

DUI Charges in New Jersey

A Practical Guide

ADAM H. ROSENBLUM, ESQ.

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Disclaimer

This publication is intended as a general education guide to DUI laws in New Jersey. This publication does not constitute legal advice. Each case is unique and must be considered based on its own specific details. This publication is for informational purposes only and is based upon New Jersey law at the time it was published. Subsequent changes in the law may or may not affect your rights. For specific legal advice regarding your case, it is advisable to consult an experienced New Jersey DUI lawyer who will be able to review your situation and the specific details of your case and provide custom-tailored legal advice.

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**Chapter 1:
New Jersey DUI Law Basics**

Chapter 1:

New Jersey DUI Law Basics

Facing a charge for “driving under the influence,” or DUI, can be extremely stressful. It’s normal to worry about how this will affect your future. You may be worried about losing your license and/or your job, paying fines, or even having to serve time in jail.

Often the evidence against you seems impossible to overcome. But even if you think the case against you is strong, there are many ways to successfully negotiate or fight a DUI charge. This guide will help you understand the violation you’re facing, the DUI process, the evidence against you, and your possible defenses.

By knowing your rights, and getting an experienced, skilled DUI lawyer on your side, you’ll have a much better chance of beating a DUI charge, or at least minimizing the negative impact it has on your life and future.

New Jersey’s DUI Statute

The first step to surviving a DUI charge is to understand what you’re being accused of.

In some states, DUI and “driving while intoxicated,” or DWI, are separate offenses. But in New Jersey, the same law covers both DUI and DWI.

This law is N.J.S.A. 39:4-50(a), under which it’s illegal to operate a motor vehicle:

- while under the influence of an intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or
- with a blood alcohol concentration (or “BAC”), of 0.08% or more.

In New Jersey, a violation of this law is considered a traffic violation, not a crime. This is not true in all states, however. For example, in New York a DWI is either a misdemeanor or a felony.

There are also a couple of other important things to note. First, the law covers both drunk driving *and* driving under the influence of drugs.

Second, you don't necessarily need a BAC of over 0.08% in order to face a drunk driving charge.

A BAC over 0.08% is, by itself, proof of impairment and enough to support a DUI conviction. This is true even if you don't show other signs of impairment and/or pass all field sobriety tests without any problems.

But even if your BAC reading is *less than* 0.08%, or your breath test evidence is thrown out altogether, you can still be charged with a DUI under the first prong of the statute: driving under the influence of alcohol (also known as "common law DUI").

In this case, the prosecutor would have to show other evidence of your impairment. Such evidence might be, for example, officer observations of your appearance and behavior, or your performance on field sobriety tests.

In addition, certain drivers are subject to higher sobriety standards.

First, New Jersey has a zero tolerance law for drivers under the age of 21. Because it's illegal for minors to drink and drive at all, under N.J.S.A. 39:4-50.14, underage drivers with a BAC of 0.01% or more can face a DUI charge.

Second, under N.J.S.A. 39:3-10.13, if you're driving a commercial vehicle with a commercial driver's license (or "CDL"), you can be charged with a DUI if you:

- have a BAC over 0.04%, or
- are under the influence of a controlled substance.

In both cases, if you're convicted you'll face extra penalties on top of any penalties under the regular DUI law.

See [Chapter 4: DUI Penalties in New Jersey](#) for more information about the potential consequences of a DUI conviction.

Refusal to Submit to a Breath Test

Under N.J.S.A. 39:4-50.2, you're required by law to take a breath test to determine your BAC if the police have "reasonable grounds to believe" you're driving under the influence.



“Under New Jersey law, you are required to take a breath test on a stationary breath test machine if police have “reasonable grounds to believe” you’re driving under the influence.”



New Jersey is an “implied consent” state. This means that by driving on New Jersey’s public roads, it’s implied that you consent to taking a breath test if you’re suspected of a DUI violation.

But the law also establishes rules for police officers.

First, they must inform you of your right to obtain (i) a copy of the breath test results, and (ii) a second BAC test from a “person or physician of [your] own selection.” The standard statement that the officers must read to you is included in [Appendix A](#).

They also may not forcibly administer the breath test.

Note that this law *only* covers the stationary breath test at the police station. It does *not* cover portable breath tests, blood tests, urine tests, or other chemical tests.

See [Chapter 4: DUI Penalties in New Jersey – Refusal to Submit to a Chemical Test](#) and [Chapter 5: Building a DUI Defense – Challenging Breath Test Results](#).

Chapter 2: **The DUI Process**

Chapter 2: The DUI Process

If you've never faced a DUI charge before, the legal process can feel unfamiliar and intimidating. Learning more about the stages of the process can help ease some of the anxiety. You should also get the help of an experienced DUI attorney. They'll be by your side through the entire process and be able to guide you every step of the way.

The Traffic Stop and Arrest

Your case begins with your traffic stop.

Under the New Jersey Constitution, you have the right to be free from all "unreasonable searches and seizures." This generally means that police officers must have "reasonable suspicion" that you've violated a law before pulling you over.

For a DUI, you might get pulled over because you're driving in a way that makes the police officer suspect you're driving under the influence. Or they may pull you over for an unrelated traffic offense. You may also encounter a DUI checkpoint, which are legal in New Jersey, so long as they meet certain requirements.

Once the officer pulls you over, he or she will make observations about your behavior, appearance, and items visible in your car. He or she may also ask you to take a roadside breath test or field sobriety tests, which you have the right to politely decline.

If the officer reasonably believes, based on all the facts and circumstances, that there's enough evidence of your intoxication (called "probable cause"), you'll be arrested and read your Miranda rights. Your Miranda rights include:

- your right to remain silent, and
- your right to an attorney.

You'll then be brought to the police station for processing. At the police station, the police may ask you to take additional tests. The only test you're required by law to take is the breath test. If you refuse to take a breath test, you'll face additional penalties. See [Chapter 4: DUI Penalties in New Jersey – Refusal to Submit to a Chemical Test](#). You can refuse to take a blood, urine, or other chemical test without facing additional penalties. See also [Chapter 3: Types of Evidence in a DUI Case](#) for more information about the types of evidence police collect in a DUI case.

Since in New Jersey a DUI is a traffic violation, and not a criminal offense, generally the police won't hold you overnight. You also won't usually have to pay bail. But if you're charged with a crime in addition to your DUI, you may be held in jail and have to post bail to be released. For example, this may be the case if you're charged with drug possession, or if you injured or killed someone while driving under the influence.

In most cases, the police will also usually tow your vehicle and keep it impounded for 12 hours. After that period is up, you can get your car back, or send someone else to get it for you.

Finally, before the police release you from custody, you'll usually get a "summons and complaint," as described below under Step 1 of [What to Expect after a DUI Charge](#). This means you're officially facing a DUI charge.

What to Expect after a DUI Charge

The legal process moves quickly after a DUI arrest in New Jersey. How long it takes to resolve depends on many factors. Some cases are resolved pre-trial, some are resolved mid-trial, and some are resolved at the end of a trial.

Below is a summary of what you can expect at each stage of the DUI process.

STEP 1: SUMMONS AND COMPLAINT

Before you're released from the station, the officers will give you a "summons and complaint." This is your DUI "ticket." It should identify:

- the offense(s) you're being charged with, and
- the location, date, and time of your first court date, called the "arraignment."

Keep in mind that you may get multiple tickets for offenses other than the DUI. These could include charges for any other offenses the officer observed, like speeding, running a red light, or driving in an unmarked lane.



"It's a good idea to get a DUI attorney before your arraignment. Your attorney may be able to waive your appearance at the arraignment, saving you time and stress."



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- the location, date, and time of your first court date, called the "arraignment."

Keep in mind that you may get multiple tickets for offenses other than the DUI. These could include charges for any other offenses the officer observed, like speeding, running a red light, or driving in an unmarked lane.

STEP 2: ARRAIGNMENT

Your arraignment usually happens quickly – anywhere within a few days to a week. At this court date, the judge will:

- read the charges against you,
- inform you of the potential penalties, and
- advise you to get a lawyer, if you haven't already.

The court may also ask whether you're pleading guilty or not guilty. If you plead guilty (this almost never makes sense), the court will enter the conviction and give you your sentence immediately.

But if you plead not guilty, the court will schedule a future court date for further proceedings.

If you don't have a lawyer yet, the judge will give you some time after the arraignment to find one. But it's much better to have one prior to your arraignment, if at all possible. A DUI lawyer can often get the court to waive the arraignment. Your attorney will also enter your plea on your behalf. This can save you the time and stress of having to appear at the arraignment.

But if your lawyer has *not* waived your appearance at the arraignment, it's extremely important that you attend. If you don't, the court can issue a warrant for your arrest and your license will be suspended immediately.

If you can't get an attorney before the arraignment, you should get one as soon as possible. The sooner you get the help of an attorney, the more likely you'll have a positive outcome. If you can't afford a private lawyer and meet certain income requirements, you can apply for representation by a public defender.

STEP 3: INVESTIGATION AND DISCOVERY

Once you hire a lawyer, the first thing they should do is request certain information from the prosecutor. This step of the process is called "discovery." Usually your attorney will request information and records such as:

- any video or audio recordings of your traffic stop and arrest;
- police reports;

- a copy of your breath test results;
- information about the breath test machine, such as breath logs and records showing it was in proper working order;
- any other scientific or medical test results;
- any statements or confessions you gave;
- the name and contact information for the arresting officer, if you don't have it already;
- information about any experts the prosecutor wants to use; and
- any other evidence that the prosecutor wants to use against you.

The prosecutor will have some time to respond to these requests for information.

In some cases, your attorney may also conduct an independent investigation, which may involve:

- taking photos of the scene,
- interviewing witnesses, and
- gathering any other evidence to support your defense.

In addition, your attorney may suggest hiring an expert who can interpret certain evidence in your favor. For example, an expert may be able to testify about the functionality of breath test equipment, or challenge the accuracy of field sobriety tests or chemical tests.

After analyzing all available evidence and information, your attorney will be able to identify your possible defenses.

STEP 4: PRETRIAL STATUS CONFERENCE

Once discovery begins, a “pretrial conference” will be held with you (or your attorney), and the prosecutor. Your attorney and the prosecutor will discuss your case and exchange information. The pretrial conference is usually held on a scheduled court date about a month after your arrest.

During this court appearance, you may be asked if you want to enter into a settlement (known as a “plea bargain”) or continue to trial. Depending on the facts of your case, it’s possible that the prosecutor will offer you to plead guilty to a downgraded offense or a plea to the offense you are facing but with a lesser penalty. For example, you may be offered a 7 month loss of license instead of a 1 year loss of license if you agree to plead guilty to the DUI, depending on the situation. Your DUI attorney can help you decide whether to accept the downgraded charge. If you do accept the charge, and the court approves it, you can resolve your case without going to trial. Otherwise, your attorney will have to continue fighting your case.

Sometimes, more time is needed for discovery. If this is the case, the court will schedule another pre-trial conference.

STEP 5: PRETRIAL MOTIONS

Before trial, your attorney might make certain requests or “motions” about your case. These may include motions:

- To force the prosecutor to turn over discovery,
- to exclude evidence, or
- to dismiss the charges against you.

For example, if it looks like any evidence against you was gotten illegally, then your attorney may file a motion to have the evidence thrown out from your trial.

Some motions might require the court to hold a pre-trial hearing, or the court may wait until after the trial to decide the motions.

Sometimes these motions determine how your case is resolved. For example, if your attorney gets a critical piece of evidence excluded from your case, the prosecutor may not have enough evidence to lead to a conviction.

STEP 6: NEGOTIATION WITH PROSECUTOR

As noted above in Step 4, it may be possible to get your charge downgraded at your initial pretrial status conference.

As your case develops, your attorney may have other opportunities to negotiate with the prosecutor.

Note that in other types of cases in New Jersey, offering a plea bargain is entirely within the prosecutor's discretion.

But in most DUI cases in New Jersey, plea bargains or downgrades are not permitted. You can only get a downgraded charge if the prosecutor agrees there's a legal defect in their case that makes it unlikely that they can prove your guilt. This could be, for example, evidence of a faulty breath test device, or improper procedures in obtaining a blood sample.

Your best chance of getting a downgraded charge is with the help of an experienced DUI attorney. Your attorney will be able to present the strongest possible evidence in your favor and weaken the prosecutor's case.

STEP 7: BENCH TRIAL

In many cases, a DUI lawyer will be able to resolve your case by motions or with a downgraded charge.



“The court must comply with certain sentencing minimums, but they otherwise have discretion to impose the appropriate penalties based on the circumstances of your case.”



“The court must comply with certain sentencing minimums, but they otherwise have discretion to impose the appropriate penalties based on the circumstances of your case.”

But it’s also possible that once all the pretrial matters have been resolved, you’ll still end up going to court. Your trial will take place in the municipal court in the jurisdiction where you were arrested.

Your trial is usually held within 60 to 120 days after arrest, and it will take place before a judge, not a jury. This is called a “bench trial.”

At the trial, the prosecutor will have to prove your guilt beyond a reasonable doubt. Your attorney will also present your defense.

If the judge is convinced beyond a reasonable doubt that you’re guilty of the offense(s) charged, you’ll get your sentence immediately. But if the judge finds you not guilty, he or she will enter an acquittal and you’ll be free to go.

STEP 8: SENTENCING

If you plead guilty, or are found guilty, sentencing usually happens immediately. The penalties include possible jail time, license suspensions, fines, and more. See [Chapter 4: DUI Penalties in New Jersey](#) for more information about potential DUI penalties.

The court must comply with certain sentencing minimums, but they otherwise have the discretion to impose the appropriate penalties. They'll do this based on the circumstances of your case, including any mitigating or aggravating factors.

Mitigating factors could include things like enrolling in an alcohol abuse treatment program or, if there are victims, apologizing and offering compensation for damages. Aggravating factors include things like causing an accident, or being hostile with police.

In the case of a plea bargain, the terms of the sentence are usually ironed out beforehand, so that you will know what the penalties will be before you agree to plead guilty.

STEP 9: APPEALS

If you're found guilty by the judge at trial, you'll have 20 days to file an appeal with the county Superior Court.

The Superior Court will have 2 or 3 judges, and they'll make their decision on your appeal based only on a review of the trial record. There will be no new evidence or testimony.

If the Superior Court confirms your conviction, it's possible to appeal to the New Jersey Supreme Court. But the Supreme Court will only hear your appeal if:

- your case involves a constitutional issue not previously addressed by the Supreme Court, or
- a Superior Court judge voted to reverse your conviction.

Note: An appeal of the guilty plea is not possible in the plea bargain scenario. By pleading guilty the judge will ask you if you give up or “waive” your right to appeal. However, the sentence may still be able to be appealed.

STEP 10: POST-CONVICTION RELIEF

If you’ve previously been convicted of a DUI, New Jersey law allows you to seek post-conviction relief. Under Rule 7:10-2(b) of the New Jersey Rules of Court, there’s generally a five-year time limit for seeking post-conviction relief.

When you file a post-conviction relief petition, you’re asking the court to open an investigation into whether the court, prosecution, or defense counsel made any mistakes in your case.

If your petition is successful, it’s possible to reduce or even eliminate DUI penalties, and avoid enhanced penalties in future DUI cases.

But it’s not easy to get post-conviction relief. It’s only possible under very specific circumstances, such as having ineffective defense counsel, prosecutorial misconduct, an illegal sentence, or lack of jurisdiction. A DUI attorney will be able to help you determine whether a post-conviction relief petition makes sense for you.

The background of the slide is a stack of several books, likely legal or academic in nature, with their spines and pages visible. The image is dimmed with a dark overlay. Two horizontal white lines are positioned above and below the main text. The text is centered and reads:

**Chapter 3:
Types of Evidence in a DUI Case**

Chapter 3: Types of Evidence in a DUI Case

In a DUI case, the prosecutor will have to submit evidence to prove that you were driving under the influence. There are many types of evidence in a DUI case, and often the prosecutor will present multiple forms. Below is a summary of the key types of evidence you may encounter in your case.

Officer Observations

As noted in Chapter 2, before the police can pull you over, they generally need to have “reasonable suspicion” that you’ve violated a law.

The police look for certain driving behaviors when deciding whether to pull someone over for driving under the influence. Often, they’ll pull you over for a traffic violation, like:

- driving on the center or lane marker,
- visibly drinking in the vehicle,
- tailgating, or
- driving off the designated roadway, such as on the shoulder.

But your behavior doesn’t *have to* be illegal for the police to have reasonable suspicion. For example, an officer may pull you over if:

- you hesitate before going through a green light,
- you’re driving unusually slow on a clear road,

- you're drifting from side to side within a lane, or
- you appear to be impaired (tightly gripping the wheel, slouching, acting erratically, etc).

Once you're pulled over, the officer will observe your appearance, behavior, and speech. He or she may note the smell of alcohol or marijuana, as well as any admissions you may make.

If they charge you with a DUI, all of this evidence can become part of your case. See [Chapter 5: Building a DUI Defense – Challenging Officer Observations](#) for information about defending against this type of evidence.

Field Sobriety Tests

During the traffic stop, if the officer believes you're intoxicated, he or she may ask you to submit to roadside field sobriety tests.

While there are different types of field sobriety tests, the three standard tests include:

- **The walk-and-turn test.** In this test, you'll be asked to 1) walk in a straight line, heel-to-toe, for nine steps; 2) pivot on one foot and turn around; 3) and repeat. The officer will be evaluating your coordination and your ability to follow instructions.
- **The horizontal gaze nystagmus test.** In this test, you'll be asked to follow a moving object (like a pen or finger) with your eyes while keeping your head still. The officer will be looking for jerking or bouncing of your eyes due to intoxication. While this test is generally considered too subjective and unreliable, it can still be used to support probable cause to arrest you.

- **The one-leg stand test.** In this test, you'll be asked to keep your arms to your sides while standing on one foot and counting from "one one-thousand" to "thirty one-thousand." The officer will be evaluating your coordination and your ability to multitask and follow instructions.

In addition to the three standard tests, police officers may ask you to perform one or more non-standard tests to add to their initial observations, like reciting the alphabet without singing.

Note that you are *not* required to take field sobriety tests. You can politely decline any roadside tests – even if the officer makes them sound mandatory. But also keep in mind that the officer can still arrest you if there's probable cause based on other observations.

If you consented to the tests and you think you performed poorly, there are still ways to counter this evidence. See [Chapter 5: Building a DUI Defense – Challenging Field Sobriety Tests](#).

Breath Tests

Breath test results are the most common type of evidence in a DUI case. If an officer suspects you of driving under the influence, they'll ask you to take a breath test by blowing into an electronic breath test device (commonly called a "breathalyzer").

Breath tests are used to measure the amount of alcohol in your breath. If the test determines you're above the legal limit of 0.08%, you'll be charged with a DUI violation. But as explained in Chapter 1, you can be charged with a DUI even if you're under the legal limit, if the officer has enough other evidence of your intoxication.

Note that you may first be asked to submit to a breath test during your traffic stop, using a portable breath test device. Legally you *do not* have to submit to a roadside breath test (or any test unless it's court-ordered), though the officer may testify about your refusal during trial.

Portable breath test devices are unreliable and the results are not proof that you were driving under the influence. But they can be used to support probable cause to arrest you.

However, if you're taken to the station and refuse to take the breath test on the stationary breath test device, you'll be subject to a separate violation and the related penalties for Refusing to Submit to a Chemical Test. This is because New Jersey is an "implied consent" state. By driving on New Jersey's roads, it's implied that you consent to taking a breath test if you're suspected of a DUI.

See [Chapter 1: New Jersey DUI Law Basics – Refusal to Submit to a Breath Test](#) and [Chapter 4: DUI Penalties in New Jersey – Refusal to Submit to a Chemical Test](#).

If you take the test results show a BAC over the legal limit, it may still be possible to defend yourself against a DUI charge. See [Chapter 5: Building a DUI Defense – Challenging Breath Test Results](#).

Blood and Urine Tests

If the officer suspects you're under the influence of drugs, or if your breath test provides a BAC reading significantly less than 0.08% despite visible signs of intoxication (slurred speech, fumbling, etc), you may be asked to take a blood or urine test.



“Unlike the breath test, there are generally no penalties for refusing to take blood, urine, or other chemical tests.”



However, unlike a breath test, there are generally no penalties for refusing to take a blood or urine test. You can only be charged with Refusal to Submit to a Chemical Test if you refuse to take a breath test. If you don't consent to a blood test, the police may only force you to give a sample if they either have a warrant, or, in very rare cases, if emergency circumstances make getting a warrant impractical.

But if you were injured in an accident and police have reasonable suspicion you were under the influence of alcohol or drugs, the police *can* get the results of blood tests conducted for medical purposes at the hospital – *if* they can get an order from a judge.

If you do consent to a blood or urine test, the police must follow specific procedures. If they don't, you can have the results thrown out. See [Chapter 5: Building a DUI Defense – Challenging Blood or Urine Test Results](#).

Drug Evidence

It's relatively easy for an officer to test if you've been drinking alcohol. But it's harder to test for the influence of drugs. There are many types of drugs, and the effects on a person's ability to drive vary.



“If you're suspected of driving under the influence of drugs, you'll taken to the police station and undergo a 12-step evaluation by a Drug Recognition Expert.”



Generally, police will cite the same types of driving behaviors for a drug DUI stop as for an alcohol-related stop – like weaving out of your lane, driving unusually slow, or other erratic behavior. Observations of your mental and physical state can also be used as evidence for a drug DUI charge.

If an officer has probable cause to believe you're driving under the influence of drugs, you'll be taken to the police station. There, a Drug Recognition Expert, or DRE, will examine you.

A DRE is an officer specially trained to recognize drug intoxication and administer the following 12-step evaluation:

1. **Breath Test.** The officer will first administer a breath test to rule out alcohol as the cause of impairment.

2. **Interview of the Arresting Officer.** The arresting officer will tell the DRE about the circumstances leading up to the arrest. This will include the officer's observations about your behavior and any circumstantial evidence, like the presence of prescription bottles in your car. This will also include any statements you made to the arresting officer.
3. **Initial Exam.** The DRE will take your pulse and conduct a preliminary exam to try to determine whether you're impaired because of drugs, or because of an injury or other medical condition.
4. **Eye Examination.** The DRE will have you follow an object moving vertically and horizontally, like a pen or finger, with your eyes, while keeping your head still. You'll also be asked to cross your eyes.
5. **Psychophysical Tests.** The DRE will ask you to perform tests often used as field sobriety tests, like the walk-and-turn test or the one-leg test. See Field Sobriety Tests above.
6. **Vital Signs.** The DRE will take your basic vital signs, including your blood pressure, pulse, and temperature. They'll also look inside your mouth and nose for signs of drug use.
7. **Dark Room Exam.** The DRE will measure your pupils using a device called a pupilometer, under different lighting conditions.
8. **Muscle Tone Exam.** The DRE will check your muscle tone for rigidity and check your pulse again.
9. **Injection Site Exam.** The DRE will check for needle marks at common injection sites.
10. **Interview.** You'll be read your Miranda rights again and the DRE will ask you questions, including about your drug use. Note that you do not have to answer these questions.
11. **Opinion.** Based on the previous steps, the DRE will give an opinion as to whether you're intoxicated.
12. **Toxicology.** The DRE will ask you to take blood, urine, or saliva tests. You do not have to submit to these tests. Chemical tests can't quantify the amount of drugs in your system – only the presence. Even though the police will use this evidence to strengthen their case, there's no way to really tell if a person was high while driving just based on these results.

Keep in mind that the specific drug doesn't need to be identified in order for you to be convicted of a DUI. It doesn't matter if you were intoxicated due to cocaine, methamphetamines, or even a legally obtained prescription medication.

See [Chapter 5: Building a DUI Defense – Challenging Drug Recognition Expert Evidence](#) for information about how to counter DRE evidence.



**Chapter 4:
DUI Penalties in New Jersey**

Chapter 4:

DUI Penalties in New Jersey

DUIs in New Jersey carry serious penalties, though there have been some recent changes.

On December 1, 2019, amendments to New Jersey's DUI laws became effective. Lawmakers noted the harsh effect license suspensions had on first-time offenders and their ability to work and lead productive lives. As a result, the new law significantly reduced license suspensions for many first-time offenders.

But the new law also now requires that all drivers convicted of a DUI get an ignition interlock device installed, regardless of BAC. And offenders still face a range of other serious consequences, including jail time and thousands of dollars in fines and fees.

What kind of penalties you get may depend on many factors, such as:

whether you have any prior DUI convictions within the past 10 years

- your BAC level
- whether you hold a commercial driver's license
- whether you are under the age of 21
- whether minors were in your vehicle
- whether you caused an accident

While you may have heard of enhanced penalties for a DUI in a school zone, those penalties were also removed as part of the recent amendments to New Jersey's DUI laws.

Types of DUI Penalties

If you're convicted of a DUI in New Jersey, you can face the following penalties:

- **Jail Time.** Even for a first conviction, it's possible to receive up to 30 days in jail. Second convictions can result in up to 90 days in jail, and third and subsequent convictions result in 180 days in jail. In some cases, you can get a jail sentence reduced by participating in an inpatient rehab program.
- **Intoxicated Drivers Resource Center.** All drivers convicted of a DUI must spend 12 to 48 hours in an Intoxicated Driver Resource Center, or IDRC. You'll have to pay a fee to attend. The program consists of education classes on topics such as alcohol and drug addiction and highway safety. You'll also be evaluated for whether you need additional treatment for alcohol or drug addiction.
- **Ignition Interlock Device.** Under N.J.S.A. 39:4-50.17, every driver convicted of a DUI is required to get an ignition interlock device installed in his or her car. The time period ranges from three months for a first conviction with a BAC of less than 0.10%, to up to four years after license restoration for a second or subsequent DUI conviction.
- When you have an interlock device in your vehicle, you'll have to blow into the device in order to operate your vehicle. If you have a BAC of over 0.05%, the car won't start.
- Once your car is moving, the device will also randomly retest you by prompting you to blow into it. If a BAC over 0.05% is detected during the retest, the device will give you time to pull off the road and park.
- The device records all of the breath tests and stores the data.
- Once you're convicted, you'll need to go to an authorized installer and lease a device authorized by the New Jersey Motor Vehicle Commission, or MVC. See [Appendix B](#) for a list of authorized manufacturers.
- Leasing usually costs about \$75 to \$100 per month. You'll also have to pay an installation fee ranging from about \$150 to \$400, depending on your car, plus a fee to remove it.

- Once installed, you'll have to bring your interlock device back to your installer on a regular basis to be calibrated, usually every two months. At that time, the data will also be downloaded and sent to the State of New Jersey.
- **License Suspension.** If you're convicted of your first DUI offense with a BAC under 0.15%, you'll only lose your license until you install an interlock device as described above. But all other DUI convictions will result in license suspension.
 - A first-time conviction with a BAC over 0.15% results in a suspension of 4 to 6 months following the installation of the interlock. A first-time *drug* DUI offense results in a license suspension of 7 months to one year.
 - A second DUI conviction results in a suspension of one to two years, while a third or subsequent DUI conviction means a suspension of 8 years – regardless of BAC.
 - Once your suspension ends, you'll also have to pay a \$100 restoration fee to get your license back. If you don't pay, and you're stopped by police, you could be charged with driving with a suspended license.
- **Financial penalties.** Fines under the DUI statute range from \$250 to \$1,000.
 - New Jersey's Motor Vehicle Commission also charges a separate fine, or "surcharge," to all drivers who have been convicted of DUI. This surcharge ranges from \$1,000 per year for three years (or \$3,000 total) to \$1,500 per year for three years (or \$4,500 total).
 - You'll also have to pay several other fees in connection with your DUI conviction, which can add up to hundreds of dollars. These include fees paid to:
 - the Safe Neighborhood Services Fund, or SNSF;
 - the Drunk Driving Enforcement Fund, or DDEF;
 - the Alcohol Education and Rehabilitation Fund, or AERF; and

- the MVC for license restoration if your license is suspended.
- **Community Service.** If you're convicted of a second DUI offense, you'll have to serve 30 days of community service. Juveniles convicted of a DUI must also serve 15 to 30 days of community service. You may be ordered to serve community service in other cases as well.



“Under recent changes to New Jersey law, every driver convicted of a DUI is required to get an ignition interlock device installed.”



Summary of Penalties by Level of Offense

The table below summarizes some of the most significant penalties according to the level of DUI offense.

As noted above, there may be other costs and fees associated with your DUI conviction. For example, you may have to pay fees in connection with:

- the impoundment of your car upon arrest,
- license restoration, and/or
- the installation of your ignition interlock device.

This means that even for a first offense, you could be facing several thousand dollars in fines and fees. Subsequent offenses are even more expensive.

	First Offense (BAC over 0.08% but under 0.10%)	First Offense (BAC over 0.10% but under 0.15%)	First Offense (BAC over 0.15%)	(BAC over 0.15%) First Offense (Drug Related)	Second Offense	Third or Subsequent Offense
JAIL TIME	Up to 30 days	Up to 30 days	Up to 30 days	Up to 30 days	48 hours to 90 days	180 days*
IDRC	12 to 48 hours	12 to 48 hours	12 to 48 hours	12 to 48 hours	12 to 48 hours	12 to 48 hours
IGNITION INTERLOCK	3 months	7 months to 1 year	During license suspension plus 9 to 15 months	N/A	During suspension plus 2 to 4 years	During suspension plus 2 to 4 years
SUSPENSION	Until interlock installed	Until interlock installed	4 to 6 months following installation of interlock	7 months to 1 year	1 to 2 years	8 years
FINE	\$250 – \$400	\$300 – \$500	\$300 – \$500	\$300 – \$500	\$500 – \$1,000	\$1,000
SURCHARGE	\$1,000/year for 3 years	\$1,000/year for 3 years	\$1,000/ year for 3 years	\$1,000/year for 3 years	\$1,000/year for 3 years	\$1,500/year for 3 years**
IDRC FEE	\$264 to \$321	\$264 to \$321	\$264 to \$321	\$264 to \$321	\$264 to \$321	\$264 to \$321
DDEF	\$100	\$100	\$100	\$100	\$100	\$100
AERF	\$100	\$100	\$100	\$100	\$100	\$100
SNSF	\$75	\$75	\$75	\$75	\$75	\$75

* Up to 90 days can be served in a drug or alcohol inpatient rehab program.

** If the violation is within three years of the first violation.

Penalties for Underage Drivers

Drivers under the age of 21 are held to a higher sobriety standard for purposes of a DUI charge. This is because it's illegal for them to drink alcohol at all.

If you're an underage driver facing a DUI charge with a BAC of 0.01% to 0.07%, the following penalties apply *on top of* any penalties imposed under the regular DUI statute:

- license suspension for 30 to 90 days,
- 15 to 30 days of community service, and
- participation in an IDRC or safe driving program.

Underage drivers with a BAC of 0.08% or greater face the same penalties as an adult.

Penalties for Commercial Drivers

If you're driving a commercial vehicle, you can be convicted of a DUI if:

- you have a BAC over 0.04%, or
- you're driving under the influence of a controlled substance.

In this case, you'll face the following penalties:

- One to three years CDL suspension for a first-time DUI or Refusal to Submit to a Chemical Test violation.

- Three year CDL suspension for a first-time DUI or Refusal to Submit a Chemical Test violation if you were transporting hazardous materials in a commercial vehicle or driving in a commercial vehicle displaying a hazardous material placard.
- Suspension of your CDL *for life* for second or subsequent violations (though the Chief Administrator of the MVC may establish guidelines for reducing this to a period of not less than 10 years).

Your CDL will also be suspended for one year for a first-time DUI or Refusal to Submit to a Chemical Test in a *personal* vehicle.

All of these penalties are *in addition* to any penalties you face under the regular DUI statute.

Alternative Sentencing

There is little leniency in New Jersey for DUI offenses. This is true even if it's your first offense. But sometimes alternative sentencing is possible.

If you can't beat a DUI charge, you'll need the help of a skilled DUI attorney to achieve the best possible outcome. For a first conviction (and sometimes your second), a judge may allow a substitution for jail time.

Spending time at an IDRC is one possibility. Some other possibilities include:

- **Hour-for-hour exchange.** For example, if you're facing 60 days of jail time, the judge may instead order 60 days in an inpatient facility or 60 days of electronic monitoring.
- **Weekend jail.** The judge may allow you to work and take care of your family during the weekdays, and report to jail on weekends.
- **Sheriff's Labor Assistance Program (SLAP).** The judge may order you to perform manual labor under the supervision of law enforcement.

Judges are more likely to allow alternative sentencing if they're convinced the program in question will rehabilitate you and reduce your chances of driving while intoxicated in the future. The judge has the discretion to choose which specific program you'll participate in. This is another area where a skilled DUI attorney can be especially helpful.

Refusal to Submit to a Chemical Test

Under N.J.S.A. 39:4-50.2, refusing to submit to a breath test carries serious consequences. This is a separate offense from the DUI. This means the penalties are *in addition to* any penalties you incur for the underlying DUI charge.

If the refusal was in connection with a **first DUI offense**, you'll face the following penalties:

- license suspension until you install an ignition interlock device for the DUI offense,
- \$300 to \$500 fine,
- participation in an IDCR program, and
- surcharge of \$1,000 per year for three years.

If the refusal was in connection with a **second DUI**, you'll face:

- license suspension for one to two years after the installation of an ignition interlock device for the DUI offense (this revocation period is consecutive to any revocation imposed for the DUI),
- \$500 to \$1,000 fine,
- participation in an IDCR program, and
- surcharge of \$1,000 per year for three years.

If the refusal was in connection with a **third or subsequent DUI offense**, you'll face:

- license suspension for 8 years following the installation of an ignition interlock device for the DUI offense (this revocation is consecutive to any revocation imposed for the DUI),
- \$1,000 fine,
- participation in an IDCR program, and
- surcharge of \$1,500 per year for three years (if the violation was within three years of the first violation).

Effect of Out-of-State DUIs

Generally, an out-of-state DUI conviction is considered a prior offense. The exception is if the out-of-state DUI was only based on a BAC of less than 0.08%.

So if you're convicted of a DUI in New Jersey within 10 years of a previous out-of-state conviction, you'll face the higher penalties associated with subsequent DUI offenses.



**Chapter 5:
Building a DUI Defense**

Chapter 5: Building a DUI Defense

Beating a DUI charge in New Jersey isn't easy, but it's also not impossible.

If your breath test results show a BAC of over 0.08%, you may think that it's pointless to try to fight a DUI charge. You may think you have no choice but to accept the conviction and the severe penalties that follow.

But with the help of an experienced DUI attorney (who may also recommend that you hire a DUI expert – see below), in most cases you'll be able to build some kind of defense. Your attorney can uncover certain facts that weigh in your favor. And they can also make arguments against allowing the prosecutor to use certain evidence against you.

This means that you could beat the DUI charge, or at least get reduced penalties.

Below are some ways you may be able to defend against a DUI charge.

Lack of Reasonable Suspicion or Probable Cause

Before the police can stop you, they must have "reasonable suspicion" that you committed a crime or traffic violation.

For DUI stops, the "reasonable suspicion" is often based on actual traffic violations, like drifting out of your lane or running red lights. But sometimes, they pull you over for behavior that wasn't actually illegal. In these cases, it may be possible that the police violated your rights by stopping you.

To arrest you for a DUI, the police also must have "probable cause" that you were driving while intoxicated. This is a slightly higher burden than "reasonable suspicion." The police may support a finding of probable cause based on their observations, including your performance on field sobriety tests.

An experienced DUI lawyer will be able to evaluate all the details of your stop and arrest to determine if the officer had reasonable suspicion to stop you and probable

cause to arrest you. If the police violated your rights, it may be possible to get the court to throw out your case.

Miranda Rights Violation

You've probably heard Miranda rights in movies or on TV:

You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you. Do you understand the rights I have just read to you? With these rights in mind, do you wish to speak to me?



“If the police fail to read you your Miranda rights, you may be able to block the prosecutor from using your statements as evidence. But you won’t necessarily get your charges dismissed.”



In other words, your Miranda rights include:

- your right to remain silent, and
- your right to an attorney.

The police *must* read you your Miranda rights before questioning you after you've been arrested. And they must be read in a language you understand – otherwise, there's no point!

When you're first pulled over, the officer will likely ask you some questions about whether you've been drinking. At this point, you haven't been arrested, so they don't have to read you your Miranda rights.

But after you're arrested, the police *must* read you your Miranda rights before they interrogate you. They'll probably ask things like where you were coming from,

how much you drank, what you drank, and whether you've taken any prescription medication or other drugs.

If the police read you your Miranda rights, and you don't remain silent or ask for an attorney, then you're implying that you waive your rights and consent to questioning by police. And they can use anything you say as evidence against you.

But if the police interrogate you while you're in custody *without* reading you your rights, then you might be able to get the court to throw out any statements you made. It doesn't necessarily mean your arrest is invalid or that the charges will be dismissed, though.

You should also remember that you can only use this defense to throw out your *statements*, not other evidence like officer observations.

Lack of Speedy Trial

In New Jersey, the agency overseeing municipal courts has stated that DUI cases should be resolved in 60 days.

Sometimes this is hard to accomplish given the amount of evidence involved. And pushing to resolve a case in 60 days also may not be in your best interests, since building a proper defense can take time.

But if the prosecutors illegally delay a case by, for example, refusing to hand over discovery, and the delay is significant it's possible to argue that they've violated your rights and have the case thrown out.

Challenging Breath Test Results

New Jersey currently uses the Draeger Alcotest® breath analyzing system to measure blood alcohol content level. The machine is complex, and not always accurate. It's possible to challenge your breath test results for a variety of reasons.

If you can get the court to throw out your breath test results for a first-time DUI charge, you'll face the same penalties as if your BAC was less than 0.10%. And if your attorney successfully argues against any other physiological evidence, you can get the charge dismissed altogether.

Here are some reasons why your breath test results could be thrown out:

- **The machine wasn't certified.** Every month, a Breath Test Coordinator Instructor must inspect the breath testing machine and issue a Breath Testing Instrument Inspection Certificate. If the police are unable to provide this certificate in your case, the results of your breath test may be thrown out.
- **The machine wasn't properly maintained.** The police must check the effectiveness and functionality of the device by calibrating it periodically. To use your test results, the officer who administered the test must prove the device was properly calibrated. Your attorney should also review records of solution changes, repairs, and manufacturer testing to confirm the machine was properly maintained.
- **The machine malfunctioned or was operated improperly.** The prosecutor has to produce documents showing that all machine procedures were followed and that the machine was in working order. If they don't, the results can't be used as evidence. An experienced DUI attorney will be familiar with the proper procedures and how the machine works.
- **The officer didn't have proper training.** The breath test device is a complicated piece of equipment. The officer administering the test must be trained on how to use it properly and hold a valid license. Otherwise, the results may not be used as evidence against you. Your attorney can request this information, and also investigate the officer's history of using the breath testing device properly.
- **The testing officer didn't testify.** You have the right to cross-examine the parties involved in your case. So if the officer who administered your test isn't present at trial for cross-examination, you can challenge the breath test results.
- **Failure to conduct an observation period.** The procedures require the officer to keep you under observation for a full 20 minutes before

conducting the breath test. If the officers didn't follow the proper observation period, it's possible to exclude the test results as evidence.

- **Failure to read the implied consent statement.** Before conducting a breath test, the officer must read you a standard statement regarding your implied consent. See Appendix A for a form of the statement.
- **The breath test results were affected by other substances.** Some items, such as asthma spray or cough drops, have a form of alcohol in them that may affect breath test results. Some non-alcoholic substances may also affect your test results, such as certain dental work or mouth jewelry. Your attorney will help you go through all aspects of your experience to see if the breath test results were contaminated.

Challenging Blood or Urine Test Results

While you are required to take a breath test, you are not required by law to give a blood or urine sample. So if you refuse, you can't be charged with Refusal to Submit to a Chemical Test. If the police want a blood or urine sample, they'll need to get a warrant to do so.

If the officer misled you about your right to decline a blood or urine test, or the police took samples against your will, you may be able to have the results thrown out. A lawyer can help investigate such improper conduct.

You can also challenge blood or urine test results if the police didn't follow proper procedures when taking them. For example, if you consent to a blood test, police must follow very specific procedures, such as:

- cleaning the withdrawal site with a non-alcohol swab;
- ensuring the containers have anticoagulant and preservatives in them; and
- properly labeling and promptly refrigerating the sample.

The police also must follow certain procedures for urine testing. A sample of at least 50ml should be collected, and the sample must be witnessed before it's labeled and refrigerated.

A DUI attorney can examine police reports and records to confirm whether all proper procedures were followed in obtaining chemical samples. And if not, you can ask the court to throw them out.

Challenging Officer Observations



“Many people think there’s no use trying to challenge the testimony of a police officer. But your attorney may be able to call into question the officer’s credibility or memory of the events.”



In some cases, an officer’s observations of you and your behavior may be enough to support a DUI conviction. This includes observations such as:

- traffic violations,
- slurred speech,
- lack of coordination,
- smell of alcohol, and
- other indicators, as discussed in [Chapter 3: Types of Evidence in a DUI Case – Officer Observations](#).

Many people think there’s no use trying to challenge the testimony of a police officer. But officers make mistakes like the rest of us.

If your case goes to trial, your attorney can try to discredit the police officer testifying against you. Your attorney will examine the officer’s training and experience with

New Jersey's DUI laws, and whether the officer made any mistakes during the arrest or while collecting evidence.

Your attorney can also call into question the officer's credibility or memory of the events. One way to do this is by requesting the police "dash cam" video of your arrest during the [discovery process](#). This will show what actually happened. The recording may help show whether the officer is exaggerating – for example, claiming you were non-compliant, or claiming the field sobriety test results were worse than they actually were.

Your attorney can also challenge officer observations in other ways. For example, officers will often suspect drugs if you have red eyes, droopy eyelids, or impaired fine motor-skills. But these physical symptoms can be caused by other medical conditions.

To determine the best way to challenge officer observations, you should carefully discuss all aspects of your experience with an experienced DUI attorney.

Challenging Field Sobriety Tests

[Field sobriety tests](#) are not very reliable evidence of intoxication. Even a completely sober person could fail a test. For example, the one-leg stand test can be particularly troublesome for people with back, leg, or middle ear problems, or people who are more than 50 pounds overweight.

And police officers often use the tests as a way to *confirm* what they already think, not to *disprove* what they think.

The *standard* field sobriety tests are also more effective when all three are done. So if one test is substituted for another non-standard test, it may be possible to call into question whether the officer had probable cause to arrest you. Some alternate field sobriety tests aren't reliable at all, like reciting the alphabet or counting backwards. Yet in many cases, they're still used by police officers.

In addition, while these tests are supposed to be performed in a standard way, that's not always possible – road conditions, weather, lighting, age, and medical conditions can all affect your results.

This is why a lawyer who knows how to thoroughly investigate your case is so important. With the help of an experienced DUI attorney, you may be able to successfully argue against the validity of the field sobriety tests. Then they can't be used as evidence against you.

Challenging Drug Recognition Expert Evidence

There is some debate over whether DRE evidence is generally accepted in the scientific community and should be admissible as evidence in a New Jersey DUI case.

The New Jersey Supreme Court is still considering this question as part of the case *New Jersey v. Michael Olenowski*. Currently, if you're facing a DUI charge, it's possible to argue against the validity of DRE evidence. But if the New Jersey Supreme Court finds that DRE evidence is scientifically reliable, it will be much more difficult to defend against the results.

It's also possible to get DRE evidence thrown out if any of the [12 steps](#) were skipped or administered incorrectly.

If you consented to a blood or urine test, you may also try to argue against allowing the results as evidence. Chemical tests will *only* show the presence of drugs in your system. And some drugs stay in your system for days or even weeks after you take them. So the chemical tests can't prove that you were high while driving – only that you took drugs at some point, which may have been much earlier.

Importance of a DUI Lawyer

There are a lot of ways to build a defense in a DUI case. But New Jersey's DUI laws are complicated, and it's not easy to successfully represent yourself.

Given the severe consequences of a DUI conviction, it's best to hire a DUI attorney to represent you. An experienced and skilled attorney will be able to evaluate all the facts of your case and determine the best defense strategy for beating the DUI charge.

Benefits of Engaging An Expert

Your DUI attorney may recommend the services of an independent DUI expert. This individual may be a former police officer, data scientist, or even an attorney who specializes in analyzing DUI cases and building defenses. An expert may:

- review the discovery (including, but not limited to, the police report, the field sobriety report, police video and audio of the traffic stop) and provide an expert opinion letter explaining various weaknesses in the prosecutor's case;
- use software to analyze data downloads from the Alcotest machine to uncover flaws; and/or
- come to court and testify on your behalf as an expert witness.

A DUI expert can help your attorney convince the prosecutor of reasons they should give you a better deal or drop your case. A DUI expert who is hired as an expert witness can attend your trial and testify on your behalf, which could lead to a finding of not guilty.

**Chapter 6:
Avoiding Future DUI Charges**

Chapter 6:

Avoiding Future DUI Charges

Even though a good DUI attorney can help you beat a DUI charge or minimize the penalties, most people would prefer not to go through the ordeal at all.

Of course, the best way to avoid a future DUI charge is to never drive while under the influence of alcohol or drugs. Whenever you're tempted, remember the safety risks to you and others, and the hefty legal penalties that await. Then use a designated driver or take a taxi or rideshare car instead.

That said, many people do make the mistake of getting in their cars after drinking too much or taking drugs. If you get pulled over while driving under the influence, there are some things you can do to reduce the impact. It's important to know your rights and obligations to make sure you don't make any mistakes that could encourage the police to arrest you or that will strengthen the case against you.

What to do if you're pulled over

Getting pulled over can be a scary and stressful experience. But if it happens to you, find a safe area to stop and stay in your vehicle. You should keep your hands on the wheel unless the officer tells you otherwise.



“Anything you say to an officer when you're pulled over will become part of the record. It's best to be polite, but say as little as possible.”



Even if you don't think the officer had the right to pull you over, it's important to remain calm. Being hostile will significantly increase your chances of arrest. And many arrests are recorded by the dash cam in the police car. So if you act aggressively, that video can be used against you later.

If asked, you should show the police your license, registration, and insurance. But remember that anything you say during your stop will be part of the record and can be used as evidence against you. So you should be polite, but say as little as possible.

For example, you don't need to explain where you're coming from, whether you've been drinking, where you're going, or make excuses for how you were driving. If the officer asks you these kinds of questions, you can just say that you want to talk to an attorney before you answer any questions.

While you don't have the right to an attorney at this point, if the officer arrests you and takes you into custody, they must read you your Miranda rights before questioning you. If you're arrested, you should invoke your right to remain silent and get an attorney.

What to do if you're asked to take field sobriety tests

As noted above, you *do not* have to take any [field sobriety tests](#), such as the walk-and-turn test or the one-leg stand test. You can politely decline these tests even if the officer makes it sound like it's mandatory and threatens you with arrest.

If a police officer asks you to take a field sobriety test, there's a good chance they've already decided to arrest you based on other observations. So you'll most likely be arrested regardless of whether you take the field sobriety tests. But if you're sober and confident that you can perform these tests without issue, you may decide to take them.

Just remember that if you *do* take any of these tests, the results may be used against you in your case. This is true even if you perform poorly for reasons other than intoxication — like uneven ground, bad weather, or medical conditions.

What to do if you're asked to take a breath test

When an officer suspects you of driving under the influence, they'll often ask you to take a roadside breath test on a portable device.

The results from these roadside breath tests are very unreliable. And like the field sobriety tests, you can refuse to take one without facing additional penalties, even if an officer makes it sound like it's mandatory and threatens you with arrest. Of course, if you're sober, you may decide to take it to show that you're sober.

But once you're arrested for a DUI and taken to the police station, you *must* take a breath test using the stationary machine. This is because New Jersey is an "implied consent" state. By driving on New Jersey roads, it's implied that you consent to taking a breath test if you're suspected of driving under the influence.

[Penalties for refusing a breath test](#) can include, among other things, license suspension and fines – on top of any penalties for the underlying DUI. So the best course of action is to just take the test at the station. When taking the test, be sure to carefully follow the officer's instructions. Don't try to delay giving the sample, or try to "trick" the machine by giving insufficient samples.

A DUI attorney can help you decide how to challenge the results, if needed.

What to do if you're asked to take a urine or blood test

Unlike the breath test, you will *not* face penalties for refusing to give a urine or blood sample. And without your consent, the police will need to get a warrant or show special, urgent circumstances to force you to give a sample.

Keep in mind that it's not uncommon for police officers to frame requests as mandatory. Sometimes they'll even bully or intimidate you into giving samples or taking tests you're not required to take. But if you know your rights and politely stand your ground, you'll have one less piece of evidence to try to counter in your case.

What to do if you get a DUI ticket

Even if you follow all the steps above, you may very well end up with a DUI charge anyway. But the less evidence you give the police, the more likely you'll be able to build a strong defense to either beat the charge or minimize the penalties. As soon as you get a DUI ticket, you should contact a DUI attorney right away to get started on your strategy.



Chapter 7: Frequently Asked Questions

Chapter 7:

Frequently Asked Questions

New Jersey DUI laws are complicated. If you're facing a DUI charge, you likely have a lot of questions about your case. Below are some of the most common questions we get about DUIs in New Jersey.

Is a DUI offense considered a crime in New Jersey?

No. In New Jersey, a DUI is a traffic violation, not a criminal offense. While some people think this is a good thing, there are still a lot of problems that can flow from a DUI charge.

While you won't have a criminal record because of a DUI conviction, you also won't be entitled to a jury trial. This is true even though the consequences can be severe, including jail time, a suspended license, and thousands of dollars in fees.

A DUI can also still show up on employment background checks. So it might have a negative impact similar to having a criminal record. And unfortunately, there's no way to expunge a DUI conviction from your record. See [Can I expunge a DUI conviction?](#) below.

Can you be convicted of a DUI if your BAC is less than 0.08%?

Yes. While a BAC of 0.08% is, by itself, enough to support a DUI conviction, you can still be convicted with a lesser BAC so long as the prosecutor can prove that you were driving "under the influence intoxicating liquor, narcotic, hallucinogenic or habit-producing drug." This may be possible if they have other types of evidence, such as officer observations.

Can you refuse a breath test?

Yes and no. You *can* refuse a *roadside* breath test on a portable breath test device without facing additional penalties. But once you're taken to the police station, if

you refuse to take a breath test on the stationary machine, you can be charged with Refusal to Submit to a Chemical Test. This offense carries severe penalties *on top of* any DUI penalties you may receive.

Even if you think your BAC will be higher than the legal limit, it's best to take the breath test when asked. If you don't, you'll likely *still* be charged with a DUI, *plus* you'll face the charge for refusing the breath test. A DUI attorney can help you challenge the breath test results.

Can you refuse a blood or urine test?

Yes. You can only be charged with Refusal to Submit to a Chemical Test if you refuse a breath test. Without your consent, the police can only force you to give a sample if:

- they get a warrant from a judge, or
- they can show urgent circumstances that make getting a warrant impractical.

Can you refuse to do field sobriety tests?

Yes. You can politely decline to take any roadside tests, including field sobriety tests. But officers typically use field sobriety tests to get *additional* evidence of your intoxication. This means they already suspect you're intoxicated, and you'll probably still be arrested.

When are you entitled to an attorney?

You're only entitled to an attorney after you've been arrested, but not during your processing at the police station.

During the traffic stop and while processing at the station, you should say as little as possible. You should be polite, but you do *not* have to answer their questions.

Just let the police know that you don't want to answer questions until you've had a chance to speak to a lawyer.

But remember that you *do* have to take the breath test at the station, even though this will be before you can consult an attorney.

Will the prosecutor and judge be lenient for a first time offense?

Not necessarily. What penalties you get will depend on a lot of factors, such as:

- the details of your case, including the circumstances around your arrest;
- your BAC;
- your driving history; and
- the judge and prosecutor on your case.

An experienced attorney will be able to look at all of these factors and decide the best way to defend your case. For more information about possible penalties for a first offense, see [Chapter 4: DUI Penalties in New Jersey](#).

Can you plea bargain with the prosecutor to get your charges reduced to something other than a DUI?

In a DUI case, the prosecutor doesn't have the discretion to downgrade your charge.

However, your attorney may be able to build a strong enough defense that the prosecutor will agree that there's a legal defect in their case. If the prosecutor is convinced they won't be able to prove a DUI charge, they may instead charge you with a lesser offense. This may be something like reckless or careless driving, or another charge that they can prove.

Your lawyer may also be able to negotiate with the prosecutor to recommend the lowest possible penalties.

Do you have a defense if you were under the influence of a prescription drug?

No. You can be charged with a DUI even if you under the influence of a drug that you obtained legally and took pursuant to a valid prescription. In fact, many medications warn against driving or operating heavy machinery when you use them.

You may have some defense if your attorney can call into question the DRE report, or present evidence that you had an adverse reaction to your prescriptions. See [Chapter 5: Building a DUI Defense – Challenging Drug Recognition Expert Evidence](#).

What are the effects of a previous out-of-state DUI?

In New Jersey, out-of-state DUI convictions generally are counted as “prior convictions.” This means if you’re charged with a DUI in New Jersey and you have any out-of-state convictions within 10 years, you’ll face higher penalties. The exception is if the out-of-state conviction was based solely on a violation for having a BAC of less than 0.08%.



“New Jersey can’t suspend the license of an out-of-state driver. But you’ll still be subject to other DUI penalties. New Jersey will also notify the licensing authority of your home state, which can result in additional penalties.”



What are the effects of a DUI for an out-of-state driver?

If you have an out-of-state license, New Jersey can’t suspend your license for a DUI. But it *can* suspend your right to drive in New Jersey. And all of New Jersey’s other DUI penalties apply to all drivers, regardless of where they’re from.

Also, New Jersey is one of 45 states party to an information-sharing agreement called the Driver’s License Compact. Under this agreement, the New Jersey MVC has agreed to notify the licensing authorities of all other member states of any traffic convictions, including DUI convictions. And the other members have agreed to record each offense.

And even if your home state isn't a member of the Driver's License compact, the New Jersey MVC will still likely try to reach out to the licensing authority to notify them of your conviction. As a result, your home state may suspend your license for the DUI anyway, or impose other penalties.

You should also be aware that New Jersey generally requires drivers to appear in traffic court themselves. Sometimes, the court will grant an exception for an out-of-state driver, but this is rare. If the court does grant you an exception, you'll need a licensed New Jersey attorney to appear on your behalf.

Can you expunge a DUI conviction?

No. Expungement is only available for certain criminal records. A DUI conviction is considered a traffic offense, and is not eligible for expungement. The only way to remove a DUI conviction from your record is by seeking post-conviction relief. See [Chapter 2: The DUI Process – What to Expect After a DUI Charge – Step 10: Post-Conviction Relief](#).

Can you get a conditional license if your license is suspended for a DUI?

No. In some states, it's possible to get a "conditional license" when your license is suspended so you can drive for limited purposes, such as getting to work or school. New Jersey does not provide conditional licenses for DUI offenders with suspended licenses.

What happens if you drive with a license that was suspended because of a DUI conviction?

Driving with a license that was suspended for *any* reason can have serious consequences. But if you drive with a license that was suspended because of a DUI conviction, the penalties are enhanced.

On top of any other penalties imposed for a driving with a suspended license, you'll also face:

- revocation of your motor vehicle registration privileges,
- \$500 fine,
- license suspension for one to two years, and
- 10 to 90 days jail time.

Will a DUI affect your insurance?

If you have a DUI, you will likely be considered a “high risk driver.” This means your insurance bill will increase. Some insurance companies also give “safe driver” discounts, which you will not be eligible for. DUIs can’t be expunged, so they’ll stay on your traffic record forever. They’ll likely affect your insurance for at least several years.

What is New Jersey’s open container law?

Under N.J.S.A. 39-3:51a and 39-3:51b, it’s illegal to drink alcohol in a vehicle while it’s in operation or to even possess an open or unsealed container of alcohol in a vehicle. This applies to the driver *and* the passengers.

If you have a partially consumed or empty alcohol container in the passenger compartment, and your conduct and appearance “may be associated with the consumption of alcohol,” the law presumes that you drank it.

Violation of New Jersey’s open container law may lead to a DUI charge. The only safe place to carry open alcohol containers is in the trunk.



**Chapter 8:
Choosing a DUI Lawyer**

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Given the complexity of New Jersey's DUI laws, and the severity of the consequences, you should not try to handle a DUI charge on your own.

For the best chances of beating a DUI charge or at least mitigating the negative impact on your life, you need to get the help of an experienced DUI lawyer who's familiar with the entire DUI process and all possible defense strategies.

Choosing a lawyer can also seem overwhelming, but you should try to get one on your side as early in the process as possible. Here are a few things you should look for when hiring a lawyer:

- **Experience.** DUI laws are complicated, and they've changed over time. Your attorney should have extensive DUI experience. This will help ensure they have the knowledge and skills to challenge the evidence against you and build the strongest possible defense. Ask about how long they've been practicing and how many cases they've handled. You can also ask about their results in other DUI cases.
- **Attentiveness.** An attorney who pays proper attention to your case is crucial. Otherwise, you may not have time to build a strong defense during the DUI process. Ask during your initial consultation how you'll be able to communicate with them if needed, and how long they typically take to return your messages. Try to get a feel for how quickly they'll respond to you.
- **Fees.** Given the steep penalties, a DUI lawyer is a worthwhile investment in pretty much all cases. But unexpected fees are never welcome. When choosing a lawyer, be sure to ask about their fee structures. They should be able to give you a straightforward answer so you can plan accordingly.

At Rosenblum Law, we understand just how stressful it can be to face a DUI charge. One lapse in judgment can result in you facing license suspension, thousands of dollars in fines and fees, and even jail time. With over 50 years of collective education and experience, our attorneys have helped DUI clients all across New Jersey get the best results possible.

If you or a loved one needs help fighting a DUI charge, call us today at 888-235-9021 or contact us through our website at www.rosenblumlaw.com/contact. We're passionate about protecting the rights and future of every one of our clients – and our consultations are always free.



Appendix

Appendix A: N.J. Attorney General's Standard Statement for Motor Vehicle Operators

Enter Defendant's Name

The police officer shall read the following:

1. You have been arrested for driving while intoxicated. N.J.S.A. 39:4-50.
2. The law requires you to submit samples of your breath for the purpose of testing to determine alcohol content.
3. A record of the taking of the breath samples, including the test results, will be made. Upon your request, a copy of that record will be made available to you.
4. After you have provided samples of your breath for testing, you have the right, at your own expense, to have a person or physician of your own selection take independent samples of your breath, blood or urine for independent testing.
5. If you refuse to provide samples of your breath, you will be issued a separate summons for the refusal. A court may find you guilty of both refusal and driving while intoxicated.
6. If a court finds you guilty of the refusal, you will be subject to various penalties, including license revocation of up to 20 years, a fine of up to \$2000, installation of an ignition interlock, and referral to an Intoxicated Driver Resource Center. These penalties may be in addition to penalties imposed by the court for any other offense of which you are found guilty.
7. You have no legal right to have an attorney, physician or anyone else present for the purpose of taking the breath samples. You have no legal right to refuse to give, or delay giving, samples of your breath.
8. Any response from you that is ambiguous or conditional, in any respect, to my request that you provide breath samples, will be treated as a refusal to submit to breath testing. Even if you agree to take the test, but then do not follow my instructions, do not properly perform the test, or do not provide sufficient breath samples, I will charge you with refusal to submit to breath testing.
9. I repeat, the law requires you to submit samples of your breath for testing. Will you submit the samples of your breath?

Answer

If the arrested person does not respond, or gives any ambiguous or conditional answer short of an unequivocal “yes,” the police officer shall read the following.

Your answer is not acceptable. The law requires that you submit samples of your breath for breath testing. If you do not answer, or answer with anything other than “yes,” I will charge you with refusal. Now, I ask you again, will you submit to breath testing?

Answer

Appendix B: N.J. Authorized Ignition Interlock Manufacturers

This list is for reference only. Please visit the New Jersey Motor Vehicle Commission’s website for the most up-to-date information and a list of authorized installers in New Jersey.

Manufacturer	Address	Website	Phone
Low Cost Interlock, Inc.	2038 W. Park Avenue Redlands, CA 92373	www.lowcostinterlock.com	(844) 316-7988
Best Labs	590 East Western Reserve Road Building 10-J Poland, OH 44514	www.sensolockamerica.com	(800) 219-9936
Intoxalock	11035 Aurora Avenue Bldg. 1 Des Moines, IA 50322	www.intoxalock.com/newjersey	(833) 210-8424
Draeger, Inc.	4040 W Royal Lane Suite 136 Irving, TX 75063	www.interlockdevice.com	(856) 753-9700
Simple Interlock	4320 Osage Beach Parkway Suite 218 Osage Beach, MO 65065	www.simpleiid.com	(844) 432-4775
Alcohol Detection Systems	1718 Belmont Avenue Suite E Baltimore, MD 21244	www.adsinterlock.com	(888) 786-7384
LifeSafer	3630 Park 42 Drive Suite 140 Cincinnati, OH 45241	www.LifeSafer.com	(800) 475-7151
1A Smart Start, Inc.	500 E. Dallas Road Suite 100 Grapevine, TX 76051	www.smartstartinc.com	(866) 387-8366



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