



# FACING **DWI** CHARGES IN NEW JERSEY?

Helpful Information That May Mean the Difference  
Between Freedom and Incarceration

**Written by:** Lauren E. Scardella, Esq.

Law Offices of Samuel Louis Sachs, Esq.  
Princeton Windsor Office Park  
379 Princeton Hightstown Road  
East Windsor, NJ 08520  
(609) 448-2700  
[www.dwilawyer-nj.com](http://www.dwilawyer-nj.com)

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HELPFUL INFORMATION THAT MAY MEAN THE DIFFERENCE  
BETWEEN FREEDOM AND INCARCERATION

*By Lauren E. Scardella, Esq.*

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888-225-8594

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## CLIENT TESTIMONIALS

*“My family recently had the need for an attorney for a criminal court issue. I came upon Sachs Law Office in an online search, as I did not have a recommendation from friends or family. I was amazed at the quick response I received for Sam Sachs. He was consistent, knowledgeable, highly professional, and a true calming factor in his dealings with my family, and the courts. He was successful in his litigation of our case, and I would highly recommend Sachs Law and Sam Sachs to anyone in need of legal representation.”* – **Pamela D.**

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*“I was extremely impressed by Sam and Lauren’s services from the first phone call. I truly appreciate their intellect and expertise around my case. They are quite passionate and will fight very hard for you while realistically managing your expectations and providing sound counsel. I was very fortunate to choose them to represent me in unfortunate DUI case that resulted as positively as possible. I would recommend them to others, without question.”* – **Jason O.**

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*“Scardella helped me with my case. I was extremely nervous with the outcome, but she assured me the procedures and different paths we could take. She was always on time, responded to my questions quickly, and knew exactly what she was talking about. She even looked up outcomes of other cases like mine to see which option would be the most reasonable.”* – **Antonio Q.**

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## ATTORNEY INTRODUCTION

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Lauren E. Scardella attended American University in Washington, D.C., where she was awarded a Bachelor of Arts in Justice. She received her Juris Doctor degree from the Rutgers University School of Law in Newark, New Jersey.



While in law school, Ms. Scardella worked as a legal intern for the Mercer County Prosecutor's Office. Following the completion of her legal education, Ms. Scardella worked as the judicial law clerk to the Honorable Ira E. Kreizman, J.S.C. (retired) in the Criminal Division of the Superior Court of New Jersey for Monmouth County.

Since her clerkship Ms. Scardella has been an associate with the Law Offices of Samuel L. Sachs. Her practice is focused on criminal and serious Municipal Court matters including driving while intoxicated. Ms. Scardella is admitted to practice in the State of New Jersey and in the United States District Court for the District of New Jersey.

## **ARE SOME DRIVERS MORE LIKELY THAN OTHERS TO RECEIVE A DWI CHARGE IN NEW JERSEY?**

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**Interviewer:** Is there a typical type of person that you see that gets arrested for DWI?

**Lauren Scardella:** No, actually I don't think that there's really a typical person.

It runs the gamut from young adults who are just over twenty-one who maybe are still in college to older adults in their sixties and seventies. Most of them are first offenses. I don't think there's a typical person who gets one.

### **While Men Tend to Be Arrested for DWI More than Women, Both Genders Worry about the Consequences of a DWI Charge**

**Interviewer:** How about men versus women? Do you see that they view a DWI arrest differently or does one group tend to get arrested more than the other?

### **New Jersey Does Not Offer Hardship Licenses**

**Lauren Scardella:** I think men get arrested more than women, and, in terms of viewing it differently? No, I

think everybody's pretty worried about the consequences especially in New Jersey. Where, which is a state that doesn't have any hardship licenses that would be granted when a license is suspended.

It's also a state that has poor public transportation if you're not in a city.

Everybody is pretty concerned when their license is lost, specifically, and less so



about the consequences about having a DWI on your record.

### **Loss of License Is the Most Common Concern after a DWI Charge**

**Interviewer:** Out of possible jail time, driver's license loss, all the things that could happen, what do you hear most often that people are most concerned about?

**Lauren Scardella:** They're most concerned about the license loss. I hear again and again that they need their license to get to work. Without being able to drive a car they will lose their employment or how will they drive their children to school or to their

after school activities? That's far and away the biggest concern of people that are arrested.

### **“I Only Had 2 Beers...”**

**Interviewer:** Is there a common backstory that people tell you about how they got arrested? Like, “I only had two drinks; I was just driving home.” Is there any commonality there?

**Lauren Scardella:** There is and there are a large number of people who will tell me that they were right around the corner from their house. My general response to that is it doesn't matter. You could be leaving the bar and pulling out of the parking lot or pulling out of your friend's house where you had a few drinks or you could be literally be pulling into your driveway.

It doesn't matter how close you are to home. You can still be arrested. That's probably the thing I hear the most about how, when it happens. The other thing that they tell me most is that they were pulled over for weaving.

## THE MAJORITY OF POLICE STOPS ARE ATTRIBUTED TO A TRAFFIC INFRACTION SUCH AS WEAVING OR SPEEDING

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**Interviewer:** That's the number one reason the police give for stopping drivers?

**Lauren Scardella:** Yes, that and speeding I would say are probably the number one and number two reasons.

**Most Drivers Feel They Are Not Intoxicated because They Had Consumed Only a Few Drinks When They Were Stopped by the Police**



**Interviewer:** Are people surprised that they've been arrested for DUI?

Do they perceive that they've only had a few drinks? Or do they say, "You know, I had it coming?"

**Lauren Scardella:** The vast majority of people do seem to perceive that they've only had a few drinks. They are under the impression they weren't drunk and that they were really okay to drive.

Most people will also say that they couldn't pass the field sobriety test even when they're sober. Although that maybe is a telling comment because they say even when they're sober – when they're also saying they didn't think that they were drunk.

### **Chemical Tests: New Jersey Prefers to Administer Breath Tests to Test for Blood Alcohol Levels**

**Interviewer:** Does New Jersey favor breath testing or blood testing? What do you see that most people do now?

**Lauren Scardella:** New Jersey is a breath testing state. Blood tests are only used in the case of car accidents or some other medical condition that becomes known to the police. If there isn't an accident where they have to take the defendant to the hospital, breath testing is the most common. I would say blood tests are a very small percentage of cases that we see.

### **Are Most Motorists Tested Close to Or over the Legal Limit of .08?**

**Interviewer:** In the cases that you see do a lot of the breath tests results come in close to .08? Or are a lot of people truly drunk and they come in a lot higher?

**Lauren Scardella:** The majority of the people that we see are, I would say, over .10 at least. The majority of people are not just at the borderline. To me, this says that there is a disconnect in a person's mind about how much alcohol ingestion it takes to get them to .08.



**Interviewer:** Out of curiosity, what's the highest BAC you've ever represented someone on?

**Lauren Scardella:** A .49. It was interesting. There wasn't actually an AIR, which is what New Jersey calls the Alcohol Influence Report, where the breath test was reported. Somehow, the police department lost it along with the other discovery; but it took several years to resolve the case because there was a benchmark.

It was a young man in his twenties from Poland. He drew a .49.

## **ARE THERE ENHANCED LEVELS OF DWI CHARGES IN NEW JERSEY?**

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**Interviewer:** Does New Jersey have different levels for different BAC's such as a super-drunk or an aggravated-mode?

### **DWI Charges Are Divided into 2 Tiers Depending on the Blood Alcohol Content (BAC) of the Driver**

**Lauren Scardella:** No, but on a first offense it is divided into two tiers. For a first offense is if a blood alcohol level is between .08 and .10, there is a guaranteed license loss and slightly lower fines and all the other penalties are the same.

If it's over .10 then it's the longer license loss. Both of them are still considered a DWI and they're both reported on the driver's abstract in exactly the same manner.

### **Will You Still Be Arrested and Charged with DWI If the Breath Test Result Is Below the Legal Limit of .08?**

**Interviewer:** What if the breath test result is below a .08, will they still arrest you and will they charge you with DWI?

**Lauren Scardella:** Yes. In New Jersey they arrest on the road and bring you back to the station and have you blow into the Alco test there. They write the summonses prior to the defendant blowing into the Alco test and they can't dismiss it then.



Yes, I have had cases that are 0.0 and I've had cases that are .04's. The drivers do still get arrested. Often those cases end up with dismissals or they end up with a reckless driving or a careless driving rather than the DWI.

### **Are Cases with Breath Tests below .08 Defensible?**

**Interviewer:** How does the court perceive someone that blows below .08? Are these very defensible cases?

### **Observations Case**

**Lauren Scardella:** They're extremely defensible. Although in New Jersey, one can be convicted without blowing over the limit because we call it an

observation's case. This is where the police arrest based on the totality of the circumstances. Did they perform well on the field sobriety test?

What was their driving conduct? What was their demeanor? Did they admit to consuming alcohol? They can technically still be convicted of DWI's. However, the prosecutor, when the BAC is below .08 is understandably much less interested in prosecution. So they are much more likely to either outright dismiss it or suggest a plea to reckless driving or a careless driving.

## **WILL CERTAIN CLASSES OF MOTORISTS BE PROSECUTED FOR DWI WHEN THEY HAVE LOWER LEVELS OF BLOOD ALCOHOL?**

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**Interviewer:** Does the limit of .08 not apply to a certain class of motorists? Such as if you have a commercial license or if you're under the age of 21 or under the age of 18?

## **Commercial Drivers Operating a Vehicle in the Course of Employment Are Subject to a .04 Limit for Blood Alcohol Content**

**Lauren Scardella:** Yes. If you have a commercial driver's license and you're driving your commercial vehicle then it's a .04 standard. If you're behind the wheel of your personal vehicle and you have a commercial driver's license it's still .08 standard.

## **Drivers under the Age of 21 Have a .01 Limit**

For people that are under 21 the standard is .01 percent. You could take Nyquil and potentially be over that.



## **What Factors Primarily Influence Sentencing?**

**Interviewer:** Are there any factors that would aggravate or enhance a DUI? What if you have a child in the car under the age of fifteen or if you get into an accident?

## **Accidents or Having Minors as Passengers Leave the Judge Little Discretion**

**Lauren Scardella:** Those factors aggravate a DWI in the sense they don't leave the judge very much

discretion. Yes, if there's an accident with no injury then that's still considered an aggravating factor. It might result in a slightly longer suspension if the BAC was over a .10. This is because in that case the potential license loss is 7 to 12 months, so I would say most people are sentenced to the minimum of 7 months.

In cases where there's an accident or there's a very high BAC or there's a minor in the car those can be reasons why a judge might sentence to a longer license suspension.

### **A Minor Passenger May Entail an Additional Charge and Result in a Criminal Offense Instead of the DWI Traffic Offense**

In the case of a child being in the car that factor can also be charged as a completely separate offense, which is a disorderly persons' offense. Technically, under the New Jersey Criminal Code that carries an additional license loss, I think of six months, and is essentially a criminal offense.



Whereas a DWI in New Jersey is not criminal, it's only traffic.

### **Accidents Attributed to DWI with Injuries or Death Result in Serious Criminal Charges**

I should mention is if there were a car accident and there were injuries that would then become an indictable criminal offense to be dealt with in the superior court. The driver would be charged with assault by auto or in the event of a death they would be charged with death by auto on top of the DWI.

### **Non-Indictable Offense: New Jersey Does Not Consider DWIs Criminal Offenses Unless Other Charges Are Added**

**Interviewer:** A DWI normally is charged as a misdemeanor but it can become a felony which is an indictable offense if there is bodily injury or death?

**Lauren Scardella:** In New Jersey the DWI itself is only a traffic offense. If there's anything like an assault, that's an indictable criminal offense. Indictable offenses are what we essentially call our felonies in New Jersey. It's not criminal. Just a straight DWI charge with nothing added is not a criminal offense.

## **CONSEQUENCE OF MAGNITUDE: INDIVIDUALS CHARGED WITH DWI ARE ELIGIBLE FOR PUBLIC DEFENDERS**

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**Interviewer:** Are defendants eligible for public defenders or court-appointed attorneys because a run of the mill DWI is not a criminal offense?

**Lauren Scardella:** Yes. In New Jersey a defendant is entitled to apply for a public defender if the case involves a consequence of magnitude. A consequence of magnitude is fines in excess of \$750 or a license suspension or jail time.

In the case of a DWI because there are potential for all three of those penalties they are entitled to apply for a public defender. Whether or not they meet the financial standards is a different story but yes, public defenders are available for DWI charges.

### **Self-Representation, Public Defenders and Private Attorneys: Which Option Is Best to Defend a New Jersey DWI Charge?**

**Interviewer:** If someone were to represent themselves, what would you say is likely going to happen versus being appointed a public defender or

retaining a private attorney? How would you compare the three?

## **Self-Representation Is Not Advisable Due to the Complexities of Navigating the Court System**

**Lauren Scardella:** I would say that somebody who wants to represent themselves is not likely to get very far in the court system. Public defenders in municipal courts in New Jersey are actually just there as appointed positions. These are people who are private attorneys; they're paid extra by the township or the municipality to work as a public defender in that court.



## **Court-Appointed Attorneys Generally Have a Private Practice as Well and Have Less Time in Which to Devote to Each Client**

Often they are attorneys that have private defense practices on top of taking these jobs as public defenders. Sometimes there is a difference in the value of the service you get from a public defender as opposed to a private attorney. I wouldn't say that that's always the case.

I think that there are issues with public defenders in terms of requesting expert reviews and there are issues in the amount of time that they can devote to each case. There are issues with the amount of time that they have to meet with each client.

**Interviewer:** Is it essentially a, "you get what you pay for," scenario? They just don't have the time and resources to do extra things that a private attorney might?

### **You Have to Meet Stringent Financial Standards to Qualify for a Court-Appointed Attorney**

**Lauren Scardella:** I think that's probably true. Yes, it's in most cases I think it is a case where you get what you pay for. On the other hand the people who get public defenders have met pretty stringent financial standards that say that they're at, or below, the poverty level and can't afford private representation.

A public defender is better than nothing. But if you can afford a private attorney who specializes in DWI defense then, that's, I would say, most times you are more likely to have a favorable outcome than with a public defender.

## Do Many People Have the Impression That a DWI Charge Isn't Serious Enough to Warrant Hiring an Attorney?

**Interviewer:** The reason I ask is I don't know if you encounter people that say, "Well, I may as well represent myself," or "Oh, a first time DWI is not really that serious, I should represent myself or just plead guilty."



**Lauren Scardella:** I get people sometimes who'll say, well, I'm guilty so I was just going to plead guilty. I've seen it happen. I've been sitting in court when somebody just pleads guilty without an attorney and it's painful to watch because you know that they haven't had anybody review their case.

## **Pleading Guilty: The State Must Prove Their Case So It Is Always Advisable to Have an Attorney Review the Facts and Circumstances of Your Case**

They don't know that they have the right to defend the charge or they don't care because they think well, I know I was drunk so I'm just not going to defend it.

That's the wrong way of looking at it. It is not whether or not you think you were drunk it's whether or not the state can prove that you were intoxicated and behind the wheel of a car.

It is important to remember the difference between those two premises.

### **IN NEW JERSEY, A DWI REMAINS ON YOUR RECORD**

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Most of my clients pretty much think that a DWI is a big deal. In somebody that didn't think it was a big deal—I would stress to them that it is. This is for the simple reason that a DWI in New Jersey, by virtue of the fact that it is a traffic offense and not criminal, it never goes away. It's always on your record.

It will follow you for the rest of your life. If you get a DWI when you are 21, when you are 91 that charge is still on your driving record. There are cases where it happens multiple times.

## **Penalties for DWIs Escalate for Multiple Offenses**

Maybe that first one didn't seem like it was such a big deal but the penalties increase so dramatically with the second and third offenses. It's really foolhardy to say well, it's not a big deal the first time because maybe you're just looking at a three-month license suspension and you think; I could do that. That's not big deal.



## **New Jersey's 10-Year Step-Down Rule**

**Interviewer:** What if you had first DUI 10, 20, 30 years ago? Is there a length of time after which you get arrested again they'll consider the charge a first offense again, not a second?

**Lauren Scardella:** Yes. In New Jersey we have what we call a 10-year step-down rule. If there's ten years or more between your first offense and your second

offense then your second offense is treated as your first offense for the purposes of sentencing.

### **A Second Offense 10 or More Years after a First Is Considered a First Offense for Sentencing Purposes Only**

A lot of people get confused by that and think it's a first offense again. It's not a first offense again. That first offense is still on your driving record but it's treated as a first offense for sentencing. If then, say three years or even nine years after the second offense a third offense occurs? You're not entitled to that step-down.

It's a third DWI offense then it comes with a 180 days in jail and it comes with a ten-year license loss. All of the offenses stay on your record forever but you can be given the benefit of the ten year step-down if there is a gap of ten years or more in between a first and second offense or in between a second and third offense.

### **Penalties for First and Second Offense DWI in New Jersey**

**Interviewer:** Can you compare the penalties for the first offense versus the second offense?

## **First Offense DWI Penalties Are Dictated by BAC and May Include Fines, License Suspension and Ignition Interlock Device Requirements**

**Lauren Scardella:** A first offense, if your blood alcohol content is .08 percent or higher but less than .1 percent, a conviction entails a fine of \$250 to \$400, and twelve hours in the



Intoxicated Driver Resource Center, as well as a three month loss of license. The judge can but does not have to impose ignition interlock requirements and there are other costs and assessments that are uniform throughout DWI's.

If the BAC is .10 percent or higher the fine is then \$300 to \$500, the same twelve hours in the Intoxicated Driver Resource Center and the license loss is 7 months to a year.

## **The Judge Has the Discretion to Impose a Jail Sentence for a First or Subsequent DWO Conviction: The Penalties Escalate for Second DWI Offense and Include Community Service Requirements**

I should mention, actually that both of those may include up to thirty days in jail, which can be suspended or not imposed. It's not required that it be imposed. For a second offense the fine is \$500 to \$1,000 along with community service for thirty days. There is a two year loss of license and forty-eight hours in the Intoxicated Driver Resource Center in addition to up to 90 days in jail.



Again, jail is not mandatory, but the 48-hour stay in the Intoxicated Driver Resource Center is an overnight trip. For a third offense its \$1,000 fine, 180 days in jail, 90 of which can be served at an in-patient rehab center, then Intoxicated Driver Resource Center at their discretion.

### **With a High BAC, the Ignition Interlock Installation Is Mandatory**

However the IDRC decides to do it. There can be a ten year loss of license. I should note, actually that on a first offense with the BAC of .15 or higher, ignition interlock is mandatory.

It is required to be on the person's car for the period of the suspension plus six months to a year. For a second and third offense the ignition interlock is also mandatory and it has to be on the person's car for the period of suspension, plus one to three years.

The penalties add up quickly.

## **CONSIDERING PLEADING GUILTY TO A DWI? IT IS IMPORTANT TO CONSIDER THE DEFENSIBILITY OF THE CHARGE**

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**Interviewer:** When you see the people that say I'm guilty, they caught me maybe I should just plead guilty. How do you explain about how defensible is your run-of-the-mill DUI case? I know every case is different.

### **There Can Be Issues with the Breath Test Result**

**Lauren Scardella:** That's a good question. The run of the mill DWI case is usually defensible at the very least in terms of the BAC. That doesn't mean that we get the Alco test reading thrown out in every case but that is probably where there's the most success.

Most people truly do not perform very well on the field sobriety test but their driving conduct is usually very good. To their disadvantage though, they make statements to the police: "Oh, I know I shouldn't have driven."

### **Beyond a Reasonable Doubt: The Driver's Perception of the Case Has No Impact on Whether Or Not the State Can Prove Their Case**

**Interviewer:** If someone thinks the case is doomed, what's the reality? More often than not, you're able to make some good inroads?

**Lauren Scardella:** Much of the reality is that one person's perception of what they did has nothing to do with whether or not the state can prove their case. The



state, even though it's a traffic offense, is required to prove the offense beyond a reasonable doubt.

They have to accomplish that by presenting competent evidence. If I know I went out to a bar and I had three drinks in an hour, that's going to put me over the limit. If I get behind the wheel of a car and I

get arrested, I may know myself that I have had too much to drink before I drove, but that doesn't mean that the state can prove it.

### **While Not Every DWI Case Demonstrates an Apparent Defense, It Is Always to Your Advantage to Have the Case Reviewed by an Experienced DWI Attorney**

Not in every case presents defenses but you don't know at the beginning of the case whether or not something can be done.

In many cases something can be done but if you just think to yourself I'm guilty and done with it—you're missing the opportunity to have an attorney review your case and look under every stone to find defenses. Many times, attorneys do find defenses.

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## **DWI DEFENSE CASE HISTORY**

**Interviewer:** Can you share a case history where the odds were really stacked against your client but yet you were able to prevail?

### **Multiple DWI Offenses with High BAC**

**Lauren Scardella:** We had a case with a client who was arrested for his third offense. He subsequently

also picked up a fourth offense and the video wasn't great. It wasn't terrible. We couldn't see a lot of what he was doing on the video.

His BAC was over a .10. Through our diligence and knowledge of the Alco test and the defense as relating to the Alco test we were able to get the reading thrown out. Because it was a third offense, that wasn't enough. That wasn't going to get him out from under the charge.

### **Do the Results Count as Evidence if the Field Sobriety Tests Are Not Administered in the Required Standardized Manner?**

We went to trial and the officer testified truthfully and we had an expert in the field sobriety tests testify. The judge ultimately found that the way that the tests were administered was not in accordance with the manual and they weren't administered in the standardized fashion. Thus, they couldn't be relied on.

The driving conduct wasn't that bad. It didn't support the DWI charge, and that the admission of alcohol when coupled with these few other factors

just wasn't enough. We won that case. That was something that we were very proud of.

### **Some Cases Can Be Time-Intensive to Defend**

The state couldn't prove the case. We spent a lot of time. At first flush it looked like they had him pretty but they didn't when it was all said and done. They didn't have the proof beyond a reasonable doubt.

### **After a DWI Arrest and Undergoing the Alco Breath Test, Many People Are Not Informed of the Results**

**Interviewer:** What would you say in a DWI case are the things that make people feel hopeless? Is it the field sobriety, is it the breath test? Is it just the fact that they've been arrested?

**Lauren Scardella:** I think it's probably just the fact that they've been arrested. It depends. They're not always told what their BAC is. Many times we get phone calls from potential clients. When I asked them if they blew into the Alco test and what their reading was they say, "Yes, I underwent the test but they didn't tell me what my reading was."



They'll say something like, "It probably wasn't very good."

## **New Jersey State Police Do Not Administer the Preliminary, Roadside Breath Test**

**Interviewer:** Do the police give a preliminary breath test at the roadside, and do you think people are confusing that with the test at the station if they give it?

**Lauren Scardella:** Some departments do give the preliminary breath test on the roadside, some departments don't. The New Jersey State Police don't use the PBT's. Sometimes people do confuse that with the Alco test. They don't understand why they've been given a test on the road and then given another test at the station.

## **Use of the Preliminary Breath Test (PBT) Is Typically to Confirm the Police Officer Suspicion That the Driver Is Intoxicated**

Most of the time the police tell the subject or the defendant that the PBT on the roadside doesn't give them a reading; it just tests for the presence of alcohol, which is not true. It does give them a reading but it's not calibrated and it's not admissible.

I think the police tend to use it as a way to check whether or not they're right in their feelings that somebody has performed poorly because of intoxication.

### **The Result of the PBT Alone Does Not Warrant an Arrest for DWI**

**Interviewer:** Essentially that gives them probable cause to arrest you, right?

**Lauren Scardella:** They need to have more than just a PBT because it's not admissible and so they wouldn't be able to use that just by itself as probable cause. They can't just go up to somebody's window and say have you had anything to drink and then give them the PBT and say, okay, we're going in.

## **COMMON MISCONCEPTIONS ABOUT A DWI ARREST AND CHARGE**

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**Interviewer:** What are some of the top misconceptions you hear from people about the DWI process?

## The Alco Test

**Lauren Scardella:** The Alco test is definitely something that there are some misconceptions about. People tend to think that they're only going to have to give one breath sample. The Alco test requires two valid breath samples in order for it to provide a reading.

There's also a requirement that the officer observe the defendant for at least twenty minutes prior to administering a breath test to make sure that they don't burp or regurgitate or put anything in their mouth that might affect the test.



A lot of people will say, "They just sat me down for a really long time before they gave me the test. I don't know why they did that." That's actually an example of the police following proper protocol.

## Use of Handcuffs

Many people are very upset and concerned that they've been placed in handcuffs. "I'm not a dangerous person. I don't need to be in handcuffs." Again, that's the police following proper protocol.

## **Right to Remain Silent both before and Following Arrest and the Miranda Rights**

People don't know that they don't have to answer the police's questions. This applies even prior to being arrested. After they're in custody they have to be given their Miranda Rights and that's a misconception. They think that the moment the cuffs are put on they have to be read the Miranda Rights and that's not the case.

Miranda only applies when somebody is in custody and being asked questions that are designed to elicit incriminating answers. After their arrested they should be advised of their Miranda Rights before they're asked, "Where did you have your last drink? How much did you have? How much time elapsed between drinks?"

### **Police Question and Eliciting a Response: Miranda Rights Protect Answers of an Incriminating Nature**

That's when Miranda would apply.

I have clients who tell me their last name is spelled wrong on the ticket. Then they say, "Can you get the case thrown out?" They asked about the Miranda

Rights, also. “They never, they never gave me my Miranda Rights.” I always ask them, “What questions did they ask you?”

After you were arrested what questions did they ask you? They'll say, well, they asked me my address. That's okay. They can do that. It's not designed to elicit an incriminating response.

Or they'll say they didn't read me my rights until much later. That's okay, too, as long as they're not asking you questions while they're driving you back to the station.

## **New Jersey Is One of the States Where a DWI Charge Is Not Criminal**

**Interviewer:** Are there any other misconceptions?

**Lauren Scardella:** Probably the biggest misconception about DWI is that it's criminal. It is criminal in most states; it's not criminal in New Jersey. One of the biggest fears people have is that it's going to be on their criminal record. If they go to apply for a job, the employer looks into their background and sees the charge.

## **A DWI Shouldn't Affect Employment Opportunities That Do Not Involve Driving**

That's not the case unless you are applying for a job where the employer's looking into your driver's history for, say a government job, where you have to drive from place to place and they'll look at your driver's abstract.

### **WHY DO ATTORNEYS CONSIDER A DWI CHARGE A QUASI-CRIMINAL CHARGE?**

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**Interviewer:** How can it be that you could have a possible jail consequence and yet it's not criminal?

**Lauren Scardella:** Attorneys refer to it as quasi-criminal. You're entitled to all the protection under the constitution: the right to counsel, the right to remain silent, you have double-jeopardy rights; you have all of those rights. You have the right to have your guilt proven beyond a reasonable doubt.



## **A DWI Conviction in New Jersey Will Not Result in Points on Your Driver's License**

It's not criminal. It's not under the criminal code. It's really, in New Jersey, just a major traffic offense, and it's one that strangely carries no points.

**Interviewer:** If you're convicted of a DWI you won't have a criminal record?

**Lauren Scardella:** Right. No criminal record from being convicted for a DWI.

## **What Is the Impact of a DWI on Your License in New Jersey?**

**Interviewer:** From the moment you're arrested what will happen to your driver's license? What could happen?

## **New Jersey Does Not Suspend a Driver's License until a DWI Conviction**

**Lauren Scardella:** At the moment you're arrested when you're charged with a DWI, absolutely nothing happens to your driver's license. Some states suspend it from the moment you're charged. Not in New Jersey; your license in New Jersey is not suspended until you're convicted.

**Interviewer:** Why do people worry about their license?

**Lauren Scardella:** One of the ways that they find out about license suspensions is in the standard statement which is read to them before they are asked to provide breath samples.

### **Drivers Are Instructed by Police That Refusing the Breath Test Will Result in a Suspension**

It tells them that if they are convicted of refusing to provide breath samples their license could be suspended. I think in general the way that people find out about the license suspensions is the Internet.



The police don't tell them what the consequences are. If they go to their first court appearance before hiring an attorney the judge tells them what the consequences are at their arraignment.

But most people do retain an attorney prior to actually having to appear in court, which means that

first appearance is where they're told what the consequences are and what's being waived.

### **Do New Jersey Residents View a DWI Charge as a Trivial Matter because It Isn't a Criminal Offense?**

**Interviewer:** It's very strange. It seems like, I mean again, it really seems like people wouldn't take it seriously in New Jersey because it's not criminal.

**Lauren Scardella:** They don't know that, though and they're not told. All they know is they are arrested and their put in handcuffs. Sometimes a police officer will say to them, "Don't worry; it's not that big of a deal because this isn't criminal." I don't know if that's helpful or harmful.

Most of them don't know that it's not criminal until the time they first call an attorney.

**Interviewer:** So the license consequence is just if they get convicted they'll have problems with their driver's license?

## **Following a DWI Conviction the License Is suspended for a Length of Time Determined by the Judge; Before Driving, Motorists Must Pay a Restoration Fee When the Suspension Is up**

**Lauren Scardella:** Exactly. Right, once their license has been suspended it remains suspended for whatever period the judge imposes. And will actually remain suspended after that if they fail to pay the restoration fee to the New Jersey Motor Vehicle Commission.

There's a toll essentially for getting your license back. You have to pay to get your name off of the revoked list.

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## **DRUG-RELATED DWI CHARGES**

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**Interviewer:** Do you see DWIs attributed to illegal and prescription drugs in your practice?

**Lauren Scardella:** We see both. The vast majority of all the DUI's we see are all alcohol-related but we also see them for both illegal and prescription medications, whether



those prescription medications are prescribed to the defendant or to somebody else.

### **Some Drivers Mistakenly Assume They Can Drive While Taking Prescribed Medication**

That may also be a big misconception, actually, is that- is that because your doctor prescribes that medication for you, you can drive with it.

**Interviewer:** What percentage of DWI's nowadays are illegal drugs or prescription drug cases?

### **Most Drug-Related DWIs Are Attributed to Prescription Medication**

**Lauren Scardella:** I would say in terms of our cases it's probably 10% or 15% of them that are illegal or prescription drugs. The majority of them are prescription-related rather than illegal drugs.

**Interviewer:** Are people surprised by an arrest for a prescription medication attributed DWI?

**Lauren Scardella:** Yes. That's a huge misconception. People are stunned to learn that they can be arrested for DWI for taking medication that is prescribed to them.

It's not all medications. The statute actually says, "If you're operating a motor vehicle while under the influence of intoxicating liquor, narcotics, hallucinogenic or habit-producing drug." If your doctor prescribes you Vicodin, that's a narcotic drug.

## **Prescription Drugs Such as Xanax and Oxycodone Are Commonly Attributed to Drug-Related DWIs**

**Interviewer:** What are the most common prescription drugs you see people arrested for taking?

**Lauren Scardella:** Xanax is a big one and painkillers like Oxycodone. A lot of times there are people who are drug addicts and they're on something that's being used during a treatment program. This could be a drug that's being used to wean them off of whatever they're addicted to, such as heroin.



In terms of illegal drugs, it's mostly marijuana. I've had cases attributed to cocaine or heroin but those are less frequently the subject of, at least in my experience, a DWI.

## **How Defensible Is a Drug-Related DWI Charge?**

**Interviewer:** Are these drug cases harder to defend? Are they more complicated?

**Lauren Scardella:** A first offense is harder to defend in that there's no lower tier for a drug offense. It's just the 7 to 12 month suspension. It's harder in that sense.

### **The State Can Prove a Drug-Related DWI Case with a Lab Report and Officer's Observations**

It's sometimes more complicated. In a case of a marijuana arrest, the lab report showed the presence and that is all that's needed. The state doesn't need to prove it used anything else but the presence of the drug coupled with the officer's observations.



### **Disputing the Drug Recognition Expert Officer's Testimony**

In other drug types of cases then you'd use what's called a drug recognition expert. This is a police officer who is specially trained. He or she goes to a specialty training course where they are trained to

detect drug use. They're basically trained to look at a person and decide what drugs they're on. A medical doctor won't do that.

There are ways around that. It's never been accepted by a New Jersey Court and there's never been a hearing on its science of reliability. But many other courts will accept it.

**Interviewer:** Have you handled these kinds of cases?

**Lauren Scardella:** I actually attended the training the DRE training for defense attorneys. It was over the course of 2 days and we learned the entire protocol and all the ways to poke holes in the expert's testimony. It was very worthwhile.

## **REFUSALS OF THE BREATH TEST**

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**Interviewer:** Do you encounter clients that say, "Whoa, I did not refuse the breath test but I was classified as refusing?"

**Lauren Scardella:** Mostly what people say is they didn't really understand that they had to do it. Or they were afraid that it would show that they were more intoxicated that they had presumed.

## **New Jersey Is an Implied Consent State—By Obtaining Driving in the State, You Agree to Undergo a Breath Test**

We have implied consent law in New Jersey which means if you drive on the road in New Jersey whether or not you got your license here, you have already given consent to undergo a breath test.

You're giving your implied consent just because you've crossed the GW Bridge and arrive in Fort Lee and that's it.



You've given your complied consent and you're failure upon arrest to give samples of your breath is an offense.

You'll be charged. It's not administrative like it is in other states. It's an offense that doesn't result in automatic suspension of your license like it does in other states.

## **Refusing a Breath Test for a First Offense DWI Entails a 7 to 12 Month License Suspension and Is Not Subject to Plea Bargaining**

**Interviewer:** What are the consequences of refusing?

**Lauren Scardella:** The consequences of conviction are- parallel the DUI consequences. For a first offense it's a 7 to 12 loss of license, there's no lower tier for a refusal. For a second offense, it is a two-year loss of license. For a third offense, there's no jail term but it's a ten-year loss of license.

There's no plea bargaining on a first offense. On the second and third offense either the DWI or the refusal can be plea bargained away, essentially.

### **Compared to Other States, New Jersey's Consequences for DWI Are Less Onerous**

**Lauren Scardella:** I'm a member of the NCDD, the National College School and you can serve on what is called their list serve. A great deal of what we end up talking about on the list serve is consequences.

Everybody has clients who are from another state. So you ask about consequences for this state or that state and I read them and I'm thinking that New Jersey is really not that bad in terms of the consequences for a DWI.

# WHAT QUALITIES SHOULD YOU LOOK FOR IN A DWI ATTORNEY?

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**Interviewer:** What would you say if someone who is facing a DWI and they come in and wanted to talk to you about the charge? What makes your practice unique in terms of defense?

## **Experience Combined with Determination Are Important Attributes**

**Lauren Scardella:** I think that what makes us unique is that we work really hard on these cases. We spend a huge amount of time up in the office working up the discovery to uncover defenses.



Probably the thing that makes us the most unique is the expertise that one of our attorneys had gained. He was one of the lead defense attorneys in State versus Chun and the only one on the defense team who knew anything about science or electronics.

He's got an incredible knowledge of the Alco test and how to challenge it and that's something that we've

been able to use to great success. This is because the first obstacle in any DWI case is to get the reading dismissed. His expertise is extremely important to us. He's been able to teach me a lot of it.

Also, we're just tireless and tenacious. We don't stop until we're absolutely sure that there is nothing else we can do and that makes us very successful

## DISCLAIMER

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### **Law Offices of Samuel Louis Sachs, Esq.**

Princeton Windsor Office Park  
379 Princeton Hightstown Road  
East Windsor, NJ 08520

(609) 448-2700

[www.dwilawyer-nj.com](http://www.dwilawyer-nj.com)

# FACING DWI CHARGES IN NEW JERSEY?

Helpful Information That May Mean the Difference  
Between Freedom and Incarceration

*"My family recently had the need for an attorney for a criminal court issue. I came upon Sachs Law Office in an online search, as I did not have a recommendation from friends or family. I was amazed at the quick response I received for Sam Sachs. He was consistent, knowledgeable, highly professional, and a true calming factor in his dealings with my family, and the courts. He was successful in his litigation of our case, and I would highly recommend Sachs Law and Sam Sachs to anyone in need of legal representation."*

– Pamela D.

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*"I was extremely impressed by Sam and Lauren's services from the first phone call. I truly appreciate their intellect and expertise around my case. They are quite passionate and will fight very hard for you while realistically managing your expectations and providing sound counsel. I was very fortunate to choose them to represent me in unfortunate DUI case that resulted as positively as possible. I would recommend them to others, without question."*

– Jason O.

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*"Scardella helped me with my case. I was extremely nervous with the outcome, but she assured me the procedures and different paths we could take. She was always on time, responded to my questions quickly, and knew exactly what she was talking about. She even looked up outcomes of other cases like mine to see which option would be the most reasonable."*

– Antonio Q.

**Written by:** Lauren E. Scardella, Esq.

**Law Offices of Samuel Louis Sachs, Esq.**

Princeton Windsor Office Park

379 Princeton Hightstown Road

East Windsor, NJ 08520

(609) 448-2700

[www.dwilawyer-nj.com](http://www.dwilawyer-nj.com)