



THE ULTIMATE
GUIDE TO
NEW YORK
DWI LAW

*Arrested for Drunk Driving,
Now What?*

ATTORNEY CARL SPECTOR

Law Office of
CARL SPECTOR



The first drunk-driving laws were passed in New York in 1910, a decade after the mass production of automobiles began in the U.S. Soon after, blood alcohol content levels were introduced as a standard, and laws in the 1930's and 1940's set the bar at 0.15%. It is now 0.08%

DWI or Driving With Impairment

- » Having **blood alcohol content of 0.08%** and you're 21 years old or older.
- » Having **blood alcohol content of 0.04%** and you're driving a commercial motor vehicle.
- » Having **blood alcohol content of 0.02%** and you're younger than 21 years old.

DWAI or Driving While Ability Impaired

- » Having **blood alcohol content of over 0.05% and up to 0.07%**, or other evidence of impairment.
- » For drivers of commercial motor vehicles who are under age 21, **blood alcohol content of 0.02%** or other evidence of impairment.

In New York, one is ordinarily charged with both a DWI/DUI (driving while intoxicated) and a DWAI (driving while ability impaired). The reason that prosecutors do this is because a DWAI is what we call a lesser included offense. However, a DWAI is not a crime. It is a traffic infraction. The consequences of driving while ability impaired are not as severe as driving while intoxicated.

A DWAI conviction does not count as a prior DWI because a conviction for a DWAI is a traffic infraction. Technically speaking, a blood alcohol content level around a 0.06% and 0.07% is considered a DWAI. Thus for a person with a blood alcohol content of 0.08% or more, a DWAI may be a viable plea bargain option. Going from a case where you are charged with a DWI where your blood alcohol

content might be 0.10%, which is a crime, may be resolved in a plea bargain for DWAI.

UNDERSTANDING BLOOD ALCOHOL CONTENT TESTS

If you're charged with a DWI in the State of New York, there is a nationwide standard of a blood alcohol content of 0.08%. If you blow a 0.08% or more, you will be charged with a DWI. In the State of New York, a DWI is an unclassified misdemeanor which is akin to an "A" misdemeanor. In the State of New York there are three types of misdemeanors: an unclassified misdemeanor, an "A" misdemeanor, and a "B" misdemeanor. All of those are considered criminal offenses. If you wind up getting charged with a DWI in New York, you are going to wind up defending against a crime. You are advised to consult with an attorney about the case.

Whether you have been pulled over and refused a subsequent roadside breath test, or refused a blood or urine test at the police station, or if you have been pulled over and charged for drunk driving, you need to understand the situation in its entirety.

Refusing a Breathalyzer

New York is an implied consent state. While you have the right to refuse a breath test in New York State, doing so will make you vulnerable to severe civil administrative penalties, including the suspension of your license. If you are charged with a DWI or a DUI, which are essentially the same thing, and you refuse to take a breath test, the judge will suspend your driving privileges while the case is pending at your arraignment. You will receive two dates; one to come back on your criminal case and another one to appear at the Department of Motor Vehicles for a refusal hearing. A chemical test refusal hearing will be held within 15 days of your arraignment in front of the judge.

There are conditional licenses and hardship licenses that one might consider. Moreover, you will also present your case at a Department of Motor Vehicles Administrative hearing. However, if your request for driving privileges is denied,

your license will be suspended for a significant amount of time and no hardship licenses will be issued.

If you refuse a chemical test (blood or urine) for blood alcohol content (BAC), your license will be suspended at your arraignment in court, and revoked for at least one year (18 months for a second offense) at a Department of Motor Vehicles hearing. The penalties and fines for refusing to submit to a chemical test are separate from, and in addition to, the penalties and fines for alcohol or drug-related convictions. Regardless of what test was refused, you will be subject to a civil penalty of \$500 (\$750 for a second offense).

DWI Blood Tests

In New York State, the police are permitted to request that a motorist give blood to test for alcohol. If you have given blood after a DWI stop, hiring a lawyer who will challenge all NY DWI blood test results is the next step.

The following are typically some premises on which your lawyer will challenge DWI blood test results.

- » Was the blood drawn by an authorized person?
- » Was the blood drawn in a medically acceptable manner?
- » Was the blood sample preserved properly prior to testing?
- » Was the laboratory technician that performed the tests on the samples qualified to do so?
- » Was the equipment used to test the blood sample certified and in proper working order?
- » Will the prosecution bring into court to testify at your trial the person that drew the blood?
- » Will the prosecution bring in to court to testify at your trial the person that tested the blood?

Blood Alcohol Urine Tests

In order for the results of a DWI Urine test to be admissible in a New York court, the police must follow certain procedures:

- » The arrest must be based upon probable cause;
- » The police must properly warn against the legalities of refusing to submit or provide a urine sample;
- » The urine sample must be properly identified;
- » The sample must be properly tested;
- » The instruments that assist in analyzing the sample must be certified and in proper working order;
- » The test must be performed by a trained and certified technician, chemist or scientist;
- » The prosecutor must establish the chain of custody of the sample;
- » The prosecutor must turn over the results of the test to your attorney in a timely manner.

Chemical Test Refusal

In New York, if charged with a chemical test refusal, there will be a hearing that is held within 15 days of the arraignment. You are advised to attend that hearing because if you do not, you will have waived it. At such a hearing, a lawyer will have the opportunity to cross-examine the police officer. If the judge finds you are responsible for that chemical test refusal, that judge will recommend a suspension of at least one year and you will have a civil penalty of at least \$500. You have the right to appeal that determination.

One of the most critical things about the chemical test refusal appeal is that you must order the transcripts from the hearing and make sure that those transcripts get to the Department of Motor Vehicles Appeals Bureau. Furthermore, you must fill out a form and file that with the Department of Motor Vehicles

Appeals Bureau so that they are aware you are appealing. One of the little-known facts about the appeals process is that you are entitled to ask for a stay or a stoppage of the suspension that was just imposed upon you if you are found responsible for the chemical test refusal while the appeals process is going on. The other little-known fact is that it only costs \$10 to appeal a chemical test refusal hearing.

PENALTIES

I. DWI and DUI

In New York State, DWI and DUI mean the same thing: driving when you are not sober. The repercussions are grave. Aside from any bodily harm you may have suffered and/or inflicted, if found guilty of DWI, you now have a criminal record. Take a look at the penalties you will likely be facing for a DUI or a DWI conviction.



First DWI Conviction Penalties

- » You may be sentenced to a maximum of one year in jail.
- » A minimum six-month driver's license suspension.
- » Be required to install and maintain an ignition interlock device at your expense.
- » Be ordered to pay mandatory fines, ranging from \$500 to \$1,000.

If you are charged with a DWI in the state of New York and you are a first offender, your lack of prior record is to your advantage, a fact that should be capitalized upon by your attorney. You will have been fingerprinted so the court, the judge, the prosecutor, the district attorney and your attorney will know you do not have a prior DWI. It is important to know that a first offense does – if you're convicted or you take a plea – require a suspension, but it does not require jail time. It is

important to understand that while a first offender has all the defenses of any other DWI in the state, the individual does have certain leniencies that can be applied to that particular case.

Second DWI Conviction Penalties

- » If the second DWI conviction is within ten years of the first, your case may be enhanced and prosecuted as a felony in Supreme Court. You would then be facing enhanced penalties of a maximum of four years in prison.
- » If the second DWI is within five years of the first, you may be sentenced to five days of mandatory jail or 30 days' community service.
- » Your driver's license will be revoked for a minimum of one year.
- » You will be required to install and maintain an ignition interlock device at your expense.
- » Be ordered to pay fines ranging from \$1,000 to \$5,000.

If you have a DWI in the state of New York and you had a prior DWI conviction in the state of New York in the past 10 years, the prosecutor may enhance your case to a felony. In such a situation, it will be presented to the grand jury. While you have the right to testify in the grand jury, in many instances individuals choose not to. You will be prosecuted in the Supreme Court on a felony. There are enhanced penalties for felonies in the State of New York for DWIs. Those cases are incredibly grave. There is potential for state jail time, long terms of probation and long terms of having to install an ignition interlock device.

Third DWI Conviction Penalties

- » Up to seven years in jail.
- » Minimum revocation of driver's license for one year.
- » If third conviction is within five years of the prior, minimum of 10 days jail, or 60 days of community service.
- » You will be required to install and maintain an ignition interlock device at your expense.

- » Mandatory alcohol evaluation.
- » Be ordered to pay fines ranging from \$2,000 to \$10,000.

How a Lawyer Helps

Facing a DWI charge is stressful. You need an experienced lawyer to see you through the entire process, provide you with expert advice and counsel, guide you through the legal process and represent you in the courtroom. Over the years, we have learned that a prompt restoration of driving privileges after an arrest for DWI in New York assumes paramount importance.

Chemical Testing

It is essential to be mindful of a key issue that can have a major impact on whether you are convicted for DWI in New York: was breath, blood or urine testing conducted after the arrest and were the results over the legal limit? If these tests were performed, you are in some luck because that is where a lawyer can make all the difference in the world.

If, however, you refused to take a chemical test to determine your Blood Alcohol Content (BAC), your license is suspended right there at your arraignment. Your driver's license can then be revoked for at least one year after a hearing by the Department of Motor Vehicles.



Regardless of the situation you find yourself in, it is on your best interest to seek out the most experienced New York DWI Lawyer you can find.

II. Aggravated DWI

If you made the mistake of drinking too much and consequently deciding to drive, you could be arrested and charged with Aggravated Drunk Driving. Aggravated Drunk Driving is given to motorists in New York State when they have a Blood Alcohol Content of 0.18% or higher. An aggravated DWI is a misdemeanor and not a felony. However, an aggravated DWI has enhanced penalties, longer suspensions and higher fines,

and they must be handled by an experienced and confident criminal defense attorney

Penalties of an Aggravated DWI Charge

- » The potential penalties are more severe – as stated below:
 - » Fine \$1,000 – \$2,500
 - » Maximum jail time 1 year
 - » Revoked for at least one year
- » Plea bargaining becomes more complicated because these charges are treated more seriously. This is why it is vital to hire an experienced New York State Aggravated DWI Lawyer that can personally work on your case.

III. Underage DWI

It is illegal for a driver under the age of 21 to have consumed any alcohol. If you are younger than 21 years old and are caught driving with a BAC of 0.02% or higher, you have broken New York State's Zero Tolerance Law.

The Zero Tolerance Law

If your blood alcohol content is 0.05% or greater, the police may charge you with Driving While Ability Impaired (DWAI) or driving while intoxicated (DWI), and may prosecute your arrest in criminal court. If your blood alcohol content is 0.02% to 0.07%, you will be asked to appear at a DMV hearing. If the judge's findings support the charge, the penalty is a 6-month license suspension, a \$125 civil penalty and a \$100 suspension termination fee. Each additional offense will result in your license being revoked for at least one year or until age 21, whichever is longer, plus a \$125 civil penalty and a \$100 license re-application fee.

1st Offense Penalties

- » Suspended license for 6 months.
- » \$125 civil penalty.

- » \$100 fee for suspension termination.
- » Possible enrollment in the New York Drinking Driver Program (DDP) and all the associated costs (see below).
- » Possible ignition interlock device installation, and all associated costs (see below).

2nd Offense Penalties

- » License revocation for 1 year (or until you turn 21 years old).
- » \$125 civil penalty.
- » \$100 fee for suspension termination.
- » Possible enrollment in the New York Drinking Driver Program (DDP) and all the associated costs (see below).
- » Possible ignition interlock device installation, and all associated costs (see below).

A driver under 21 years old who refuses to take a chemical test under the Zero Tolerance Law is subject to a 1-year license revocation and a \$125 civil penalty. Underage DUI arrests in New York State carry a heavy burden that negatively impact an otherwise promising young person for decades. However, you still have some of the same rights and defenses that any other person charged with DWI in New York has. These cases are defendable and winnable. Because of the added complication of being underage, the person has a lot more to lose. Future employment, college admission and even current enrollment in college can be affected. An experienced lawyer is your safest and wisest bet.

IV. Felony DWI

In New York State, if you have been charged with a previous alcohol conviction within the last decade, you could face a felony DWI charge. Felony DWI is a serious crime, where you could face periods of jail time, lose your driving rights and pay high fines.

Obtaining Felony DWI Charges

- » When the defendant has a previous DWI conviction within the past 10 years. While there are other circumstances that can lead to felony charges involving a DWI, this is the most common.
- » Where the DWI itself is a misdemeanor but the driver is charged with some other felony, like vehicular manslaughter if someone is killed.
- » It is now a class “E” felony to drive while intoxicated with a child 15 years of age or younger in the car (Leandra’s Law). In addition, if the defendant is the parent, legal guardian, or custodian of the child in the vehicle, the police MUST file a report with Child Protective Services (CPS).

V. Commercial Driver DWI

Compared to other drivers, every driver holding a Commercial Driver License (Class A, B, or C) is held to stricter Blood Alcohol Content (BAC) standards, and faces tougher penalties, while operating a vehicle that requires a CDL license. If you have a CDL, all it can take is one beer and your career can be ruined.

CDL DWI Conviction Penalties

- » A single conviction for DWI, DWAI or having a blood alcohol content level of 0.04% or higher requires a minimum 1-year revocation of the driver’s license (3 years, if driving a vehicle that requires hazardous materials placards).
- » A second conviction within the driver’s lifetime results in permanent revocation, with a possible waiver after 10 years.
- » A third conviction results in a permanent revocation without any possibility of ever getting it back. Drivers who hold a commercial license should review the Commercial Driver’s Manual (CDL-10), available at motor vehicle offices, for additional information about penalties that apply to them.

VI. DWAI

In New York State, DWAI or Driving While Ability is Impaired tends to carry less severe penalties than a DWI or an Aggravated DWI conviction. A conviction to a DWAI is not a criminal conviction but instead a traffic violation. If you have been charged with a DWAI in New York, you need an experienced New York DWAI Lawyer represent you to protect your driving record and secure your future from a DWAI violation.

Penalties of DWAI

- » Driving While Ability Impaired (DWAI by alcohol) fine ranges from \$300 to \$500, to a maximum of 15 days in jail, and even 90 days' suspension of driver's license.
- » Driving While Impaired by a Drug (DWAI-Drug) fine ranges from \$500 to \$1,000, maximum jail time is 1 year, driver's license suspension for at least six months;
- » Driving While Ability Impaired by a Combination of Alcohol/ Drugs (DWAI-Combination) fine ranges from \$500 to \$1,000, maximum jail time 1 year, drivers license revocation for at least six months.

Additional penalties apply to second and third DWAI convictions. Although the penalties are less severe than a DWI, they can have a negative impact, such as markedly higher insurance rates and could impact your job or future employment opportunities.

SUSPENDED LICENSE

If you wind up pleading guilty or are found guilty of a DWI or DWAI, at the time of your plea and sentence you will lose your ability to drive. The judge will suspend all driving privileges. On a DWAI, you will be suspended for 90 days. On a DWI, the minimum will be a 6-month revocation from that moment that you take the plea and are sentenced.

Having your license suspended means you will lose your freedom to drive for a period before your license is returned to you. A lawyer at this point will fight for your privilege to drive and can help you secure a hardship license or maintain a conditional license.

Your attorney can ask the judge for a 20-day stay, which stops that suspension from the moment it starts. 20 days will be added on to your suspension period. If it was a 90-day suspension, it will be 110 days. However, you will have 20 days to go to the Department of Motor Vehicles to get a new post-conviction conditional license. 20 days is typically the amount of time that the courts and legislature and the Department of Motor Vehicles determines it takes for the DMV to be informed about your case. We recommend you go 14 days after the court case ends to try and get the conditional license.

Hardship License

In New York, if you are charged with a DWI or DUI, you will have to appear in front of a judge. When you do appear before a judge, if your blood alcohol content level is 0.08% or more, or if you refuse to take a breath test, the judge will suspend your privileges. If you do refuse to take a breath test, you are not eligible for a hardship license. However, if you do blow a 0.08% or more, you are eligible for a hardship license. A hardship license is not given by the Department of Motor Vehicles. It is only handed out by the judge. Ordinarily the process is to ask the judge to put the case on for a few days later for a hardship hearing. The purpose of the hardship hearing is to determine whether the judge will give you a hardship license based on financial hardship.

In the more rural areas of New York State, it is very difficult to get from one's home to one's place of employment without using a motor vehicle. There is not very much mass and/or public transit. Therefore, one might have to hire a driver or pay for a taxi. None of these options is easy on the pocket. Everybody is on their own income and it is fixed to some extent, of course. If you can prove to the court that based on your income it would be a financial hardship for you to essentially hire a driver, then the court would grant you a hardship license.

However, in the City of New York, getting a hardship license is a little more difficult due to the advent of copious mass transit. If you live in Brooklyn and you

have to go to Washington Heights, there are buses and subways, which would not create, in most cases, a financial hardship. Remember, a financial hardship does not imply that it is going to take you longer.

After your arrest for a DWI / DUI in New York, your driver's license will be administratively suspended at your arraignment and remain suspended until the end of your case. If you are an out-of-state driver, your privileges to drive in New York State will be suspended. State law provides you with an opportunity to try to get a hardship driver's license in New York State while your case is pending, in order for you to commute to and from your place of employment.

The factors that the court will consider are as follows:

- » You must not have refused to take a chemical test;
- » You must not have had a previous DWI conviction within the last five years;
- » You must testify at the hardship hearing that without your driver's license you would suffer extreme hardship and that there is no viable alternative means of getting to work other than driving yourself, you may have to provide documentation to support your hardship claims;
- » You must have a witness testify who supports and confirms your hardship claims;
- » Additional witnesses must confirm that there are no family members, friends or coworkers that could drive you to work.

Conditional License

In the State of New York, if you are charged with a DWI, you are required to appear before a judge for an arraignment. At that time, if your blood alcohol content is 0.08% or more, the judge will suspend your driving privileges or your driver's license, if you are licensed in the state of New York, while your case is pending. In such a situation, there is something called a conditional license. You are not entitled to a conditional license immediately after the judge suspends you at the arraignment. However, you are entitled 30 days later to go to the Department of Motor Vehicles and acquire a conditional license.

The conditions for this license are that it is for work, school or medical appointments. They will also give you a time slot on a specific date of your choosing when you may run errands and shop. These stipulations will be stated on the conditional license.

After a first-time conviction for DWI/DUI or DWAI, you may participate in the Drinking Driver Program (DDP) and receive a conditional license under the following circumstances:

- » If Department of Motor Vehicles determines you are eligible for the DDP;
- » If the sentencing judge does not stop your enrollment in the DDP;
- » If payment of the enrollment and program fees is complete;

The law mandates participation in the DDP, even if the driver is not eligible for a conditional license, for convictions of specific alcohol or drug-related violations, or in specific plea-bargaining situations.

It is important to note, however, that conditional driver's licenses are not permitted for commercial driver's licenses.

IGNITION INTERLOCK DEVICES

Any driver convicted of misdemeanor or felony drunk driving charges in NY are required to install and maintain ignition interlock devices at their own expense on any vehicles they own or operate for a minimum of six months. Ignition Interlock Devices are connected to a motor vehicle ignition system and measures the alcohol content of the operator's breath. As a result, the vehicle cannot be started until the driver provides an acceptable sample breath. For an Aggravated-DWI offense in New York, or any repeat alcohol or drug offense within five years, a judge is required to order the system installed on each vehicle owned or operated by the motorist during both the revocation period and any probation period that follows.

The Cost of an Ignition Interlock Device

The cost of the Ignition Interlock Device depends on the vendor and the level of ignition interlock service. It usually costs approximately \$100 for installation and a monthly fee of \$100. The individual that is convicted of DWI in New York has to pay to pay all the fees associated with installing and maintaining these devices.

While using the interlock device, you may be eligible to hold a conditional license. However, your license will be revoked if you fail to comply with the court's terms, or you are convicted of any traffic offense other than parking, stopping or standing.

FAQs

Is hiring a DUI lawyer worth it, and how can someone know they have the right person?

Whenever someone deals with the New York criminal justice system, not only will the judge expect the person to be represented by an attorney, it is also a requirement. The person must then decide whether they want a criminal attorney with DWI specific experience, or just any criminal defense attorney. The first thing to keep in mind is to try to get an experienced New York DWI attorney for the New York criminal justice system, so the person ought to seek out criminal defense attorneys who focus their attention or practice on defending DWIs and DUIs.

What happens if I have been pulled over and I have been drinking?

It is not illegal in the state of New York to be over the age of 21 and operating a vehicle after consuming alcohol, but it is illegal to consume alcohol to the extent that the person's operation of the motor vehicle would be impaired. If



someone only had two beers and their ability to operate the motor vehicle was not impaired, their admission that they only had two beers might not necessarily hurt them because there are many people on any given night who consume alcohol at a relatively moderate level and their ability to operate a motor vehicle is not impaired by that.

It is completely innocuous for someone who was at least 21 years old to admit to a police officer that they had only had two beers. There is a distinction between drinking some and drinking too much. However, because most people do not realize the blood alcohol content in their system may be higher than they would guess, it is wiser to err on the side of caution.

Why do judges think defending yourself is a bad idea in a DWI case?

Judges have their own opinions and attorneys know that most judges will require the person to get an attorney in the New York criminal justice system. It would be unwise for someone to not have an attorney because there are many ways that an attorney can protect their client's legal rights. An attorney can explain the ramifications of certain actions and they can navigate the waters of a DWI or a DUI case in a way that mitigates, diminishes or even removes any potential sentences, penalties or fines. The judges know this, because they see hundreds, if not thousands, of DWI cases every year.

Would it be illegal for a public defender to handle an entire DWI case?

Public defenders can handle an entire DUI case, although most people might not be financially eligible for a public defender, since there are eligibility markers and requirements. Such an individual would have to hire a private attorney.

A lot depends on the type of experience, background and focus the public defender had on DUI cases. The individual should also consider the type of attention they want as a person who has experienced this traumatic event in their life, because people ordinarily want more attention than a public defender can provide. On the other hand, a private attorney can give the client the attention

they need, could go into the details of the case and walk the client through the entire process.

Should I refuse the roadside breath test?

In New York, there are consequences over refusing to blow into the breath testing device. There is a general rule that states that a person should not take the test if they believe their blood alcohol content to be a 0.18% or more. The problem with that analysis is that people generally would not know what their blood alcohol content might be prior to blowing into that device, so someone who thought they might have a blood alcohol level of a 0.18% would in fact be more than double the minimum legal limit, because the legal limit in the State of New York is 0.08%.

While most people would not know what their blood alcohol content might be, they would know how much they had to drink over what period of time. The consequences of taking a breath test is that there would be a breath reading that the person is stuck with, even if it is defensible. Blowing a 0.08%, 0.09%, 0.10%, 0.11% or 0.12% would be a lot better than blowing 0.13% or higher, because they could get a better possible plea bargain, whereas the higher the readings are, the more problematic the plea bargaining.

A refusal to take the breath test will trigger a Department of Motor Vehicles civil case against them, and make that person subject to a civil penalty of \$500, as well as a loss of driving privileges in New York for one year, so there could even be consequences if the person refused the breath test.

There are other consequences for refusal, in that the prosecutor could view the refusal as an aggravating factor which might be used against the person if they went to trial. This would usually be a situation that cannot be changed, since the person would have already made the decision by the time they spoke to their attorney, although they should be aware that the refusal will need to be vigorously defended in conjunction with the criminal case.

What happens if I fail the roadside sobriety tests?

In New York, field sobriety tests are not conducted in the field at all, although it would depend on what municipality the person was in.

The roadside sobriety tests are not done on the roadside because when the person is arrested, the tests are conducted in the controlled environment of a police station in a special room equipped with a video camera, where they can measure how the person walks, based on lines on the wall and the floor. The general rule is that an individual should only attempt such tests if they are confident they will pass them. Should there be any doubt, field sobriety tests should not be attempted because they are recorded and could possibly be used against them at trial. Refusing to take these tests could also imply consciousness of guilt; officers might claim that refusing to take the tests indicates awareness that one will not pass.

What should someone do when the police ask them to say the alphabet backwards?

Most people cannot say the alphabet backwards, even if they were sober, intelligent, clear and were not under the influence of drugs or alcohol. I would probably refuse that test because it is not an ordinary test. Some police officers do ask people to recite the alphabet starting and stopping at specific letters. The individual is able to refuse to take these tests, and the general rule is that they should only attempt it if they knew they could perform it, which would be proof they were sober and not under the influence.

How can someone have their case dismissed before the DWI case?

A person who wants to hear a verdict has to commit to hiring an attorney with whom they can have honest and clear communication. This individual will commit to being educated by said attorney about the law, to ask the attorney to explain what is in their best interest. In order to have a case dismissed after a trial, the person will have to make a commitment to the long haul; going to trial in front of a judge or jury in getting a not guilty verdict.

That person must make a commitment to himself and the attorney, and to realize that the facts of the case may not be exactly as the police officer stated, or exactly how they stated and they must be cognizant and aware that evidence may come in that hurts the case. It would be their obligation to work with their

attorney to try to find a way to articulate the evidence that may, in fact, lead to a “not guilty” verdict.

What can I expect when I go to court?

The prosecutor will file certain papers and will inform the judge and your attorney of the results of any breath tests conducted. The judge will take that into consideration. The judge is required to then suspend your driving privileges while the case is going on, provided your blood alcohol content is 0.08% or more. This why it is important to have an attorney from the very beginning.

What kind of evidence would be used by the prosecution to convict me?

The evidence that would be used against somebody by the prosecution for a DWI would be the observations by the police officer. This includes their observations about your physical attributes; bloodshot, watery eyes, an odor of alcohol, unsteadiness and lack of balance and equilibrium, are all different kinds of evidence that may be used to prosecute you. Other indicators of sobriety (or its lack thereof) are how you performed the standard field sobriety tests of walk and turn, the one-leg stand, the HGN and the Romberg test.

Additionally, they may also use the blood alcohol content result from a test such as a breath test, a blood test or a urine test, as well as any admissions the person might have made, such as “Yes, I had three beers”.

What effect will the DWI have on my driver’s license?

In the state of New York, a DWI can have a tremendous effect on someone’s driver’s license. The driver will be suspended pending prosecution while the case is going on. But there might be a hardship license available in some cases. If someone does not appear for a refusal hearing, their driving privileges will be suspended or revoked.

What can I expect if I am convicted of a DWI? Can you illustrate some of the penalties and elaborate how it may affect someone's life?

If one is convicted of a DWI as a criminal conviction, they can expect a driving license suspension of six months, having to install an ignition interlock device for one year and a \$500 fine, as well as having to take DDP, which is a drunk-driving educational program. Having a conditional discharge means that they must stay out of trouble and not get re-arrested for a whole year.

What are some resolution options besides a DWI conviction?

In the state of New York, a DWI conviction is a misdemeanor. With the consent of the prosecutor and the acceptance by the judge, DWI's can be dropped down to a DWAI. This charge is a traffic infraction, which carries a shorter period of suspension, no ignition interlock device installation, a smaller fine and most importantly, no criminal conviction.

How can I win my DWI case?

There are many points in a DWI case that can be challenged. The idea is to challenge whatever points in that case that would lead to a successful result. Sometimes you can challenge the stop by the police, sometimes you can challenge the procedures used to give a breath test, and sometimes you can challenge the procedures used by the police to indicate that there was a refusal. The objective is to identify each of the points where a challenge can be made and put your best foot forward into each of those challenges.

What are the repercussions if someone had a vehicle accident and were arrested for DWI?

There aren't any specific repercussions in the law. However, when someone has been arrested for DWI and there is an accident that precedes the arrest for the DWI, very often the accident is an aggravating factor that may hinder a good plea bargain for the driver who was arrested for the DWI. Prosecutors

very often hold that against the individual who was arrested, trying to state that the accident was caused by the person who had the DWI because they were intoxicated.

What will happen if I have multiple DWIs?

In the state of New York if someone has a DWI conviction and then has another arrest for DWI, both of which are misdemeanors within ten years the second one can be elevated to a felony by the prosecutor. This is not an automatic consequence, but it is within the discretion of the prosecutor to treat the second DWI arrest as a felony. As a felony, DWIs are considerably more serious, the consequences are more over-reaching, including the possibility of having to go to state prison for 1-4 years.

Can you tell me more about a marijuana DWI charge?

Marijuana stays within an individual's system for approximately 30 days. The key to trying to defend against that would be to suggest that the police officer cannot prove that you were under the influence of marijuana at the time of the operation of the motor vehicle. It is important that you let your attorney know the circumstances of that DWI case and how you were operating the motor vehicle. Cases where a client was charged with a marijuana DWI where they were arrested at a checkpoint are where the police officer did not see much driving. This makes it harder for the State to prove beyond reasonable doubt that you were under the influence if they did not witness any aberrant driving, any difficulty driving, or any traffic infraction.

What are Miranda rights?

In New York, if you are charged with a DWI, there will more than likely come a time when the police officer will sit you down and read you your Miranda Rights. That will probably come much later than you are expecting. Very often, when you get pulled over, the police officer will ask you a series of questions.

Where are you going?

Where are you coming from?

Have you had anything to drink?

How much did you drink?

These questions will not be asked after they read you your Miranda Rights. These questions will be asked of you when they pull you over. These questions and the answers you provide are not necessarily subject to Miranda Rights. They are investigatory questions that the courts have allowed those answers to come in as evidence against you because at that point you are not in custody.

However, if you do have the unfortunate experience of getting arrested for a DWI, eventually you will be read your Miranda rights. It will be much later in the process. By then it is likely you will be more tired, but it is critical to understand that your right to remain silent and your right to have an attorney are both very real. Very often, these rights are read to you on a video following which you may be asked questions like “Sir/Ma’am, where were you coming from?” or “Ma’am/Sir, did you have anything to drink?” or “Ma’am/Sir, how much did you drink?” Be aware that you do not have to answer a question. Your case will not go any easier for you if you do. Lying would be a big mistake, but if someone says to you that you have the right to remain silent and then they ask you how much you had to drink, remain silent. Be aware that any answer that you give, the prosecutor will attempt to use against you at your trial.