

# DUI Or DWI? What's The Difference

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January 3, 2012 | by Einhorn Barbarito

During the Holiday Season, particularly on New Year's Eve, the police in your town may step up DWI/DUI check points in your area. New Jersey is participating in a stepped up enforcement throughout the state of a program called: **Drive Sober or Get Pulled Over**.

**So what happens if you find yourself at a "Sobriety Checkpoint" and find yourself being told that you are under arrest for being intoxicated?**

First, it is important that you take any tests that the police ask you to perform. You must take the breathalyzer test. You must also inform the police of any medical conditions or disabilities that you have that may interfere with your ability to take the tests. Also, it would be in your best interest to also demand and take independent blood and urine tests.

However, if you are arrested, do not answer any questions the police ask. The first thing you should do is obtain advice of an attorney who concentrates his/her practice in DWI law. This attorney's expertise may help you avoid losing your license or even going to jail.

**Can you still be arrested for DWI/DUI if your blood alcohol content (BAC), according to the breathalyzer test given at the checkpoint, is less than the legal limit?**

Yes! And again, you need to obtain an attorney who can help you in these situations.

Although your Blood Alcohol Level is below the limit for a *per se* offense, you could still be convicted of Driving **Under** the Influence rather than Driving While Intoxicated.

The DWI Statute in New Jersey, has two (2) components:

1) This first is based solely upon Blood Alcohol Level. If your Blood Alcohol Level (BAC) is 0.08 or higher, you are guilty of a *per se* DWI offense based upon your BAC. That is a first Tier offense with a three (3) month loss of license. For a BAC in equal to or in excess of 0.10, you could lose your license for seven (7) to twelve (12) months, and other fines and penalties would also be possible, and

2) Even though your Blood Alcohol Content is below the *per se* amount, the State can still prove a violation of the statute by establishing that you were **Under the Influence**. The State would use the Police Officer's observations of your performance of sobriety tests, and any evidence of erratic driving or motor violations to prove that you were under the influence. Being "under the influence" means that a driver's judgment or control is so impaired that it would be improper to drive.

Since a ticket was issued with a BAC less than 0.08, it must be assumed that the Police Officer involved will seek a DWI conviction based upon the "Under the Influence" part of the statute.

It is imperative you contact a lawyer who is knowledgeable in DWI defense law.