

THIS IS AN ADVERTISEMENT FOR LEGAL SERVICES

Charged With DWI: Now What?

A Guidebook to Navigating the Legal System



Brought to you by the Law Offices of Bush and Powers

THE LAW OFFICES OF BUSH AND POWERS

It is our strong belief at Bush & Powers that information and preparation make for prudent decisions. As our materials indicate, we want you to understand both the processes and law behind impaired driving offenses.

We actively encourage clients to act responsibly and confront the charges against them. Although it generally is not a pleasant subject and in fact, seems to be something people would rather forget, trial preparation can make the difference between a "Not Guilty" and a "Guilty" verdict.



Hopefully this booklet will help explain what you might expect in the weeks and months to come. There is likely more information we can share with you about the individual aspects of your case. Therefore, I encourage you to call now for a free consultation.

Bill Powers, *Attorney at Law*

Super Lawyers
NORTH CAROLINA
2007

BOARD CERTIFIED CRIMINAL LAW SPECIALIST

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CHARGED WITH A DWI: NOW WHAT?

When you're going through difficult times in life, you need an attorney who can protect your legal interests and has the experience to give you the legal insight to make good decisions. You deserve personal attention and a prompt response to your questions. We are here to help.

At the Law Offices of Bush & Powers, the attorneys who make up our legal team have experience helping people through challenging times and taking cases to court. We're prepared to be your advocate by guiding you through the legal process, educating you about your rights and presenting the case with care and professionalism.

We invite you in the next few pages to learn more about how to protect your legal interests and navigate the legal process. Remember, even in the worst cases, there are defense options. You are presumed "innocent until proven guilty." This booklet explains some of what you might expect in the weeks and months to come. This will familiarize you with some of the terminology you will need to understand your case. In the event that we can be of assistance to you, we will be able to share more about the intricacies of your individual case and guide you in the decision making process ahead.

Information and preparation make for good decisions and frankly, more satisfied clients. Prior to even speaking with you, we want to provide helpful information. We want you to understand both the processes and law behind impaired driving offenses. Please use this as a starting point for the questions you have and consider writing down any additional questions you would like to ask.

Watch for these icons on the side bars to point out additional questions, definitions, important facts and helpful hints.



Questions



Definitions



Important Facts



Helpful Hints

CALL US. WE'RE HERE TO HELP!

(704) 342-4357

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WHAT DOES THIS ALL MEAN?

You have been charged with “Driving While Impaired” or “DWI.” In the past, this was known as “DUI,” or “Driving Under the Influence.” There is no practical distinction between the two. A driver can be impaired by substances other than alcohol, like drugs such as cocaine, marijuana or even prescription medications. The term “DWI” was established to encompass all substances that might “impair” your ability to operate a motor vehicle, whereas “DUI” tended to relate more to alcohol only. DWI charges are criminal cases and have special rules for their presentation in court, some of which we will explain in the pages to come.



DWI stands for “Driving While Impaired” and encompasses more areas of impairment than just alcohol.

CAN I GO TO JAIL? EVEN FOR A FIRST OFFENSE?

Yes, you can go to jail even for a first offense. There are four factors that if found part of the case, require active jail time in North Carolina. Your lack of a prior record, service to the community or otherwise wholesome life cannot change that fact. They are called “**Grossly Aggravating Factors,**” or “**GAF’s.**”

Factors in aggravation, whether deemed “gross” or something different, are only considered if you are convicted. That is why it is so important to review the facts of the case prior to making a decision on how to proceed. In simple terms, these are the four examples of Grossly Aggravating Factors:



Grossly Aggravaing Factor:

One of four sentencing factors that add to the seriousness of the offense and, if found, mandate jail time in the state of North Carolina.

- 1. Children under the age of 16 in the car at the time of the DWI**
- 2. Accident related to the DWI resulting in Serious Bodily Injury**
- 3. Driving with a suspended or revoked license at the time due to a prior alcohol related offense**
- 4. Prior DWI within seven (7) years**

Generally speaking, if you have only one (1) GAF, the minimum amount of jail time a judge can impose is seven (7) days. If you have two (2) or more GAF’s, the judge is required to sentence you to a minimum jail sentence of thirty (30) days. However, they can, in their discretion, order MORE time in jail.



BONDING COMPANIES & BAIL

There is no practical distinction between the terms “bond” and “bail.” Bailments were created under old English Common Law to ensure those accused of a crime came to court. The belief was that if people had money to lose, they would make certain to be present for hearings.

WHAT IS THAT BOND PAPERWORK THAT WAS GIVEN TO ME?

When you were released, the person who paid the bond received a receipt. The amount of the posted bond and the date is stated on the face of the receipt. It is your receipt and it is very important not to lose. If you, a friend or family member posted a cash bond, make absolutely certain the receipt is kept in a safe place. The Clerk of Court will not refund the bond in cash; rather a check is normally mailed. They must provide proper identification, mailing address, case disposition and return information.

Some clients choose to post their release with cash. You will be entitled to the return of all the money after the **final** court appearance for the matter. Only the person who posted the bond may receive the funds from the Clerk of Court. That is true whether or not you actually gave the money to another party to post bond.

HOW MUCH DO I OWE THE BONDING COMPANY?

For taking such risk, the Bonding Companies charge a fee. The normal cost for obtaining assistance of a Bondsman is approximately ten percent (10%) of the total bond amount. You are NOT entitled to a refund of the bonding company fee.



Bonding:

The term “bonding” refers normally to a type of insurance Bonding Companies carry. Because they are insured, they may sign the release paperwork at the jail promising to pay and/or be personally responsible for your bailment or “bail,” in the event you chose not to appear in court.



What Happens If I Miss Court or Don't Pay the Bondsman?

If you fail to come to court or otherwise comply with the conditions of the Bonding Company, they may chose to “surrender” you to the Sheriff's Department. We encourage our clients to keep in close contact with their Bonding Company and comply with everything they ask of you.

ADMINISTRATIVE COURT

The Magistrate who sets the conditions of bond prepares a Release Order. The terms and conditions for the release are set forth within the Release Order. The Release Order also provides the First Appearance Date in Courtroom 1130. DWI cases normally receive a Hearing Date within approximately one month of the arrest. People who are released from jail are Ordered to appear in Courtroom 1130 for an Initial Appearance. People who do not have the money to post bond or who are still in jail are taken to see a judge to address those issues.

WHAT HAPPENS IN COURTROOM 1130?

Courtroom 1130 is an “Administrative Hearing.” **This is NOT the trial.** There are no witnesses in 1130; the police officers will not appear; no evidence will be presented; nor will there be any testimony. **Your presence is normally not required if you hire our firm.** If you wish to handle the matter yourself or wish to ask for a public defender, you **MUST** go to Courtroom 1130. It is possible you will sit in court for an extended period of time (or wait in the hallway to enter the courtroom). It is not unusual in Charlotte for Courtroom 1130 to have well over 1,000 matters on the docket. The purpose of Courtroom 1130 is to:

- 1. Explain the Court System to people who do not have an attorney**
- 2. To address legal counsel and issues of indigence**
- 3. To handle some matters for plea, if appropriate.**

Having your attorney appear on your behalf is the preferred method of obtaining a trial date in Courtroom 1130. There is limited space and many other matters to handle in court that require the defendant’s appearance. Cases are systematically distributed to the different trial or “dispositional” settings.

Through agreement with the different law enforcement agencies and the court system, officers are normally assigned two days a month in which the must appear in court. Generally, cases are set on a bi-weekly basis.



Because of the large number of law officers, it became too difficult to allow each individual officer to set court dates. Therefore, the court system has established system-wide policies to allow more evenly distributed caseloads in each trial court, which includes the process of "calendar" matters for trial or disposition.

MY PAPERWORK HAS COMPLICATED NUMBERS ON IT!

Each person charged with a crime is assigned a case number. Case numbers are normally written on the upper right hand side of the release order. They also may be written on the ticket or uniform citation if they are available to the police officer. All case numbers begin with the year of the offense, for example "07-CR-xxxxx." The "07" indicates the year 2007. "CR" is the Clerk of Court's designation of a criminal offense. Each county in North Carolina has its own series of case numbers and they all are issued the same way: 07-CR-xxxxxx.

The numbers following "CR" are assigned in the order in which people are arrested. The first person charged on January 1, 2007 was given the case number of "07-CR-00001."

If your paperwork reflects 07-CRS, the "S" denotes a criminal case in Superior Court. In DWI cases, only felony Habitual Impaired Driving offenses and misdemeanor appeals to Superior Court receive the "CRS" designation. Even if the charges end up in Superior Court or are Felonies, they always start out in District Court and are marked "CR



Reference the contact information at the back of the booklet for other helpful contact and reference information



We are here to answer any questions you may have even before you hire us to represent you. We want you to be informed! Visit us online at:

www.BushandPowers.com



How are Trial or "Dispositional Dates" Set?

Your charging officer has preassigned court dates. Each officer has dates chosen for them by the system and as such, the officer cannot subjectively determine when you will go to court. They are required to be in court on certain dates and times, which are scheduled in advance.

Call for a FREE consultation!
(704) 342-4357 or email us at:
Bill@BushandPowers.com



HOW DO I KEEP UP WITH ALL OF THE COURT DATES?



There are a few different ways:

1. You can call our firm

Yes. You can call us at 704-342-4357. We have access to court records and will be more than willing to provide information regarding your court dates. We also will answer other questions regarding the process and provide information about your case. The consultation is free.

2. You can call the Clerk of Court

You also can call Clerk of Court. The telephone number for the Charlotte Clerk of Court is (704) 686-0600. Be advised, their phone system is busy. Usually Thursdays and Fridays are the best days to call. You will need your case numbers if you decide to try calling.

3. You can check on-line:

<http://www1.aoc.state.nc.us/www/calendars/CriminalQuery.html>

Accidents do occur in the recordation of new dates within the system. We have found that with both our office and clients checking dates, there is much less room for errors. Given the very serious consequences for missing court, like going to jail for a "Failure to Appear," checking multiple sources and confirming appearances makes sense. It also saves you from additional fees.

Is There a Court Hearing to Get My License Back?

Yes, technically. A hearing process is required if the District Attorney's Office asks for one. In most instances, after preparing the appropriate materials, we can get a Pre-Trial Privilege without you coming to court.

The District Attorney's Office can waive their right to require a hearing on the privilege.

The materials we submit are based upon a written Affidavit.

It is common to obtain a Pre-Trial Privilege without a hearing if all the paperwork is complete and accurate. You must be otherwise eligible for the privilege.



DRIVING AFTER A DWI

A charge of **Driving While Impaired** in North Carolina requires an immediate thirty (30) day revocation of your driving privilege—just for being charged. After ten (10) days from the date of the arrest, a Pre-Trial Limited Privilege may be obtained in certain circumstances.

In order to drive in the intermediary time between your arrest and your court date, you need to obtain a Pre-Trial Limited Driving Privilege.

We will prepare it for you as part of our legal representation. Obviously you must qualify for the privilege and otherwise complete the required steps for the privilege to be issued.

I NEED TO DRIVE TO WORK! WHAT SHOULD I DO?

There are restrictions to when and where you can drive. The Standard Hours for Limited Driving Privileges are Monday through Friday, 6:00 a.m. until 8:00 p.m. You may request the Court grant additional hours or days of operation, or “Non-Standard” privileges. For example, people who work 3rd shift, or who are “on call” and who might be the “emergency” reference person at work are commonly granted “Non-Standard” privileges. Proof of Non-Standard Hours is usually accomplished by forwarding on work letterhead or other official materials, a letter stating the days and hours needed. People who have been convicted in the last seven (7) years of Driving While Impaired (DWI) or who do not have a valid driver’s license may NOT obtain a Pre-Trial Privilege. Furthermore, most judges will not grant a Pre-Trial Privilege to persons who have a **Grossly Aggravating Factor** (*See page 2 for definition).

Prior to obtaining the Pre-Trial Privilege, there are five (5) primary requirements that clients must assist us in completing or obtaining:

- **Alcohol Assessment**
- **DL-123 (or Equivalent)**
- **Work Hours**
- **Signed Privilege**
- **Affidavit**



Limited Driving privileges also allow people to conduct “household maintenance” such as going to the grocery store, picking up children from school and the like. Normally the Court will direct such activities to take place during the Standard Hours.



Affidavit:

A sworn statement in writing made especially under oath or on affirmation before an authorized notary.

Alcohol Assessment

The client must obtain an Alcohol Assessment at a properly licensed facility. Please do not mistake this condition for a privilege as our assumption you have a drinking problem. It is a requirement of the North Carolina General Assembly. There are many companies in the Charlotte area that offer Alcohol Assessments, but normally we recommend Tyvola Assessing Center. The telephone number for Tyvola is 704.525.4828. Marie Thusen, Executive Director for Tyvola Assessing Center will schedule times for our clients on weekends, after hours and/or whenever it is convenient to your schedule. The process normally takes about thirty (30) minutes and is not overly cumbersome. Mrs. Thusen will administer two (2) questionnaires that are approved by the State of North Carolina. Without going into great detail, the purpose of the "testing" is to determine whether one might have a potential problem with alcohol or other elicit substances. The cost for the assessment is One Hundred (\$100) Dollars. In most instances, Tyvola will accept payment at the time of the testing. If your schedule requires a weekend or evening visit, advance payment may be required.



After thirty (30) days from the date of the arrest, you are entitled to obtain your regular driver's license. The Pre-Trial Driving Privilege is no longer required after that time.

There are no restrictions on when or where you can drive.

DL-123

The client must request from his or her insurance carrier a form called a DL-123. We strongly urge clients NOT to disclose to their carrier the purpose of the form. Primarily, it is none of the carrier's business and secondly, you have not been convicted of any offense. We request clients to simply provide the Bush & Powers facsimile number of (704) 358-9079.

The Pre-Trial Driving Privilege may be obtained ten (10) days after your arrest. It is valid for twenty (20) days thereafter. As such, the Legislature has ordered all persons charged with Driving While Impaired and who had an alcohol concentration of .08 or higher to not drive for thirty (30) days. Only ten (10) days are kept in effect if a person properly applies for and receives the Pre-Trial Privilege.

In order to obtain your driver's license after the thirty (30) day revocation period, you must pay a One Hundred (\$100) Dollar restoration fee to the Clerk of Court. If you provide the funds for such fee to our office in a timely fashion, we will pick up your driver's license at no charge. The \$100 Restoration Fee is assessed by the Clerk of Court, not Bush & Powers.



The Clerk of Court will accept only certified funds such as a Money Order, Bank Check or Cashier's Check. The Clerk will also accept cash. We request clients to provide the Restoration Fee before the thirty (30) suspension period expires.



BLOOD ALCOHOL CONCENTRATION

There are a few ways that your license might have been revoked. First, if blood was drawn pursuant to the arrest, it is commonly not tested for several weeks. Upon receiving notice of an BAC (Blood Alcohol Concentration) that exceeds the legal limit (.08 or Higher), the Clerk of Court is required to send Notice to the Department of Transportation, Division of Motor Vehicles. As such, your license MAY be suspended weeks or months after the arrest.

The DMV can only suspend your license if the BAC was at or above .08. **However, you still may be charged for Driving While Impaired EVEN WITH A LOW READING!** The State of North Carolina can seek to prove impairment via "Retrograde Extrapolation." It is possible that the BAC may have been higher when you were driving and diminished over time. Do NOT assume the case will be automatically dismissed.

I WAS MARKED AS A REFUSAL? WHAT DOES THAT MEAN?

A "refusal" results in an automatic twelve-month (1 Year!) suspension. If you deny refusing OR if there are circumstances whereby the charging officer did not have the legal right to demand a sample, you may challenge the revocation. You must challenge the "willful refusal" via formal letter within ten (10) days of the revocation notice. This is VERY important. If properly retained and otherwise legally appropriate, we can file a Demand for Hearing and forward that to DMV via certified mail.

I DIDN'T WANT TO BLOW. CAN I STILL CHALLENGE?

In certain circumstances, yes. For example, one cannot be suspended for willfully refusing the testing if Probable Cause to arrest for impaired driving did NOT exist. It is an extremely complex aspect of DWI law and therefore is best discussed with legal counsel after exploring the law and facts of the charges.



You may still be charged for Driving While Impaired even with a low Blood Alcohol Content reading!



Is Certified Mail to the DMV Required?

No. But it is the only real proof you requested the hearing in time. If you miss the hearing date, you WAIVE YOUR RIGHT TO FIGHT THE REFUSAL SUSPENSION!



The Police got an order to draw blood. Can they do that?

That question is frankly hard to answer. It is a developing area of law and one that promises litigation in the future. Caselaw exists on both sides of the argument. It is our position that "forcing" a blood test is an improper intrusion on your Constitutional Rights.

BENCH VS. JURY TRIALS

All DWI charges require appearances with a District Court Judge. Trials, Motions & Guilty Pleas are heard by the District Court Judge, which may be appealed if appropriate. In the event you are not satisfied with the judgment and/or trial, you have as a matter of right a "Trial De Novo." De Novo translated from Latin means "anew" or "from the beginning." The original judgment by the District Court judge is completely set aside. The appeal is taken before a jury of your peers. In most instances, a jury trial is not required.

IS A JURY TRIAL DIFFERENT? DOES IT COST MORE?

Occasionally we will recommend jury trials to clients. Legal fees for jury trials are NOT included in the basic contract of representation. Furthermore, the State of North Carolina is now given an opportunity to appeal certain pre-trial motions. It is important to recognize: Juries are "Finders of Fact" in Superior Court. Judges are "Finders of Law" in Superior Court. In District Court, the Judge acts as both the Finder of Fact and the Finder of Law.

DO I NEED TO GET MY COURT PAPERS?

Preparation is key for a zealous DWI defense. Although some documentation is provided to people upon release from jail, the vast majority of truly important forms are not provided. It is something we must search out and in some instances, fight to obtain. Bush & Powers does not believe in "just waiting until the court date to talk with the officer." Acting in such fashion is imprudent. As such, we obtain the important paperwork for the client, once we are retained.

The following materials are very important to obtain BEFORE trial:

1. **Charging Officer's Affidavit**
2. **Alcohol Influence Report**



In the District Courts Judges are both the Finder of Fact and the Finder of Law unlike jury trials.

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Bill@BushandPowers.com

Charging Officer's Affidavit

In order to set a bond or even hold a party in jail for impaired driving, Probable Cause must be established. The old-fashioned way of obtaining Probable Cause required the officer to testify before a Magistrate as to the factual basis behind the case. That testimony was under oath.

Mecklenburg County has somewhat changed the procedure. It is now more customary for officers to prepare a written, sworn affidavit for the Magistrate's review. That form is now called the Arrest Affidavit.

Within the Arrest Affidavit the officer writes down his or her impressions of the DWI arrest. They normally state why the accused was pulled over, how they acted, and how they performed on the various psychophysical dexterity tests (also known as Standardized Field Sobriety Tests / SFST's).

The Charging Officer's Affidavit gives counsel a basic idea of what the officer believed during the arrest investigation. It may provide a basis for a Motion to Suppress or Dismiss. It may explain why an officer acted a certain way. It also may help remind clients about certain details of the arrest they have forgotten.

Alcohol Influence Report (AIR)

Many officers are provided the AIR form, (or something similar), by their respective law enforcement agencies.

The AIR form lists with great specificity the observed effects of alcohol on the accused. It also provides pertinent personal information. AIR forms include how a person was dressed, how their speech sounded, whether their eyes were red & glassy and describes in a detailed fashion the SFST performance.

In some cases, police officers record their recollections of the arrest within personal notes. That type of documentation is normally not provided without some discourse with the District Attorney's Office. Although law enforcement officers are not required to disclose the materials to the District Attorney, the Magistrate or Defense Counsel, most will if approached in an appropriate fashion.



What Happens If I am scheduled to Work on the Day the Officer is Assigned to Court?

As tough as it may sound, you take the day off from work. The Court system assigns the date randomly. No one gets to choose. Sometimes that hurts the client, sometimes that is hard for the officer. There are times where something may be moved to two weeks before or two weeks after the suggested date, but the case will almost always be on the same day of the week. That will only change if the officer gets reassigned to another court date or if the case is transferred to Superior Court for some reason.





TESTS (AT THE ARREST)

There are three (3) commonly accepted Psychophysical Dexterity Tests that were promulgated by the National Highway Traffic Safety Administration (NHTSA):

- **The Horizontal Gaze & Nystagmus (HGN)**
- **Walk & Turn / Heel to Toe**
- **One Leg Stand**

Officers also occasionally perform other tests such as making one say their ABC's, count on their fingers or answer questions. Officers are instructed to attempt to distract the party performing the physical tasks. That is called "Divided Attention" testing.

A "Nystagmus" is a persistent, rapid, involuntary movement of the eyeballs. Appellate Courts in North Carolina previously ruled such testing could not be admitted at trial as proof of impairment or determinative of probable cause to effectuate an arrest. Effective December 1, 2006, the North Carolina Legislature adopted the test as a methodology to determine impairment. It remains to be seen whether the Courts will adopt the test as reliable or find the statute unconstitutional.

Another common testing device is the AlcoSensor. The AlcoSensor is a portable alcohol-screening device normally given on the scene of the arrest. AlcoSensor results are NOT admissible for the purpose of determining guilt or innocence. The court may consider AlcoSensor results to establish whether probable cause existed for arrest.

I SAW A CAMERA IN THE POLICE CAR. CAN I SEE THAT?

Video and audio tapes are occasionally utilized in trials for impaired driving offenses. It is important to note many officers do NOT have audio-video equipment in their patrol vehicle. Most police agencies have their own internal policies.



When appropriate, we request the video upon being properly retained. It is our office policy to obtain video evidence whenever possible. There is no additional charge for duplicating the video. We ask our clients, at such time as one may be available, to set up an appointment. During the visit, we will review the research materials regarding your case and watch the video with you.

IS MY ARREST PICTURE AVAILABLE TO THE PUBLIC?

If you were arrested in Mecklenburg County, your “mug shot” is likely available to everyone in the world to see. It may take time to be posted, but you can check the following two sources on-line:

“<http://arrestinquiryweb.co.mecklenburg.nc.us>”

“http://mcsoweb2k.co.mecklenburg.nc.us/inmatesearch/inmate_search.asp”

The first link is for people who were arrested and released. The second link is for people who are still in jail, awaiting a dispositional date.

There are really only two ways to get your picture off the internet:

1. **You were mistakenly arrested**
2. **You win the case and have the record of the arrest and court paperwork “expunged.”**

ISN'T THERE A MOTION FOR DISCOVERY?

Traditionally there has been no right to “Discovery” in Impaired Driving offenses. Recent court opinions may challenge that principle. There is a wealth of information that can be obtained with effort. It is our goal at Bush & Powers to assemble the requisite documentation for your case without delay.

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(704) 342- 4357 or email us at:
Bill@BushandPowers.com



Expunged:

To destroy; to blot out; obliterate; erase. The act of physically destroying information- including criminal records- in files, computers and other depositories.



Motion for Discovery:

A complete summary of all the facts and circumstances surrounding the charges documentary evidence; both in favor and against the accused.

ALCOHOL SCREENING/ TESTING DEVICES



Alco-Sensors are in fact defined as “chemical analysis” devices. The North Carolina Administrative Code states, “In examining devices for making chemical analyses, the commission finds that at present only screening devices for testing breath of drivers are suitable for on-the-scene use by law enforcement officers.”

Relatively recent interpretations in the caselaw pertaining to Probable Cause for Arrest and the use of technology have made the application of alcohol screening / testing devices one of the two most important issues in the impaired driving practice genera. Probable cause has not changed; yet, the method for arriving at what a reasonably, prudent person might believe has certainly become more complicated.

An equally important area of import is the administration of psychophysical dexterity tests or what has commonly become known as Standardized Field Sobriety Tests (SFST).

Similar in nature or utilization, roadside and laboratory simulated physical dexterity tests work hand-in-hand with alcohol “screening” devices. However, humans can be prone to discrepancies and inconsistent behaviors. No two individuals are truly alike, and finding a common understanding or defining basic mores can in itself create dissension. The NHTSA states in its DWI instructional manual, “The PBT (Preliminary Breath Testing) result is only one of many factors the officer considers in determining whether the suspect should be arrested for DWI. It should never be the sole basis for a DWI arrest.”

AlcoSensor

Intoxilyzer

**Call for a FREE consultation!
or email us at:
Bill@BushandPowers.com**

HOW DOES IT WORK?

The purpose of breath testing devices is to obtain a representative sample of the different chemicals expelled from the bloodstream and into the respiratory system through the lungs. Put simply, we seek to capture what was most recently floating about the bloodstream. In addition to CO₂, we exhale other poisons, including CH₃CH₂OH (ethyl alcohol). Screening devices implement the use of a fuel cell to measure alcohol in one's breath. The key to alcosensor testing is to utilize chemical compounds that create an electrical current only when exposed to ethyl alcohol. By determining the amount of alcohol used by the electric current, the device can determine the amount of alcohol in one's breath and thereby the bloodstream.



Peak Measurement Technique:

When a precise volume of breath sample is passed across a fuel cell, the amount of electricity from the cell rises from zero to a peak number. As all the electrons are used up or transferred, the electrical charge then decays back to zero. This is called the "peak measurement technique."

Of the different methods available, it is likely the most accurate. Its major flaw, if it may be considered such, is the amount of time it takes to convert the electrical current. Added time is the result of increased accuracy. For all breath alcohol measurement devices, it is critical to obtain a deep lung sample.

HOW DO I KNOW THE TEST WAS GIVEN PROPERLY?

Intoximeters, Inc., by and through its chief engineer Mr. John Evans, recommends "police field operators should be tested or re-certified once per year" depending upon each officer's relative experience with AlcoSensor devices on a daily basis. Furthermore, the operational instructions as "supplied or listed on the device" are attached and state:

The results supplied by a properly calibrated Alco-Sensor III can be no better than the quality of the sample collected by the operator. Good sampling technique is essential to obtaining a deep lung breath sample, and a deep lung breath sample is essential to obtaining a breath alcohol reading that correlates with a blood alcohol sample drawn at the same time.

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(704) 342- 4357 or email us at:
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Bush and Powers is here for any questions that you have regarding your case. Remember the consultation is free. If you should hire us to assist you, we will be able to explain more about the intricacies of your case.

Certification, Awards & Seminars

Board of Governors, North Carolina Academy of Trial Lawyers

SuperLawyers 2007–Criminal Law

Business North Carolina Legal Elite 2007–Criminal Law

Board Certified Criminal Law Specialist by the National Board of Trial Advocacy

Chair, North Carolina Academy of Trial Lawyers Annual DWI Conference

Former Co-Chair of the Criminal Law CLE Division, North Carolina Academy of Trial Lawyers

Certified Instructor, Operations & Maintenance CMI, Inc., intoxilyzer 5000 Series, C.E.S. Consulting, Meeting Requirements of United States Department of Transportation 49 CFR Part 40

Classes Seminars Taught



DWI Update, NCATL January 2007

“Blood, Breath & Beyond”

Hot! 2007 DWI Update North Carolina Bar Association, May 2007 “Breathalyzer and Intoxilyzer Machines from the Defense Perspective”

The Criminal Masters in Advocacy Seminar, NCATL Summer Convention, June 2007 -- Focuses on defending DWI cases in today’s climate in light of the enormous legislative changes enacted in December 2006

Standardized Field Sobriety Tests in North Carolina, Lorman CLE, 2006, “Detection & General Deterrence, Phase Three: Pre-Arrest Screening”

DWI Defenses, Ideas for a Changing Legal Environment, NCATL 2005, “The Intoxilyzer 5000 and AlcoSensor–Know the Technology –Help Your Client”

Strategies In handling DWI Cases in North Carolina, Lorman CLE, 2004, “The Intoxilyzer 5000- It Will make You See InfraRed”

DWI Defenses, Traffic, Insurance & Substance Abuse Issues in North Carolina, Lorman CLE, 2004, “Traffic Law & Insurance Issues”

Legal Ethics in North Carolina, Lorman CLE, 2004, “Ethical Issues Related to Criminal Law”

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Clerk of Court:

(Mecklenburg County)

Phone: 704.686.0600

Tyvola Assessing Center:

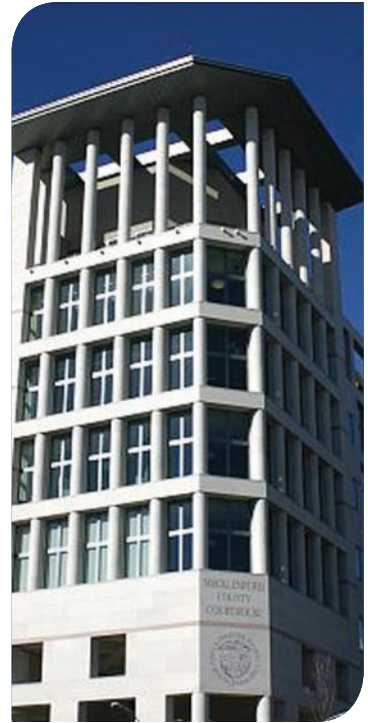
Phone: 704.525.4828

**For more information on membership standards
and criterion of inclusion in SuperLawyers &
Business North Carolina Legal Elite see:**

www.SuperLawyers.com

[www.Business.com/archives/
2007/01/legal_elite.html](http://www.Business.com/archives/2007/01/legal_elite.html).

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"Thanks. Thanks. Thanks. Thanks. Thanks. Thanks. What more can I say?"

-Jacklyn E.

"Mission Accomplished."

-Emmit M.

"I want to thank you for everything you did with all my charges & tickets. You were not only a great lawyer but you also cared about me and my future, which means a lot to me."

-Heather L.



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