

# **HOW TO SURVIVE YOUR NEW YORK DWI ARREST**

**FOR THE FINGERLAKES REGION  
2012 Edition**

**“The Local Advantage”**

**LAWRENCE NEWMAN, ESQ.  
Attorney & Counselor at Law**

**504 North Aurora Street  
Ithaca, NY 14850  
607-229-5184**

**[www.ithacadwi.com](http://www.ithacadwi.com)**

**<http://ithacadwi.blogspot.com>**

## INTRODUCTION

If you are reading this, you were probably recently arrested for DWI. You may be angry and scared about the charges with which you are accused. A DWI charge and arrest can be a serious, life altering event. You may even be disappointed and upset with yourself over the way things turned out.

Right now, what you need most of all is an attorney you can trust. You need a local DWI lawyer who “knows the ropes” in the area of New York DWI law, and most especially the Upstate New York Courts. You need an experienced attorney who keeps up with the latest legal cases and scientific information concerning New York DWI cases.

Unlike most generalist attorneys who handle many areas of law, almost every one of the cases for which I am retained are DWI, criminal defense, and auto-related cases. This enables me to give you the best possible representation for your DWI case.

Like most people, you are probably concerned with the prospect of having to hire an attorney. Because of this, I offer a **Free DWI Consultation**. If you decide I am not the attorney for you, you owe me nothing. This free DWI consultation allows us to discuss your case in detail. You can receive your free consultation by calling **1-607-229-5184**.

We will discuss:

- **The particulars of your DWI Case**
- **The laws regarding New York DWI Cases**
- **The consequences of a DWI conviction**
- **New York DWI vs. New York DWAI**
- **How to keep your license from being suspended**
- **My Fees and the Scope of my representation**
- **The pros and cons of a Jury Trial or a Bench Trial**
- **...and much more.**

I believe that with increased knowledge there is power and a lessening of fear. Not because your DWI is going to vanish or disappear; but because with your new and better understanding of the DWI process, you will know your options and how to proceed. It is my sincere hope that at the end of our consultation, you will become more relaxed and feel less distressed over the charges you are currently facing.

**I handle the following types of cases in Tompkins, Broome, Seneca, Tioga, Yates, Cortland, Cayuga, and Schulyer Counties:**

- DWI - Driving While Intoxicated
- DWI 2nd and DWI 3rd
- DWAI- Driving While Ability Impaired
- DWI Refusal
- AGGRAVATED DWI
- UNDER 21 DWI AND DWAI
- DWI suspensions and hearings from Drunk Driving
- AUO 3<sup>rd</sup> and Traffic Violation matters
- Marijuana possession and sale
- Injuries as a result of a car or truck accident

**What makes me different?**

- **Accessible 24 hours a day/ seven days a week/ 365 days a year**
- **My clients receive my cell phone number**
- **My clients can fax and email directly to my phone**
- **I live in Ithaca, so all the Upstate County Courthouses are my home turf**
- **I will travel to you if you don't have transportation**
- **I charge fair, reasonable, and flat fees on DWI (criminal) cases**
- **I represent "your" interests and work to satisfy "your" goals**
- **I represent you at all DMV administrative license hearings, if necessary**
- **I accept checks, visa, mastercard, and paypal**
- **I clearly and regularly communicate with you concerning options at every stage of your proceedings**
- **You talk directly to me and not an associate or paralegal**
- **I provide you with written information so that you can make informed and educated decisions**

Please be aware that many changes in New York laws surrounding DWI charges and prosecutions became effective 2010. As a result, much of this new legislation has not even been reviewed by the courts. Therefore, my legal advice on these topics may change as the Courts provide us with guidance on these new areas of law.

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# CHAPTER ONE

## THE NINE BIGGEST MISTAKES PEOPLE MAKE AFTER BEING ARRESTED FOR DWI

### 1. Waiting too long to hire an attorney.

You heard it said, “if you snooze, you lose.” After their arrest for a DWI, many people are angry, upset, scared, and confused. They are often embarrassed and would rather not deal with their situation. Some people wait to call an attorney until only days before their first Court appearance. The great majority of the time, they are afraid to talk to their family or friends because they do not want to be judged. So often they end up doing nothing but waiting and hoping it will all go away. The truth is that the DWI can be a nightmare if it is not dealt with quickly and with action.

**Your PROACTIVITY** can decrease fear and increase certainty.

1. Time can be your friend or your enemy depending upon how it is used.
2. Inactivity after a DWI case is always a bad idea.
3. The problems with waiting to hire an attorney can only magnify over time.

Many DWI cases are successfully defended based upon learning the details of the stop and the arrest. **A Successful Defense is always in the details.**

- The defense of the case may require a visit and an investigation of the scene.
- The defense of the case may require a discussion with potential witnesses.
- The defense of the case may hinge on the memory of the events and activities before and after the stop and arrest.
- The defense of the case requires immediate investigation because memories fade, roadside conditions can change daily due to weather, videotapes can get erased, and witnesses can move or prove difficult to locate.
- The defense of the case requires pinpointing timelines. When each and every event occurred can be crucial, such as, when the stop occurred, when statements were given, when the Miranda warnings were given,

when the Field Sobriety Tests were given, and when the arrest was made.

- The defense of the case may require a thorough and detailed analysis of how the Field Sobriety Tests were instructed and how they were performed.
- The defense of your case may involve your past medical history, and obtaining documentation of GERD (gastro-esophageal reflux disease), Diabetes, asthma, COPD (chronic obstructive pulmonary disease).
- The defense of the case may require analyzing how the Police Officer recorded his observations, the words he used, his notes about the stop and the arrest, and his filling out police forms and records. These pieces of evidence can all prove significant to a successful defense.

### **When should I hire a DWI attorney?**

**Immediately.** New York law requires that you have **45 days** after your arraignment (also called the initial appearance) to file any and all Pre-trial motions. An experienced DWI attorney will immediately **demand** that the prosecution hand over all discovery documents and all proof that they are going to use against you. The government (the DA) has **15 days** to respond to this demand. If you fail to hire an attorney and you do not file any pre-trial motions (challenging the probable cause of the stop, the probable cause of the arrest, and the voluntariness of your statements), you then give up your right to fight the stop, the arrest, and all evidence that came from them.

15 days or 45 days is NOT a lot of time to prepare if you wait to the last minute to begin.

In short, the sooner you act, the better chance I will have in providing the best possible DWI defense.

## **2. Not hiring an experienced and local DWI attorney.**

My practice focuses only on DWI, criminal defense, and car accident cases. I am a member of the National College of DUI Defense. The NCDD is an organization which only allows membership for criminal defense attorneys who are dedicated to the defense of citizens accused of driving under the influence. I am certified as a Breath Alcohol Technician according to the U.S. Department of Transportation, Federal Regulation 49 Part 40. I am a Doctor of Chiropractic with a B.S. in Human Biology. This background helps with many legal issues that surround auto, forensics, and DWI case

defense which quite often intersect with scientific areas of expertise, such as anatomy, physiology, and toxicology.

The majority of my retained clients are New York DWI cases. New York DWI laws are complicated, and techniques in defending DWI are constantly changing. That is why it is important to find a lawyer who stays on top of the current DWI laws, trends, and what occurs in the Upstate New York Courts everyday. I am that lawyer.

Furthermore, I concentrate my Continuing Legal Education on DWI specific seminars, rather than general criminal law issues. This summer was selected to attend the National College of Criminal Defense in Macon, GA. We worked on trials for 2 weeks. Last summer I attended the NCDD DWI trial workshops held at Harvard Law School. This assures I always have the most current, up-to-date information to benefit my clients.

### **3. Not taking the matter seriously.**

New York State has no expungement law so if you are convicted, this is a charge that will follow you for the rest of your life. In fact, a conviction will stay on your record even after your death. The additional insurance charges alone could cost you thousands of dollars. Also, a NY DWI or DWAI Drug charge will be used as a predicate offense if you receive another within a 10 year time period. For this second DWI, you will most likely be indicted as a Felony DWI, class E which could mean a real possibility for prison time.

### **4. Continuing to drive after your license has been taken away.**

No need to tempt fate. If your license has been taken, suspended, or revoked, you are only hurting yourself if you continue to drive. "Driving while license invalid" is a misdemeanor in New York State, and punishable by up to a year in jail. Not to mention the complications it will pose in your DWI case.

### **5. Not taking full advantage of your constitutional rights.**

This usually happens when you try to handle the case on your own, or hire an attorney not well versed in DWI laws. There may be numerous areas of your stop and arrest that were unconstitutional. Defense Pre-trial motions must be filed (within 45 days) to:

- Contest the constitutionality of the stop
- Contest the constitutionality of the probable cause to arrest
- Contest the constitutionality of the Miranda rights
- Contest the manner in which roadside tests were given

- Contest the use of a Portable Breath Tester
- Contest the constitutionality of any search and seizure
- Contest the constitutionality of the refusal

## **6. Failing to appear in Court.**

If you do not show up for a Court appearance, the Court will issue a bench warrant for your arrest and revoke any bond. The next time you are stopped for a traffic infraction, you will be spending some time in jail and posting a bond for your future appearances.

## **7. Talking to anyone but an attorney about your case.**

Anything you say to them can be used against you. Talking to friends, family, etc. may be nice and comforting, BUT EVERY CASE IS DIFFERENT. Just because something happened in your friend's case, doesn't mean it will happen in yours. REMEMBER: Different counties, different judges, different District Attorneys, and different facts mean different results. I can tell you from years of experience in hundreds of courtrooms over a 7 county area that case outcomes can vary based upon time and place.

## **8. Thinking that by talking to numerous attorneys you will then be able to handle it on your own.**

You need to have an attorney go to Court with you. There is no way around it. It has been said that "an attorney who represents themselves in court, has a fool for a client." EVEN ATTORNEYS charged with DWI will hire a DWI attorney to represent them in court. What does that tell you?

You need an experienced DWI attorney to explain not only the law but options specific to **your case** and, most importantly, how your decisions can impact your future. Besides it is highly unlikely that any Judge in any Court I know would allow you to go "pro se" (represent yourself) for a DWI criminal misdemeanor.

## **9. Just pleading "Guilty" to the DWI to get it over.**

**If I plead "Guilty" do I really even need a Lawyer?**

I have many clients give me a call and say something along the lines of . . .

"I am guilty. I just want to plea guilty and get this over."

My answer is always a VERY strong "YES!" My job isn't simply to get innocent people found not guilty, or to get guilty people "off."

My job is to make sure that you are treated fairly and receive fair treatment throughout the process. I also think it is of the utmost importance to understand all of your options and how the decisions you may make today can affect your future.

In the large majority of cases you will facing **NOT ONE but TWO different DWI charges**. These are the DWI “per se,” which is based strictly upon your blood or breath test results, and the DWI “common law” charge based upon the police officer’s (trooper/deputy) opinion. That is why you received two UTTs for DWI. One says, VTL 1192 (2) and the other VTL 1192 (3).

In New York State, DWI has a very large punishment range. These can range from license suspensions to revocations of 90 days or up to a year. The Court Surcharges can range from \$260.00 (for a DWAI) and many hundreds more for a DWI. The fines can range from the hundreds of dollars to the thousands as well. Punishments can include years of **probation** where you cannot drink alcohol or be around anyplace serving it for years. The conditions of your probation can be as wide as you can imagine. If your plea bargain is not properly negotiated, you could end up with some overly harsh conditions. Misdemeanor DWI probation is 3 years. Felony DWI probation is 5 years.

Good negotiations may help you avoid having a deep lung device (ignition interlock device) attached to your car. This is an apparatus that requires you to blow into it to start your car, and periodically while driving. If you have friends or business associates in your car, it can be quite embarrassing. Not to mention, it costs about \$90 per month to monitor... a price paid by YOU. Over the years, it can cost you thousands of dollars.

Other conditions on your probation could be large amounts of community service, costing you money when you are not working. Some Courts are also now imposing weekends in the county jail on first time DWI offenses.

Another, and most important consideration is that if you plead guilty, you have 100% chance of being found guilty and having a DWI conviction on your record. New York State has no Expungement law so your DWI record will stay with you for life.

Sometimes, you have the opportunity to be found not guilty at trial, which is not necessarily the same thing as being found innocent. If your rights were violated, etc., a trial is usually the only chance for you to keep this off your record. You could even have the chance of being found guilty to the reduced charge of DWAI, which is a traffic infraction.

What it boils down to is that even if you are guilty, you still need a good DWI lawyer to make sure that you understand your options and are treated fairly.

## **CHAPTER TWO**

### **COMMON POLICE MISTAKES AND HOW THEY CAN HELP YOU**

#### **1. Basing an arrest on the statements of the driver alone.**

The officer must have independent evidence to corroborate these statements. This often arises when he has not seen you in physical control of your car.

#### **2. Detaining a driver longer than is reasonable to investigate.**

The Constitution does not allow officers to hold you without limit. It is an illegal seizure.

#### **3. Stopping a vehicle without an articulable reasonable suspicion.**

A police officer in New York cannot stop you just because he thinks you are suspicious. He must articulate specific facts that indicate you are driving while intoxicated or impaired, or violating some other law or ordinance.

#### **4. Stopping a vehicle because it stops in the middle of the street or it is driving too slow.**

Unless there is a specific traffic ordinance you are violating, such as impeding traffic, it is not lawful for an officer to stop you. It is an illegal seizure.

#### **5. Stopping a vehicle for weaving within a lane.**

The statute only requires you to drive as nearly as is practicable within a single lane. Some cases hold that one weave into the shoulder is not enough reason for a stop.

#### **6. The police fail to follow the rules of the Departments of Criminal Justice Service and Health and Data Master (DMT) or Draeger (Alco Test) operation manual.**

These failures may invalidate any alcohol testing.

## **7. Stopping a vehicle at an improper roadblock.**

There are guidelines that must be followed to validate the stop. If not, it is an illegal seizure.

## **8. Stopping a vehicle just to check the driver's license and registration.**

There must be an actual traffic violation or an articulable reasonable suspicion of a crime. If not, it is an illegal seizure.

## **9. Stopping a vehicle without being able to identify it as the one actually committing a traffic infraction.**

Officers must be able to convince the Court that they stopped the right car. If not, it is an illegal seizure.

## **10. Stopping a vehicle for no reason at all.**

It's done. Officers usually do not show up in Court on these. If there is no reason, it is an illegal seizure.

## **11. Blocking a vehicle's exit without justification.**

Officers may not restrict a driver's freedom to leave without a reasonable suspicion. If not, it is an illegal seizure.

## **12. DWI probable cause.**

A police officer in New York must have a reasonable belief that your driving has been impaired before he can request that you submit to an alcohol test.

# CHAPTER THREE

## PROBLEMS WITH FIELD SOBRIETY TESTS (FST)

There are only three recognized and standardized tests from the NHTSA (National Highway Traffic Safety Administration). They are the HGN Test (Horizontal Gaze Nystagmus), Walk and Turn Test, and the One Leg Stand Test. Many clients ask me, "Just how accurate are these tests in truly gauging someone's ability to drive?"

### 1. HGN Test (Horizontal Gaze Nystagmus)

The Horizontal Gaze Nystagmus test is the first test that is supposed to be administered by the police officer. This is the "Pen Test" where a pen (or other stimulus) is passed back and forth in front of your face in order for the officer to determine if HGN is present in your eyes.

The basic premise is this: Your eyes have natural nystagmus (while tracking an object) in them. That is, a "shakiness," for lack of a better word. Without alcohol present, it is said that you cannot see the nystagmus. Once alcohol enters your system, the nystagmus can increase and then can be seen by the naked eye.

Law enforcement claims that the HGN test is 88% accurate at determining if someone has a BAC (blood alcohol concentration) of 0.08 or above. . .  
HOWEVER,

There are MANY, MANY problems with that statement. For one, even if it is as accurate as claimed, the test must be performed exactly to specifications (in the NHTSA guidelines) in order to avoid a false reading! Many law enforcement officials have simply taken a 24 hour course (in which less than 1/3 covers HGN) in order to receive this training. They are not optometrists, ophthalmologists, doctors or true eye experts.

Often when I cross exam police officers at hearings and trials, they admit to having no re-training or re-testing on their understanding and testing of the HGN test, even if their original police academy training was many years prior. Additionally, there are at least 47 types of Nystagmus. Yet the non-M.D., O.D., or doctors of any kind purport to be able to tell the difference.

A skilled, experienced, and certified DWI attorney can point out to the jury and the judge the many faults that the police made in the giving of this Field Sobriety Test.

## **2. Walk & Turn Test**

The walk and turn test is a "Divided Attention Task." What that means is the test is designed to have you do many different things at the same time. The thinking behind this is that if you are intoxicated, you can still perform tasks, only one at a time. The police officer will ask you to do several things at the same time, and if you cannot, you fail the test.

The police officer will ask you to walk heel to toe 9 steps up and 9 steps back, counting out loud, while making a special type of turn. The officer is looking for 8 clues, such as using your arms for balance, not staying on the line, or having your heel toe distance greater than 2 inches apart. Any of these failures to follow the test perfectly would supposedly indicate you are intoxicated.

This is a difficult test to do properly. It requires a great deal of balance and coordination. It can be very hard to perform for many people with certain types of back or leg problems. Aside from the physical demands of the test, most people will be scared and frightened performing it on the side of a busy highway. Again, this is a test that requires the officer to give the instructions properly, otherwise, what they see as mistakes can actually be you performing the test properly (as instructed). It is an extremely subjective test. Often the police officer will have you walk an imaginary line, even though the NHTSA guidelines require a line on the roadside.

## **3. One Leg Stand Test**

This is another one of the "Divided Attention Tasks" that you may be asked to perform. With the One Leg Stand, the officer will instruct you to stand on one leg, keeping the other leg more than 6 inches off the ground, and count to 30. Often he will ask you to count inside your head silently but offering you no idea how to do this counting. If his counting and your counting are not in synch, you fail this test.

## **Other Potential Tests**

### **Portable Breath Test (PBT) aka "Road Side" Breath Test**

The officer may administer a Portable Breath Test on the scene. This is a handheld device that purports to show your BAC. Despite the claims, the results of this test ARE NOT ADMISSIBLE IN COURT! This is because of

the unreliability of the devices. They are NOT calibrated. However, you need a good attorney to make the proper objections to keep this evidence out of the ears of the jury.

## **The Finger Count Test**

The DWI Finger Count FST IS NOT one of the three standardized tests but it is frequently used to assist officers in their DWI Investigations.

The Finger Count FST requires a person to put one hand in front of him/her with the extended palm facing upward. The top of the thumb is then touched with the tip of the index, middle, ring and little finger. After each touch, the finger and thumb are separated. The person is usually instructed to count out loud, "ONE, TWO, THREE, FOUR" in relation to each finger-thumb connection. The process is then reversed. Three (3) complete sets are usually performed.

The major "clues" that the police look for with the Finger Count FST are:

The person's ability to follow instructions.

The person starts too soon.

The person does not count as instructed.

The person does not touch fingers as instructed.

The person does not perform the correct number of sets.

The person stops before instructed to do so.

## **The Alphabet Test**

The officer may ask you to give him the alphabet starting at a particular letter and ending at another. This test is also highly subjective. Often people have a hard time concentrating with the combination of flashing blue and red lights, nervousness, and lateness of the hour, and therefore do poorly. If they perform the alphabet perfectly, the officer may try to trick them by not saying anything afterwards, and then people will naturally start over or continue with the alphabet.

## **Made Up Tests**

Officers, Troopers, and Deputies sometimes make up their own tests. These can range from instructions to write down a signed statement for the Judge to the giving of **inside** the car Sobriety tests, like the inside the car HGN.

## CHAPTER FOUR

### WHAT YOU SHOULD KNOW ABOUT THE BREATH TEST aka “The Chemical Test”

Many New York State Counties use the BAC DATAMASTER machine for breath testing to measure (BAC) blood alcohol concentration levels. This Machine utilizes INFRARED LIGHT passing through a sample chamber (where the breath is passing through) and/or electrically charged “plates” (fuel cell devices) which attract and “count” ions of alcohol as their “measuring” tool. Like all “machines,” all breath testing devices are subject to variance, from systematic error, random causes, or mere sampling variability endemic to all breath testing devices.

The BAC DATAMASTER is a computer based on old technology. The brains of this machine is a microprocessor which was introduced in the 1970s, more than 30 years ago. The microprocessor was the basis for some of the very first home computers and video games. In fact, this computer chip is the same chip that ran the old Atari video games.

After a person is arrested for DWI, an officer will ask them to blow into a breath tube which leads to a breath sample chamber. The machine shines a light source (a light bulb) through this sample chamber. The filter wheel spins at the other end of the breath tube chamber. The infrared light causes the alcohol molecules to "vibrate" or "absorb" light at a particular frequency. The filter wheels are "designed" to filter out potential contaminants. The machine filters out some contaminants better than others.

The amount of the breath sample and any reading of alcohol are very small. (Between 81.4 ml and 82.2 ml). The machine must make a multiplication conversion to an amount great enough for us to understand. The difference in light emitted and received is computed through a computer program in the machine to come up a value that can be compared to a .08.

The machine is calibrated to **assume that everyone** tested will have a blood/breath ratio of 2100/1 (i.e. 2100 parts of alcohol in the breath for every 1 part of alcohol in the blood). If a person has a higher blood/breath ratio (i.e. 2400/1), the test will not be adversely affected by this assumption. However a person with a lower blood/breath ratio will be adversely affected because the machine will erroneously read too high. Thus, a person who

should test at .05 or .06, could actually test well above a .08. Additionally, scientists have documented people with blood/breath ratios as low as 1100/1. This ratio is merely an **average** and this ratio can vary from person to person and day to day in the same person. You should know that the temperature and your state of health can affect what the machine reads, and your body temperature has nothing to do with the amount of alcohol you may have or have not consumed. A person with a fever will have a higher breath test reading than an identical person without a fever. A person with bronchitis or an athlete will all have different readings on this machine.

There is much debate about the accuracy of this machine and the prosecutor's expert will state that the machine will only read light absorbed by alcohol. We now know that the machine often misreads other substances commonly found in the breath as alcohol, thus giving an inaccurately high reading. Even more disturbing is the fact that the manufacturer of this machine does not warrant it for any particular purpose. The machine is **not** warranted for accurate and reliable breath testing.

## CHAPTER FIVE

### WHAT MUST THE PROSECUTION PROVE TO FIND YOU GUILTY OF DWI?

Remember... “You are Innocent until Proven Guilty”

The 5 facts that must be proven “BEYOND A REASONABLE DOUBT”  
before you can be found guilty of DWI:

1. You (Your identity),
2. Were operating (As a driver),
3. A motor vehicle,
4. In the state of New York (on a public road or highway),
5. while either your blood alcohol level was over .08 (DWI per se)

or

You were mentally and physically incapable of driving (DWI:  
driving while intoxicated/common law) as a reasonable and prudent  
person

or

You were affected to any extent in your driving ability (DWAI driving  
while ability impaired).

## CHAPTER SIX

### WHAT ARE THE POTENTIAL DWI PENALTIES?

#### DWI and Related Offenses\*

Offense	Mandatory Fines Minimum Fines and Maximum Fines	Maximum Jail Term	Mandatory Penalties to License
<b>Driving While Ability Impaired (NY VTL §1192[1])<sup>(1)</sup></b>			
First Conviction	\$300 - \$500 <sup>(2)(3)(6)</sup>	15 days	90 day suspension
Second Conviction within 5 years of either a conviction for ADWI, DWI or DWAI	\$500 - \$750	30 days	Revoked at least 6 months
Third Conviction within 10 years	\$750 - \$1,500	90 days	Revoked at least 6 months
<b>Driving While Intoxicated (NY VTL §1192[2] and [3])<sup>(1)</sup></b>			
First Conviction	\$500 - \$1,000 <sup>(4)(6)</sup>	1 year Misdemeanor	Revoked at least 6 months
Second Conviction within 10 years (prior ADWI or DWI)	\$1,000 - \$5,000 <sup>(5)(6)</sup>	4 years "E" Felony	Revoked at least 1 year (18 months if prior conviction is for ADWI) <sup>(7)</sup>
Third Conviction within 10 years (prior ADWIs and/or DWIs)	\$2,000-\$10,000 <sup>(5)(6)</sup>	7 years "D" Felony	Revoked at least 1 year (18 months if at least one prior conviction is for ADWI) <sup>(7)</sup>
<b>Aggravated Driving While Intoxicated (VTL §1192[2-a])<sup>(1)</sup></b>			
First Conviction	\$1,000-\$2,500 <sup>(4)(6)</sup>	1 year Misdemeanor	Revoked at least 1 year

Second Conviction within 10 years (prior ADWI or DWI)	\$1,000 - \$5,000 <sup>(5)(6)</sup>	4 years "E" Felony	Revoked at least 18 months <sup>(7)</sup>
Third Conviction within 10 years (prior ADWIs and/or DWIs)	\$2,000-\$10,000 <sup>(5)(6)</sup>	7 years "D" Felony	Revoked at least 18 months <sup>(7)</sup>

\* This chart only sets forth court imposed sanctions; separate and additional sanctions may also be imposed by the Department of Motor Vehicles.

<sup>(1)</sup>All convictions under Vehicle & Traffic Law section 1192 require the payment of a Driver Responsibility Assessment to the Department of Motor Vehicles in the amount \$250 per year for 3 years in addition to the mandatory fines set forth in this chart.

<sup>(2)</sup> First alcohol or drug-related violation by a driver under the age of 21: 1 year revocation. Second alcohol or drug-related violation by a driver under the age of 21: revocation until age 21 or 1 year, whichever is longer.

<sup>(3)</sup> \$260.00: State mandatory surcharge which is in addition to mandatory fines.

<sup>(4)</sup> \$400.00: State mandatory surcharge which is in addition to mandatory fines.

<sup>(5)</sup> \$500.00+: State mandatory surcharge which is in addition to mandatory fines.

<sup>(6)</sup> Chemical Test Refusal Revocation: \$500 civil penalty; Chemical Test Refusal with prior refusal or alcohol-related violation within five years: \$750 civil penalty, *see* VTL §1194.

<sup>(7)</sup>Additional licensing penalties may arise if the prior offenses occurred within 4 years of the current offense.

NOTE: Court surcharges are variable and constantly increasing.

### **VICTIM IMPACT PROGRAM**

Where court imposes a sentence for a violation of NY VTL §1192, the court may require the driver to attend a single session of the Victim Impact Program; *see* NY VTL §1193.

## DRINKING DRIVER PROGRAM

Administrative Fee: \$75.00	Paid by driver when s/he enrolls in DDP; fee is non-refundable.
Agency Fee: \$225 (approx. cost)	This fee is paid to the agency that teaches the DDP course.
Evaluation/Assessment Fee:	If driver is referred for additional alcohol evaluation or treatment, additional fees set by the mental health professional will also be incurred by the driver.

## RE-LICENSING FEE

If driver's license is *revoked* as a result of an alcohol-related conviction, the driver must *re-apply* for a new license. When *re-applying* for a new license, the driver must include a \$50 non-refundable re-application fee with his application.

As of September 22, 2003, if a driver's license is *suspended*, the driver must pay a \$35 termination of suspension fee to the court that suspended his or her license. The court may not lift the suspension of the driver license until that fee is paid.

### **Legal Disclaimer**

**The information you obtain in this guide is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation. I invite you to contact me and welcome your calls, letters and electronic mail. Contacting me does not create an attorney-client relationship. Please do not send any confidential information to me until such time as an attorney-client relationship has been established.**

# CHAPTER SEVEN

## FAIR, REASONABLE, AND FLAT FEES

Everyone is concerned about the fees that their attorney will charge. Although there is no good time for a DWI, it seems as if they always happen at the worst possible time. I will discuss my fees with you during your free consultation. Every case is different, so it is impossible for me to list out my fees in this book.

Here are some general facts about my fees.

### **1. My fees are always quoted on a "Flat-Fee" basis for DWI and criminal cases.**

Nobody likes surprises when it comes to how much things will cost. I use a "Flat-Fee" for my representation of DWI cases. I prefer the flat-fee method because:

- **It allows my clients to know exactly how much their representation will cost in advance and not be concerned about surprise bills.**
- **It is difficult and a pain to keep track of how many minutes or parts of an hour I spent on a client's case, spoke with them on the phone, answered an email, or a text.**
- **I don't like restaurants or any other business charging me extra for their services or for more condiments, bread, or ice. To me it is petty.**

### **2. My fees compared to others.**

My fees fall somewhere in the middle to upper range of fees charged by the majority of criminal defense attorneys. I am not the cheapest lawyer around, nor do I strive to be. If I were, I would probably have too many clients to be able to give you the personal attention and the quality representation I believe you deserve. I would rather have less clients and more time to spend with them than to have lots of clients with no personal time.

If fees are your one and only concern, and you are looking for the cheapest possible lawyer you can find, I am probably **NOT** the guy for you.

I am definitely not the most expensive attorney around either. I understand that anytime someone is coming to see a lawyer, it is almost always an unexpected expense. I will work with you (within reason) and set up a payment plan with you, if necessary.

### **3. I accept Credit Cards**

I accept all major credit cards at no additional cost to you. I do not add any additional "convenience" fees, as is the practice with some other attorneys or businesses.

### **4. Pre-Trial + Trial Fee Structure**

With most of my cases, I use a pre-trial plus trial fee structure. What I mean by that is that your initial fee will include my representation of you through all court appearances, pre-trial hearings, several meetings with you, review of all evidence, DMV hearings, and negotiations with the prosecutor up to trial.

If after review of all of the evidence and offers made, you decide you want to have a trial, there will be an additional trial fee.

I use this pre-trial plus trial fee structure in order to charge everyone a fair amount based upon the work and time that it will take me to prepare for your case. Obviously, trial prep and the actual trial will be much more time consuming, and this fee structure contemplates this.

## **“The Local Advantage”**

**NEW YORK DWI DEFENSE LAWYER  
LAWRENCE NEWMAN, ESQ.**

**504 North Aurora Street  
Ithaca, NY 14850  
607-229-5184**

**[www.ithacadwi.com](http://www.ithacadwi.com)**

**<http://ithacadwi.blogspot.com>**