



Driving While Intoxicated: What You Need to Know



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First and foremost, I would recommend that you not operate a motor vehicle after having consumed alcoholic beverages. There is a great danger to both the public at large and yourself. Additionally, if you are convicted of driving while intoxicated, you will certainly face harsh penalties.

Should you find yourself in the unfortunate situation of being pulled over as a suspect for driving while intoxicated (DWI), there are many things you need to know. First and foremost, if the police officer suspects you of driving while intoxicated, he or she will have you exit your motor vehicle so that roadside sobriety tests can be administered. The police officer will then use a variety of physical, psychological and scientific tests in connection with their drunk driving investigation. These tests are

referred to as The Field Sobriety Tests. The Field Sobriety Tests are administered immediately after the traffic stop to individuals suspected of driving under the influence of alcohol or narcotics. The results of these tests are used by the police in order to establish probable cause so that a suspect can be placed under arrest. After the suspect has been arrested, the suspect will be taken back to the police station in order to give a breath sample to be analyzed by the Alcotest machine. The Alcotest is administered in order to determine an individual's blood alcohol content.

QUESTION: CAN I REFUSE TO TAKE THE BREATH TEST?

ANSWER: No. A refusal to submit to a breath/chemical test is an entirely separate offense from driving while intoxicated, thus having additional penalties. The relevant statute states that, "Any person who operates a motor vehicle on any public road, street or highway or quasi-public area in this state shall be deemed to have given his consent to the taking of samples of his breath for the purpose of making chemical tests to determine the content of alcohol in his blood." If you refuse to take a breath test, you will be fined between \$300 and \$500 for a first offense; a fine of not less than \$500 or more than \$1,000 for a second offense; and a fine of \$1,000 for a third of subsequent offense. A first offense carries a seven month driver's license suspension.

A second offense carries a two year license suspension. A third offense carries a ten year license suspension. Please realize that conviction for similar offenses occurring in other jurisdictions count as prior offenses for purposes of the refusal statute. Therefore, if you find yourself in the unfortunate position of being a suspect for operating a motor vehicle in New Jersey while intoxicated, you should not refuse a breath or blood test.

QUESTION:

DO I HAVE THE RIGHT TO SPEAK WITH AN ATTORNEY BEFORE I TAKE THE BREATH TEST?

ANSWER: No. You do not have the right to speak with your attorney prior to being administered the Alcotest, nor do you have a right to have an attorney present. If you find yourself in this unfortunate situation, read the forms presented to you by the police carefully before affixing your signature.

QUESTION: WHAT ARE THE PENALTIES IF I AM CONVICTED OF DRIVING WHILE INTOXICATED?

ANSWER: For a first offense, you will be fined between \$250 and \$400. You will be required to attend alcohol awareness classes at the Intoxicated Driver Resource Center (IDRC) for a period of 12-48 Hours. You must pay \$100 for the IDRC program. You will also be required to pay a \$50 Violent Crimes Compensation Board (VCCB) penalty, and a \$75 Safe Neighborhood Fund Assessment. You could also be sentenced up to 30 days in the county jail. You will lose your driver's license in the state of New Jersey for a period of three months to one year for a first offense.

For a second violation of the DWI Statute, fines range from \$500-\$1,000. You will be required to perform community service for a period of 30 days, which will be done on terms as the court deems appropriate under the circumstances. You will be forced to attend alcohol awareness classes at the IDRC for 12-48 hours. You must pay \$100 for the IDRC program. You will also be required to pay a \$50 VCCB penalty, and a \$75 Safe Neighborhood Fund Assessment. You will be sentenced to a term in the county jail for 48 hours to 90 Days. You will lose your privilege to operate a motor vehicle in the State of New Jersey for two years.

For a third or subsequent violation of the DWI Statute, you will be fined \$1,000. You must attend alcohol awareness classes at the IDRC for 12-48 hours. You will be required to pay \$100 for the IDRC program. You must also pay a \$50 VCCB penalty, and a \$75 Safe Neighborhood Fund Assessment. You will be

sentenced to jail for a term of 180 days, however 90 days of the jail sentence can be served by participating in a drug or alcohol inpatient rehabilitation program approved by the Intoxicated Driver Resource Center. You will lose your driving privileges in the State of New Jersey for 10 years.

Please realize that the above mentioned penalties are enhanced if you are convicted of driving while intoxicated for operating a motor vehicle within 1,000 feet of school property, including a school crossing zone.

QUESTION: DO I HAVE THE RIGHT TO AN INDEPENDENT BLOOD TEST?

ANSWER: Yes. New Jersey Law provides that in addition to the breath and/or blood samples taken at the direction of a police officer, the person tested shall be permitted to have such samples taken and chemical tests of his breath, urine, or blood made by a person or physician of his own selection. It is the duty of the police officer to inform the individual tested of his right to an independent breath, urine or blood test. The requirement that the police advise a defendant of their right to an independent test is limited to those times where a defendant has already provided a breath sample to the police. The police are not obligated to inform a defendant of their right to an independent test when that defendant has already provided a blood sample.

QUESTION: CAN I BE CONVICTED FOR BOTH DRIVING WHILE INTOXICATED AND REFUSING TO TAKE THE BREATH TEST?

ANSWER: Yes, you can be convicted for both violations, and will be sentenced for both violations. Your license suspension and possible jail time can be consecutive terms, which means that your sentence will not be served at the same time.

QUESTION: WHAT ARE THE COLLATERAL CONSEQUENCES TO A CONVICTION FOR DRIVING WHILE INTOXICATED?

ANSWER: New Jersey Law has created the Motor Vehicle

Violations Surcharge System mandating that surcharges shall be levied annually for a three year period and shall be \$1,000 per year for each of the first two convictions, for a total surcharge of \$3,000 for each conviction, and \$1,500 per year for the third conviction occurring within a three year period, for a total surcharge of \$4,500 for the third conviction. Additionally, the New Jersey Administrative Code requires an assessment of nine insurance eligibility points if a person is convicted for driving while intoxicated.

As you can see, the consequences for a conviction of driving while intoxicated are extremely severe.

QUESTION: DO I AUTOMATICALLY HAVE THE PRIVILEGE TO OPERATE A MOTOR VEHICLE IN NEW JERSEY ONCE I HAVE SERVED THE PERIOD OF SUSPENSION?

ANSWER: No. Before you are allowed to operate a motor vehicle over the roads of the State of New Jersey you are required to pay a restoration fee of \$100 to the Motor Vehicle Commission.

QUESTION: WHAT HAPPENS IF I AM OPERATING A MOTOR VEHICLE WHILE ON THE SUSPENDED OR REVOKED LIST FOR A VIOLATION OF THE DWI STATUTE?

ANSWER: If you are convicted for operating a motor vehicle while on the suspended or revoked list for a violation of the DWI Statute, you will be fined \$500, you will have your license to operate a motor vehicle suspended for an additional period of not less than one year nor more than two years, and you will serve time in the county jail for not less than 10 days or more than 90 days.

QUESTION: WHAT SHOULD I DO IF I AM CHARGED WITH DRIVING WHILE INTOXICATED?

ANSWER: You should consult with a competent attorney who has experience in representing defendants who are charged with violating the New Jersey DWI Statute.

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