

Sunday, June 29, 2008

More on defending drunk driving in Virginia.

Image from Virginia Forestry Dept's website. In Virginia and Washington, D.C., the law says that drivers in those states impliedly consent to have their blood alcohol levels tested if the police have sufficient grounds for seeking such tests. In that regard, here are important relevant Virginia statutory provisions and appellate opinions: - In Virginia, "Any person, whether licensed by Virginia or not, who operates a motor vehicle upon a highway, as defined in § 46.2-100, in the Commonwealth shall be deemed thereby, as a condition of such operation, to have consented to have samples of his blood, breath, or both blood and breath taken for a chemical test to determine the alcohol, drug, or both alcohol and drug content of his blood, if he is arrested for violation of § 18.2-266, 18.2-266.1, or subsection B of § 18.2-272 or of a similar ordinance within three hours of the alleged offense." Va. Code § 18.2-268.2 (A). - The certificate of analysis for the blood alcohol test is inadmissible if the technician's certification was expired at the time of the analysis. However, that does not automatically prevent an erroneous certificate of analysis admission to rise to the level of harmless error. *Brooks v. Newport News*, 224 Va. 311, 315, 295 S.E.2d 801(1982). - The burden is on the prosecution to prove a defendant was intoxicated while he was operating his truck, not for the defendant to show that Defendant became intoxicated after leaving his or her parked vehicle. *Overbee v. Commonwealth*, 227 Va. 238, 244, 315 S.E.2d 242 (1984), - In Virginia, the certificate for breath analysis is inadmissible at trial if the test was performed over three hours from the defendant's previous driving experience. - *Overbee v. Commonwealth*, Va. Code § 18.2-268.2 (A), 227 Va. 238, 243. Jon Katz.

Posted by Jon Katz in Drunk driving/DWI/DUI at 00:00