

DWI Defense Attorney Hynes
N.H. DWI GUY
Devoted to Drunk Driving Defense



Attorney Hynes
The “N.H. DWI GUY” presents

A guide for people accused of DWI in New Hampshire:

DWI Defenses that work!

For more detailed information give me a call for a free consultation:

(603) 674 - 5183

or visit my website:

<http://www.nhdwiguys.com>

ATTORNEY ADVERTISING

INTRODUCTION

If you have been charged with DWI, you may be feeling angry, confused, and of course concerned about what may happen to you. I have personally prepared this brochure to provide a brief overview of the DWI law in New Hampshire, as well as some defenses you may have. It is not a substitute for a good DWI lawyer. Remember, you are not guilty until proven otherwise beyond a reasonable doubt.

Besides a criminal charge, if you refused a breath or blood test or tested above the legal limit, you are facing a mandatory license suspension. However, you are entitled to a hearing, but you **MUST REQUEST THE HEARING WITHIN 30 DAYS OF THE REFUSAL OR TEST OVER**. Act now to protect your rights. Give me a call for a free phone consultation at: (603) 674-5183 to discuss your case in more detail.

DISCLAIMER: This book is not formal legal advice and it does not create any attorney/client relationship. Legal advice is almost always case specific. I do not recommend anyone who is not an experienced DWI lawyer to handle DWI cases just as I do not recommend someone represent themselves on a DUI charge.

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BIOGRAPHY

The N.H. DWI GUY's Training includes:
Standardized Field Sobriety Testing Certification Student Course (NHTSA Course) ,
Standardized Field Sobriety Testing Certification Instructor Course,
Drug Recognition Expert Training,
Owner/ Operator of PBT (Portable Breath Test) machine,
Owner of Intoxilyzer 5000EN; breathalyzer breath test machine presently used throughout N.H.

Attorney Hynes is one of only a few Attorneys in the entire State who has completed the 40 hour Field Sobriety Testing Instructor course. This course is designed for Police officers who train other officers on how to administer field sobriety tests. In all likelihood, Attorney Hynes knows these tests better than the cop who arrested you.

Memberships: New Hampshire Association of Criminal Defense Lawyers

Bar Memberships: Admitted in New Hampshire and Massachusetts

REPUTATION

Sometimes, all it takes to get a favorable disposition is to have a lawyer who the prosecutor is familiar with agree to represent you. The State can sometimes get an idea for *what* they are up against based upon *who* they are up against.

He is the #1 search result on google for N.H. DWI Lawyer for a reason*.

*Information accurate as of 4/27/2011



Hynes arguing before the New Hampshire Supreme Court

How Can I Be Convicted of DWI?

In New Hampshire, the State must prove 3 things to get a DWI conviction.

Operation, Public Way, and Impairment due to alcohol, or controlled drugs, or a BAC above the legal limit.

Operation

While the Statute is called driving under the influence, you do not actually have to be driving to be convicted. The State must prove you were "operating" a vehicle. This could be sitting in a parked vehicle while it was running. However, the State must prove it beyond a reasonable doubt, and if there is any issue with driving, including when the driving occurred, a good DWI lawyer can help get the charge dismissed.



Public Way

Public way is roughly defined as anywhere the public has access to. It is usually a road. If you were in a driveway, or other place that is considered private, you have a good defense to your DWI.

Under the influence of alcohol or controlled drugs

The major dispute in most DWI cases is whether someone was actually impaired. This is different than drunk. The State needs to prove impairment to any degree beyond a reasonable doubt to obtain a DWI conviction. It is not illegal to drink alcohol and then drive, as long as the alcohol does not impair your ability to operate a vehicle, or give you a BAC above the legal limit.

To obtain a DWI conviction for drugs, the State must prove you were impaired by a *Controlled Drug*. Many prescription drugs are not controlled drugs. Yet many drugs mimic the affects of alcohol. You have a right to make the State prove your impairment beyond a reasonable doubt.



BAC (Breath/Blood alcohol content) above the legal limit

If the State can prove your BAC was above the legal limit (.08, or .02 for drivers under 21), you can be found guilty of DWI.

Even if the State has a breath test or blood test showing .08 or higher, assuming the test was properly administered, there are many reasons of why the test can be wrong. See the Breath test/ blood test section of this pamphlet for more details.

Field Sobriety Tests

Field sobriety tests are things the officer will have you do near the side of the road for the cop to try and guess if you are impaired due to alcohol. There are 3 approved standardized tests. Often the tests are not given in the correct manner, and people simply can not do them for any number of reasons which are unrelated to alcohol. The prosecutor and cop usually rely on these tests as the best evidence of being drunk. If you were arrested for dwi and did the tests, the officer thought you failed them. A good dwi lawyer who is an instructor in field sobriety tests can find all the things the officer did wrong, and that you did right, to show why the tests are not reliable. (And if you are wondering about the picture, I have asked a cop at trial to juggle (a test of balance) - He wouldn't do it.)



Horizontal Gaze Nystagmus -HGN (Eye Test)

The first test is an eye test / horizontal gaze nystagmus (HGN) test.

In this test the officer is looking for jerking of your eyes as you follow the pen. I have had many Clients call me up and say they passed this test. Unfortunately, it is impossible for you to know if you passed the test. The reason is because the jerking is involuntarily and does not affect your vision (It is also rather subjective on the part of the officer). I always argue a nystagmus has nothing to do with driving. Further, many things, besides alcohol or drugs can cause a nystagmus. In my experience, I have been able to show the officer did not administer this test correctly around half of the time.



Walk and Turn

The second test the cop will ask you to do is walking 9 steps heel to toe and walk back. Besides being a balancing test, this test is really a listening test. The officer is looking for 8 specific things:

1. Cannot keep balance while listening to instructions.
2. Starts before instructions are finished.
3. Stops during test.
4. Fails to touch heel-to-toe.
5. Loses balance while walking/steps off line.
6. Uses arms for balance.
7. Does not perform turn correctly.
8. Takes the incorrect number of steps.



If you do only 2 out of 8 incorrectly (according to the cop) the officer will decide you failed the test. The problem with this test is many people can not do it. Anyone with medical conditions, particularly back and leg problems, or who are older or are wearing heels have difficulty doing this test. A good dwi lawyer can show a failure was due to things other than alcohol.

One Leg Stand

In this test, the officer has you raise one foot off the ground and count out loud for 30 seconds.

The officer is looking for 4 things in this test:

1. Put your foot down before 30 seconds
- 2: Using arms for balance
- 3: Swaying
- 4: Hopping

2 out of 4 things will make you a failure according to the cop. Again, medical conditions, as well as someone's age, weight, and surroundings such as temperature and wind, can make it extremely difficult, if not impossible to do the test to the officer's satisfaction. Also, unfortunately, swaying is very subjective. I have heard an officer testify he marked someone off for swaying a half of an inch. The judge apparently was not impressed as the client was found not guilty.



Breath tests

If you gave a breath test at the police station you used an Intoxilyzer 5000en. This is the only approved machine in New Hampshire. **The N.H. DWI GUY owns one of these machines and is familiar with its procedure and limitations.** He can go over with you exactly what the officer had you do.

The machine is not perfect! Below are common problems.



Top 10 Problems with the Intoxilyzer

1. It does not actually measure ethanol (drinking alcohol). It can detect other chemicals on the same wave-length, such as wood alcohol, isopropanol, acetone, and other chemicals.
2. The machine is not 100% accurate and has a margin of error. This is why the DMV will not act on a suspension for a BAC of .08.
3. The machine can be faulty, often breaks, and needs repairs.
4. The operator may not have been certified.
5. The machine uses what is called a "partition ratio" to determining your BAC (Blood alcohol content) based upon BrAC (Breath alcohol content).
6. Body temperature affects the results.
7. Breathing patterns affect the machine.
8. Radio frequency interferent RFI (radios, cell phones, etc.) interferes with the machine.
9. The machine will sometimes detect "mouth alcohol"; GERD - (Gastroesophageal reflux disease) can give too high of a reading as air from the stomach (reflux) comes into the mouth.
10. Testing during the absorptive phase. The State must prove what your BAC was **AT THE TIME OF DRIVING**. Often, the breath test is around an hour or so after you were driving. If you drank close in time before driving, the alcohol likely did not absorb into your body/blood.



Finally, New Hampshire, is the only State in the Country where the officer **MUST** give you a copy of your breath tubes. **DO NOT OPEN THE BAG.** You can get the tubes tested to see if the results are actually what the State claims they are.

Blood Tests

The most accurate of the tests for alcohol is a blood test. This test also can be used to check for drugs, which the breath test cannot. The test is often given at a hospital. The test must be provided by a certified person. Further, there are steps that person must take to ensure proper administration of the test. You have a right to have the blood sample independently tested, but you have to inform the State crime lab to hold your blood so they do not destroy it.



Errors in blood tests include:

1. Phlebotomist (person drawing the blood) drawing it wrong, or not using the correct tubes, or inverting the blood. The blood should be drawn from a "blood kit" with tubes that contain an anti-coagulant, and preservative to prevent fermentation.
2. The Officer forgets to refrigerate the blood, which can allow bacteria to grow in it, which can increase the alcohol of the blood.
3. Not using a preservative which supposedly inhibits bacteria from growing which can increase the alcohol content.
4. Mislabeling the tube.
5. Chain of custody issues (How the blood got from you, to the crime lab, to court).
6. The State crime lab not analyzing the blood correctly. The analyst could do something wrong, or the machine might not be working properly that day. This is why it is important to look at the chromatograms from the GC.

Driving under the Influence of Drugs



In New Hampshire, you can be found guilty of DWI if you drove under the influence of CONTROLLED DRUGS. Not all drugs are controlled drugs. Making this more complicated is that many prescription drugs that are not controlled drugs often mimic the effect of alcohol. N.H. DWI GUY has won numerous cases by showing someone was under the influence of a non-controlled drug where the state could not prove the person was under the influence of alcohol or a controlled drug beyond a reasonable doubt.



In drug cases, the officer will sometimes be a drug recognition expert (DRE). The N.H. DWI GUY has taken the DRE overview class and knows all the things a DRE looks for:

DECP 12 Step Evaluation Process

- | | |
|---------------------------------------|------------------------------|
| 1. Breath Alcohol Test | 7. Dark Room Examination |
| 2. Interview of the Arresting Officer | 8. Muscle Tone Assessment |
| 3. Preliminary Examination | 9. Injection Site Assessment |
| 4. Eye Examination | 10. Interrogation of Subject |
| 5. Divided Attention Tests | 11. Opinion of Evaluator |
| 6. Vital Signs | 12. Toxicology |

Since the State will have an expert to help prove their case, you deserve an expert, a qualified DUI Attorney, to show you were not under the influence of drugs. Attorney Hynes has training and experience to know when the DRE did not do things correctly. This could be the difference between Guilty with a long loss of license and fines, and being found Not Guilty.

Even if your case does not involve drugs, if the cop is a DRE, the DWI GUY will ask the officer why he did not do all the things he learned in his DRE class, as alcohol is also a drug (a depressant).

Overview of DWI Penalties

Note: All DWI Penalties do not include any loss of license for refusing a test or giving a test over the legal limit. That loss of license (6 months or 2 years) can run in addition to any license loss after being found guilty of the criminal offense.

Simple First Offense DWI

Class B Misdemeanor, Fine not less than \$620. Mandatory Minimum loss of license 9 months, up to 2 years. 6 months can be suspended upon enrolling in an IDIP program within 45 days of conviction. IDIP program is 20 hours, and costs around \$500. It must be completed before license is returned. Major violation toward Habitual Offender law. Need SR-22 Insurance.

If driver is under 21 there is always a minimum one year loss of license.

Aggravated DWI

Class A Misdemeanor, Fine not less than \$750 and penalty assesment. Mandatory Minimum loss of license 18 months, up to 2 years. 6 months can be suspended with Judge's discretion.

Mandatory Jail time Minimum 3 days in jail up to a year in jail.

MOP program (7 day straight in-house treatment program) mandatory. MOP program costs around \$1500. Major violation toward Habitual Offender law. Need SR-22 insurance.

If Aggravated DWI is for causing serious bodily injury then it is a felony. Mandatory 14 days in jail up to 3 and half years - 7 years in prison. Fine \$1000-\$4000. Plus other conditions of aggravated DWI.

2nd Offense DWI

Class A Misdemeanor, Fine not less than \$750 plus penalty assesment.

Loss of License: At least 3 years.

If previous DWI was within 2 years then Mandatory Jail time Minimum 30 days in jail up to a year in jail.

If previous DWI was between 2 years and 10 years then Mandatory Jail time Minimum 3 days in jail up to a year in jail.

MOP program (7 day straight in-house treatment program) mandatory. MOP program costs around \$1500. Major violation toward Habitual Offender law. Need SR-22 insurance. Interlock device 1-2 years.

Ignition Interlock Device is a device you must blow into in order to start your car. You must pay for the cost of it.



Other Consequences

If you are convicted of DWI, you will now:

Have a criminal record. In New Hampshire, DWIs are either a misdemeanor, or felony.

Be required to carry SR-22 insurance. This will raise the cost of your insurance.

Be required to complete a 20 hour drunk driving program, or a more intensive program.

Possibly need an interlock device.

Be at risk of losing your job. Many employers will take action against you for a DWI conviction.

Administrative License Suspension

For refusing a breath / blood test, or giving a sample over the limit after being charged with DWI, you will lose your license for either 6 months or 2 years. However, you are entitled to a hearing. **But, you must request the hearing within 30 days of the refusal/test over.**

At the hearing, the State must prove a few things:

- (a) Whether the officer had reasonable grounds to believe the arrested person had been driving, attempting to drive, or was in actual physical control of a vehicle upon the ways of this state or operating or attempting to operate a boat on the waters of this state or was driving, operating, attempting to operate, or in actual physical control of an OHRV while under the influence of intoxicating liquor, narcotics, or drugs;
- (b) The facts upon which the reasonable grounds to believe such are based;
- (c) Whether the person had been arrested;
- (d) Whether the person has refused to submit to the test upon the request of the law enforcement officer or whether a properly administered test or tests disclosed an alcohol concentration of 0.08 or more, or, in the case of a person under 21 years of age, 0.02 or more;
- (e) Whether the officer informed the arrested person of his or her right to have a similar test or tests conducted by a person of his or her own choosing; and

Although I have heard other Attorneys and clients say the hearings are a waste of time and impossible to win, I have successfully won at numerous hearings by showing: The officer did not have sufficient reason to ask the person to take the test, the test was not properly administered, the person did not refuse, and the person was not impaired at the time of driving.

DWI DEFENSES THAT WORK!

Just because you are charged with DWI does not mean the State will be able to prove your guilt beyond a reasonable doubt. In fact, I have won more than half of the trials for DWI I have represented clients on*.

Although, DWI is probably the most complicated type of misdemeanor criminal case, there are many ways to show reasonable doubt. Good DWI defense involves science, knowledge of field sobriety tests, criminal procedure to keep out evidence, and case law to know what exactly the State must prove. Knowing all of these things extremely well can very well be the difference between being found guilty and not guilty.

This is a list of my TOP 10 DWI Defenses

1. Invalid Stop
2. You were not the driver
3. Your BAC (blood alcohol content) was lower at the time of driving
4. The breath machine is not accurate
5. The blood test is not accurate
6. You were not under the influence of alcohol or controlled drugs
7. You were not on a "way"
8. You were not "operating" a motor vehicle
9. Any impairment was due to non-controlled drugs or not alcohol
10. Evidence was illegally obtained or is otherwise not admissible

*Information accurate as of April 27, 2011. Past results do not guarantee future results. Each case is unique and the smallest fact can be the difference between guilty and not guilty.

Frequently Asked Questions

Q: Does New Hampshire have a hardship license?

A: No. Not under any circumstances.

Q: What if I refuse a breath or blood test?

A: If you refuse after being arrested for DWI you will lose your license for 6 months or 2 years. Unless you are successful at an administrative license suspension hearing.

Q: What is the "Legal Limit" in NH?

A: .08 for drivers 21+, .02 for drivers under 21, and .04 for drivers operating a commercial vehicle.

Q: What is IDIP?

A: It is an impaired driver intervention program. It costs around \$500. It is around 20 hours. You must complete it if found guilty of DWI before you get your license back. At the end of the program you may be required to get additional treatment.

Q: What is MOP?

A: It is the multiple offender program. You will have to complete it if convicted of a subsequent (second or more DWI), or if you were found guilty of aggravated DWI. It is a 7 day in-house treatment program. It costs around \$1500. Again, at the end you will be evaluated and may require extra treatment before you can drive again.

Q: What should do I after I am arrested?

A: Do not give extra information to the police. If it is close to the time of arrest go to a hospital and get a blood test. Call an experienced DWI Lawyer to go over your case.

Q: How much will it cost for you to represent me/ How can I afford it?

A: The cost of how much it will cost for me to represent you depends on a variety of factors. For a first offense DWI you can expect to pay around 2-4 thousand dollars to have an experienced and knowledgeable DWI lawyer represent you.

Q: Do I need an attorney?

Consider the following: If you cut open your arm with a knife, you could try and fix it yourself, either with bandages or staples, or you could go to a trained professional, a Doctor, and get it properly taken care of. The Dr. will cost you more than if you did it yourself, but the results ought to be worth it. You wouldn't risk your body by trying to do it yourself, why risk going to jail or losing your license by doing it yourself?

How should I pick a DWI Lawyer?

Hiring the best lawyer for you can be a difficult decision. I advise clients that the most important things they should look for in a lawyer is experience, knowledge of the law, communication/ relationship with the client, cost, whether a majority of the lawyer's cases are DWI defense, and perhaps, most importantly, previous results. Feel free to call me at (603) 674 - 5183, for a free phone consultation to discuss your options with you.

CHECKLIST FOR HIRING A N.H. DWI LAWYER

The following is a checklist of 10 things you may want to ask any lawyer you are considering hiring to handle your New Hampshire DWI.

YES Have you won a DWI with a BAC at least as high as the one I am alleged to have given? (DWI GUY has had a DWI completely dismissed with a blood BAC of .35% - more than 4 times the present legal limit)

YES Do you own an operable Intoxilyzer 5000EN, and know how to use it?

YES Do you own an operable Alcosensor FST Portable Breath test machine, and are you a certified supervisor/operator of it?

YES Do you hold a current certification in the administration of Standardized Field Sobriety Tests as recognized by the National Highway Traffic Safety Administration and the International Association of Chiefs of Police? (The same field sobriety tests that are taught to New Hampshire police officers at the academy)

YES Have you received training in the procedures employed by a Drug Recognition Expert through a Drug Evaluation and Classification Overview Course (DRE)?

YES Have you strictly defended those accused of a crime/DUI, and never prosecuted a single person for anything; especially not for a DUI?

YES Have you won an administrative license suspension hearing by showing the police officer "did not have reasonable suspicion to ask the driver to submit to a test"?

YES Are you a certified Instructor in Standardized Field Sobriety Tests as recognized by the National Highway Traffic Safety Administration?

YES Is a majority of your practice devoted to DWI Defense?

RECENT RESULTS

May 2011 Charge: DWI 2nd

Result: At trial State failed to prove a valid 1st offense conviction. Not guilty on DWI 2nd.

April 2011 Charge: Refusing a breath test

Result: No license suspension!

April 2011 Charge: Second Offense DWI

Result: Case dismissed.

April 2011 Charge: Aggravated DWI & DUI

Result: Not guilty at trial. No DWI conviction including mandatory jail time.

March 2011 Charge: Blood test refusal

Result: License suspension rescinded; no license loss

March 2011 Charge: DWI 3rd offense & Aggravated DWI

Charge reduced to minimum jail time on a second offense and minimum license loss of 3 years.

March 2011 Charge: DWI

Result: Not guilty at trial. No License loss or DWI conviction!

February 2011 Charge: DWI Drugs & DWI Alcohol

Result: Not guilty at trial. No License loss or DWI conviction!

February 2011 Charge: DWI Drugs & DWI Alcohol

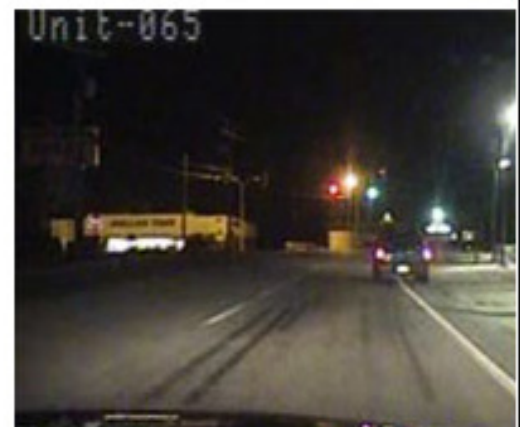
Result: No License loss or DWI conviction!

January 2011 Charge: DUI Drugs and alcohol

Result: Not guilty at trial.

See video excerpt and more case examples and details at:

<http://www.nhdwiguy.com/results.html>



TESTIMONIALS

Will Fight for you

I was charged with DUI and would not accept a guilty plea as I work in a brewery. The cop said I crossed over the lanes, failed all the field sobriety tests, and my breath test was over the legal limit. At trial the DWI GUY showed the tests were unreliable and I was found not guilty!

Y. B. – Dover District Court March 2011

30 Beers + .35 BAC - DWI DISMISSED

I was under 21 and charged with DWI. The police claimed I hit other cars, said I drank 30 beers, and that my blood alcohol content was .35. DWI GUY was able to get the charge completely dismissed.

H.O. - Manchester District Court - December 2010

Won at ALS & Got the DWI Dismissed

I was in a car crash and charged with DWI alcohol and drugs. I refused to give a blood test, told the cop I was drinking , and the cop said I failed the field sobriety tests. DWI GUY showed the cop did not have reasonable suspicion to ask me to take a blood test and I kept my license at the ALS. The prosecutor later fully dismissed the DWI.

R K. – Concord - November 2010

Saved my career

I was accused of drinking and driving. I gave a blood test which the police claimed was .14. I couldn't have a dwi conviction on my record, so I didn't want the State's plea offer of a DWI conviction and 9 month loss of license. At trial, after asking the cop only a few questions, I was found not guilty.

P. D. - Nashua NH - September 2010.

Office Locations:

Nashua: 5 1/2 Mulberry St. Nashua, NH 03060
Portsmouth: 155 Fleet St. Portsmouth, NH 03803
Hudson: 238 Central St. Hudson, NH 03051

Office hours by Appointment only.
Home visits may be available.

Serving all of New Hampshire
For a free consultation call me at:
(603) 674 - 5183

For more details visit:
<http://www.nhdwiguy.com>

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