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## **DUI and DWI Defenses**

The penalties for DUI (driving under the influence) and DWI (driving while intoxicated) offenses can be very serious. If you've been arrested for DUI or DWI and want to fight the charge, you should understand all of the defenses that may be available to you. By mounting a viable defense, you might help persuade the prosecution to drop or reduce the charges, prevent the suspension of your driver's license, or even get an acquittal after a trial.

In a DUI or DWI case, the prosecution must prove two main things: 1) the person being charged (the "defendant") drove a vehicle and 2) at the same time, the defendant was "under the influence" -- meaning that the person's ability to drive safely was affected to an appreciable degree by drinking alcohol, taking a drug, or a combination of alcohol and drugs.

In a DUI or DWI case, a defense can be anything that proves one of these two elements wrong, and thus prevents the prosecution from proving its case. A defense might also prevent the prosecution from introducing evidence at trial, which reduces the prosecution's ability to prove its case.

The defenses available to DUI and DWI defendants vary depending on where the arrest occurs. Below is a look at some common DUI and DWI defenses that are available in most states

### **Defenses Related to "Driving"**

If you weren't actually driving a vehicle at the time of the alleged DUI or DWI offense, you can't be convicted of drunk driving. Most DUI and DWI cases start with a driver getting pulled over, so there usually isn't much argument over whether the defendant was actually driving. But if a police officer didn't actually observe you driving -- the officer approached your idle car while you were behind the wheel in a parking lot, for example -- the issue might be debatable, based on the evidence.

## **Defenses Related to the Arrest**

If the police officer did not have legal justification to stop your vehicle and/or arrest you in the first place -- or if the officer failed to follow proper legal procedures during the arrest -- any evidence gleaned from the traffic stop or the arrest might be deemed "inadmissible" and, therefore, kept out of a court case against you. This could leave the prosecution with no real case (for example, because breathalyzer results and the arresting officer's testimony couldn't be used as evidence), and the DUI or DWI charges against you could be dropped.

### **No Probable Cause to Arrest**

If an officer did not have probable cause to stop your vehicle, detain you, or arrest you for drunk driving, then you may be able to keep any evidence obtained during the arrest from being admitted at trial. For example, if you believe you were stopped because of your race or ethnicity -- and not because you were driving erratically or appeared to be intoxicated -- you may be able to challenge the arrest.

### **No Miranda Warnings**

If you are arrested, a police officer must provide you with Miranda warnings as part of the process. These are the warnings you hear on TV -- that you have the right to remain silent, that anything you say may be used against you, and that you have the right to an attorney, and so on. If the officer doesn't provide Miranda warnings, or recites them incorrectly, you may be able to exclude certain evidence at trial.

### **Challenging the Officer's Testimony Regarding Your Behavior**

Often, a significant part of the evidence against you in a DUI or DWI case will consist of the arresting officer's observations and impressions as to whether or not you were drunk. For example, the officer may testify about the way you were driving (uneven speeds, weaving, crossing the center line, running a red light, or hesitation going through a green light), how you looked and acted once your vehicle was stopped (bloodshot eyes, slurred speech, stumbling), or how you performed on field sobriety tests -- like walking in a straight line or reciting the alphabet backwards. If you can challenge the officer's observations or present evidence that might refute those observations, you may be able to knock a big hole in the prosecution's case.

## **Introduce Witnesses Who Saw Things Differently**

If other people observed your actions and behavior around the time of the traffic stop or arrest, you can introduce them as witnesses in your DUI or DWI case. For example, a witness may testify that:

you didn't drink anything before you got in the car  
you appeared to be sober, or  
you ran a red light because you were distracted by conversation, not because you were drunk.

## **Offer Valid Explanations for Your Appearance and Behavior**

You may be able to counter the officer's conclusion that you were drunk by offering valid explanations for how you looked or the way you acted. For example,

you did not perform well on field sobriety tests because of physical impairments  
your eyes were bloodshot because of lack of sleep, allergies, or wearing contacts  
your speech is slurred because of lack of sleep or medications you take, or  
you did not perform well on field sobriety tests because the instructions were confusing.

## **Defenses Related to Breath, Blood, Urine, and Saliva Tests**

In all states, an adult who drives with a blood alcohol content (BAC) level of .08% or above is guilty of a DUI or DWI. For drivers under the age of 21, almost all states set the limit at .01% or .02%. Police officers often administer chemical tests to measure the BAC in your breath, blood, urine, or saliva. The results of these tests are usually a big part of the prosecution's DUI or DWI case against you. If you can successfully challenge the accuracy of these tests, the test results may be deemed inadmissible at trial.

Failure to provide necessary warnings or information. In many states, if you refuse to take a chemical test, your license may be automatically suspended. If arresting officers fail to advise you of this consequence, the results of the test might not be admitted in court or in a license suspension hearing. Similarly, some states require police officers to offer a choice between tests. If officers fail to comply with the

law, this could affect the admissibility of test results.

Administration of the chemical test. States usually have requirements as to how chemical tests must be administered and how the machines are calibrated and maintained. If you can prove that the officers did not comply with these requirements, that the machine was faulty, or that the technician was not competent, you may be able to get the test results thrown out.

Challenging the accuracy of the test results. A wide range of factors can affect chemical tests, rendering the results inaccurate. Challenging the accuracy of chemical BAC tests often requires technical and legal expertise in the subject area or the testimony of a forensic chemist or other expert. Examples of conditions that might change the results of the test include:

Consumption of food or medication. Most breath testing machines will register any number of chemical compounds in human breath as alcohol, including some types of food and non-impairing drugs or medications. Eating food or taking drugs within certain periods prior to the test may result in a false reading.

Testing during the absorption phase. It takes about 45 minutes to three hours for alcohol to become fully absorbed into your body. This means that if you "have one for the road," you may not be legally impaired while driving, even if a chemical test administered later shows a BAC over the legal limit (your BAC will rise between the time you were driving and the time that the test was administered -- often an hour or more after the police stop you).

Mounting many of these DUI defenses may require the expertise of a lawyer. If you are accused of a felony DUI or DWI, you should hire an attorney -- be sure to find one experienced with handling DUIs or DWIs. Those facing lesser charges -- misdemeanors or license suspensions -- may also benefit from consulting with a lawyer.