
The New York DUI / DWI Field Sobriety Tests

Upon starting to drive, or upon having physical possession of a car, you have subjected yourself to the possibility of being the subject of an investigation for DUI/DWI. A DWI conviction can have an adverse effect on your life and livelihood.



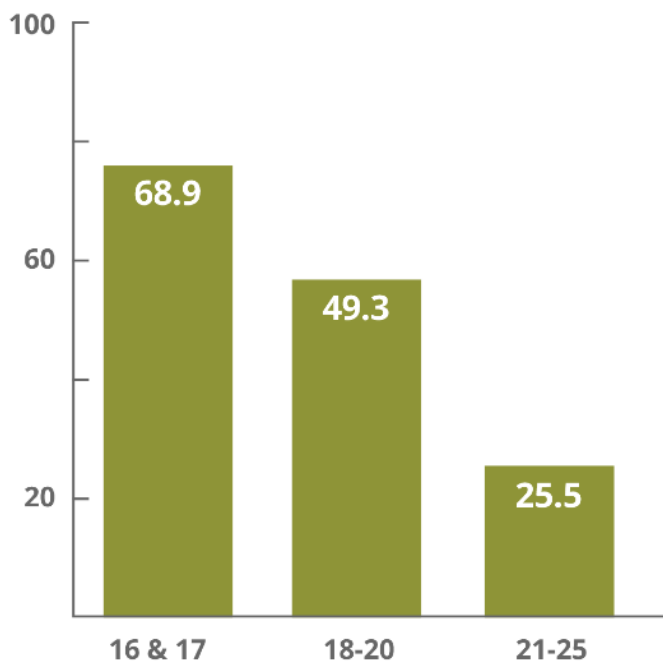
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Have You Been Arrested for a DUI / DWI in New York?

In 2022, there were 21,583 DUI arrests in New York.

This figure represents an increase in the number of such arrests in the state. In fact, 2022 marked an increase in both the number of DUI arrests and traffic fatalities in the state. In fact, a report by High Rise Legal Funding found New York among the top 10 states with the most DUI arrests.



Here is a breakdown by percentage of the decline in misdemeanor DUI or DWI arrests in NY between 2005 and 2014:

- Those age 16 & 17 (68.9 percent)
- Those age 18 to 20 (49.3 percent)
- Those age 21 to 25 (25.5 percent)

Chart: percentage decline in DUI arrests by age

Those age 50 and older experienced the largest increase in misdemeanor drunk-driving arrests, rising 16.8 percent from 2005 to 2014. This is the only age group in which there was a rise in both year-over-year and within the last 10 years. Its important that you talk to a New York DUI attorney to protect your rights.

Why the difference?

Experts have explained the irregularity by drawing attention to the use of anti-DUI/DWI messages in the early years of a person's childhood and young adulthood, coupled with harsher penalties for younger drivers.

It was not until the 1980s that there was a complete marketing campaign against drunk drivers, along with a corresponding clampdown by police. Thus, those age 50 and older began driving at a time when law enforcement was more tolerant of driving while intoxicated (DWI).

Another factor that can explain the decline in DUI arrests among younger drivers is the existence of tougher penalties for those motorists under age 21.

START

Standardized Field Sobriety Tests (SFSTs) Used in New York

If you are the subject of an investigation for intoxication, the police will request that you perform a number of standardized field sobriety tests.

If you are stopped by police, who request that you take a field sobriety test, then you are legally obligated to take the test as refusal may lead to immediate license suspension. If you face arrest after carrying out the test, you should refuse to take any other tests that are requested of you, including breath, blood or urine.

Although a jury may view your refusal to take additional tests as suspicious, if you complied with the New York Field Sobriety Tests, your DWI attorney can demonstrate to the jurors that you were cooperative with police, and were then arrested, as a result of which you refused to submit to a breath test.

If the police stop you and ask you to take a field sobriety test,

YOU SHOULD TAKE THE TEST

IF YOU ARE ARRESTED, REFUSE OTHER TESTS



Developed by the National Highway Traffic Safety Association

DUI/DWI police officers who are trained to investigate DUIs learn how to conduct five field sobriety tests. They are the Walk-and-Turn, HGN, One-leg Stand, Rhomberg Balance and Finger-to-Nose.

These exercises call for one to split attention, perform several tasks simultaneously, use the ability to remember and perform unusual physical tasks. Police officers spend several hours in training on ways in which to administer the tests, and are given sufficient time in which to practice them. They are given a cheat sheet that is one page in length that contains diagrams and information to help them remember what to look for when you are completing the tests. However, police officers will not show you that cheat sheet to enable you to view beforehand what they are looking for in your performance of the tests.

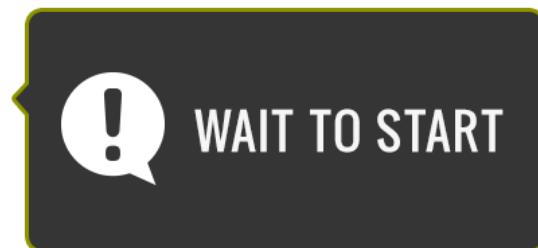


Wait to start the test

Make certain that you do not start the test until you receive specific instructions to do so.

It is likely that the police officers will give directions while showing you how they wish to see you perform the test.

If you start too quickly, the officers may use that against you, and subsequently, remind the jury that you were unable to follow a basic direction to wait until you were told to start the test. They may say that this is an indication of impairment.



Your ability to follow directions is a key part of the test!

Walk and Turn

The police officer will initially ask you to stand in the starting position, with one foot before the other, with contact between heel and toe, and with your hands at your sides.



You will have to stay in this position without loss of balance or any deviation from that position. If you return your front foot to a natural standing position, the officer can count that against you, contending that you were unable to keep your balance or take heed of directions.

The officer will then request that you walk in a straight line, putting one foot before the other, making contact between heel and toe.

Do not lift your arms for balance. Do not step outside the line or create a gap that is more than six inches between your heel and toe.

Following your ninth step, you will have to turn in a certain way. They will request that you take a number of small pivot steps while planting one foot down as the pivot point.

You will then have to walk nine steps back to the point at which you started. If you step outside the line, correct yourself right away and continue. While the majority of DUI officers will allow you to restart the test, they may later tell the jury that you needed to attempt to take the test two or three times.

Horizontal Gaze Nystagmus (HGN)

The HGN test is one where officers ask individuals to use their eyes to follow an object.



Relax. You cannot directly control whether your eye will exhibit nystagmus, so staying calm is your best option.

HGN: What Are Police Looking For?

The officers look for three indications that could exist in each of your eyes:

1. whether your eye has nystagmus, or a jerking motion;
2. when the nystagmus initially happens;
3. whether you have noticeable nystagmus at “maximum deviation”

Before carrying the HGN test, the officer is required to ask you a number of questions. They wish to make certain that you do not wear corrective lenses; are not afflicted with head trauma; or are not taking certain medications. Therefore, if you have nystagmus, they will argue that it is associated with impairment by alcohol.

One-leg Stand

The one leg stand is similar to the walk and turn test in that it has an instructional and performance aspect.



In the instructional part, you will be directed to stand on one leg while lifting the other leg in the air a minimum of six inches above the ground. Additionally, you will be asked to flex your foot, look down at the toes on that foot and keep your hands by your side.

One Leg Stand: Listen Carefully

There may be times when you have to do this while counting out loud for approximately 30 seconds or until the officer instructs you to stop.

If you begin to hop on your foot in order to maintain your balance, it will not count in your favor. It is best to stay composed and relaxed. Attempt not to lift your leg to such a height that it produces a greater risk that you will lose your balance.

If you have an issue with a leg, knee, foot, ankle, back or any other medical problem that you believe could adversely affect your capacity to perform the test, inform the officer prior to starting the test. This should be part of the official record.



Speak up for yourself if you have a medical issue that could affect your performance.

Rhomberg Balance

The Romberg balance is another test that measures your balance and capacity to remember directions.



Rhomberg balance: Be Ready to Multi-task

In addition, the test requires you to multi-task. During the instructional segment, the officer will request that you stand with your feet together, and put your hands down at your side. When you are instructed to start, tilt your

head back, close your eyes, guess when 30 seconds have passed, return your head forward, open your eyes, and say stop.

The officer will be looking for any signs of hopping, swaying or loss of balance. Additionally, the officer will notice if you do not keep your eyes closed, you count aloud, and not in your head, or if you spend an inordinate amount of time counting. Generally, alcohol causes people to have delayed reactions.

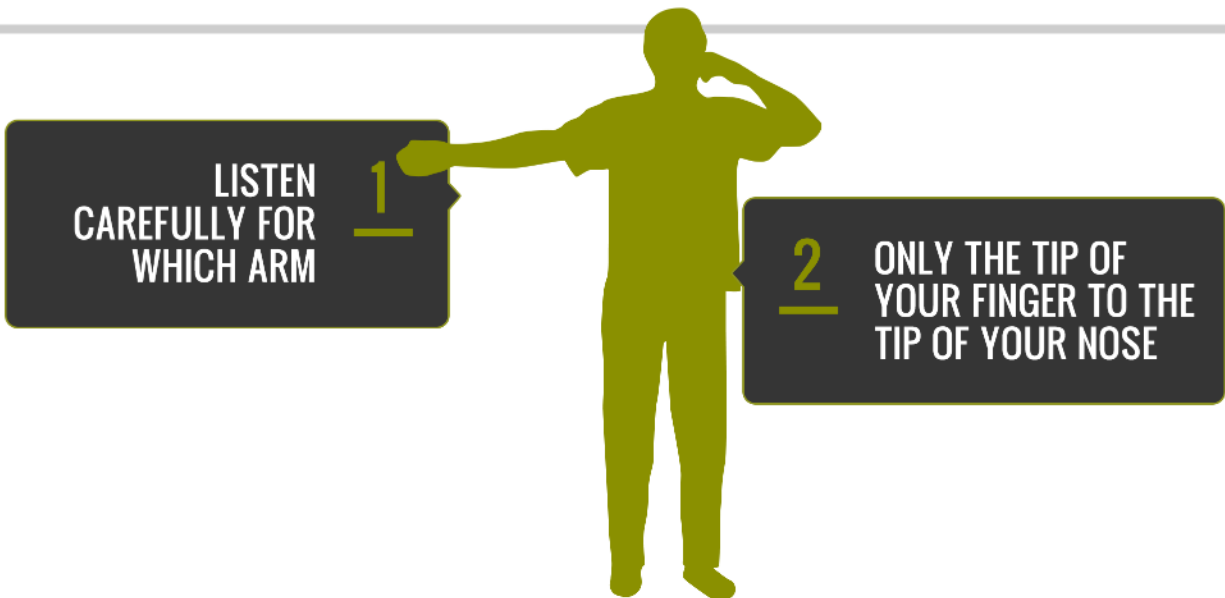
The officer will be keeping time with the use of a digital stop watch. If you do not stop until after 60 – 90 seconds have elapsed, they will attempt to use that against you. It is recommended that you have a method of counting and stick with it. Do not be alarmed if you are not directed to perform this test because it is not administered every time.



Have a single method of counting.

Finger-to-Nose

The final test that an officer usually administers is the finger-to-nose.



The officer will request that you close your eyes, extend your hands out at your side, and when verbally ordered with “left” or “right,” use your index finger to make contact with the tip of your nose prior to returning it to your side.

The officer will tell you which arm to use during this exercise. There is no pattern, so listen carefully to the instruction before moving.

Here are a couple of important points to keep in mind if you are asked to take this test:

1. Keep your eyes closed for the duration of this test.
2. Use the “tip” of your index finger to touch the “tip” of your nose.

Usually, people place the pad of their index finger on the tip of their nose. However, this will count against you. If you touch any part of your nose aside from the tip of it, that will also count against you. Furthermore, do not attempt to guess which hand the officer wishes you to use. They will tell you.

It is important that you remain calm and listen carefully. Be aware that they may not always alternate uniformly. They may try to trick you and say “left-right-right-left.” Always remove your finger after making contact with your nose, and return it to your side.



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