

NEW JERSEY DWI LAW HANDBOOK

A Comprehensive Guide for DWI Arrests

ATTORNEY CARL SPECTOR

Law Office Of
CARL SPECTOR



Once arrested for a DWI, an individual is likely facing the loss of driving privileges, exorbitant court fees and fines, suspension of their driver's license, even jail-time. Your prospects appear to get increasingly bleaker. Added to this dismal image is the fact that there is not very much education out there about DWIs. Furthermore,

there are so many fine nuances to the law that it takes an experienced pundit to effectively maneuver a DWI case.

To educate the gentle folk of New Jersey, and to help them understand the law concerning DWIs, this eBook was compiled by a dedicated DWI criminal defense attorney who has over 30 years of experience behind him. This eBook is an invaluable resource for those facing DWI charges as well as those who want to learn more about DWIs in order to avoid finding themselves in said situation. The following sections delineate every detail you want to know, including questions to some of the most frequently asked questions.

BLOOD ALCOHOL CONTENT LIMIT

Legal Limit in New Jersey

In New Jersey, the legal blood alcohol limit is 0.08%. The statute says that if your BAC level on the Alcotest is 0.08% or 0.09%, then you may face suspension. In fact, it is entirely possible for you to end up with a 3-month suspension on a DWI charge in the state of New Jersey.

If your BAC level is 1.0% and higher, the maximum penalties are a minimum of 7 months suspension and a maximum of 12 months. Moreover, you will pay fines to the court of up to \$750.

Longer License Suspensions

Judges might impose an additional month or two on the suspension. Second and third offenses in the state of New Jersey have a whole different sentencing structure.

PENALTIES

A DWI in the state of New Jersey is a traffic infraction; it is not a crime. If you are charged with DWI in New Jersey, you will be facing a driver's license suspension. When your license is suspended for a DWI, you could be stripped of all driving privileges for up to 7 months.

License Suspension and Fines

The maximum for a first offense is a 12-month suspension. In New Jersey, the fines start at around \$350, but can rise above \$750 by the end of the trial. Violators will be charged a \$1,000 motor vehicle assessment for 3 years and be required to take driving classes which could reach a requirement of up to 48 hours.

Installation of an Ignition Interlock Device (IIDs)

An ignition interlock device is a device that has to be installed in your vehicle. You have to blow into this device to turn on the engine. It measures whether or not you have any alcohol in your system. In the state of New Jersey, ignition interlock is a requirement for a blood alcohol level of 0.15 or more.

FULL LIST OF PENALTIES

The State of New Jersey has several different statutes that cover Driving While Intoxicated, Permitting DWI. The DWI law begins with N.J.S.A. 39:4-50 Driving While Intoxicated.

First Offense When BAC is Between 0.08% and 0.10%

For the first offense when a person's BAC is 0.08% or higher, but less than 0.10% or a case based upon observation of intoxication alone the penalties are:

- » A fine that ranges from \$306 to \$400
- » VCCA \$50

- » DDEF \$100
- » SNSF \$75
- » \$100 surcharge
- » In the court's discretion, imprisonment not exceeding 30 days
- » Suspension of drivers' license for a period of 3 months
- » IDRC 12 to 48 hours during two consecutive days of not less than 6 hour each day

And the court may order

- » participation in supervised visitation program as either a condition of probation or a form of community service
- » installation of an interlock device for not less than 6 months nor more than 1 year commencing immediately on return of offender's driver's license (39:4-50.17)
- » satisfy the screening evaluation and referral requirements of the IDRC. If these requirements are not met, then mandatory 2-day term of imprisonment and driver's license suspension until requirements are satisfied.

First Offense when BAC is 0.010% or Higher

For a first offense when BAC level is 0.010% or higher or operation under the influence of drugs, the penalties are:

- » Fine ranges from \$300 to \$500
- » VCCA \$50
- » DDEF \$100
- » SNSF \$75
- » \$100 surcharge
- » In the court's discretion, imprisonment not exceeding 30 days

- » Suspension of driver's license for a period of not less than 7 months nor more than 1 year
- » IDRC 12 to 48 hours during two consecutive days of not less than 6 hour each day

And the court may order

- » participation in supervised visitation program as either a condition of probation or a form of community service.
- » If BAC is less than .15% may order installation of an interlock device for not less than 6 months nor more than 1 year commencing immediately on return of offender's driver's license, and
- » If BAC is .15% or higher SHALL order installation of an interlock device for not less than 6 months nor more than 1 year commencing immediately on return of offender's driver's license, and
- » Satisfy the screening evaluation and referral requirements of the IDRC. If these requirements are not met, then mandatory 2-day term of imprisonment and driver's license suspension until requirements are satisfied.



Second Offense

For a second offense for Driving While Intoxicated (DWI), the penalties are as follows:

- » A fine that ranges from \$500 to \$1,000 and
- » VCCA \$50

- » DDEF \$100
- » SNSF \$75
- » \$100 surcharge
- » Imprisonment of not less than 48 hours, which shall not be suspended or served on probation, nor more than 90 days (court may authorize 2 days through IDRC)
- » And, driver's license suspension for 2 years
- » Community service for 30 days
- » And IDRC 12 to 48 hours during two consecutive days of not less than 6 hour each day

And the court may order

- » Participation in supervised visitation program as either a condition of probation or a form of community service
- » **Shall** order installation of ignition interlock device during license suspension and for not less than 1 year nor more than three years commencing immediately on return of offender's driver's license
- » Satisfy the screening evaluation and referral requirements of the IDRC. If these requirements are not met, then mandatory 2-day term of imprisonment and driver's license suspension until requirements are satisfied.

Third or Subsequent Offense

For a Third or Subsequent Offense for Driving While Intoxicated (DWI) in New Jersey the penalties are:

- » A fine of \$1,000
- » VCCA \$50
- » DDEF \$100
- » SNSF \$75

- » \$100 surcharge
- » Imprisonment not less than 180 days in county jail or workhouse- no work-release, out-patient, etc.: must do time in confinement. Except the court may order the defendant to serve up to 90 days of that sentence participating in a drug or alcohol inpatient rehabilitation program approved by the IRDC
- » Driver's license suspension for 10 years
- » The court may order participation in supervised visitation program as either a condition of probation or a form of community service
- » **Shall**, order installation of ignition interlock device during license suspension and for not less than 1 year nor more than 3 years commencing immediately on return of offender's driver's license
- » Satisfy the screening evaluation and referral requirements of the IDRC. If these requirements are not met, than mandatory 2-day term of imprisonment and driver's license suspension until requirements are satisfied.

Refusal to Submit to Chemical Testing

Refusal to Submit to a Chemical test is a violation of N.J.S.A. 39:4-50a and it carries its own set of penalties if you are convicted or plead guilty to a refusal.

First Offense

- » Fine ranges from \$300 – \$500, and
- » DDEF \$100, and
- » Driver's License suspension for a period of not less than 7 months nor more than 1 year, (consecutive to any revocation under N.J.S.A. 39:4-50 unless part of a permitted plea agreement in which event the suspension may be concurrent) and
- » Shall order offender to IDRC, and

- » Shall order installation of an ignition interlock device during period of suspension and for not less than 6 months nor more than 1 year beginning immediately on return of offender's driver's license.

Second Offense

- » Fine ranges from \$500 – \$1,000, and
- » DDEF \$100, and
- » Driver's License suspension for a period of 2 years (consecutive to any revocation under N.J.S.A. 39:4-50), and
- » Shall order offender to IDRC, and
- » Shall order installation of ignition interlock device during period of suspension and for not less than 1 year nor more than 3 years, beginning immediately on return of offender's driver's license.

Third or Subsequent Offense

- » Fine \$1,000, and
- » DDEF \$100, and
- » Driver's License suspension for 10 years (consecutive to any revocation under N.J.S.A. 39:4-50), and
- » Shall order offender to IDRC, and
- » Shall order installation of ignition interlock device during period of suspension and for not less than 1 year nor more than 3 years, beginning immediately on return of offender's driver's license.

DWI FEES

If you have been charged with DWI in the state of New Jersey and decided to just plead guilty without speaking to a New Jersey DWI Lawyer, you are facing high fines. The court costs for a DWI will be somewhere around \$700 on

average, plus a \$3,000 surcharge, and the IDRC fee which is \$75. You will likely end up paying somewhere between \$3,700 and \$4,000. A first time DWI in New Jersey could easily cost \$5,000 over the whole life of the problem if you give up and just plead guilty.

KNOW YOUR RIGHTS: MIRANDA RIGHTS

When Miranda Rights Are Read

After you have been arrested, the police are supposed to read you your Miranda rights. The police are supposed to read the defendant their Miranda rights before the interrogation can begin. Some interrogation questions might include: where you were, how much did you drink, what did you drink, how many drinks over the last few hours, and if you are taking any medication.

Questions like these after your arrest become subject to the Miranda rules, not the questions that they would ask you when they first pull you over. If the police officer doesn't ask you those questions, then the fact that they didn't read you the Miranda rights is not relevant. Your case won't be dismissed because they didn't read it to you.



I Wasn't Read My Miranda Rights

If they do arrest you and then start to interrogate you and they didn't read you your Miranda rights, there could be an issue. If you've been under arrest the answers to those questions is subject to a hearing. At a hearing it will be determined if those statements can be suppressed and not be able to be used against you at a trial and where a judge would decide that your rights were violated or not.

Your Rights Can Provide a Strong Defense

People can fight their case, even if they actually have been drinking and driving. Not every case is perfect for the police and the prosecutor. There are constitutional rules in place that protect all of us.

BUILDING A DEFENSE

Building a Client's DWI Defense Using the Police Reports or Videos

When you retain an attorney for a criminal defense case, they will send a letter of representation to the court and to the prosecutor. The prosecutor has an obligation to provide us with all the police reports. We also request any videos from the police car or the municipality where you were taken to the police station.

When we go to court, you will know what our strategy is. This is because you will have helped formulate it. By now, your attorney will have educated you. You will understand what the strategy is, based on what the police reports say. A good lawyer gets his clients actively involved in their own defense, from the very beginning.

How Police Videos Benefit You

There are a lot of cases where there is a video from the police car. It is a camera mounted right behind the windshield, and you can see everything. You see the way the client was driving before they got pulled over; all the way to the field sobriety test. What you see may differ from the narration by the police officer.

Very often, there is audio that accompanies the video. You can hear the officer. You can hear the responses of the client. In many cases, you can see it mirrors more closely what clients are saying than what the police reports say.

THE PROSECUTION

Strong Defense Against the Prosecution

It is important to start your trial in a congenial manner. A good attorney acknowledges that the prosecutor and him are just trying to do their jobs but the prosecutor must realize that the defending attorney has a client he will fight to defend. It is his job is to protect his client's interest.

Working Towards the Same Goal

If the prosecutors don't like what they hear, the relationship can become a little more adversarial. But many times, an attorney has been able to work in a cooperative way with the prosecutors towards the same end.

The goal is always to come to an agreement on what the best results are for that particular case. It is perhaps most ideal to seek a lawyer who has been both a prosecutor and a defense attorney, because he knows how to approach prosecutors.

COMMON MISCONCEPTIONS

*I refused the breathalyzer.
Therefore, the police have no
evidence against me.*

The law in New Jersey breaks DWIs down into a couple of different theories for the state or for the prosecutor.

If you take a breathalyzer exam or an Intoxilyzer, these are both chemical tests. If they draw blood from you, this is a chemical test. If you give them a urine sample, this is also a chemical test.



If you don't supply them with any of those chemical tests, the state still has the opportunity to attempt to prosecute you with the common law or observation DWI. In this case, the police officer testifies about your basic condition and comments on how you were operating the motor vehicle.

The police officers will generally comment about whether or not you were driving erratically, carelessly, or recklessly. Very often they need to establish elements called observations.

These observations include bloodshot and watery eyes, odor of alcohol, or unsteady feet. Therefore, admitting to drinking is not necessarily an observation. However, it is a statement against your own interest.

Furthermore, the police would then do a battery of standard field sobriety tests, all approved by the National Highway Safety Traffic Administration. The first one, called HGN, is an eye test during which they ask you to follow a finger or a stimulus, and they watch whether your eyes are shaky or have nystagmus to them.

The second test is a Walk and Turn test, during which you have to walk a line of nine steps, pivot and then walk nine steps back, all heel to toe, while watching your feet and counting out loud.

The third standard field sobriety test is called One Leg Stand, during which you must lift one foot off the ground 6 inches and count "one-one thousand, two-one thousand" until the officer tells you to stop. Essentially, they're trying to estimate 30 seconds.

The officers will take those tests, break them down, and ultimately give their opinions. While the HGN test can't be used to prove that you are guilty beyond a reasonable doubt, only for probable cause, the other two tests can be used to prove an observation case.

The other issue with a refusal is that you'll receive a separate summons for refusal, which can and should be challenged. It does carry its own penalties, which include suspensions of driving privileges and, if you're licensed in the state, suspension of your driving license. While refusals may have certain advantages, they certainly have some disadvantages.

I think I performed rather well on the standardized field sobriety tests. Therefore, it will be an easy case.

This might be true occasionally. Performing the field sobriety tests is a challenge, even for sober people. However, performing them well when stopped could be a tremendous advantage. It might even help you get the case thrown out on a pretrial hearing, before you even have to go to trial. Performing well could be a huge advantage in your case.

The best way to analyze this performance is for your attorney to interview the potential client and achieve their own sense of how he said he did.

He will review the police report in comparison to the way a person performs. He will then gather the police videos, if they have videos from their police cars. It's a multi-step process to reap the rewards of performing well. However, it could be a tremendous advantage.

I refused the breathalyzer and the standardized field sobriety tests. Because of this, I should be home free.

It's interesting that very few people actually take advantage of this concept of refusing to take the field sobriety tests. The reason might be some consciousness of guilt, and it might show some arrogance or belligerence on the part of the motorist, to some extent.

However, not doing the tests would certainly provide the officer with less evidence. But remember that the police officer is going to be observing the motorist at all times, regardless. The officer is going to make certain observations about that motorist, like bloodshot watery eyes, odor of alcohol, and whether or not he's unsteady.

Therefore, the officer doesn't need the field sobriety tests to make those conclusions. However, refusing to take a field sobriety test is probably a good idea. Both refusals probably put the prosecutor at some kind of a disadvantage.

If you couple both these things together, in New Jersey, it creates an interesting case because you're facing a separate refusal, which makes it difficult for the state to prove that you're under the influence in the first place.

Furthermore, it might become difficult for them to prove the refusal or to establish a refusal if they didn't have a reason to put you on the machine in the first place. If they don't have probable cause to ask you to take the tests, they will have difficulty sustaining a refusal charge.

The police officer did not read me my Miranda rights, so the case should be dismissed.

Yes. The Miranda Rights are important for anybody who is being arrested or has been placed in custody. Once you're in custody, and the police want to interrogate you, their obligation is to inform you of your Miranda Rights.

Many examples of such cases exist. The police officers make a valid arrest, but they don't read your Miranda Rights. It's still a valid arrest because they never had an opportunity to ask questions that might incriminate the individual. Therefore, the Miranda Rights don't become relevant to the prosecution.

For example, if the police pulled you over and they asked you if you've been drinking, you're not under arrest yet. Therefore, those questions are valid and those answers are admissible. But let's say after you answer those questions, you're taken out of the car and asked to do field sobriety tests, and then they decide to arrest you. This triggers your right to having the Miranda Rights read to you.

If they don't read you your Miranda Rights, this doesn't create an automatic flaw in your case. The Miranda Rights really pertain to the admissibility of statements against you, not necessarily any other evidence against you.

If the police officer does arrest you legally, does not read you your Miranda Rights, and then starts questioning you while in custody or when you get back to the police department, saying things like, "How many drinks did you have? How much food did you eat? What time did you start drinking? What type of alcohol

did you drink? What period of time past between each drink?” then these statements are subject to a suppression.

This means that these questions and answers are subject to be excluded from evidence at a trial. This suppression hearing would be done in front of the judge. The judge would decide whether or not that evidence could be introduced against the individual at the trial. However, the mere fact that this happened does not invalidate an arrest.

The police officer was very rude to me, and I felt intimidated. I was forced to say or do things because of that intimidation. This will help my case out, because it's caught on camera.

In the state of New Jersey, the police vehicles have recording devices. The police even have audio that are attached to his or her person. A good attorney will request the audio and video from the police officer.

Many times, they will receive them. The attorney should review them with the client, and I go over them himself. The attitude of a police officer does not necessarily lead to a case being dismissed. However, it makes it a lot easier to scrutinize, analyze, and defend when intimidation becomes a factor.

Intimidation is a real factor, especially in cases in which an individual's pulled over and the police officer wants to search a vehicle for either narcotics or marijuana. The officer's statement must be that the person gave his consent.

However, often the police officers tend to be overly intimidating in those situations, making audio and video extraordinarily beneficial. Therefore, the audio and video should always be asked for and reviewed.

I'm not worried because the police officer was very nice to me and assured me that I shouldn't worry, even though I was arrested. He said it was all part of the procedure.

It feels better to be processed by a pleasant officer rather than someone who is rude, intimidating, and overwhelming. Depending on the charge, police officers can be brought to court. In many instances, they are brought to court to assist the prosecutor, even if the case isn't going to trial, to give the prosecutor some information about the case and the attitude of the motorist.

If a police officer is particularly nice, this is a good thing. It doesn't mean your case is going to be dismissed or plea-bargained down to your satisfaction. However, cooperating with the police and having the police be cooperative with you can be somewhat beneficial.

I would seek the advice of a New Jersey DWI Lawyer, depending on what the charge is, because the police officer is not an attorney for you. He shouldn't give legal advice. Furthermore, you can't trust that you're going to get a beneficial, subjective opinion from a prosecutor, because he's not your attorney.

It's always nice to have a pleasant police officer, but I would not advise someone to give up his right to have a New Jersey DWI Lawyer.

I'm not an alcoholic, and the court should understand that.

For Cases involving Multiple DWI offenses, certain issues certainly arise with regard to both treatment and the assistance that treatment can provide.

This is especially true for a third offense DWI (39450), because the penalties do require jail sentences, and jail sentences can be mitigated with residential treatment.

On a first offense, no presumption exists that the charged individual is an alcoholic. Therefore, no real discussion occurs between the state and the attorneys with regards to whether or not somebody abuses alcohol.

This is something you should discuss with your New Jersey DWI Lawyer. It's not necessarily an extensive conversation during the plea bargain or even in front of the judge.

My tolerance level for alcohol is very high, and it takes a lot for me to be intoxicated. Because of that, I should do the standardized field sobriety tests to prove I'm going to be fine.

If someone gets pulled over, he's asked to do the field sobriety tests, and the police officer feels there's not enough evidence to arrest him, then he'll go on his merry way.

Very often, though, high tolerance to alcohol is not necessarily enough to get back on the road. This is because the police officer will note bloodshot watery eyes, odor of alcohol, and any answers you spoke with regards to your consumption of alcohol.

Having a high tolerance to alcohol might be a lifestyle issue. It also might be an advantage to you in that the officer is not able to prove an observation case. If you did well, the question would be why they arrested somebody who did so well on field sobriety tests. These are good questions that need to be discussed on an individual basis.

I only had 3 drinks. I got pulled over, and I was honest with the officer. I can even show the receipt from the place that I bought the drinks. Shouldn't that be enough?

You can find blood alcohol content calculators out on the Internet. Some hand-held ones are available that people use, as well.

However, this doesn't offer the question of how many drinks you had but how your body metabolizes that alcohol. This pertains to individualized metabolic rates. For someone who is 150 pounds and had three full meals that day before drinking three glasses of wine over three hours, a controlled amount of alcohol with only 4 ounces each, his drunkenness level really depends on his metabolism.

Therefore, someone might be fine with three drinks, and they might be well over the legal limit with three drinks. This depends on metabolism, when those drinks are consumed, and how much alcohol is in those drinks.

A glass of wine at a bar could be 4 ounces, while a glass of wine and at another bar could be 3 ounces. At a third bar, it could be 3 times that, depending on the pour and the bar culture. I don't think the amount of drinks an individual had is a good parameter for an ultimate resolution as to whether somebody is intoxicated or not, legally speaking.

I am a professional in the educational field or in the healthcare field. Because of that, the courts will go easy on me.

Some of the prosecutors are certainly open to listening to these issues. The judges don't get involved in any types of pretrial. The prosecutors are fairly constrained with their ability to process that type of information to the benefit of an individual.

Your lawyer needs to know what you do for a living so they can advise you accurately. However, leniency is not forthcoming for people in those fields. It's important to inform your New Jersey DWI Lawyer your occupation in order to discuss any collateral consequence.

I am a single mother, and the courts will be lenient on me.

Untrue. While there should be some consideration for the fact that it could be difficult for some people to function as a result of the charge, generally, it does not exist.

The client must inform the attorney so the attorney knows what types of collateral consequences could occur. I don't find that the prosecutors have the capacity to do much with that information, however.

My medications were prescribed, so I don't have to worry.

This is not necessarily the case because, in a DWI, the person is charged with being under the influence of something other than alcohol. You can be prosecuted and even found guilty of being impaired by prescription medication.

The idea behind prescription medication is that you have to take it responsibly. Warnings are listed on them that should be taken seriously, because if impairment is due to the prescription medicine, a person can be successfully prosecuted.

I'm new to NJ. However, the DUI laws are similar in my previous state. Therefore, if I had a DUI from another state, it shouldn't be a problem in NJ.

If you have a conviction for a DWI within 10 years from another state, New Jersey courts, the state prosecutors, and the municipal prosecutors are required to take this fact into consideration. This out-of-state conviction may elevate your ultimate sentence to a second or a third offense.

If I have a DUI in NJ and went to another state, is this a problem?

You certainly have the right to go to another state as long as your New Jersey case is over and you've fulfilled all of your obligations. However, the DWI in New Jersey may have an effect on your ability to get licensed in the other state.

Note that there's something called an interstate compact that ties each member state together with information from each motorist. As such, it may affect your insurance, your ability to get re-licensed, your requirement to install

ignition interlock device if that was required in New Jersey, and a whole host of other obligations.

If I was convicted for a DUI in NJ, can I get it expunged from my record?

The answer is no. New Jersey does not permit the expungement of any traffic offense. Since a DWI in the state of New Jersey is a traffic offense, it cannot be segregated from the record. Therefore, it cannot be expunged.

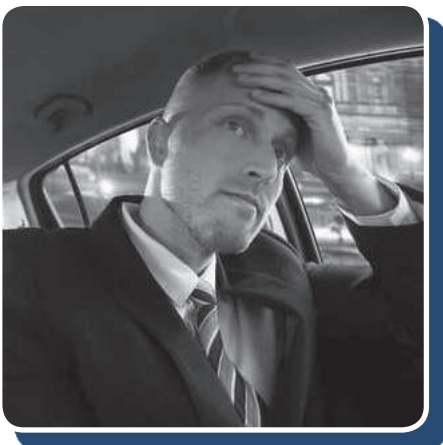
If I blew under 0.08%, this is fine for my case.

A couple issues exist with this idea.

The first depends on whether you're underage or not. We do have an underage statute, which requires the prosecution of any motorist under the age of 21 who blows 0.01 or 0.02, 0.03, 0.04, 0.05, 0.06, and even 0.07. As an underage DWI, your 0.07 would be prosecuted as an underage.

Some prosecutors would probably try to prosecute you for a 0.07, while several prosecutors would not. The statute does automatically prosecute at a 0.08, so a 0.07 should theoretically be okay. However, it's not always as simple as all that.

We'd have to get the facts of the case and have a conference with the prosecutor before judging this particular case.



This is the first time I've gotten a DUI, and I have a clean record. I've never done anything wrong, so because of this, the courts will go easy on me and let it slide.

In the state of New Jersey, DWIs are prosecuted vigorously. No plea bargaining is involved, so, essentially, the case will either go to trial, the person will take a plea, or the case will be dismissed.

However, the prosecutors or judges are not basing dismissals on first offenses, pleasantries, or no prior points on the license. Significant issues must arise for dismissals. Mandatory minimum sentences exist for first-time offenders. Therefore, just because it's a first offense, you're not going to get away easy.

I thought I was intoxicated, so I pulled over to the side of the road to wait it off. The police came and insisted on arresting me, even though I wasn't driving. Will it be an easy case?

Here, we find an issue of operation or concept of operation. This is something the state must prove. Because you've pulled over to the side of the road, it becomes an issue in any DWI case.

This is not an open and shut case to the advantage of the motorist because of many issues, like: how did the motorist get to that location? Was he intoxicated when he drove there? What information did the motorist give to the police officer?

Did somebody else drop him off? Did he drive to that location? Was he intoxicated when he drove there? Did he drive to that location sober and drink in the car?

The issue of operation is a legal term that the statute and the case law discuss. It must be analyzed on an individual basis.

I should come clean with the court, tell them about my drinking habit, and admit everything that I did was wrong. They will understand my honesty.

It's obviously good to be honest. However, when you're charged with a DWI, it's best to have a New Jersey DWI Lawyer and to rely on the confidentiality between you and your attorney.

Therefore, honesty between you and your attorney is absolutely critical, encouraged, and protected. Going into court on your own and simply stating you did it isn't going to garner any advantages. It's likely to lead to a conviction either by plea or at trial.

Therefore, it's good to be honest, but it should be in the right format. That format exists between you and your attorney.

I hear that DUI is an impossible battle that's never easy to win. I'm doomed to lose, and I shouldn't pursue it.

This is the way some people feel, especially right after the arrest. It's understandable. The DWI offers a very depressing set of circumstances. The more you read on the internet, the more it feels like there is no hope.

Having a meaningful conversation and consultation with the right attorney will help you decide on a better course of action and give you back some of the power and some of the rights afforded to you. The law does provide for the presumption of innocence, and the burden of proof is on the state. The state must prove each and every element beyond a reasonable doubt.

For most cases or every case, an individual should have a consultation with a New Jersey DWI Lawyer in order to figure out whether or not that individual has certain issues he can take advantage of without simply giving up and taking punishment. The individual has a significant amount of rights to be taken advantage of.

I fear I'm going to be facing a great deal of jail time for DUI in New Jersey.

On a first offense, jail time is not a factor as long as no significant aggravating factors existed, such as an accident or people getting hurt.

Going into a second offense, it becomes more complicated because a jail term requirement can be worked out quite simply. On a third offense, in the state of

New Jersey, if someone is convicted by plea or by trial, there is a 180-day jail requirement, 90 days of which can be served in a residential treatment program.

Jail becomes a conversation at the second offense level, not the first offense level.

I was pulled over suspected of being intoxicated. However, what I used was several days ago. This shouldn't matter, right?

Remember the premise of being intoxicated or impaired at the time of the driving is important in this case. Often, this begins with a police officer observing somebody driving erratically, carelessly, or recklessly.

Sometimes, this could warrant a speeding ticket, which does not suggest intoxication or being impaired. After all, many people get traffic summonses without being charged with DWI.

When we're discussing marijuana, as an example, police officers will make certain observations that lead them to believe the person is under the influence of marijuana. The motorist might even admit to having smoked marijuana. An odor of marijuana could emanate off the person's breath or off the person's clothes.

An odor of marijuana could be emanating from inside of the vehicle, which is another indicator that someone has recently consumed marijuana by smoking it.

The police will ask the individual to provide a urine sample, and the forensic lab of the New Jersey State police will test that urine sample. Those cases can be successfully challenged. However, the person who is charged with such an offense needs to speak to an experienced New Jersey DWI Lawyer.

Remember, the issue is whether the person was under the influence at the time he was driving.

If I have done a great deal of research on the internet and have a lot of good information about this through a friend's experience, I could probably beat this case on my own.

The internet has provided a wealth of information and some very good tools for research. I have a lot of potential clients and clients themselves who call me and ask excellent questions because they've researched something on the internet. I find it to be invaluable to clients to have that resource available to them.

While the internet is a very useful tool, it does not make somebody an attorney. To be an attorney, you have to go through 4 years of college and 3 years of law school full-time. I've been practicing for nearly 30 years, and I've been a prosecutor and a defense attorney.

I don't think I would ever let myself do any of my own dental work if I looked it up on the internet and saw how easy it was to do. I don't think it's a good idea.

Therefore, it's not a good idea to represent yourself on a DWI. Furthermore, there's also the discussion of objectivity, about being objective about your own case. I suppose if you're fighting a speeding ticket or something that has less consequence, the objectivity might not be a large factor.

However, faced with the consequences of losing your license, potential jail, steep fines, and having a long-lasting effect on your driving privileges and insurance rates, it's not a good idea to represent yourself.

My friend had a DUI, was pretty intoxicated, and had a successful case. If I do the same things, will I get the same results?

Some standardized things exist for DWIs in the state of New Jersey. The potential sentences for first offense, second offense, and third offense are standard.

However, some differences exist between one person's case and another person's case, in one court and in another court, from one judge to another judge, between one prosecutor and another prosecutor, and from the way an individual attorney goes about defending a DWI case to the way another attorney would handle it.

As such, it's very hard to presume that the results your friend got would be the same as yours. Each case needs to be sized up individually.

I have a relative or a friend who practices law. He practices a general kind of law. Can he help me out on this?

Any attorney in the state of New Jersey is certainly permitted to represent you.

I've found that people who do more work in one area tend to be more in-tune to what the issues are and how to deal quickly with those issues.

If I wanted to find somebody to do a closing for me, I would want an attorney who practices real estate law, for example. He understands what the issues are, he knows what the issues are before I even get my contract, and he can anticipate so much of the case.

I find that with criminal law, this is very similar. Overriding issues exist that even a general attorney would know. However, someone who does a lot of criminal law or, in this case, DWIs, tends to know the relevant issues.

These people speak to a lot of prosecutors; they're in courts for these cases on a daily basis; they take the up-to-date seminars; they buy the up-to-date books; they are constantly evolving with the law; and they're doing many trials to hone their skills in that specific area.

Any attorney admitted to practice in the state of New Jersey could represent you. However, the question is whether or not you'd be better off with someone who practices this particular area on an ongoing basis, day-in and day-out. Anyone would agree that you're better off with the person who lives and breathes this area of the law than with someone who does just a few per year.

I should only go with a lawyer who has guaranteed me success on my DUI.

Lawyers should not guarantee any particular results; it's unethical, it's immoral, and it's probably illegal because you can't guarantee anything.

A lawyer shouldn't guarantee things to the clients other than guaranteeing that he is the sole practitioner of the case or that he'll be at the particular court date.

The lawyer can certainly guarantee that he'll put his best foot forward. However, guaranteeing a particular result crosses into a dangerous and unethical area.

A lawyer is a lawyer. I should just shop around and find the best deal or the cheapest deal.

Money is always an issue, and it's something that should be considered when choosing a New Jersey DWI Lawyer. But a lawyer is not a lawyer. Some people do more in one area of law and less in another.

Establishing a rapport with the attorney is essential because you have to work with the attorney. You must ask yourself if he is someone who knows the area of the law better than most.

Furthermore, is this an attorney who, if I call him, will get right back to me if he's in court? Will he pick up his own phone? Will he answer the questions I have, even if I've asked three or four times?

Therefore, money is a factor. It's an issue, and it's always an issue when you're dealing with consumer products or services.

You cannot, therefore, decide something so serious based only on the price.

DUIs happen to alcoholics and drunk people only.

Untrue.

They've had one too many for the legal limit or perhaps two too many for the legal limit. They did not anticipate having any problems when they got behind their wheel. In fact, most of them don't have problems other than the fact that they are pulled over for some minor traffic offense and it escalates into a DWI arrest.

To answer your question, the people who are arrested for DWIs are, in fact, regular people who probably drink less than most because their tolerances are particularly low. It is a complete shock to them that they're over the legal limit, because they don't comprehend what their bodies can handle because they don't drink very often.

These non-drinkers are the ones who suffer the wrath of the written law, listed at 0.08.

I'm hesitant and reluctant about hiring an attorney because of a prior conviction. It wouldn't be beneficial if I did so, and it would be a waste of money. Maybe I should throw myself to the mercy of the court.

Before doing this, you should speak with a New Jersey DWI Lawyer about your second DWI.

If that first DWI was not counseled by an attorney, this could be a major factor in defending you in the new case.

The best move would be to try to get one or two free consultations in order to become a little more educated on the issues before deciding.

FAQS AND RELATED TOPICS

What should you do when charged with a DWI?

You should hire an experienced and dedicated DUI/DWI lawyer. It is most unwise to proceed without expert legal counsel.

Should I hire an attorney for a DWI?

Absolutely. DWI cases in NJ are complex. A DUI/DWI lawyer knows which defenses can be used. An attorney can make negotiations with a prosecutor.

Are there difference between a DUI and a DWI?

DUI means Driving Under the Influence. DWI means Driving While Intoxicated. In NJ, the two terms mean the same.

What can happen for a first DUI/DWI offense?

- » In New Jersey, a DWI is not a crime, but serious traffic offense.
- » You may be charged with a financial obligation to the court and a requirement to have a ignition interlock device added onto your car.
- » You can also face losing your license for a period of 3-12 months.

What can happen if I am found guilty or plead guilty to a second DUI/DWI offense?

- » You will be required to serve a minimum of 2 days in jail which can be served in the Intoxicated Drivers Resource Center.
- » Depending on your BAC, you could face up to 90 days behind bars.

What can happen if I am found guilty or plead guilty to a third DUI/DWI offense?

- » A third DWI is still a traffic infraction in New Jersey.

- » You will be required to serve 180 days in jail.
- » 90 days of your jail sentence can be served in a residential treatment facility.

What about being charged for a marijuana DUI?

- » A third DWI is still a traffic infraction in New Jersey.
- » You will be required to serve 180 days in jail.
- » 90 days of your jail sentence can be served in a residential treatment facility.

What can happen if I am charged with a DUI/DWI for drugs?

- » A third DWI is still a traffic infraction in New Jersey.
- » You will be required to serve 180 days in jail.
- » 90 days of your jail sentence can be served in a residential treatment facility.

What is BAC or blood alcohol content?

- » BAC is based on a nationwide standard of .08.
- » You can still be charged for a DUI if you blow .07 BAC or less.
- » DUI charges are increased if you blow a .15 BAC.

What are the fines for a DUI/DWI offense?

- » If you are found guilty, you will be required to pay several financial obligations from court reaching up to \$900.
- » You will owe a fee to the DMV of \$1,000 a year for three years.

What happens if I am charged with a DWI in a school zone?

- » If you are charged with a DWI in a school zone, you can also be charged with operating in a school zone.
- » School Zone convictions double your penalties.

What is I am an out-of-state driver and I am charged with a DUI/DWI?

- » If you are charged with a DWI in a school zone, you can also be charged with operating in a school zone.
- » School Zone convictions double your penalties.

What if an underage child/individual was caught drinking and driving? DWI under 21 (underage DWI)?

- » If you are under 21 and blow a BAC of .01-.07 you will be charged with underage DWI.
- » If someone under 21 blows a BAC of .08 or more, then they will be treated as an adult.

What are the possible penalties for DWI under 21?

- » New Jersey has a zero tolerance for anyone under 21.
- » If you blow below a .07 then you will not be convicted and you will not have it count against you.

How can I defend myself against DUI charges?

- » Each DWI case is different and can varies based on your situation.
- » An experienced New Jersey DWI Attorney can use the facts from your case to your advantage.

What is an Alco-test? How does it determine a DWI?

- » An Alco-Test determines your Blood Alcohol Content.
- » You will be physically monitored for 20 minutes prior to taking the test.

- » You must blow into the machine for two samples.

How can I defend myself if I refused a breathalyzer?

- » You could have given insufficient samples and still be charged with refusal.
- » You must be read a required refusal statement by the police.

What is DWI by police observation?

- » A police officer will observe you driving bad or may smell alcohol in the car.
- » You could be viewed with bloodshot eyes, or slurred speech.
- » You failed the field sobriety tests given by an officer.

What are DWI observation videos?

- » An Observation video will show the interaction between the police officer and my client.
- » Field Sobriety Tests are viewable which can help defend clients.

How can I defend against an observation case?

If you perform the field sobriety tests fairly well, we can use this in court to prove you were not driving a vehicle in an intoxicated state.

What field sobriety tests are there and how do they determine a DUI/DWI?

- » There are three types of field sobriety tests created by the National Highway Safety Traffic Administration.
- » The Walk and Turn Test
- » One Legged Stand
- » Horizontal Gaze Nystagmus Test
- » You have the right to refuse these tests.

How can I defend against field sobriety tests?

Simple. An attorney will first review the evidence the police took during the field sobriety tests.

What is an 'Allowing a DWI' charge?

- » Allowing a DWI is based on letting someone drive a vehicle who is under the influence.
- » These penalties can become the same for the owner of the vehicle as it is for the driver of the vehicle.
- » If you Allow a DWI, you could face a license suspension.

Can passengers in the vehicle during a DUI stop help my case?

- » I will speak and interview all of the passengers in the vehicle.
- » Speaking with your passengers can help the DUI case against you, they may remember things you do not.

What is the glove box defense?

- » You were charged with a DWI, you consumed alcohol but did not drive.
- » The police arrested you prior to driving but after you started drinking.
- » This is not a common circumstance but something to consider.

Does NJ offer hardship licenses if charged with a DUI?

- » In many states a hardship license allows DUI offenders to drive to work or school.
- » New Jersey does not have any hardship licenses.

What can happen if I am caught driving after being charged with a DWI?

- » The judge cannot suspend your license unless you plead or were found guilty.
- » During a pending DWI charge, you are allowed to drive as normal.

What are ignition interlock devices (IIDs)?

- » It is up to the judge to decide to impose a Ignition interlock device in your car if you had a BAC of .15 or below.
- » It is mandatory to have an ignition interlock device installed on your car if you have a BAC of .15 or above.

How are expert witnesses used in a DWI case?

- » Most experts are former State Troopers or Police Officers.
- » Their opinion can be used for a plea with the prosecution.

What are DWI motions?

- » We will review if there is a motion for probable cause to pull you over.
- » Rule 104 determines if the police collected your breath sample correctly.
- » There are motions to suppress urine samples.
- » We can file a motion based on the state's lack of providing discovery.

Does NJ have speedy trial rules?

New Jersey does have a Speedy Trial Rules, but it does not an exact time frame

What is the 60-day DWI rule?

- » This is not a speedy trial rule.

- » The court tries to resolve your case in 60 days.
- » The court will require your attorney to complete or resolve the case in less than 60 days

What are DWI pretrial hearings?

- » This hearing lets us determine which evidence can be used against your case.
- » The judge will determine if the breath test readings are upholdable in court.

What happens at DWI jury trials?

You will be prosecuted in the Municipal Court as a Traffic Offense.

Can you explain the DWI trial process?

- » 95% of DWI cases do not go to trial.
- » You have the right to go to trial, and are presumed innocent until completion.
- » Your Attorney can cross examine the arresting police officer.

What happens if I have a suspended license from a DWI?

- » If your license is suspended, you will not be able to drive.
- » If your license has been suspended for an extended period, you must reinstate your driver's license at the DMV and pay a fee.
- » If you are caught driving on a suspended license, you could face 10-90 days in jail no matter the reason.

What is the Intoxicated Driver Resource Center (IDRC)?

- » If you are found guilty of DUI, you will be required to attend an intoxicated drivers resource center.

- » For a first offence you will be required to attend two 6-hour classes.
- » For a second offense, you can attend the IDRC to avoid jail time.
- » If you are charged and found guilty for a third DUI, you will be required jail time, and will not have the option to attend an IDRC.

Community service for DUI offenses?

- » If you are charged with a first time DWI offense, you will not be required to do community service.
- » You will be required to perform community service if you are found guilty of a second DWI offense.

Can I travel to Canada with a DWI?

- » Canada can see driving records of US citizens.
- » You may be asked if the case is still pending or how it was resolved.
- » You may be detained every time you visit.