

23 WAYS TO FIGHT YOUR DWI



There are a number of ways to defend against a New Jersey DWI / DUI charge. Here is a list of some of the best DWI defense tactics put together by New Jersey DWI attorney Evan Levov.

- 1** **Standardized field sobriety tests** are not statistically reliable indicators of intoxication. The accuracy of these tests is 68 percent at most, barely a passing school - grade, and not reliable at all for anyone 65 years or older, or people with certain medical conditions or injuries, or those who are considered 50 pounds or more overweight.
- 2** If standardized field sobriety tests have shortcomings, **non-standard field sobriety tests** are like rolling the dice, as an indicator for impairment. Touching your nose with your finger, counting backward, or saying the alphabet are not considered valid sobriety tests by either medical science or the federal government (NHTSA).
- 3** If you were **pulled over for no apparent reason** and then charged with DWI, you may have grounds for a challenge. An officer in New Jersey must have a valid reason to believe that a violation of the motor vehicle code has taken place or must show that the vehicle was being driven improperly before he can pull you over. You cannot be legally stopped for simply walking out of a bar and getting behind the wheel, for example. This is considered a violation of your rights.
- 4** **Videos and dispatch tapes** may provide fertile ground for challenging a DWI arrest. New Jersey state troopers and most other police officers have cameras in their patrol cars, and videos from testing and booking rooms that can provide material for your New Jersey DWI defense. At the very least, dispatch tapes have an audible recording of most vehicle stops. Videos and transcripts could show bias on the part of the officer by showing that the driver was steady on his or her feet, that his or her speech was clear and coherent, or that his or her attitude was not uncooperative or belligerent. An experienced NJ DWI attorney could use such footage to prove that an officer's testimony may not be support his/her assessment of your intoxication.
- 5** If the **breath-test operator does not have a valid operator's license** as required in New Jersey, the breath test is not admissible in court. Sometimes operators do not renew their certificates in a

timely fashion.

- 6** If the **breath-test operator has an expired operator's license**, the breath test is not admissible in court. Operators' licenses must be renewed every three years.
- 7** If the **breath testing machine malfunctioned** during your breath test or was repaired after your test, the results may be inaccurate. The burden rests with the prosecuting attorney to show that proper procedures were followed concerning the machine. If they were not, your test results may be considered invalid and excluded from evidence.
- 8** A breath testing machine is meant to take precise measurements when operated correctly and according to specific protocol. If **machine protocol is not followed during operation**, the readings could be wrong and the test invalid.
- 9** **Certain medical conditions**, such as those affecting legs, arms, back or neck, and eyes, can affect your performance on the field sobriety tests. Other conditions such as asthma and acid reflux can affect your breath test results.
- 10** Weather reports showing that **bad weather conditions** existed when you were arrested for your New Jersey DWI could be used to challenge the arrest. For example, conditions such as low visibility or high winds could counter or explain both poor driving while on the road and poor balance on field sobriety tests.
- 11** A **police officer's record** and prior statements can be used to challenge a New Jersey DWI case. If there is any record of misrepresentation, or of violating a driver's rights, this can be used to challenge the officer's credibility. Prior testimony about administering field sobriety tests can be used if the officer's information differs from trial to trial.
- 12** In accordance with New Jersey law, if you are **not kept under observation by the police for at least 20 minutes** before submitting to the breath test, test results could be excluded as evidence.
- 13** By using **independent witnesses**, such as hospital personnel or bartenders, as well as witnesses to any accidents that occurred, crucial evidence can be gained regarding a defendant's sobriety.
- 14** Similar to the required Miranda rights, so must a person be read the **New Jersey Implied Consent Law** before submitting to a breath test. Failure on the officer's part to read the form or to read it correctly could result in a dismissal of the case.
- 15** There are many **errors that can occur when being tested on the Alcotest 7110 MK111-C breath testing machine**. These errors include inputting incorrect arrest information, wrong machine settings, having the machine not notice or recognize testing errors, and timing errors during testing.
- 16** Various **substances and chemicals can cause false breath-test results**. Just a few of these items include fingernail polish, cough drops, or asthma spray, all of which contain some form of alcohol. In addition, paints or chemicals that you may work with could cause erroneously positive results on a breath test.

17 If the state does not resolve your drunk-driving case within a reasonable time period from your arrest date, your case could be dismissed in accordance with New Jersey guidelines for **speedy resolution**.

18 Using **expert witnesses** to review the validity of tests involved in a DWI case is crucial to being able to find all flaws in the test results. Expert witnesses exist for breath tests, blood tests, and field tests for sobriety.

19 **Blood tests** in a NJ DWI case have to follow very specific prescribed rules for both the testing and the handling of the blood, which could result in dismissal of the case if the blood was obtained or processed without following all of the rules. Sometimes both police blood testing and medical centers fail to follow the proper protocol. Prep swabs that are non-alcoholic can still have traces of alcohol, which in turn could skew the test results. Hospital tests can be even more unreliable for both healthy and severely injured patients. Lactate ringers used during treatment can result in falsely elevated blood serum results, which in turn can result in exclusion of the blood results.

20 **The prosecutor on a DWI case is required to provide complete disclosure of all necessary evidence.** If that does not happen, a motion to compel evidence is filed. If complete discovery still does not happen by the deadline set by the judge, it could lead to the charges being dismissed altogether.

21 **Drug Recognition Evaluation (DRE)** protocol goes beyond breath, blood, or urine testing and requires additional physical tests at the police station, as well as checking blood pressure and temperature. However, DRE has not been proven to be a reliable indicator of impairment by drugs.

22 **Being forced to give either blood or urine** or both can cause the results to be excluded as evidence. By law, you can choose to refuse to provide blood or urine samples to determine intoxication.

23 **Being charged with refusal to comply applies to refusing a breath test only, in New Jersey.** If you are charged with refusal to provide blood or urine, that charge must be dismissed.

We are here to help you get started on your defense immediately. Please call us today for a free consultation at (877)-735-2288.



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