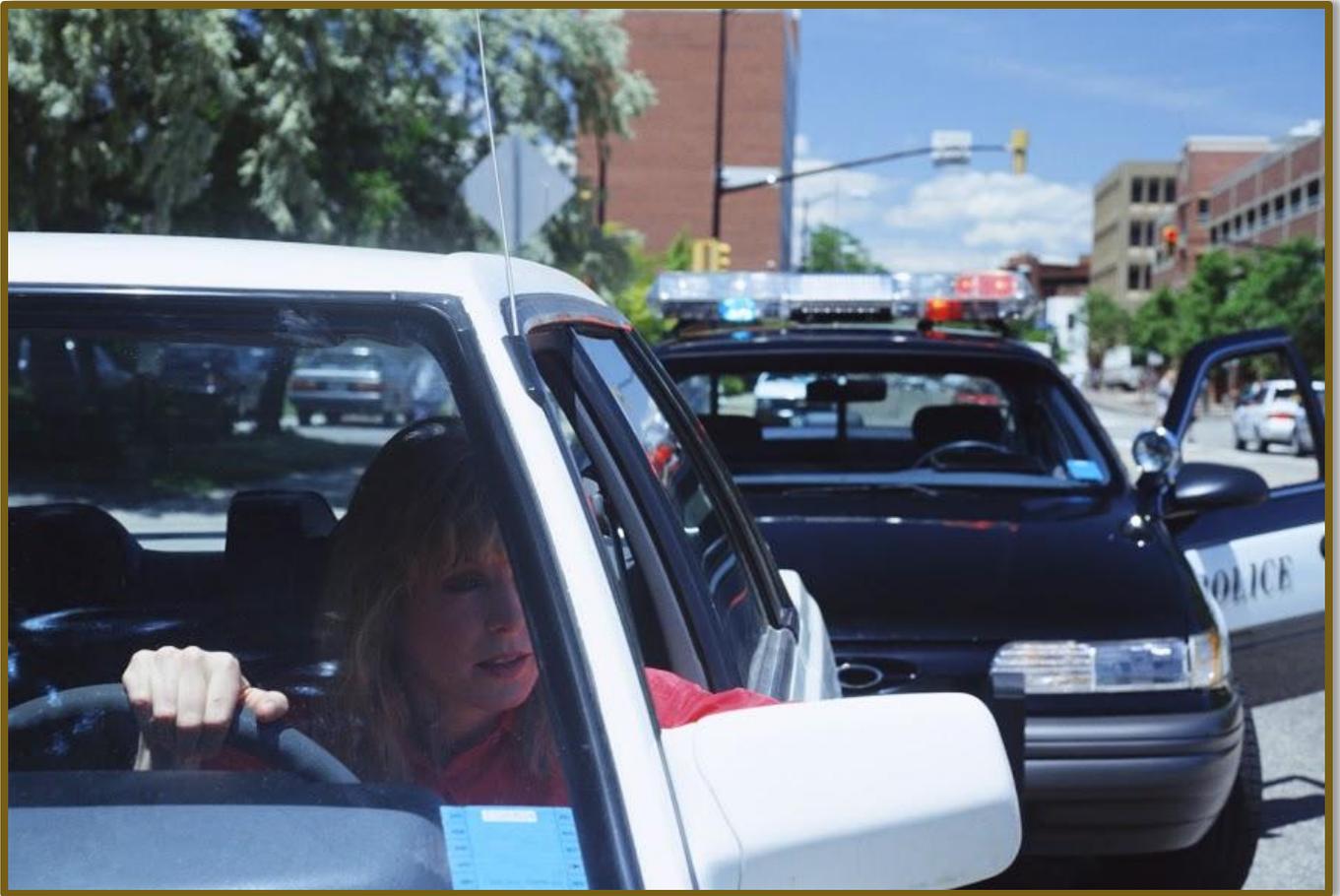


# A TENNESSEE DUI STOP WHAT TO EXPECT

*By Knowing What to Expect If You are Ever Stopped on Suspicion of Driving Under the Influence in Tennessee You May Appear Calmer and More in Charge, thereby Decreasing the Odds that the Stop Will Result in an Arrest*





It is a rare motorist who has never looked in the rearview mirror and seen flashing red lights. Seeing those lights when you have had a beer or a glass prior to getting behind the wheel and taking to the roadway, however, can instill fear in even a veteran driver. Whether you are concerned that you are over the legal limit or you are certain you are not, knowing that you are getting ready to go through a driving under the influence, or DUI, stop is frightening. There is nothing you can do at this point about the fact that you had that glass of wine or gulped down that beer; however, you may be able to influence the direction the traffic stop takes. Law enforcement officers commonly associate a nervous suspect with a guilty conscience. The reality, of course, is that even a completely sober motorist is likely to be nervous when faced with a DUI stop. The old adage

“knowledge is power” applies here. By knowing what to expect if you are ever stopped on suspicion of driving under the influence in Tennessee you may appear calmer and more in charge, thereby decreasing the odds that the stop will result in an arrest.

## What Is Illegal in Tennessee?

It is not illegal to have a beer or a glass of wine before driving. The law makes it



illegal to operate a motor vehicle while *under the influence* of alcohol or drugs **or** with a blood alcohol concentration, or BAC, of 0.08 percent or higher. Therefore, an officer often has a certain degree of discretion with regard to making an arrest. If you are clearly drunk you are

going to jail; however, simply smelling alcohol on your breath, for example, does not require the officer to make an arrest. If the officer believes you have had something to drink, but you may not be over the 0.08 limit the officer can decide to let you go or pursue charges based on the “under the influence” section of the applicable statute. Your attitude and performance throughout the stop can make a significant difference.

## When Can the Police Pull You Over?



Despite what many people are led to believe, an officer cannot pull over a motorist for no reason. Simply deciding to pull over all green cars, for instance, is not legal. The law requires an officer to have “reasonable suspicion” that criminal activity is, or was, taking place in order to legally pull you over. Here’s where it gets tricky though. While an officer is required to have a reason to stop you, the reason he stops you and the end result of the stop are not required to be the same thing. An officer may use a

“pretextual” stop for the initial stop which then leads to a DUI investigation. For example, the officer could original pull you over because of a broken tail light. During the course of the officer’s conversation with you, however, the officer begins to suspect that you have been drinking and driving which then leads to a DUI investigation. The bottom line is that an officer must have a valid reason for

the initial stop; however, that initial stop may lead to a more serious investigation into a DUI crime.

## Your Performance on the Field Sobriety Tests

Once an officer has reason to believe a motorist is under the influence of alcohol or drugs, the next step is to request that the driver perform a series of field sobriety tests, or FSTs. FSTs are intended to test things like balance, coordination, memory, and your ability to follow instructions – all of which are indicators of intoxication, or lack thereof. Although there are very explicit guidelines for interpreting a suspect's performance on FSTs, the bottom line is that the officer who is conducting the test makes a subjective determination whether or not you passed each test.

An officer may use a variety of FSTs, including the three standardized FSTs. Standardized FSTs are those that have been approved by the National Highway Transportation Administration, of NHTSA, and include:

- **Horizontal gaze nystagmus test (HGN)** – HGN is widely used, in large part because of its touted level of accuracy. The HGN test involves the officer using a pen light (or other similar object) and moving it from the center of your field of vision to the side and back while looking for nystagmus, an involuntary “bouncing” or “twitching” of the eye that occurs when under the influence of alcohol. The more your eyes “twitch” the higher the probability that you are under the influence of alcohol or another substance.

- **One-leg stand**— the one-leg stand test requires you to stand on one leg with the other leg pulled up about six inches for a count of thirty, counting out loud while performing the test. Your arms must remain down at your sides and cannot be used for balance during the test.
- **Walk and turn** – the walk and turn requires you to walk a straight line heel to toe for nine steps after which you pivot and return along the same line. Your arms cannot be used for balance and must remain at your sides at all times. Taking too few or too many steps, failing to pivot properly, or swaying while you walk can cause you to “fail” the test.

## Tennessee’s Implied Consent Law and Submitting to the Chemical Test

The final step in a Tennessee DUI stop is a chemical test. You may be given a portable breath test during the stop; however, this should not be confused with the official test given after you have been placed under arrest. The portable test may be used to establish probable cause for your arrest but not be introduced as evidence at a trial.

Tennessee is one of many states that now have an implied consent law. In essence, this law says that you have given your implied consent to submit to a chemical test if arrested for DUI simply by virtue of the fact that you are operating a motor vehicle on a public roadway. This does not mean you *must* take the test. Instead, it means that there is a penalty attached if you refuse a chemical test. Your license will be suspended for a minimum of one year for refusing a chemical test.

You will likely be asked to submit to a breath test which measures the level of alcohol found in your breath. A BAC result of over 0.08 percent will be used as evidence against you at trial. A blood or urine test could also be performed. Typically, a blood or urine test is only requested if the officer believes you are under the influence of drugs which cannot be detected through the use of a



breath test. You may also request a blood or urine test if medical reasons prevent you from completing a breath test.

If you find yourself charged with driving under the influence, or another alcohol or drug related

driving offense, in Tennessee, consult with an experienced Tennessee criminal defense attorney as soon as possible.

Department of Safety and Homeland Security, [DUI Offenses](#)

National Highway Transportation and Safety Administration, [Standardized Field Sobriety Testing](#)

AVVO, [Steps of a DUI Charge in Tennessee](#)

## About Bennett and Michael, Attorneys at Law



The law firm of Bennett & Michael is located on the historic public square in Murfreesboro, Tennessee. We offer knowledgeable and effective representation for families in divorce and family law situations, injured victims of negligent accidents, and those charged with misdemeanor or felony offenses.

Our firm takes pride in being a local law firm that delivers superior results at competitive prices right here at home for the people of Murfreesboro, Smyrna, La Vergne, and the greater Rutherford County area. Our staff is professional and helpful, and our attorneys are experienced litigators and trial lawyers.

When you need legal help, you should be confident that the lawyer you choose will provide you with exceptional and trustworthy services. Our experienced, dedicated, and compassionate lawyers and legal staff are committed to always protecting clients' rights and relentlessly fighting for their best interests. Enlist the unyielding advocacy at Bennett & Michael, and you can trust that you and your family will get the results, service, and respect that you deserve. You won't be disappointed.