANCE OFFICE**



**TO: THE DRINKING SOLDIER**  
**DRIVING WHILE IMPAIRED (DWI) IN NORTH CAROLINA**

**1. Q. WHAT CONSTITUTES "DWI" IN NORTH CAROLINA?**

A. A motorist may be convicted of DWI in North Carolina if he operates a vehicle while under the influence of an impairing substance or if, at any relevant time after operating a vehicles he is found to have a blood-alcohol concentration of .08 or more. A person is "under the influence of impairing substances" if his mental and/or physical faculties are appreciably impaired by some substance.

**2. Q. WHAT CAN I EXPECT IF I AM PULLED OVER FOR DWI?**

A. The officer will probably have you perform several field sobriety tests. He may then decide to ask you to consent to a blood or breath test. If the officer has probable cause to believe you have operated a vehicle while under the influence, he may arrest you and formally charge you with "Driving While Impaired."

**3. Q. DO I CHOOSE WHICH TEST TO TAKE?**

A. No. The officer decides. You have a right to an additional chemical test after your initial test which you pay for yourself.

**4. Q. CAN THE OFFICER FORCE ME TO GIVE A SAMPLE FOR CHEMICAL ANALYSIS?**

A. You can refuse to be tested but you will lose your driving privileges in North Carolina for a period of one year. You may also receive a military letter of reprimand. Under certain circumstances your commander can give you a direct order to submit to a blood test. The police can frequently prove the DWI charge without a test result by testifying about your driving and performance on field sobriety tests.

**5. Q. WHAT IF I HAVEN'T BEEN DRINKING? WHAT IF I HAVE ONLY BEEN TAKING PRESCRIPTION DRUGS?**

A. Driving under the influence of prescription or other drugs is no defense to DWI. Although no alcohol may be involved, you can still be convicted of DWI. If you can show that prescription drugs were the cause of your impaired driving, you may receive a more lenient sentence.

**6. Q. WHAT ARE THE RIGHTS OF A PERSON REQUESTED TO SUBMIT TO A CHEMICAL ANALYSIS TO DETERMINE BLOOD-ALCOHOL CONTENT?**

A. You will be advised that you have been charged with operating a vehicle upon a highway or public vehicular area while committing an implied consent offense. You will be requested to submit to a chemical analysis to determine your alcohol concentration. It is required that you be informed both orally and in writing as to your rights, which are as follows:

You have a right to refuse to be tested.

1. Refusal to take any required test or tests will result in an immediate revocation of your driving privilege or at least 10 days and an additional 12 month revocation by the Division of Motor Vehicles.
2. The test results, or the fact of your refusal, will be admissible as evidence at trial of the defense charge.
3. Your driving privilege will be revoked immediately for at least 10 days if:
4. The test reveals an alcohol concentration of 0.08 or more; or
5. You were driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more.
6. You may have a qualified person of your own choosing to administer a chemical test or tests in addition to any test administer at the direction of the charging officer.
7. You have the right to call an attorney and select a witness to you for you the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time you are notified of your rights.

[It is usually recommended that you do request a witness to view the testing procedure and also that you ask for the help of an attorney.]

You will have a chance to blow into the Breathalyzer twice, and if you do so the lower of the two readings will be used.

**7. Q. MY FRIEND WAS CHARGED WITH DWI WHILE HE WAS DRIVING MY CAR, AND I GOT CHARGED TOO. CAN THIS HAPPEN?**

A. Owners who knowingly permit their vehicles to be driven by impaired drivers can be charged with Aiding and Abetting a DWI. The charge is just as serious as a DWI, and the penalties are just as severe.

**8. Q. DO I NEED A LAWYER TO HELP ME IF I AM CHARGED WITH DWI?**

A. Yes! DWI is a serious criminal charge. Conviction may result in jail, fines, community service, the loss of driving privileges and increased insurance premiums. If you are convicted, your on-post driving privileges will be revoked and you will receive a letter of reprimand from a General Officer. In addition, you can be barred from reenlistment and discharged.

**9. Q. IF I AM CHARGED WITH DWI, CAN I BE REPRESENTED BY AN ARMY ATTORNEY?**

A. Regulations prohibit Army legal assistance attorneys from representing persons charged with criminal offenses. A legal assistance attorney can assist you with military administrative actions which flow from a DWI charge. For example, a legal assistance attorney can help you respond to a letter of reprimand or revocation of driving privileges. If your commander recommends your administrative elimination, Trial Defense Service will provide legal counseling.

**10. Q. WHERE WILL MY DWI CASE BE HEARD?**

A. On-post cases are usually heard in federal court by a United States Magistrate. Off-post cases are usually heard in state court, first before a district court judge and then (if a conviction is appealed) again by a superior court Judge.

**11. Q. DOES THE ARMY HAVE TO WAIT FOR THE COURT TO DISPOSE OF MY CASE BEFORE TAKING ACTION?**

A. No. Your driving privileges will be suspended immediately upon arrest and you may receive a letter of reprimand before you are convicted. You will be referred to Operation Awareness or a similar alcohol/drug abuse education program. Your commander may start separation proceedings against you.

**12. Q. WHAT IF I AM LATER ACQUITTED OF DWI OR PLEAD GUILTY TO A LESSER CHARGE?**

A. Conviction of DWI is not required to support military administrative sanctions. Each case is carefully reviewed on its own facts and merits. If an acquittal was due to a technical defect (for example, absence of a particular witness at trial) which does not otherwise undermine the evidence of your impaired driving, administrative sanctions may still be imposed. These sanctions will usually only be lifted when it appears that you were not actually driving while impaired. For example, if you could not be identified conclusively as the driver in an accident situation, the sanction might be lifted.

**13. Q. WHAT IF I HAVE OTHER QUESTIONS OR SPECIFIC PROBLEMS I WANT HELP IN SOLVING?**

A. See a legal assistance attorney as soon as possible. Your lawyer can answer the questions and help you to make a fair and intelligent decisions about your choices, options and alternatives. Our legal assistance office stands ready, willing and able to help you in these matters.