The Do's And Don'ts Of A DWI Case

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There's perhaps no greater fear encountered by drivers than being stopped by the police after consuming alcohol or taking drugs. The reason for that is simple. The consequences for a DWI / DUI arrest in New Jersey are staggering. There are significant fines and other financial penalties. If convicted, you will be required to attend a driver intoxicated resource center, and even a first offense can result in a period of 30 days in jail. More importantly, conviction of a DWI / DUI will always result in a loss of license ranging from three (3) months (.08% blood alcohol content to .10%) to seven (7) to 12 months (greater than 1.0% blood alcohol content).

Additionally, there is no right to a jury trial in any DWI / DUI case. All cases are heard before a Municipal Court Judge who invariably works for the very municipality whose police have arrested you. Most alcohol based prosecutions are based upon breath tests. Under certain circumstances, the State may proceed based upon blood or urine tests obtained following a hospitalization. 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 this right to a jury trial. Because the consequences of a DWI / DUI conviction are significant, they may have a devastating effect upon the defendant and his or her 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.

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When confronted with a DWI / DUI situation, there are some **"Do's" and "Don'ts"** that you should remember:

DO'S (AT THE SCENE):

- **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.

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DON'TS (AT THE SCENE)

- **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.
- Don't try to evade the stop once you realize that the police are directing you to pull your vehicle over:
    - Failure to stop after seeing flashing lights or other police direction could result in a serious criminal charge being filed against you along with the underlying DWI / DUI charge.

- **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 succeed by discounting their basis to subject you to the breath test.

- **Don't** refuse the 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.

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DO'S (AT THE POLICE STATION)

Do take the breath test: Any failure to agree to take 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 not intoxicated. Under an "Implied Consent Law," any person who operates a motor vehicle in the state is deemed to have consented to a DWI / DUI chemical test.

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 or to restrict that right 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 for 20 minutes may void the test results.

If necessary, **Do** cough, belch, regurgitate - if you feel the urge – and inform the Police of the situation.

- The breath test may be invalidated if there is raw alcohol in your mouth. The police must wait for another continuous twenty (20) minutes after any raw alcohol is re-instituted into your mouth. Additionally, that twenty (20) minute period begins after the ingestion of water, gum or any other substances.

Do ask for a copy of your test results: the police are required to supply the test results.

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DO'S (AFTER THE ARREST)

Do get a knowledgeable and experienced attorney who knows DWI / DUI law. Be sure that that attorney is willing to spend time with you discussing the facts of the case and that he or she will treat you like an individual.

Do hire non-legal forensics 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 expert to explain how your medical conditions could invalidate the breath tests results or explain a way for your failure to perform roadside tests.

Do show up for all Court appearances: Your failure to attend any court proceeding will result in a further action by the Court which may include the imposition of penalties, setting of bail and even jail.

- A motor vehicle violation will revoke your license for your failure to appear and address a DWI or any summons.

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WHAT YOUR ATTORNEY SHOULD KNOW!

When using an attorney, make sure he/she is aware of all the issues that surround DWI cases, including:

1. Constitutional issues involving the police's basis for the original stop;
2. Constitutional and related issues involving the police's decision to subject you to a breath test;
3. Issues involving the qualifications of the breath test operator who administers the test;
4. Issues regarding medical conditions and how they may affect the ability to present defenses to the DWI / DUI charge;
5. Issues involving the administration of the roadside, psycho physical tests, roadside sobriety tests;
6. Issues regarding the manner in which the breath test was administered – All protocols surrounding the procedures;
7. Issues involving the proper maintenance and periodic testing of the testing device (proper instrument inspection certificates, valid operator certificate, proper calibration reports, proper certificates of analysis for simulator solution, proper calibrating unit standard solution reports, certificate of accuracy for the device and proper control tests certificates).

Most importantly, do not put your head in the sand. A DWI / DUI proceeding is not a pleasant experience. But you cannot avoid or ignore it. You cannot represent yourself since the consequences are life-altering. 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.

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