

Dui/Dwi Holiday Checkpoints – An Important Reminder

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The holidays are fast approaching – and there are celebrations to go to, office parties and lots of holiday cheer. The holidays are also a time when the police set up DWI checkpoints to ensure that you are not inebriated while you are driving.

There is perhaps no greater fear encountered by a driver than being stopped by the police at one of these DWI checkpoints, particularly if you have decided to “celebrate” the holidays. The fear is well founded; the consequences in New Jersey for a DWI/DUI arrest are staggering. There are significant fines and other financial penalties. If convicted, you will be required to attend a driver intoxicated resource center; even a first offense can result in a period of 30 days in jail. More importantly, conviction for DWI/DUI will always result in a loss of license ranging from three (3) months – if your blood alcohol content is 0.08% to 0.10% – to twelve (12) months – if greater than .10% blood alcohol content. The suspensions and penalties are even greater for second and third offenses.

Most alcohol based prosecutions are based upon breath tests. However, under certain circumstances, the state may also proceed based upon blood or urine tests obtained. A conviction may also be based

upon observation and opinion testimony by the police. Intoxication by drugs is also covered by the statute.

How serious is it?

A DWI/DUI case is considered “quasi-criminal.” In other words, every DWI/DUI defendant is entitled to the full range of constitutional rights afforded to a criminal defendant except for a jury trial. Because the consequences are so significant, they may have a devastating effect upon the defendant or his family due to the significant fines and loss of license. There is no exception to the loss of license law in New Jersey and there are no temporary or work licenses issued.

Also because of the serious nature of a DWI/DUI case, we at Einhorn Barbarito believe you should be informed of not only what happens at a DWI/DUI checkpoint, but also of the “Dos” and “Don’ts” you should follow if you are pulled over at these holiday checkpoints. We have posted these tips before and believe they should be repeated each year during the holiday season to help you. These tips may help you potentially mitigate or negate the charges because any number of things which occurred during the checkpoint, the tests or arrest, may have violated your rights.

This information is in no way meant to condone or permit drinking and/or drugging and driving; in fact, I would caution you to not drink at all at these holiday parties. However, this article is meant to inform you of issues that you may face if you are stopped and subsequently arrested at a holiday DWI/DUI checkpoint.

Getting Stopped at a Checkpoint:

You will, at least once in your life, be stopped at a DWI/DUI checkpoint. Should this happen, the police will only stop drivers long enough to ask simple questions and to check for signs of impairment, such as alcohol on the breath, slurred speech, and glassy or blood shot eyes. If you show no signs of intoxication, you will be allowed to drive away.

However, if the officers have any “probable cause” for believing that you are intoxicated, they will direct you to the side of the road for a field sobriety check and a potential breath test. If this happens and you are directed to remain for further investigation, here are some do’s and don’ts you should

follow.

DO'S (AT THE DUI Checkpoint):

- **Do** have all your documents in your hand before the officer arrives at your car otherwise the officer may claim you fumbled for your documents.
- **Do** open your window immediately when you stop your vehicle after being directed by the police to combat the claim the car had a strong odor of alcohol.
- **Do** be polite and remain calm: A good attitude may result in no ticket if you are a borderline case.
- **Do** tell the police of all your medical problems and any reasons you cannot perform the roadside tests. This will assist your attorney in arguing the tests are not relevant or that they may not be reliable on the issue of probable cause or intoxication.
- **Do** listen to all instructions given by the police and have the officer repeat them. Then follow those instructions. Many drivers are too eager to start the roadside tests before instructed. This permits the arresting officer to testify that you were unable to follow directions due to intoxication. Furthermore, if your arrest is videotaped, any mistake in following the officer's instructions will be recorded and used against you.

DON'TS (AT THE DUI Checkpoint)

- **Don't** be nasty or argue with the officer when stopped: a polite attitude may help you in a close case, based upon your performance on roadside tests.
- **Don't** volunteer information: what you say can and will be used against you, however, once you receive Miranda Rights, you may remain completely silent. Your silence cannot be used against you. However, you are required to take the breath test at the police station without the right to consult a lawyer.
- **Don't** forget to tell the police of your physical and medical conditions which may make it difficult or impossible for you to take the roadside tests: By telling the police at the scene, you are informing them of your inability to perform the test which reduces the relevance of the result.
- **Don't** refuse the breathalyzer test / never refuse the test: Once you are given the breath test rights under the New Jersey Implied Consent Law, you must take the test. There is no exception to that rule. If you refuse to take the test or do not unequivocally agree to take it, a separate charge will be filed against you for refusal. A refusal charge carries with it the same fines, penalties and license loss of a DWI violation itself. Although you cannot be jailed for a refusal charge, you can be found guilty of both a DWI and refusal charge.
- **Don't** ask for a lawyer before you agree to take the test: You have no right to an attorney in your breath test rights. Continuing to ask for an attorney will be deemed as a refusal. Police will read an additional paragraph to you which informs you that you have no right to have any attorney advise you regarding taking the test. Listen to the instructions in that paragraph and take the test.

- **Don't** forget to ask for your own independent test: This will create a legal issue to potentially keep out the breath test results out of your case.

If at this point you are arrested for failing the breath test or field sobriety tests, please try to remain calm. You need not say anything except to ask to speak with an attorney, and follow these tips when you are at the police station.

DO'S (AT THE POLICE STATION)

- **Do** take the breath test: any failure to agree to the test is a separate offense that may result in significant fines and a seven (7) to twelve (12) month loss of license even if you are not actually intoxicated.
- **Do** ask for your own independent test to be taken: under the DWI/DUI statute, you are entitled to ask for, and obtain, an independent blood alcohol test. Failure of the police to have a policy permitting an independent test or to restrict that right in any way may defeat the summons issued against you.
- **Do** take note of the actions and whereabouts of the police from the time you are arrested, and more importantly, when you are at the headquarters: The State has the burden of establishing that you were kept under continuous observation for twenty (20) minutes prior to the administration of the breath test. Failure of the police to keep you under observation may void the test results.
- If you cough, belch or regurgitate – or you feel the urge – inform the Police of the situation. The breath test may be invalidated if there is raw alcohol in your mouth which these actions may cause to happen. The police must then wait for another continuous twenty (20) minutes after any raw alcohol is re-introduced into your mouth. The twenty (20) minute period begins after ingestion of water, gum or any other substances.
- **Do** ask for a copy of your test results: the police are required to supply them to you upon request.

If you are found to be under the influence, you will be arrested and read your rights (called Miranda Rights and you will be familiar with these if you have ever watched a cop show on t.v.). If this should happen, please follow these tips to help you with your case.

DO'S (AFTER THE ARREST)

- **Do** ask to speak to your attorney. After you are read your rights (You have the right to remain silent and you have the right to an attorney) do not speak with the police or anyone, including family members, but a knowledgeable and experienced attorney who knows DWI/DUI law. The nature of the punishment can be so devastating that you need an attorney who knows:
 - The Constitutional issues involving the police's basis for the original stop.

- The Constitutional and related issues involving the police's decision to subject you to a breath test
- The Issues involving the qualifications of the breath test operator who administers the breath test and the manner and protocols surrounding the procedures;
- The issues involving medical conditions you may have and how they can affect the ability to present defenses to the DWI/DUI charge;
- Issues involving the proper maintenance and periodic testing of the testing devices and of the operators who perform the test for accuracy and proper calibrations.
- **Do** hire non-legal forensic experts recommended by your attorney to attack both the diagnostic tests administered and the breath test results. This may also include hiring a medical or related professional to explain how your medical conditions could invalidate breath test results or explain away your failure to perform roadside tests.
- **Do** show up for all Court appearances: your failure to attend any court proceeding will result in further actions by the court which may include the imposition of penalties, setting of bail or even jail.

And the most important DON'Ts of this entire article:

Don't put your head in the sand. A DWI/DUI proceeding is not a pleasant experience, but you cannot avoid or ignore it.

Don't try to represent yourself: The consequences of DWI/DUI conviction can be life-altering and devastating. Obtain the services of a competent and experienced DWI attorney. To choose the right attorney for your case, interview a number of attorneys and find one with whom you feel comfortable and who specializes in that area of the law.

And finally, the most important Don't – **DON'T DRINK AND DRIVE!** If you wind up injuring or killing another person the penalties you face will be cataclysmic to your life.