

# DWI (*Driving While Intoxicated*) Demystified



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**A** recent survey reveals that in 2010, approximately 26,000 arrests for Driving While Intoxicated, "DWI," were made in the state of New Jersey. Given the prevalence of the issue, it is no surprise that one of the most common inquiries I receive involves the DWI.

Below is a list of "myths" or questions I have received, either in my office or elsewhere, regarding the DWI and my attempt to "demystify" the issue for those inquiring minds.

The issues raised below not only demonstrate the magnitude of a DWI, but also, the inherent and warranted difficulties that attach to its defense.

**#1** *"I wasn't doing anything wrong. There's no way that cop had probable cause to stop me."*

This statement represents one of the most commonly made mistakes among non-lawyers and lawyers alike. It is a simple and straightforward principle: police do not need probable cause to stop your vehicle! Rather, police need only a "reasonable and articulable suspicion" that you committed a motor vehicle infraction before they may legally stop you. This is signifi-

cant because the "reasonable and articulable suspicion" standard requires less than probable cause. To take an example, if Johnny Walker is driving 5 miles below the speed limit, and staying within his lane of traffic but slightly drifting, at 2:30 a.m., those facts may not be enough to sustain a probable cause determination, but a judge may determine that a reasonable and articulable suspicion of DWI existed.

**#2** *"What happens if I refuse to perform field sobriety tests?"*

Some people mistakenly believe that if they refuse to perform field sobriety tests when instructed to do so, it will be to their advantage, as there is less evidence that can be used against them in a future criminal proceeding. However, that is only half-true. Although there will be no evidence of performance on the field sobriety tests, the failure to perform the tests may be used in evidence at trial. Essentially, the prosecutor may be permitted to argue that an inference of guilt can be drawn from a refusal to perform the legally required tests demanded by the police.

**#3** *"I blew less than a 0.08%. They have no case against me!"*

In the state of New Jersey, a person with a blood alcohol content of 0.08% or more is legally intoxicated. Accordingly, the most common way to prove a DWI is through evidence of a person's blood alcohol content of 0.08% or more at the time of the vehicle's operation. However, there are other ways to prove DWI. First, the presence of a narcotic in a person's system, in conjunction with other facts, may be sufficient to prove a DWI. Second, a DWI may be proved through the arresting officer's testimony. Even without evidence of blood alcohol content, a police officer may testify regarding observations of a person's driving, odor, performance on field sobriety tests, statements and other facts, which taken

together, may be enough to prove that the person operated a vehicle while under the influence of alcohol or narcotics.

**#4** *"I don't need a lawyer. I will negotiate for a reduction of the DWI to a lesser offense."*

While the majority of municipal court and superior court cases are resolved by way of plea agreements, the same is not true of DWI's. In the state of New Jersey, plea-bargaining in DWI cases is absolutely banned. The ban is due to municipal court guidelines promulgated by the Supreme Court of New Jersey, which contain limitations with respect to the disposition of DWI offenses. A prosecutor, in most cases, cannot simply agree to a downgrade or dismissal of a DWI except where there exists a bona fide issue in a case.

**#5** *"A DWI isn't that serious."*

While it is true that a DWI does not constitute a crime in the state of New Jersey, but rather a motor vehicle offense, it does carry serious consequences. A first DWI offense carries a maximum one year license suspension, a maximum \$500.00 fine, \$325.00 in penalties, a possible 30-day jail term, 12 to 48 hours in an Intoxicated Driver Resource Center, possible installation of an ignition interlock device on any regularly operated vehicle after the expiration of the driver license suspension period, and \$3,000 in insurance surcharges. As subsequent offenses are acquired, the period of license suspension and amount of fines and penalties increase exponentially.



Considering the range of consequences attached to a DWI, the importance of consulting an attorney who is skilled and knowledgeable in the practice area cannot be overstated. As such, whenever presented with the question, "What's the best defense?" the response should always be: *"Do not drink and drive."*

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