A faded background image showing a hand holding a glass of wine, with car keys resting on a table in the foreground.

NEW YORK DWI GUIDE

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There is never a valid excuse for driving while drunk. This extends also to driving while under the influence of other mind and mood-altering drugs, as doing so puts the lives of the driver, all passengers, and all other motorists in danger. If you are unable to think, move, and act clearly, even in case of emergency, you should

not try to operate a motor vehicle. Attempting to drive while intoxicated or under the influence of drugs will easily alert local police, who have the power to impose fines and major penalties against irresponsible drivers.

When you have been charged with DWI (driving while intoxicated) or with DWAI (driving while ability impaired) in the state of New York, you can expect to face a number of penalties once you are convicted, and some of these consequences will last for months after you receive your sentence. However, despite New York's stringent DWI and DWAI laws, not every charge will result in an open-and-shut case. Repeat offenders will find it difficult, if not impossible, to convincingly argue against DWI and DWAI charges, but drivers arraigned for the first time may have some leniency. Despite New York's "Zero Tolerance" law regarding underage drivers and blood alcohol content (BAC) levels, police officers and state courts can overlook a slightly elevated BAC on breathalyzer test. While it is a challenge and most often not practical to try to have a DWI or DWAI charge dismissed outright, New York state courts may show a small amount of flexibility in imposing penalties.

In order to fight a DWI or DWAI charge imposed against you or a loved one, you will need the assistance of a qualified DWI attorney to argue your case in court. While you will likely still have to contend with all the legal consequences of a DWI or DWAI conviction, your attorney will fight to have your charges reduced based on your particular circumstances. Our New York law office has years of experience advocating for clients following DWI and DWAI charges, and we would be glad to defend you in court.



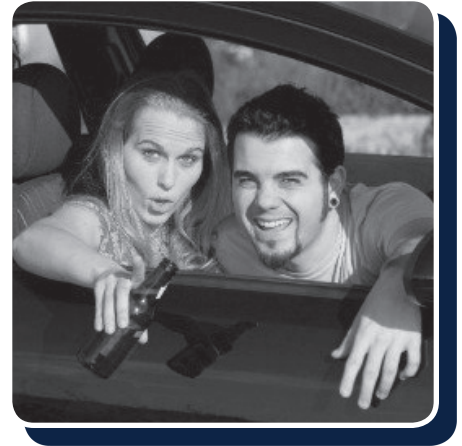
PENALTIES FOR DWI CHARGES IN THE STATE OF NEW YORK

The consequences for all the types of DWI charges are major, and they only escalate according to the severity of the crime. Under New York state law, individuals charged with driving while intoxicated for the first time will face a loss of driving privileges for at least six months, a fine of \$500 to \$1000, and a maximum jail sentence of one year. If convicted, they will have to install ignition interlock devices (IIDs) on their cars in order to demonstrate sobriety before driving in the future. Drivers charged with DWI for the second time must grapple with a class E felony conviction, and penalties include a one-year suspension of driving privileges, a fine of \$1000 to \$5000, and a maximum jail term of four years. A third DWI charge is a class D felony, and the consequences are unsurprisingly just as serious: a fine of \$2000 to \$10,000 and a maximum jail sentence of seven years.

Note that the above penalties apply only to driving while intoxicated, which concerns driving with a BAC level of .08 or higher—or of .04 or higher for drivers of commercial vehicles. Driving with a BAC level between .05 and .08 counts instead as driving while ability impaired by alcohol (DWAI/alcohol). Because the amount of alcohol in the bloodstream is lower, the penalties are somewhat reduced. A first DWAI/alcohol conviction results in a 90-day revocation of driving privileges, a fine of \$300 to \$500, and a sentence of up to 15 days in jail. A second conviction can incur a six-month suspension of one's license, a fine between \$500 and \$700, and a maximum of 30 days in jail. A third, fourth, or subsequent DWAI/alcohol conviction bears with it a fine totaling \$750 to \$1500 and a jail sentence of up to 180 days.

PENALTIES FOR DWI FOR YOUNGER OR SEVERELY DRUNK DRIVERS

The state of New York has different standards, often described as “Zero Tolerance,” for drunk drivers under the age of 21 years. In contrast to the .05 BAC minimum for most adult drivers to qualify for DWAI/alcohol, drivers under 21 will be charged with DWI if their BAC levels are at least .02. There is no jail time imposed for a first offense of the Zero Tolerance law, but driving privileges will be suspended for six months, and convicted drivers will be required to pay both a \$125 fine as well as a fee of \$100 to end the suspension. The consequences are similar for a second offense, but the license revocation can last for a full year or even until the driver reaches the age of 21.



There is a significant difference in driving ability between a driver with a BAC level of .08 and one with a .18 BAC level, and New York state law treats these cases accordingly. Drivers who are found to have a BAC level of .18 or above will be charged with aggravated driving while intoxicated (aggravated DWI), and while the amount of jail time served mirrors that for standard DWI convictions, the other penalties are more serious. A first-time aggravated DWI will result in a fine between \$1000 and \$2500 and a revocation of one's driver's license for at least one year. The fine increases somewhat to \$1000 to \$5000 for second-time offenders, and driving privileges are suspended for at least 18 months. For a third conviction, the fine increases again to a sobering \$2000 to \$10,000.

Though most DWI cases are clear-cut, New York state law is well aware that not every case has an outcome set in stone. If you are charged with DWI or DWAI/alcohol, your arresting officer is required to prove that you were in fact both operating your motor vehicle at the time of the arrest, that you were intoxicated according to the results of a correctly administered chemical test, and that the officer lawfully stopped your vehicle. If your attorney can prove that any of the above criteria is inaccurate, the penalties that you will face upon conviction may

change. For further help defending yourself in court, contact our team of experienced DWI attorneys for guidance and support as you prepare to fight your DWI or DWAI/ alcohol charge.

FREQUENTLY ASKED QUESTIONS | NEW YORK DWI GUIDE

What is the Legal Blood Alcohol Content?

Before breathalyzers were invented, there was common law DWI, and that is when you can't pass a field sobriety test and you smell like alcohol. Since the invention of the breathalyzer, there's a statutory amount that you can drink before driving. The amount that you can have, as far as a blood alcohol content level goes has gradually gone down over the years for safety purposes. The nationwide BAC level, and New York State adheres to this, is a .08% BAC. It is the least amount that you can have and be charged with DWI. If you are under the age of 21, and blow lower than the .08, and that is a different case entirely. If you blow a BAC up to .17, you're still within a DWI and .18 is where you cross the line into aggravated DWI.

What Are the Penalties for First Time DWI Arrest?

I had a call recently from a client asking what the repercussions are regarding a first-time DWI offense. Normally, a DWI has accompanying charges so that there's probable cause for the officer to pull you over. Usually it is a lack of using a turning signal, a registration, or inspection problem, and then you've got the actual DWI charge.

There are usually a couple of charges that the police make, and that is your BAC or blood alcohol content statutory amount, and then your common law DWI. Having said all that, there's a lot of charges floating around. We get it down to one charge, and that's going to be some form of a DWI. The concern here is what the repercussions of either being found guilty of that charge or



pleading to that charge are. What you're looking at is no jail time, a fine and suspension of your license.



How Much Does a DWI Attorney Cost?

I would say the majority, if not most, of my clients come in and they're concerned about the cost of hiring an attorney, such as myself, to represent them in a DWI situation. That's always an issue, and I understand that. I've got to tell you that if you look at hiring a big city firm, you're going to be looking at somewhere around four or five thousand dollars. Locally, that is not the case. I charge \$1,500 for a first time DWI, and \$2,000 for an aggravated DWI. If it is a felony DWI, then my charge is \$3,500 to resolve that for you.

Will I Spend Time in Jail for DWI?

Recently, a client came in and she was very distraught because she had received a DWI, had gone through the whole system with the fingerprinting and picture, and the whole nine yards which was very intimidating for her and she was crushed. She was extremely nervous about whether or not she was going to have to go to jail on a first-time DWI charge. The answer is no, you're not looking at jail time in this county. You are, however, looking at a fine and suspension or revocation of your license, and there's going to be an annual cost involved for the next three years which usually adds up to around \$750.

What is Leandra's Law?

Recently, I had a client come in being charged with moving violations and DWI. She had the children in the car and actually had an accident; a horrific situation. She wanted to know the implications. Implications are severe to be charged with DWI and have children in the car. Under Leandra's Law, it is required that she be charged with a felony and prosecuted very severely. That is something you definitely do not want to do. You do not want to drink and drive, and you certainly do not want your children in the car.

Will I Lose My License Because of DWI?

I had a client call recently, and he was charged with a lot of moving violations and a DWI charge, and he was concerned whether or not he was going to lose his license. It is New York State law that you lose your license at arraignment, or your first appearance, pending prosecution. You're not allowed to have your actual license while you're going through the prosecution steps in litigation. This is enforced very strictly in city court and locally.

There is, however, a requirement that you have a hearing, which is pursuant to the Constitution, whether or not they have probable cause to go and do that. An attorney can defend that and request that hearing. In your outer courts, it is possible for a different disposition on that, which I can get into specifically when you come in for a consultation. Additionally, there is a license that you can get conditionally so that you do have some privileges while you do not have your actual privileges that the judge has taken.

Can I Get a Conditional License?

You are entitled to a conditional license if you make certain criteria and pay certain amounts. All you're going to be able to do is go to school, to work, and to medical appointments. Then you're going to have a block of time where you are going to go and register with Department of Motor Vehicle when you want to go grocery shopping and have that free block of time, normally three hours. You are entitled to that if you meet the particular criteria.

Can I Get a Hardship License?

Here in the country, a hardship license is granted very easily and routinely because we're rural. We must drive, whether it's to work, to school, for groceries or whatever. We can't walk, take the bus, take the subway, or call an Uber. The court almost has to go and give you that hardship license; there's no good reason not to. The difference in a city such as Buffalo or Erie is that they do have so many different modes of public transportation or transportation such as taxi or Uber available so that you can move very easily within the city, so it's extremely unusual for the judge to grant a hardship license in the city like that.

What is a Marijuana DWI Charge?

A marijuana driving while ability impaired or intoxicated is somewhat different than an alcohol related one in terms of defense. Certainly, you are charged the same. This, of course, is going to have to be common law because there's no breathalyzer yet for marijuana. It's still a DWI charge and prosecuted the same way, but defended differently. The reason for that is because there is residual marijuana in your system for up to 30 days, and they need to go and prove that you just smoked a joint. My defense, of course, is you smoked that joint a long time ago and you shouldn't be charged.

Are There Worse Penalties for a Second DWI Arrest?

I had a client contact me that had his second DWI charge, which is not good. It's mandatory that if you've been convicted of a DWI within the preceding 10 years, you're second charge is a felony. Felonies are extremely detrimental to people in New York State. You could be looking at state time and thousands of dollars in fines. You need to go and hire a very good DWI attorney to take care of that for you.

What If I'm Arrested for Underage DWI?

I represented an individual who was a high school senior in a small town, and was 17 years old, obviously under the age of 21. He was actually just moving his car from his girlfriend's house to his parents and didn't use a turning signal. There was a local festival going on and there were a lot of Deputy Sheriffs out that day. They saw that he didn't use the turning signal, so they pulled him over and they had probable cause to go through the field sobriety, give him the breathalyzer, the whole nine yards.

Now, a typical under-21 charge is anywhere from .01 to .07, and that normally is not prosecuted locally; that usually goes to the Department of Motor Vehicles. However, my client was charged with a .09, so they prosecuted him locally in the town court, and he was looking at some severe penalties. What I was able to do is, after several appearances, work with the prosecutor. We got the court

to agree to go and reduce the BAC on papers and we ended up at Department of Motor Vehicle court.

Will I Lose My Job Because of a DWI?

I had a gentleman come in who had received a DWI charge, and he was very concerned how that may affect his job. His particular case, I don't think was going to because he had a desk job. The state is not going to go and advise his employer directly that he received a DWI, so I don't see any causation or reason for him to lose the job; I don't see them even finding out about it.

Now, it becomes different if you drive for a living, such as a bus driver or trucker, or if you're a pilot. These are going to be huge problems because you're driving ability is an issue here, and you could lose your job because of this. In fact, you're probably looking at some kind of suspension or revocation of your license, so you won't be able to go and continue with that job in any event. It's very important to contact me early and see how we can go and work this out to your advantage.



ABOUT THE AUTHOR

For over 30 years, attorney Scott F. Humble has represented clients in the general practice of law with emphasis of financial restructuring and personal injury accidents.

Scott received his law degree in 1988 from Thomas M. Cooley Law School and his undergraduate B.S. degree in 1984 from the State University of New

York. He is licensed to practice in the State of New York and the Commonwealth of Pennsylvania and before the U.S. District Courts for the Western Districts of New York and Pennsylvania, as well as the U.S. Bankruptcy Court for the Western District of New York and the Middle District of Pennsylvania. Attorney Humble is a member of the American Association for Justice, the National Association of Consumer Bankruptcy Attorneys, Inc., the Erie County Bar Association, the Jamestown Bar Association, and the Bar Association of Northern Chautauqua County.

