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Practice in focus

Disclaimer: This flyer and any information contained herein are intended for informational purposes only and should not be construed as legal advice. Seek competent legal counsel for advice on any legal matter.

# Criminal Defense

## What To Do If You Are Arrested for Drunk Driving

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

third DWI convictions including lengthy license suspensions of up to 10 years and a mandatory 6 months in jail for a third conviction.

Additionally, there is no right to a jury trial in any DWI / DUI case. All cases are heard before a Municipal Court Judge who invariably works for the very municipality whose police have arrested you. Most alcohol based prosecutions are based upon breath tests. Under certain circumstances, the State may proceed based upon blood or urine tests obtained following a hospitalization. A conviction may also be based upon observation and opinion testimony by the police. Intoxication by



drugs is also covered by the statute.

### How serious is it?

A DWI/DUI case is considered "quasi-criminal." In other words, every DWI / DUI defendant is entitled to the full range of constitutional rights afforded to a criminal defendant except for this right to a jury trial. Because the consequences of a DWI / DUI conviction are significant, they may have a

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## Beware the DYFS Case

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Most American parents believe that they are the ultimate decision-makers of all issues concerning their children. Unfortunately, that is not true, especially when the New Jersey Division of Youth and Family Services becomes involved with your family. Under our Title 9 statute, the state is really the ultimate parent. The following is an explanation of what may happen if DYFS becomes involved with you and your children.

Children are protected by the Title 9 Abuse and Neglect law, which provides that DYFS must investigate

all claims of abuse and neglect, even if they are made anonymously and without corroboration. The complaints are investigated on an emergency basis, with a follow up investigation conducted. Investigations will lead to a finding of substantiated child abuse and neglect of an "unfounded filing."

If an investigation results as unfounded," your name is not placed in the central registry for child abuse and neglect. However, the fact of investigation continues



to exist. If the agency substantiates the allegations of abuse and neglect, your name will forever be placed in a central registry. That placement will result in your inability to adopt, become a foster parent, or seek employment in day-care or educational facilities. You have a right to

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## What To Do If You Are Arrested for Drunk Driving

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devastating effect upon the defendant and his or her family due to the significant fines and loss of license. There is no exception to the loss of license law in New Jersey and there are no temporary or work licenses issued. If you are stopped for drunk driving, at the scene, here are some things you should do, and some things you should NOT do:

Do's	Don'ts
Have all your documents in your hand before the officer arrives at your car and be polite and remain calm.	<b>Don't</b> be nasty or argue with the officer.
Open your window immediately when you stop your vehicle after being directed by the police to combat the claim the car had a strong odor of alcohol.	<b>Don't</b> volunteer information: what you say can and will be used against you.
Tell the police of all your medical problems and any reasons you cannot perform the roadside tests.	<b>Don't</b> try to evade the stop when you realize that the police are directing you to pull over.
Listen to all instructions given by the police and have the officer repeat them. Then follow those instructions. Any mistake in following the officer's instructions may be recorded and used against you. Don't be nasty or argue with the officer when stopped and don't volunteer information.	<b>Don't</b> forget to tell the police of your physical and medical conditions that may make it difficult or impossible for you to take the roadside tests.
	<b>Don't</b> refuse the breath test—never refuse the test, and don't ask for a lawyer before you agree to take the test. You should also ask for your own independent test.

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It can accomplish this based upon anonymous information, interviews with your children, even without your permission or knowledge.

Ultimately, any DYFS case involving removal of the children must be brought before a court. If there is an emergency removal, DYFS must bring the matter before a judge within two business days of that emergency removal.

It is important to hire an attorney who has DYFS experience. The laws involving child abuse, neglect and parental termination are far different from any other statutes

and laws. Additionally, by statute, DYFS is required to report substantiated abuse cases to the respective county prosecutor for review to determine if criminal charges will be filed if the allegations include excessive corporal punishment, sexual abuse or lack of proper medical care or lack of supervision.



## Beware the DYFS Case

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appeal such substantiation, which must be filed within 20 days of your receipt of a substantiation letter.

### Do You Have Rights?

Absolutely. DYFS is not all-powerful. It is a large bureaucracy that works by policy and protocols. It does not treat each family individually based upon the family's unique character. Although DYFS is required to preserve the family unit, it often times breaks families apart, removing children or ordering one parent to leave the household.

The Division can actually remove a child without court order, if it believes that a child or children's life is subject to imminent risk.

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#### FAQ's About Reporting Child Abuse/Neglect

**Q. Does someone need proof to report an allegation of child abuse?**

**A. No.** A concerned caller does not need proof to report an allegation of child abuse and can make the report anonymously.

**Q. Do callers who make a false report have immunity from civil or criminal charges?**

**A. Any person who, in good faith, makes a report of child abuse or neglect or testifies in a child abuse hearing resulting from such a report is immune from any criminal or civil liability as a result of such action. Calls can be placed to the hotline anonymously.**

**Q. Is it against the laws of New Jersey to fail to report suspected abuse/neglect?**

**A. Any person who knowingly fails to report suspected abuse or neglect according to the law or to comply with the provisions of the law is a disorderly person and subject to a fine of up to \$1000 or up to six months imprisonment, or both.\***

\*FAQ's Source: State of New Jersey Department of Children and Families, <http://www.state.nj.us/dcf/abuse/how/>

## Criminal Defense: who we are and what we do...

Our criminal defense attorneys have extensive and wide-ranging experience at every stage of all types of criminal cases in both Superior and Municipal Court. When faced with the devastating prospect of a criminal charge, it is important to retain a skilled and experienced criminal defense attorney who places the client's best interest as top priority. Whether the crime is a serious, indictable matter in Superior Court, a disorderly personal offense in Municipal Court, or a serious motor vehicle violation such as drunk driving (DWI/DUI), our firm is dedicated to defending and protecting the rights of our clients.

### Michael R. Ascher, Esq.

Former Deputy Attorney General and Assistant Prosecutor, Michael has extensive experience in criminal and civil matters on both the trial and appellate levels.  
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