

# ALBUQUERQUE CRIMINAL LAWYER BLOG

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## Divided Attention Testing in a New Mexico DWI Investigation

When you are pulled over on suspicion of **DWI** in New Mexico, the police will not launch straight into performing a field sobriety test; they will question you first. What you may not realize is that this is not mere chit chat. These questions are a test in themselves,

Though not as formal as the field sobriety tests you will take, these tests, referred to as pre-exit tests, are used for a number of purposes. They provide grounds for the subsequent standardized field sobriety tests. The driver's performance on these "pre-exit" tests will also often end up in court. Thus, they are important both for the officer's decision to pursue a DWI investigation, and later to a judge or jury in determining guilt.

As you are answering the officer's questions, he or she will be looking for signs of intoxication such as slurred speech or odor of alcohol. The officer will also look for mental impairment such as confusion about the date and time or why you were pulled over. They will have you perform certain routine tasks such as finding and producing your license and registration. These tests are meant to divide your attention while also testing physical dexterity.

"Divided attention" refers to the brain performing multiple tasks at the same time. Alcohol use can affect your ability to perform divided-attention tasks even at low levels. This inability to multitask makes driving a car very difficult for an intoxicated person because it requires so many things to be done at once--maintaining an appropriate speed, maintaining the lane, steering the car, checking mirrors, etc.

Initial questioning can test for divided attention in three primary ways: asking two questions at once, giving you more than one command at a time, interrupting or distracting you as you are answering a question, or asking unusual questions. The officer may have you recite alphabet backwards, count down from one designated number to another. The officer may fire questions at you pretty rapidly all in an attempt to fluster you.

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Some field sobriety tests include divided attention tasks as an element. For example, the one-leg stand test requires you to balance on one foot while counting aloud by thousands and the walk-and-turn test requires touching the heel to the toe while walking in a straight line and counting steps. Officers will sometimes combine more than one test to create a divided attention test, such as requiring a subject to touch his finger to his nose while standing with feet together.

Both the pre-exit tests and the standardized field sobriety tests are difficult under the best of circumstances. A few drinks will make it pretty near impossible. Worse yet, many officers will err on the side of arrest due to the low standard of impaired to the slightest degree. Breathe test or not, the pre-exit testing along with the field sobriety tests may be sufficient to meet this standard.

These tests may provide the probable cause necessary for arrest even at low levels of alcohol. And it simply does not get any better moving through the process. With the low burden placed on the State for a DWI conviction, any alcohol at all with poor pre-exit and field sobriety testing may lead to a conviction.

And the moral is, Don't Drink and Drive!

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