

## **DUI**

When one is arrested for driving under the influence (DUI) of alcohol or drugs, they are not facing a mere “traffic violation.” A DUI is a criminal offense that can result in severe penalties and a significant long-term impact on your future. If you are charged and convicted of DUI, you will face many reprimands including, but not limited to:

- Jail time,
- Loss of driving privileges,
- A criminal record,
- Mandatory installation of an ignition interlock device (IID),
- Community service, or
- Substantial fines and costs.

If you were involved in a collision while driving under the influence that caused injury or a fatality, you can even face a felony conviction and a lengthier term in state prison. When the stakes are this high, you need experienced Santa Barbara DUI criminal defense attorneys Sanford & Christy Horowitz to challenge police procedure, chemical testing, and field sobriety tests while fighting for your future.

### **Understanding the DUI Process in Santa Barbara**

When arrested by the police for DUI, one will actually be charged with two distinct but related criminal offenses: (1) California Vehicle Code Section 23152(A) & 23152(B). A violation of VC Section 23152(A) applies if you were arrested based on evidence that your actual mental or physical driving abilities were impaired. The VC Section 23152(B) violation is what is referred to as a “per se” offense. An individual can be convicted of this offense even if the person drives perfectly and exhibits minimal signs of physical or mental signs of intoxication. A “per se” violation only requires the prosecutor to prove that a lawfully administered chemical test of blood, breath or urine established that driver was operating a motor vehicle with a blood alcohol concentration (BAC) of .08 or higher.

Unless you are stopped at a DUI checkpoint or you are involved in an accident, a DUI investigation will usually involve you being pulled over for erratic driving or a traffic violation. When the officer stops your vehicle, he or she typically will not have enough evidence for a DUI arrest. The officer will likely ask you a number of questions about where you are coming from and whether you have been drinking. While you should not lie to the officer, you should not answer these questions unless you have ingested absolutely no drugs or alcohol. While you should have your license and registration ready to provide to the officer, you are not required to answer questions about your activities. These questions serve two functions for the police officer. First, the officer wants you to provide incriminating statements, so he can initiate a DUI investigation. Second, he is observing you for physical signs of intoxication like red eyes, alcohol on your breath, slurred speech and similar indicators. There is no benefit in being belligerent, simply state that you are not comfortable answering questions without a lawyer.

At some point, the officer probably will ask you to participate in field sobriety tests (FSTs) and to submit to a portable breath test. These preliminary forms of alcohol or drug screening are administered to support probable cause for a DUI arrest. A driver is not obligated to submit to either of these forms of screening, so it is usually not in your interest to do so unless you have not ingested any drugs or alcohol. While the officer might still arrest you for DUI, you will have limited the evidence available to the prosecutor. Consequently, it is important to understand the penalties of refusing formal chemical testing under VC Section 23612. A refusal following a lawful arrest will result in additional penalties, depending on previous offenses. For a first offense, these additional penalties include: 2 extra days in jail, an administrative license suspension of one year, and nine months in DUI school. A prosecutor may also comment on the refusal as consciousness of guilt and continue to pursue a criminal case based on the officer's observations.

### **DUI Defense Based on Proven Strategies**

Christy and Sanford Horowitz understand that their job is to fight for the best possible outcome for their clients. They carefully review police reports, chemical testing and other evidence to develop effective strategies when seeking a dismissal, reduced charges, or acquittal. Some of the defenses that Sanford & Christy Horowitz Criminal Defense might successfully employ in your case include:

- **Exposing an Improper Stop:** If the officer does not have sufficient basis for the initial stop, Horowitz Law will seek to suppress all evidence obtained following the stop.
- **Demonstrating Unreliability of FSTs:** Even when conducted, demonstrated and scored perfectly, FSTs can be fairly inaccurate. Further, many officers lack sufficient training and experience in administering these highly subjective tests. FSTs also are as likely to reveal injury, illness, obesity or lack of coordination as alcohol impairment. Horowitz Law attorneys have the same training police officers receive in FST's and make sure a jury understands the inherent unreliability of FSTs.
- **Failure to Observe Mandatory Waiting Period:** When a police officer administers a breath test, the officer is required to observe a 15-minute continuous observation period. This waiting period is to mitigate the risk of an inaccurate breath test because of mouth alcohol. While the officer is supposed to carefully watch for belching or other factors that could interfere with an accurate result, many officers take this time to write reports or handle other tasks.
- **Rising Blood Alcohol Defense:** A driver can be convicted while operating a motor vehicle with a BAC of .08 percent or higher. Depending on when a driver consumed alcohol and the delay before administering a formal breath or blood test, an individual's BAC can rise over the legal limit after the stop.
- **Challenging Breath Test Results:** There are many factors that can compromise the accuracy of a breath test, including low-carb diets, diabetes, mouthwash, gender, improper calibration of the device and other factors. The attorneys at Horowitz Law

carefully investigate chemical testing procedures and results that compromise the test's accuracy or reliability.

Experienced criminal defense attorneys Sanford & Christy Horowitz will carefully investigate chemical testing procedures and the results that compromise the test's accuracy or reliability to fight for the best possible outcomes for clients.