

2026 Edition Foreword

Without question, the most significant development in New Jersey drunk-driving law in the past year was the complete collapse of the nascent litigation challenging the scientific accuracy of the Alcotest 9510. As detailed in sections 10:29 and 10:30 *infra*, on December 19, 2025, the Supreme Court promulgated an order which eliminated the statewide stay on prosecutions based upon evidence derived from the Alcotest 9510 and shifted the task of determining scientific reliability to local trial courts.

How this new approach to determining scientific reliability will unfold should prove to be controversial, contentious and expensive. In a trial involving blood-alcohol evidence from the Alcotest 9510, the prosecution will have to affirmatively establish that the instrument is scientifically reliable under the criteria established by *Daubert v. Dow Chemical*, 509 U.S. 579 (1993) and *State v. Olenowski*, 255 N.J. 529 (2023). During any such Daubert hearing, both the prosecution and defense will need extensive expert testimony and documentary evidence in order to either establish or refute evidence of scientific reliability. The party who will be responsible for paying expert fees is an unresolved question. Theoretically, the local municipality funding the prosecution should be responsible for expert fees. Moreover, if the defendant is represented by the local public defender, the municipality will also be responsible for funding the necessary defense experts.

This is a lot to expect from a system of local prosecutors, judges and prosecutors who almost always work on a limited, part-time basis under minimal budgets, in a process that is greatly influenced by local politics. Moreover, the decision of the municipal court judge on the scientific reliability of Alcotest 9510 will merely become the law of the case and will in no sense be precedent for drunk-driving prosecutions in other municipal courts. Essentially, the reliability of the Alcotest 9510 will not be decided until a municipal appeal is considered by a panel of the Appellate Division.

One collateral consequence of the Court's December 19, 2025 order is that a local prosecution may be conducted by the county prosecutor or the attorney general; two entities that are both divorced from local political pressures and are in a superior position to fund the necessary experts for the State. Of course, in the

case of an indigent defendant with private counsel or one that does not have the financial means to hire the necessary experts, the prospect of a one-sided hearing on Alcotest 9510 evidence remains a distinct possibility unless a defense funding source can be found.

Another collateral consequence of the Court's order is the immediate release for prosecution of a backlog of hundreds of drunk-driving cases that have been subject to a judicial stay since May 1, 2023. This fact may portend dozens of Alcotest 9510 cases being tried simultaneously in municipal courts throughout the State without a binding determination as to the instrument's scientific reliability.

Beyond the foregoing, the case law from the past year established significant changes in Fourth Amendment jurisprudence related to drunk-driving and an expansion of prohibited defenses. As in past years, all of these topics and many dozens more will be detailed in the 2026 edition of this volume.

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