

# **101 DUI Defenses**

**Kick-Start Your AZ  
DUI Defense!**



**Winning Arizona  
DUI Defense Strategies**

**By: James Novak, Arizona DUI Attorney**

# LAW OFFICE OF JAMES NOVAK, PLLC ARIZONA DUI & CRIMINAL DEFENSE ATTORNEY

## Introduction

**Congratulations!** You have made a wise decision to take advantage of downloading your free Arizona DUI Winning Defense Strategies Book. If you were arrested for any Arizona DUI charge, your life has been turned upside down. It has probably traumatized you emotionally, physically, and financially, and had adverse impacts on your family, your ability to drive, your employment and other aspects of your life. Your top challenge now is answering the questions of “what happens now?”, “how can I make this go away?”, or in the least “how can I get the best outcome in my DUI case?” How is this going to affect my future and my freedom? If you are uncertain about answers to these questions read on:

By downloading and reading this book you, you have taken your first step towards getting those questions answered. In reading this book you will learn what happens step by step in the DUI and judicial processes, how it will affect you, and what can be done to get the best outcome of your case. Just because you have been charged with a DUI, does not mean you will be convicted. If you read this book and hire a good Arizona DUI Defense Attorney, such as the Law Office of James Novak, you will see, it’s not over yet—Not by a long shot. So you got a DUI--- That does not change the fact that you still have constitutional rights that Arizona police and prosecution must not violate. That does not change the fact that defenses on your behalf can be used to possibly suppress evidence or get your case dismissed. Every case is different and holds its’ own set of circumstances. But an experienced, seasoned DUI Defense attorney and litigator like James Novak knows which defenses to use under what circumstances. Then the evidence is examined carefully, and the best defense case possible will be mounted on your behalf to get the best outcome, from either lesser charges to a total dismissal.

Arizona has some of the toughest DUI laws in the Country. And with them you face harsh punishments. As a former Arizona Prosecutor, experienced DUI defense Attorney, Arizona Law Firm founder, experienced trial litigator, I have handled hundreds of DUI cases including high profile cases, celebrity and professional sports player’s DUI cases. I have been able to get many successful dismissals and not guilty verdicts. This was not out of luck- but hard work, training, education, experience and continuing to keep up on new local and tough Arizona state laws and DUI defenses that may affect my client’s cases. Remember, when you hire an attorney, they work for you. My number one priority is You. There should be **No Secrets** to providing a good defense. That is one of the reasons I share this book with you. I want you to feel comfortable, safe, assured, and understand everything possible there is to know that can be done to defend an Arizona

DUI. Upon completion of the book you hopefully feel better about your situation and gain an understanding of the court, and judicial processes and what may be done by an experienced DUI Attorney to defend and win your case. In this book you can expect “dos”, “don’ts” “how tos”, tips, tools, facts, laws, stories, and a multitude of defenses, defense tactics and strategies.

So let’s get started on helping you put the pieces back together, get on with your life, and shed some light on the road ahead from here. If you find it useful, share the news someone else who may need Arizona DUI legal help by telling them about my Free DUI Winning Defense Strategies Book, and the Law Office of James Novak, Arizona DUI Defense Attorney.

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(ABRIDGED PDF VERSION)

# 101 DUI Defenses

## 101 DEFENSES TO BEAT YOUR ARIZONA DUI

**Congratulations!** You have taken the first step to get valuable information about fighting your Arizona DUI. In simple terms, you will gain knowledge of how top DUI defense Attorneys in Arizona can defend your DUI. This is just a sample of 21 out of 101 defense strategies that have been compiled for your consideration and general reference material. These represent Arizona DUI defenses that may potentially relate or be used to defend your Arizona DUI depending on the circumstances surrounding your case. This abridged version briefly references criteria that a qualified, experienced and skilled Arizona DUI lawyer may use to defend your DUI, in an attempt to get your charges reduced or strive to ultimately obtain a total dismissal of your DUI charges:

### **ILLEGAL STOP OF PERSON OR VEHICLE**

#### **Did a police officer illegally stop you?**

The United States Supreme Court has held that an officer must have a reasonable suspicion of a criminal or traffic offense to stop a vehicle. If the officer did not have a reasonable suspicion, then the remedy can call for a dismissal of the DUI charges. An officer cannot legally stop a driver unless they can substantiate a specific and just cause to believe there has been a traffic infraction or other violation of law. Weaving within one's own traffic lane for a short distance or making a wide turn should not justify a hunch that the driver is driving intoxicated. These types of actions are seen commonly in unimpaired drivers.

### **THE OFFICER DID NOT HAVE PROBABLE CAUSE TO MAKE THE ARREST**

#### **Was there probable cause to arrest you?**

The burden on the Arizona police is greater to arrest you than it is to make the initial stop. The standard for an officer to stop a vehicle, the officer must have merely a "reasonable suspicion" of DUI. But to make an arrest, the level rises to a higher standard, which is that "probable cause" to arrest. If a motion to dismiss for lack of probable cause to arrest is made, the court then considers all facts gathered by the officer before the arrest. What occurred after the arrest: the breath or blood test then is *not* relevant. Based on the facts, the case may be dismissed.

## **CHANGING LANES WITHOUT A SIGNAL AS A BASIS FOR A STOP**

### **Were you stopped because you did not use your turn signal?**

You should always use your turn signal at all times. However, an argument could be made that the stop was illegal because no other traffic existed, involved a remote area, or no other traffic was affected by your turn without using a turn signal. The police and prosecution will argue that you are required to signal if there is other traffic nearby. Most DUI arrests occur late at night and very often the police car is the only vehicle even within sight distance of the driver. **A.R. S 28-754. Turning movements and required signals:** “A person shall not so turn any vehicle without giving an appropriate signal in the manner provided by this article in the event any other traffic may be affected by the movement.”

## **WEAVING WITHIN THE LANE**

### **Were you stopped because your vehicle weaved within your driving lane?**

A motion may be filed to challenge the stop if it was based on a single observation of weaving within a lane as opposed to a significant or erratic amount of weaving within your lane to justify a stop. Does the swaying of a vehicle, especially larger vehicles such as SUVs, travel trailers, trucks, buses, and the like, on the road, moving a matter of inches in the lane are a reason to stop? Were there any strong wind factors? Were you avoiding an accident because another car was infringing on your lane? Weaving once without crossing any divider lane lines is *not* a violation of the law. Therefore, a vehicle cannot be stopped for that reason. If there are no other infractions or reasons to stop the vehicle then the stop should be held illegal.

## **DRIVER FATIGUE**

### **Were you actually fatigued rather than under the influence of drugs or alcohol?**

Driving fatigued can produce many of the same signs as impaired driving under the influence of drugs or alcohol. However, it is not a crime to be tired while driving. The case should be dismissed.

## **BLOODSHOT AND WATERY EYES**

### **Did the officer claim your eyes were bloodshot or watery?**

The police officer would need to have known how your eyes typically look on a daily basis. This appearance of your eyes may be normal for you. There are a variety of reasons that exist for discoloration, bloodshot or watery eyes including, smoke, allergies, flu symptoms, or simple fatigue. The police officer will be forced to admit that they don't know how long you had been awake, what eyestrain you may have had during the day, or what other factors existed that contributed to cause the appearance of watery or bloodshot eyes. Note: “Glassy eyes” are not indicated as a clue of cause being intoxication by the National Highway Traffic Safety Administration (NHTSA). A 1997 NHTSA study bloodshot eyes were removed from the list of impairment clues since there were so many other possible causes exist besides excessive alcohol.

## **SLURRED SPEECH**

### **Did the officer claim your speech was “slurred”?**

How would a police officer, that does not know you personally, know what your voice typically sounds like? You may have a congenital, acquired speech impediment, dental or medical condition. Or you may simply be fatigued, thirsty, or had stress on your voice that day from excessive activity. Maybe that is your normal speech pattern. Regardless, they will be forced to admit on the witness stand, that they are not familiar with any of these facts about you that may apply to your situation. The police have standard forms which they fill in with checkmarks for observations and field sobriety test results. In some cases the officer cannot remember from their independent recollection if you had been slurring every word or just some words anyway.

### **FLUSH FACE**

#### **Did the police claim your face was “flushed” in appearance?**

It is common for the police to attempt to correlate a flushed or red face with a sign or symptom of intoxication. The police do not ask and try to get possible explanations for this observation such as working out doors, driving after a physical work-out, being in the sun, or allergies. Many other factors may exist that would cause this red discoloration. Medical conditions such as Eczema or Rosacea can cause readily seen red patchy or rash-like appearances on the face, neck and upper torso.

### **POOR GROOMING**

#### **Did the police claim your grooming was poor?**

On what basis was this opinion formulated? How does the police officer know what your typical grooming patterns or outward appearance is? What exactly did they document in the police report which constituted their opinion of “poor grooming”? If your clothing is crumpled or hair is disarray, the officer that stopped you for suspicion of DUI, would prefer to think that you must be driving drunk. Usually, they do not ask for an explanation for what in their opinion is “poor grooming”. Perhaps you just finished working, helped a friend move, chased a lost pet down the street, spent a long day or night studying, playing basket ball, or struggling with something else in your life. There are hundreds of explanations for crumpled clothing, or disarray hair, which have nothing to do with impairment due to alcohol or drugs.

### **STAGGERING OR SWAYING**

#### **Did the police report that you were staggering or swaying at some point during the stop?**

The officer will record anything and everything possible to stack the cards against you, to get a DUI conviction. You may at times be along side of a street or highway, with fast moving traffic. There may be gravel on road. You may be wearing high heels. You could be recovering from a leg or foot injury which would cause a different stance or exit from vehicle. Or you may have another medical condition that causes this type of movement in your gait or walk typically. Or you are just simply nervous because of the ordeal. If you are reported to have struggled to get out of your vehicle, issues can be challenged related to restrictions in the vehicle such as a larger person exiting a smaller vehicle. Other mechanics of the vehicle could be restricting such as trying to get out of a seatbelt that has mechanical problems unlatching.



## **RATE YOURSELF**

### **Did the police ask you to rate yourself?**

The police routinely ask you to rate yourself from “0” to “10” that is “0” sober “10” extremely intoxicated. If the question was asked after you were arrested or were free from leaving, then your response may be suppressed as a violation of your right to remain silent. Do not allow self-incrimination. You have the constitutional right to remain silent. Use it!

## **FIELD SOBRIETY TEST IMPROPERLY ADMINISTERED**

### **Did the officer administer field sobriety testing in accordance with Federal Government guidelines?**

According to the National Highway and Traffic Safety Administration, improperly administered field tests are not valid evidence of intoxication. The NHTSA sets certain standards for the administration of tests that include: Walk and Turn, One Leg Stand, and the Horizontal Gaze Nystagmus test. The above tests are not to be used if the DUI suspect is elderly, obese, unhealthy, injured or suffers another medical condition which would affect them adversely if the tests were done, or if the results of the test would be inaccurate due to the condition.

## **NON-STANDARDIZED FIELD TESTS ARE INVALID**

### **Did the police request that you do testing that is not recognized as standard and valid?**

The Federal Government (NHTSA), Medical Science, or any DUI Testing Governing authorities, *do not consider* touching your finger to your nose, or saying the alphabet, or counting backwards, as valid sobriety tests.

## **TEST LOCATION & LANDSCAPE**

### **Were the Field Sobriety Tests (FST) given on a flat surface away from the rush of passing traffic?**

If the FST was conducted on a slope, uneven surface, on rocky or unusual terrain, or in the presence of heavy traffic; or if you were wearing constricting shoes or high heels; there is a good chance to argue that the FST had been improperly given due to the landscaping conditions or your restrictive apparel and results can not be relied on.

## **FAILURE TO DETERMINE IF THE ACCUSED IS AN APPROPRIATE CANDIDATE FOR THESE ROADSIDE EXERCISES**

### **Did the Police properly screen you for criteria that would determine if you were eligible according to the set guidelines to participate in the tests?**

If the defendant is 50 or more pounds overweight, over 60 years old, or has physical impairments that affect their ability to balance, he or she is not an appropriate candidate for these exercises. The NHTSA manual explicitly states that anyone falling in these categories *should not even be given these tests*.

## **THE HORIZONTAL GAZE NYSTAGMUS (HGN) IS NOT A SCIENTIFICALLY VALID TEST UNDER ROADSIDE CONDITIONS**

### **Did the officer report that you failed or did poorly on the HGN test?**

This is the “follow the pen with your eyes test” actually has a very complicated name- the Horizontal Gaze Nystagmus (“HGN”) test. Many people do not understand what the police officer is actually looking for when he/she performs this test. Some people think they just need to follow the pen. This test, however, purportedly measures the involuntary jerking of the eye when a person is impaired by alcohol. When medical doctors conduct this test they do so in an areas with good lighting, employing medical equipment that holds the patient’s head still and clearly lists the angles. The officer, for one test, must determine whether he detects the onset of nystagmus prior to 45%. It is almost impossible without be accurate on the angle. The test can be challenged as invalid under almost all roadside and lighting conditions.

## **PORTABLE BREATH TEST INADMISSIBLE**

### **Did the police charge you with a DUI based upon the results of a Portable Breath Test Unit?**

Arizona does not allow the results of the Portable Breath Test (PBT) to be used against you as a form of admissible piece of evidence. The PBT is not maintained or calibrated and not considered reliable evidence. It is generally intended for use as a preliminary test, used only in conjunction with other DUI tests or admissible breathalyzer unit testing. If your DUI charges were based strictly on the results of the portable breath test unit, the evidence can be suppressed with regard to those results.

## **DUPLICATE BREATH TEST OUT OF RANGE**

### **Were the two breath tests that you took, far apart in range, and still used to charge you with a DUI?**

Two breath tests are given. If the second test is not within 0.020 alcohol concentration of the first test, additional tests shall be administered until the results of the two consecutive tests are within 0.020 alcohol concentrations. If this procedure is not followed and the results are outside the allowable range that breath test evidence may be suppressed.

## **POLICE BLOOD TEST INACCURATE**

### **Was blood testing protocol and procedures followed to draw, test, analysis, and preservation followed?**

Many times blood testing fails to follow prescribed rules of testing, analysis, or preservation recommendations. Blood evidence can often be challenged, suppressed, in the event of any such deviation or violations of proper handling.

## **FAILURE TO MIRANDIZE**

### **Did the police officer read your Miranda Rights at the time of your arrest?**

Prosecutors may not use as evidence the statements of a defendant in custody for a DUI when the police have failed to properly issue Miranda Warnings.

## **CHARGES MUST BE BROUGHT IN THE PROPER COURT AND JURISDICTION**

**At the time of the stop, did the police officer indicate on the citation that you were to appear in a certain court and city that your defense attorney later found to be incorrect?**

If your defense attorney discovers the DUI citation indicates that you should appear in an incorrect court and jurisdiction, a motion for dismissal can be filed and will be granted. However, keep in mind that charges can still be filed later in the proper jurisdiction by the Prosecution. Note, this can be used as a negotiating tool in plea bargain. In some cases, your defense attorney can negotiate a total dismissal.

- **DISCLAIMER:** These defense strategies are not intended to be comprehensive or complete and may not apply your particular DUI defense. Some of these defenses may or may not lead to a total case dismissal, suppression of some or all of the evidence, or reduction of charges. Every situation is different. However, all factors regarding your particular case circumstances should be examined, and defenses considered for applicability.

## **APPENDIX**

### **THE NEED TO HIRE A DUI ATTORNEY**

The police have already done their job and charged you with Arizona criminal DUI. You have a lot at stake including adverse effects to your job, driver's license, family, finances, children, future and freedom. The case is already in the court system and your file has been attached a court reference number. A mug shot and a case number are all you are in the eyes of the State of Arizona and the Prosecution. Sound cold? Yes, but true. The Prosecution does not care who you are, what you do, or how your family or job will be affected by any of it. All they want is a conviction. That's what they get paid for. And they will work closely, with the police to get it. They will not look over every detail of your case to evaluate it to determine if the charges are justified, or to determine if your constitutional rights were violated in anyway. That is not their job and they are too busy for that anyway. Their job is not to protect you, provide a defense, or help to find a way to minimize the adverse impacts to you due to the charges. They prosecute and convict.

If you are looking for the Judge to be in your corner, look again. He's not either. The Judge does not intervene until a motion is filed or your sign a plea agreement or take the matter to trial. "Telling" your side of the story to the Judge will not have favorable effect on your situation. The Judge does not have authority to dismiss the case until a proper Legal defense challenge is made on your behalf by your Arizona Defense Attorney, or the jury returns a Not-Guilty Verdict on all charges. The chances of getting an acquittal or not-guilty verdict without a good Arizona Criminal Defense or DUI Attorney are slim

to none. The system is complicated. It is a maze of laws, protocol, people and odds against you.

You have a choice. You need a strong ally. You need an Arizona Criminal and DUI Defense Attorney to build a strong defense for your case. You need someone you can call for answers to questions, to defend you, to protect your constitutional rights, to fight to get evidence suppressed, charges reduced or labor to get your case ultimately dismissed. The chances of any of these favorable outcomes are drastically reduced without the Retention of a private Arizona Criminal Defense or DUI Attorney, who does this day in and day out.

The decision is yours. Charges of Arizona DUI are serious, as are many other criminal charges. An Arizona DUI has many factors to evaluate. Including, a violation of your Constitutional Rights, the reason for the stop, the police officer's handling of the case, proper crime lab testing methods, proper implementation of field sobriety tests, and more. There are many factors in a case that can be challenged to your favor. But you will not get that benefit without the right defense attorney. The judge and prosecution will look at your case through the mind of prosecution only, not in your defense.

The impacts of an Arizona DUI or other Felony charges are negatively life altering. You should strongly consider hiring an Arizona DUI defense attorney. If you ask whether you can afford an Arizona DUI defense lawyer. You should first ask whether you can afford *not* to hire an Arizona DUI lawyer. Money can be paid back, or made up again. But your future, your freedom, your reputation, your family are not so easily repaired. Too much is at risk when you get convicted of an Arizona DUI, Felony and even some Misdemeanor crimes in Arizona.

When you consult criminal defense or DUI attorneys, get quotes. Also, you must have a comfort level with that attorney. Make sure you feel they are competent and experienced enough to defend you effectively. You may be surprised how affordable some DUI attorneys may be, as compared to what you have to lose. Some like The Law Office of James Novak have extremely affordable flat fees with an options for flexible for payment plans that are agreed upon by both the client and James Novak. His motto is "Client First". Showing up to court with no defense is just putting your hope in the hands of the person who wants to convict you, the prosecutor. That's their job.

## **CHOOSING AN ARIZONA DUI ATTORNEY**

If you are facing Arizona DUI and criminal charges, you have an important decision to make. How do I choose the right Arizona DUI defense attorney for my case? Below are just a few questions you should ask any attorney before making the decision to hire.

- Who Will Be My Lawyer?

- Will you be the lawyer who is actually handling my case?
- Who is doing all the investigation on my case? Will you be the lawyer who shows up to court with me?
- Will you be switching lawyers on me?
- Can I meet my assigned lawyer before I agree to hire your firm?
- Will I be able to speak to you if I have a question or concern?
- What is it going to Cost?
- What is Your Experience?
- What background do you have that qualifies you to handle my case?
- Have you ever been a prosecutor? If so, where, and for how long?
- What training do you have with the issues involved in my case?
- How many cases like mine have you handled?
- How often do you handle this specific type of case?
- How often do you deal with this particular prosecutor?
- How often do you appear in this court?
- How often do you appear before this particular Judge?
- What is your current caseload?
- How long should I expect to wait to hear back from you if I have to leave a message for you?

No matter what you chose to do, remember a DUI or other Criminal Charge you are innocent until and only if you are proven guilty. Everyone makes mistakes. It's how you recover from that mistake that counts more. You can take control of your criminal or DUI charges now, by consulting and retaining James Novak, Arizona Criminal and DUI Defense Attorney. Get a strong defense in your corner. You deserve a second chance.

# Author Biography



James Novak exclusively defends Arizona DUI and Arizona Criminal Cases. As an experienced Arizona Attorney, James Novak understands how an Arizona DUI or Arizona Criminal charge can affect your employment, your future, and your freedom. Arizona has some of the toughest DUI laws in the country. And with them comes harsh punishments. As a Former Arizona Prosecutor, experienced DUI defense Attorney, Arizona Law Firm founder, experienced trial litigator, James has defended hundreds of DUI cases, with many successful outcomes. He is extremely knowledgeable, efficient, and experienced in defending Arizona DUI and Criminal Cases.

He is very familiar with the harsh and constantly changing Arizona DUI laws, penalties, courts systems, many of the judges, many of the prosecutors, procedures, protocol; most importantly he knows what defenses can be used and are needed to get evidence suppressed, cases dismissed and get “not guilty” verdicts on DUI and criminal cases.

He recognizes that all cases have their own set of circumstances and evidence. He does not defend with a “cookie cutter” mentality, or simply sit back and “hope for the best”. Upon retention he immediately begins examining the evidence, and formulating and effective defense to pro-actively mount against the prosecution based on each client’s unique situation.

James Novak is highly educated. He holds four advanced higher education degrees. He draws from his experience, training, and education to provide the most effective defense possible against criminal and DUI charges. Nothing replaces experience, training, and education when it comes to understanding and knowing how to provide a viable defense. In addition to his Jurist Doctorate degree (Attorney at Law) James Novak also holds a Degree from the School of Engineering. This assists in the assimilation and understanding of all matters that relate to all technical issues, such as crime scene investigations and crime lab testing processes, accident reconstruction, biomechanical engineers and forensic experts. His third advanced degree was awarded in Arizona where he received with Distinction a Masters in Counseling/Education. This provides the physiological tools to assist in reading people in jury trials, jury selection, and depositions. This advanced degree also assists in mitigation hearings as it relates to alcohol, drugs and other addiction issues. His final advanced degree was also awarded from Arizona and is a Masters of Business Administration (MBA). This education gave him the tools to evaluate evidence as it relates to White Collar Crimes, Theft, Employment Crimes, Fraud, Embezzlement, and anything related to business or financial matters. James Novak is qualified to handle any DUI and Criminal matter. James Novak lives by the law motto “no barriers for defense”. The Law Office of James Novak was

built on the philosophy that “The Client's needs and Defense Comes First”. He is deeply committed to that priority. His quest is to make sure each of his clients receives the strongest defense possible; and will fight relentlessly to protect their constitutional rights, their future and their freedom.

James Novak stays connected with the Legal Community both at the State and Federal Level, and keeps informed on the constantly changing Criminal & DUI laws at both levels. He has authored many Criminal & DUI Defense papers, web articles, and web blogs, to help anyone looking for free legal help on the internet. He is dedicated to helping defendants overcome their DUI and Criminal Charges trauma and consequences with information, understanding and support. Now he invites you to join the many, to learn and enjoy his free Arizona DUI Winning Defense Strategies DUI Book.

“Knowledge is power.”

- *Sir Francis Bacon, English author, courtier, & philosopher (1561 - 1626)*