

## **E358 Reported Case: DWI Defendants Entitled to Breath Machine Data. State v Maricic**

**2. Reminder- New law Revises Eligibility for Expungement of Criminal and Juvenile Delinquency Records.**

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**1 Reported case DWI defendants entitled to breath machine data**

State v Maricic \_\_\_ NJ Super. \_\_\_ (App. Div. 2010) A-5247-08T4

In this DWI matter, the Court held that defendant has the right to discover downloaded Alcotest results from the subject instrument from the date of last calibration to the date of defendant's breath test and any repair logs or written documentation relating to repairs of the subject Alcotest machine, without a showing of prior knowledge of flawed procedures or equipment. Although the requested items were not included in either Special Master King's list of fundamental documents that must be produced by the prosecutor in discovery or the list adopted by the Court in *State v. Chun*, 194 N.J. 54, 145, cert. denied 129 S. Ct. 158, 172 L. Ed. 2d 41 (2008), they are nonetheless of unquestionable relevance to a determination of the reliability of the Alcotest machine and procedures utilized.

**2 Reminder- New law Revises eligibility for expungement of criminal and juvenile delinquency records**

This law makes some changes to the criteria for expungement of criminal convictions and adjudications of delinquency and also adds to the list of crimes that may not be expunged.

*Expungement of Indictable Offenses Generally* Section 1 of the law reduces the amount of time that must elapse before a person convicted of an indictable offense is eligible for expungement. Under current law, subsection a. of N.J.S.2C:52-2 requires a person to wait 10 years from the date of his conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later, before applying to expunge a conviction for an indictable offense. The law would allow expungement for an indictable offense although less than 10 years has expired if the court finds that:

- Less than 10 years has expired from the satisfaction of a fine, but the 10-year time requirement is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered by the court, or could not do so due to compelling circumstances affecting his ability to satisfy the fine; or

- At least five years has expired from the date of conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later; the person has not been convicted of a crime, disorderly persons offense, or petty disorderly persons offense since the time of the conviction; and the court finds in its discretion that expungement is in the public interest, giving due consideration to the nature of the offense, and the applicant's character and

conduct since conviction.

In determining whether compelling circumstances exist, a court may consider the amount of the fine or fines imposed, the person's age at the time of the offense, the person's financial condition and other relevant circumstances regarding the person's ability to pay.

*Expungement of Certain Drug Crimes* Section 1 of the law also allows expungement of certain convictions for the sale or distribution of a controlled dangerous substance (CDS) or possession thereof with intent to sell. Expungement would be allowed if the convictions involve crimes of the third or fourth degree, and the court finds that expungement is consistent with the public interest, giving due consideration to the nature of the offense, and the petitioner's character and conduct since conviction. Under current law, a person may not have his conviction for the sale or distribution of a CDS or possession thereof with intent to sell expunged unless it relates to the sale, distribution, or possession with intent to sell a small amount of marijuana or hashish.

*Expungement of Delinquency Adjudications* Section 2 of the law changes the criteria for expunging a record of an adjudication of delinquency. Under current law, to expunge an adjudication of delinquency, a minimum of five years must elapse after final discharge of the person from legal custody or supervision or after the entry of any other court order not involving custody or supervision. Also, the person must not have been convicted of a crime, or a disorderly or petty disorderly persons offense, or adjudged a delinquent, or in need of supervision, during the five years prior to the filing of the petition for expungement. Section 2 of the law would except periods of post

incarceration

supervision pursuant to section 25 of P.L.1982, c.77

(C.2A:4A-44) from these five-year periods.

*Need for Availability of Criminal Records Factor* Section 3 of the law amends N.J.S.2C:52-14 to require a court to determine whether the need for the availability of a person's criminal record outweighs the desirability of freeing the person from the disabilities normally associated with a criminal conviction in cases of third and fourth degree drug offenses. This change is necessitated by section 1 of the law, which authorizes expungement of third and fourth degree convictions for the sale or distribution of a controlled dangerous substance or possession thereof with intent to sell. Under prior, a court only weighs this consideration if an objection to the expungement is raised by a law enforcement official.

### **3. Tax Planning Advice is Tax Deductible**

When Estate Planning is done, certain Tax implications are discussed. A portion of your Estate Planning bills are tax deductible when they pertain to tax planning. Discuss this with your accountant when doing your 2010 tax return.

For Estate Planning, we request our clients fill out the Confidential Will Questionnaire. You may want to fax or mail the interview sheet to our office prior to the appointment.

Clients should bring to the appointment:

1. The completed Will Questionnaire Sheet
2. Your questions written out.
3. All papers you have in connection with your Will.
4. If available, you may want to bring at the signing of your Will, not the initial appointment, a list of your assets, along with:

Copy of Real Estate Tax Bills  
Health Insurance Policy, Existing Nursing Home Contract (if any),  
Existing Life Insurance Policies, Life insurance paperwork indicating the face value,  
death benefit, and cash value with respect to the policy, Copies of all current  
bank statements, Copies of all Series E or EE bonds, Most current statement  
from Stock Broker, Most current Mutual Fund statements, Most current statement  
for IRA account, Most current statement of Qualified Retirement Account (Non-  
IRA), Complete copies of any Annuities, Copies of any Notes or Mortgages  
Receivable by you.

The scope of the services we anticipate performing for you are as follows:

1. Will review and update, if appropriate.
2. Living Will review and update, if appropriate.
3. General Durable Power of Attorney review and update, if appropriate.

At our initial meeting, we will discuss the matter, and provide a written retainer statement. I will quote you a fixed fee for the projected legal work. This way you will know at the beginning what your costs will be. Client can now pay fees by check, Visa, MasterCard, American Express, Discover, cash or money order. Once retained, we will represent your interest vigorously.

As you might imagine, we have many requests for appointments and our schedule is very full. Therefore, we ask that you make every effort to keep your appointment

#### **4. Estate tax Changes**

##### **Temporary Estate Tax Relief**

***Temporary estate, gift and generation skipping transfer tax relief.*** Prior law phased-out the estate and generation-skipping transfer taxes so that they were fully repealed in 2010, and lowered the gift tax rate to 35 percent. The new 2011 law sets the exemption at \$5 million per person and \$10 million per couple and a top tax rate of 35 percent for the estate, gift, and generation skipping transfer taxes for two years,

through 2012. The exemption amount is indexed beginning in 2012. The law is effective January 1, 2010, but allows an election to choose no estate tax and modified carryover basis for estates arising on or after January 1, 2010 and before January 1, 2011.

The Clinton-era rate of 55 percent with a \$1 million exclusion was due to return for 2011. The compromise package sets for two years a rate of 35 percent with an exclusion amount of \$5 million. The cost of this provision was estimated at \$68 billion.