

Five Ways to Get your Charges Dismissed

Although there may be other ways a DWI charge could be dismissed, we will discuss the five (5) most common ways in this post.

1. A DWI charge could be dismissed if it is determined that the **officer did not have a reasonable suspicion to pull the vehicle over**. If an officer stops a vehicle traveling on a public highway, he/she can only do so if they have a reasonable suspicion that the driver has committed a vehicle and traffic law violation. If it can be shown that the officer pulled your vehicle over without reasonable suspicion, then the evidence obtained thereafter may be subject to suppression. Suppression means that a Court could find that the evidence is not admissible in a trial against you. Without the evidence gained after the initial illegal stop, the charge could be dismissed.
2. A DWI charge could also be dismissed if, upon review of the case, it is determined that **the officer did not have probable cause to arrest you**. Officers can demonstrate probable cause with standardized field sobriety tests and preliminary breath tests. The officer can also testify as to their observations of the scene and any evidence they obtained from the scene. If law enforcement does not have sufficient evidence, then they will not have probable cause to make an arrest. If it can be demonstrated that the officer didn't have probable cause, then the evidence obtained at the station (the breath test results) could likely be suppressed. The breath test is often the main piece of evidence that the police use against you, and if it is suppressed your case may be dismissed.
3. A DWI charge could also be dismissed if it is determined that law enforcement did not follow the **required protocol to take a breath test**. For example, there is a twenty (20) minute observation period prior to taking a breath sample to make sure you do not belch or vomit in your own mouth. Additionally, law enforcement should make sure your mouth is free from any other substance, like gum or chewing tobacco. These types of substances may hold the alcohol in your mouth and cause a condition, that is called "mouth alcohol contamination." A good DWI criminal defense attorney knows the protocol and procedures law enforcement should use to take a breath test sample from you and if they do not follow it, your attorney can move to have your case dismissed.
4. A DWI charge could also be dismissed if it is determined that law enforcement cannot show **that you were operating the vehicle**. Under the law, operation requires an intention to move the vehicle. If you were not in a moving vehicle and you were merely in the vehicle for

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heat, air conditioning, or you were simply listening to music, you may be able to argue that you had no intention of moving the vehicle and your DWI charge may be able to be dismissed.

5. Lastly, a DWI charge could be dismissed **if your vehicle was not being operated on a public highway**. A public highway is a specific legal definition that includes parking lots with more than four (4) spaces. If you weren't operating your vehicle in an intoxicated condition on a public highway a good defense attorney is going to point that out and ask for your charge to be dismissed or reduced.

This is not legal advice and is for general informational purposes only. Please consult a lawyer if you're charged with a DWI.

Tom Anelli & Associates is a statewide DWI defense practice focusing on solely on DWI Defense matters. Tom Anelli holds certifications in the Science of Evidential Breath Alcohol Testing, and is factory trained on the breath testing instrument most used by local law enforcement. He is also a NHTSA Certified Practitioner and Instructor in Standardized Field Sobriety Testing.

Further, Tom is the author of the New York Edition of The DUI Book: A Citizen's Guide to Understanding DWI – DWI Litigation in America. Tom has appeared nationally as a regular legal commentator on TruTV.

He earned his B.A. at Syracuse University and his Juris Doctor at St. Thomas University School of Law before earning admission to the New York State Bar.

Please remember you can call Tom Anelli 24/7 at 1-800-DWI-1100 or www.dwitom.com