

Understanding DWI Defense



Law Offices of Kevin P. Sheerin
323 Willis Avenue, Suite 1
Mineola, New York 11501
(516) 248-3494
Toll Free (888) 998-9984

www.SheerinLaw.com

Types of DWI Charges

There are six different offenses that may trigger a DWI charge: (1) driving while ability impaired by alcohol; (2) driving while intoxicated; (3) aggravated driving while intoxicated; (4) driving while ability impaired by drugs; (5) driving while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs; and (6) zero tolerance, applicable only to drivers under 21 years of age. Commission of each offense requires different types of conduct, and the applicable penalties for each offense vary based on the offense itself. It is important that you identify the type of DWI offense with which you were charged and understand the information specific to that charge.

Driving While Ability Impaired by Alcohol (DWAI)

To be found guilty of a DWAI, one must drive a vehicle with a blood alcohol content (BAC) greater than .05%, but less than .08%. The first DWAI offense is a traffic infraction; a second DWAI offense committed within five years of the initial offense is also a traffic infraction; a third DWAI offense committed within ten years of the initial offense is a misdemeanor. (For the purpose of DWAI and all other DWI type offenses, length of time from the initial offense is measured from the date of conviction, not the date of the ticket or charge.) The first DWAI offense carries a fine of \$300-500, a jail sentence of up to fifteen days, and a 90 day driving license suspension. The second DWAI offense carries a fine of \$500-750, a jail sentence of up to thirty days, and a driving license revocation of at least six months. The third, and any subsequent, DWAI offense carries a fine of \$750-1500, a jail sentence of up to 180 days, and a driving license revocation of at least

one year if the offense occurred within five years of the previous DWAI offense.

Driving While Intoxicated (DWI)

This is the most well known DWI type charge. To be found guilty of a DWI, one must drive a vehicle with a BAC of .08% to .17%. The first DWI offense is a misdemeanor; a second DWI offense committed within ten years of the initial offense is class E felony; a third DWI offense committed within ten years of the initial offense is a class D felony. The first DWI offense carries a fine of \$500-1000, a jail sentence of up to one year, and a drivers license revocation of at least six months. The second DWI offense carries a fine of \$1000-5,000, a jail sentence of up to four years with a minimum of five days in jail or thirty days community service, and a driving license revocation of at least one year, in addition to ignition interlock and alcohol assessment. (Ignition interlock is a device installed in the vehicle of a convicted offender. The driver of the car must exhale into the device before attempting to start his or her car. If the device detects a BAC of .025% or higher, the car will not start. While the car is running, the ignition interlock device will require additional breath samples at random intervals. This is to prevent a sober individual from breathing into the device to allow a inebriated person from starting the car.) The third, and any subsequent, DWI offense carries a fine of \$2,000-10,000, a jail sentence of up to seven years, with a minimum of ten days in jail or sixty days community service, and a driving license revocation of at least one year, in addition to ignition interlock and alcohol assessment.

There are two types of DWI charges. The first one, which is mentioned above, requires that the driver of a vehicle register a blood alcohol content of at least .08%. The second allows a police officer to charge a driver with DWI if that police officer has reason to believe that the driver was under the influence of

alcohol while driving.

Aggravated Driving While Intoxicated (ADWI)

To be found guilty of a ADWI, one must drive a vehicle with a BAC of at least .18%. The first ADWI offense is a misdemeanor; a second ADWI offense committed within five years of the initial offense is class E felony; a third ADWI offense committed within ten years of the initial offense is a class D felony. The first ADWI offense carries a fine of \$1000-2,500, a jail sentence of up to one year, and a drivers license revocation of at least one year. The second ADWI offense carries a fine of \$1000-5,000, a jail sentence of up to four years with a minimum of five days in jail or thirty days community service, and a driving license revocation of at least eighteen months. The third, and any subsequent, ADWI offense carries a fine of \$2,000-10,000, a jail sentence of up to seven years, with a minimum of ten days in jail or sixty days community service, and a driving license revocation of at least eighteen months.

Driving While Ability Impaired by Drugs (DWI-drug)

To be found guilty of a DWI-drug charge, one must drive a vehicle while his or her ability to drive is impaired by drugs. The drugs covered by the DWI-drug law include illegal drugs such as marijuana and cocaine, but also some prescription medications. The penalties associated with a DWI-drug conviction are identical to the penalties associated with a DWI conviction, and can be found above.

Driving While Ability Impaired by a Combination of Alcohol or Drugs (DWAI-combination)

To be found guilty of a DWAI-combination, one must drive a vehicle while his or her ability to drive is either impaired by (1) the combination of multiple drugs, or (2) the combination of alcohol and any drug(s). The first DWAI-combination offense is a misdemeanor; a second DWAI-combination offense committed within five years of the initial offense is class E felony; a third DWAI-combination offense committed within ten years of the initial offense is a class D felony. The first DWAI-combination offense carries a fine of \$500-1000, a jail sentence of up to one year, and a drivers license revocation of at least six months. The second DWAI-combination offense carries a fine of \$1000-5,000, a jail sentence of up to four years, and a driving license revocation of at least one year. The third, and any subsequent, DWAI-combination offense carries a fine of \$1000-5,000, a jail sentence of up to seven years, and a driving license revocation of at least eighteen months.

Zero Tolerance

The zero tolerance offense applies only to drivers under the age of twenty-one years who drive while under the influence of alcohol. If a driver under twenty-one years of age has a detectable blood alcohol content of .02 to .07 percent and operates a vehicle. The penalty for a first time offender is a civil fine of at least \$125 and a six month suspension of his or her drivers license, followed by a \$100 suspension termination fee. The penalty for a second offense is a civil fine of at least \$125 and revocation of the offender's drivers license for the longer of one year or until the driver turns twenty-one, followed by a \$100 re-application fee. For example, if the driver is seventeen years of age at the time of his second zero tolerance offense, he will lose his drivers license until he is twenty-one, a

period of four years. However, if the driver is aged twenty years and eleven months at the time of his second zero tolerance offense, he will lose his drivers license until he is aged twenty-one years and eleven months, a period of one year, which is longer than the month span until his twenty-first birthday.

Statute of Limitations

A statute of limitations is a time period within which the prosecution must bring charges or lose the ability to press charges against the alleged offender. In New York State, the statute of limitations for a petty offense such as a traffic violation is one year; the statute of limitations for a misdemeanor is two years; the New York statute of limitations for class E and class D felonies is five years. The time period for the statute of limitations starts to run on the date of the commission of the offense. The statute of limitations may be tolled, or stopped, during periods when the alleged offender is continuously outside the State of New York or when the location of the defendant is unknown and cannot be discovered with reasonable diligence on the part of the prosecution.

Because the prosecution is only required to bring charges before the statute of limitations expires, it is unlikely that an alleged offender will be able to escape punishment by hiding from the law. Intentionally missing court dates or other proceedings will only hurt you, and will not cause the prosecution's case to expire. It is best to attend all proceedings at which your presence is mandated by the courts.

Defenses

There are numerous defenses available to individuals charged with DWI

type offenses. Each will fall into one of four general categories: (1) challenging observations of the driver's pre-stop behavior; (2) challenging observations of the driver's post-stop behavior; (3) challenging the validity of field sobriety tests; and (4) challenging blood alcohol content measurements.

Challenging Pre-Stop Behavioral Observations

In many DWI type cases, the prosecution's main witness will be the police officer(s) that stopped and ticketed the driver. Police officers will stop cars whose drivers exhibit suspicious behavior, including, but not limited to, swerving, excessively high or low speeds, and hesitation at green lights or intersections. Potential defenses include offering alternative explanations for the conduct observed and regarded suspicious by the police officer. For example, a driver might be hesitant at an intersection or drive at a reduced rate of speed when he or she is driving in an unfamiliar neighborhood and looking for street signs.

Challenging Post-Stop Behavioral Observations

The prosecution may also rely on the police officer's testimony about the driver's conduct and behavior after the stop. Some suspicious behaviors that can be important to the prosecution's case includes, but is not limited to, slurred speech or bloodshot eyes. Again, potential defenses will include explanations for the observed conduct other than alcohol or drugs. For example, an individual may have bloodshot eyes due to spring allergies.

Challenging Field-Sobriety Tests

When a driver is stopped and the police officer(s) suspect intoxication, the police officer may administer a field sobriety test. Some common field sobriety

tests include asking the driver to recite the alphabet, asking the driver to walk in a straight line, and asking the driver to balance on one foot. A good defense proposes alternative reasons that might cause the driver to fail a field sobriety test. For example, a driver may be unable to recite the alphabet either forwards or backwards due to unfamiliarity with the English language. This is an especially viable defense given the vast plenitude of nationalities, and the correspondingly great number of languages spoken, in New York City.

Challenging Blood Alcohol Content Measurements

In many DWI type offenses, the prosecution may rely on a blood alcohol content measurement taken at the scene by a police officer. A common defense is to challenge the accuracy of the device used to measure BAC. This can be especially important when the registered BAC is at a “borderline” number. For example, if a zero tolerance offense is based on a BAC reading of .02, it may be possible to argue that the actual BAC of the driver was .019, which is below the threshold necessary for a zero tolerance offense and would leave the individual's driving record unscathed.

Although less common, it may also be possible to offer non-drinking alternative reasons for the BAC reading. For example, the alcohol content in some mouthwashes is comparable to the alcohol content of hard liquor – original Listerine has a listed alcohol content of 26.9%. An individual who has rinsed his mouth recently is likely to test for a high BAC at the time of a traffic stop.

Legal Options

If you have been ticketed for a DWI type offense, it is in your best interest to

contact a DWI attorney to help prepare your defense. While all lawyers who have passed the New York State Bar Examination are technically qualified to help present a DWI defense, only attorneys with experience and specialization in defending DWI cases will know the intricacies of presenting a complete defense.

Written and compiled in June 2010 by Andrew S. Leung