

Top California DUI Defense Tactics

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As the evidence in California DUI cases becomes more and more technical, the defenses against it grow. There are now [numerous ways to fight a DUI case](#) and to hopefully avoid a [costly conviction](#).

One top DUI defense tactic is the fight against the assumption of "average." Breath reading equipment, urine analysis, and even most field sobriety tests are based around the assumption that the driver being tested should respond to the tests in the same manner in which the "average" non-intoxicated person would.

But, what makes up average?

A good attorney will point out that breath reading equipment can render results 15% higher than a person's actual BAC due to erroneous information based on "average" calculations. Specifically, if a person arrested for a DUI in California blows anything other than a ratio of one part alcohol per exhaled breath to one 2100 parts alcohol in the blood, the BAC calculation will be skewed.

People can vary widely in their actual ratios, and can blow anywhere from a 1:1300 ratio to a 1:3000 ratio. That's quite a difference. Obviously, the equipment will not know what ratio the person is actually blowing, and will calculate every BAC based on the average person's 1:2100. Thus, the resulting BAC computation may be invalid.

Urine analysis is based on the same type of assumption. Labs evaluate samples based on the assumption that the average person's alcohol in urine to alcohol in blood ratio is 1:1.3. The actual ratio can vary greatly from the "average" assume, and thus the BAC content has a potentiality of being inaccurate.

Even one of the field sobriety tests, the horizontal gaze test, is based on assumptions of how an average person's eyes behave when affected by alcohol.

Most officers are trained to evaluate a driver based on the degree at which the eyes begin to jerk when following a pen in an arch. The assumption is that any jerking before the forty-five degree angle indicates a BAC of over .08.

But this does not allow for any pre-existing eye conditions in the driver. Perhaps the driver's eyes normally jerk at an angle different than that of the "average" person?

Much of the evidence presented by the prosecution in a California DUI case will be based on assumptions relating to that of the "average" individual. An important defense tactic is to highlight the problems associated with such evidence.

Another top DUI defense tactic can be broken down into "what the driver did right." This tactic focuses on reminding the officer, and the jury, of all the correct actions and reactions the driver exhibited at the scene.

This might throw off the arresting officer in cross-examination and--more importantly--prove to the jury that even if you "failed" a portion of a field sobriety test there is a possibility you were not drunk according to California's DUI law.

If you were not acting belligerent, falling down, or refusing to perform the test, it is highly possible that an action deemed by the officer to indicate a BAC over .08 (such as missing the heel-to-toe test by more than a half an inch) is in fact an error of assumption.

By stressing the correct actions and reactions you exhibited at the scene, your attorney is providing additional ammunition to show that any performance mishaps during the test may have been caused by the difference between you and the "average person" on whom the tests were based, and not necessarily a product of alcohol consumption.

I hope that you see that there are many DUI defense tactics that a good attorney can use in court. Two of the top tactics include proving that most people, including you, do not fit the mold of the average person used by officers and labs to indicate BAC, and the stressing of the defendant's compliant attitude and favorable actions at the scene.

To find out if these approaches might help your defense of your California DUI charge, call my office now to set up a fee initial consultation. My number is 415-552-6000.

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