

## 10 DO'S AND DON'TS OF DRUNK DRIVING DEFENSE

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### Do's

1. **Read the Statutes.**
  - a. MCL 257.625a-o
  - b. The Motor Vehicle Code.
  - c. Use the jury instructions for the elements.
2. **Know the Case Law or know where to find it.**
  - a. Sources:
    - i. ICLE Michigan Drunk Driving Law and Practice.
    - ii. SADO's Defender Trial Book.
  - b. Cases that every attorney should know:
    - i. People v. Hamilton, 465 Mich. 526 (Constitutionality of arrests.)
    - ii. People v. Pomeroy, 419 Mich. 441, People v. Wood, 450 Mich. 399, People v. Stephen, 262 Mich. App. 239, People v. Burton, 252 Mich. App. 130 (Sleeping driver.)
    - iii. People v. Lyon, 227 Mich. App. 599, People v. Solmanson, 261 Mich. App. 657 (Elements of Operating)
    - iv. People v. Lambert, 395 Mich. 296, (Impaired Driving)
    - v. People v Fosnaugh, 248 Mich. App. 444, (Chemical test Admission.)
3. **Get a copy of the "Michigan Breath Test Operator 2003 Breath Test Manual.**
  - a. Procedures
  - b. Administrative Rules
4. **Conduct a thorough interview with your client.**
  - a. Things to focus on:
    - i. Where were they stopped?
    - ii. Place of arrest.
    - iii. What were they stopped for?
    - iv. Determine entire sequence of events from the time they started drinking or using drugs to being released from custody.

- v. Who owns the car?
- vi. What does their driving record look like?
- vii. Have they been convicted of Drunk Driving in the past?
- viii. Was there an accident?
- ix. Review all documentation.
  - a. 625 G permit
  - b. Breath test results sheets.
  - c. Bond forms.
  - d. Towing receipts.
  - e. Accident forms.
  - f. Ticket.
- x. Does your client have a good memory of the incident?

**5. Do not rely exclusively on the police reports. Get a hold of and review videotapes.**

- a. What to look for:
  - i. Verify whether the police had probable cause to stop.
    - a. Criminal activity
    - b. Civil infractions
    - c. Reasonable suspicion that criminal activity is afoot.
  - b. Destruction of the videotape after requested can sometimes be parlayed into a dismissal.

**6. Review audiotapes of 911 calls and radio traffic.**

**7. Conduct a thorough in person investigation.**

- a. Take pictures, if necessary.
- b. Drive the scene.
- c. Use maps and “Google Earth”.

**8. If there is an Implied Consent violation, hold the hearing.**

- a. Things to remember when conducting the hearing:
  - i. Read the police report.
  - ii. Move for sequestration of non-testifying officers;
  - iii. Don't belabor the point in a hearing if the four issues are met.

iv. Resist the urge to cross examine if they have missed an issue.

**9. Hold more trials.**

- a. Jury trial should have a theme.
- b. Don't worry too much about the composition of the jury.
- c. Do not play hide the ball with the jury.
- d. Remember that what a witness does not say is just as important as what a witness does say.
- e. If you use an expert, try to find experts who do not have a long track record in criminal cases.
- f. Prepare a trial notebook.
  - i. Pertinent voir dire questions.
  - ii. A list of witnesses.
  - iii. A complete copy of the police report.
  - iv. Complete set of pertinent jury instructions.
  - v. Every piece of evidence that you plan to admit.
  - vi. Copies of all transcripts from hearing or preliminary examinations.
  - vii. Case law relevant to your issues.

**10. Hold more preliminary examinations.**

**Don'ts**

- 1. Don't believe that a drunk driving case is unwinnable.**
- 2. Don't handle a drunk driving case if you are not going to put in the effort.**
- 3. Don't threaten the prosecutor or the judge.**
- 4. Don't say too much in your motions.**
- 5. Don't file frivolous motions.**
- 6. Don't ever believe a prosecutor or any other attorney on the current state of the law.**
- 7. Don't take the case too seriously.**
- 8. Don't allow your client to direct the defense.**
- 9. Don't forget that your reputation is everything.**
- 10. Never pass up an opportunity to win.**