



THE DWI DEFENSE GUIDE

MANAGING YOUR DWI DEFENSE IN WNY

WHAT TO EXPECT AFTER A DWI ARREST IN WNY

DWI ARREST, CHARGES, & SENTENCING PROCEDURES IN WESTERN NEW YORK

ACTIONS YOU CAN TAKE TO REDUCE YOUR PENALTY



THE DWI DEFENSE GUIDE – MANAGING YOUR DWI DEFENSE IN WNY What To Expect After You’ve Been Stopped For DWI in Western New York *DWI Arrest, Charges, & Sentencing Procedures* ACTIONS YOU CAN TAKE TO REDUCE YOUR PENALTY

by Thomas Trbovich* - “The WNY DWI Lawyer” - defense@wnydwi.com

The Western New York Police and our Courts now take DWI arrests more seriously than ever before. Depending upon the particular DWI charges that you may be found guilty of, penalties include large fines & surcharges, loss of driving privileges, and probation or even jail time. If you’ve been charged with DWI you need to be aware of what is involved in the process of prosecuting you and what you can do to help yourself come away with the absolute minimum penalty.

1. DWI Stop & Arrest Procedures

Most of the Police Officers operating in WNY are well trained and competent when it comes to making a DWI arrest. However, on some occasions, important components of the procedure are not followed precisely, leaving scope for an experienced DWI Defense Lawyer to move for a complete dismissal of your case.

The exact details of the stop and arrest procedures that you could experience may vary depending upon the place where you are stopped, the officer who stops you, and also the conditions of the event and how you behave during it. In general, a Police Officer pulls you over and, if there is any suspicion that you may be intoxicated, requests that you take a *field sobriety test*. This usually includes a series of standard (or non-standard) cognitive and/or physical maneuvers.

ADVISORY - Remain calm, and if you have any disability or injury that could compromise your performance in the test inform the officer politely.

If the officer is not satisfied by your performance in the field test you may be asked to take a roadside *breath test* to determine the level of alcohol in your blood. A positive reading for alcohol may lead to your arrest for DWI. In most cases, you may be taken to a facility where you will be asked to undergo a *chemical test* (sampling your breath, or urine, or blood) to determine the exact level of alcohol or other intoxicating substances in your blood.

ADVISORY - The officer must warn you that if you refuse to take the chemical test your driver’s license may be revoked for a period of 1 year. In fact, this revocation can hold even if you are subsequently found not guilty of DWI.

Depending upon the circumstances, you may then be either released to a sober third party (with or without bail) with paperwork and orders to report for a subsequent *Arraignment*, or you may be committed to a holding center prior to release pending arraignment. Another possibility, especially if you refused to take the required chemical test, is that you may be immediately taken before a Judge to undergo the arraignment procedure.

ADVISORY - As soon as possible take the opportunity to do some research and retain an experienced local DWI Defense Attorney to manage your case.



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operating in all 8 counties of
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2. Arraignment

The **Arraignment** will be your first encounter with a Judge following your DWI arrest. The Judge may seem like a reasonable person, but be warned – he or she is certainly not motivated by your best interests! *It can be critical to the outcome of your case that the arraignment be managed carefully and correctly.*

If your chemical test indicated a BAC (Blood Alcohol Content) of 0.08% or higher your drivers license will be immediately suspended pending your prosecution. If you refused to take a chemical test your drivers license will be immediately suspended pending a future hearing with a separate DMV Judge which will determine whether your license should be returned to you or not.

During the arraignment, the Judge will inform you of the alleged DWI charges against you, and advise you of your right to contact any person that you choose in order to notify them of your situation. The Judge must also advise you of your right to contact an Attorney or to request a court-appointed Attorney.

ADVISORY - *If you have not already retained an experienced local DWI Defense Attorney to manage your case, you are strongly advised to request an adjournment (of up to 48 hours) to find one.*

The Judge will also ask you if you wish to plead “Guilty” or “Not Guilty” to the DWI charges against you:



- **If You Plead “Guilty”**, the Judge will ask you to be interviewed by a *Probation Officer* for a pre-sentence report, or the Judge may sentence you immediately. Unless there is a sentence commitment, you could receive a maximum penalty, even on your first offense. Sentencing may include a fine, surcharge, loss of driving privileges, probation, and possible jail time. *In most cases, it is unwise to plead guilty - you should always acquire professional legal advice before pleading guilty.*

- **If You Plead “Not Guilty”** a follow-up court date will be established for a *Hearing, Trial, or Further Proceeding.*

ADVISORY - Plead “Not Guilty” and Request an Adjournment

It Is Unwise To Plead “Guilty” without the advice of an experienced DWI Defense Attorney. A practiced local DWI Lawyer should be able to negotiate on your behalf to minimize the charges against you and obtain a significantly reduced penalty. If you request an adjournment to retain a competent attorney, and you plead “Not Guilty”, the court will schedule your next court date and consider the terms of your release. You may be released *under your own recognizance* (by agreeing to attend your next court date with no requirement for a bail charge), released *under supervision*, or released *under a set bail* (in which case you will need to deposit either cash or a bail bond with the court prior to being released).

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If required, we can put forth arguments that compel the court to reconsider or reduce your amount of bail. If your license was suspended we may also apply for a temporary hardship license to keep you on the road. In order to determine your optimum defense strategy, we will request information about your charges from the Prosecutor, or submit a motion for discovery from the prosecution, and thoroughly analyze all details of all the evidence collected against you. Finally, if any of the important components of the arrest were not followed correctly we may move to have the entire DWI case against you completely dismissed.



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3. Preliminary DWI Trial Hearing

In many cases, the Judge will meet with you and the Prosecuting Attorney to determine what issues, evidence, motions, and hearings are needed. If a plea or dismissal is not negotiated, then the case will be set for either a *Bench Trial* (presided over by only the Judge), or for a *Trial by Jury*. For you to be found guilty in a trial by jury, the entire jury must be in unanimous agreement that there is no reasonable doubt about each charge against you.

This meeting is also an ideal opportunity for your Defense Attorney to sound out the Judge around any points of contention, before considering with you the range of options open to you in resolving the case in your best interest.

4. Plea Bargaining In DWI Charges

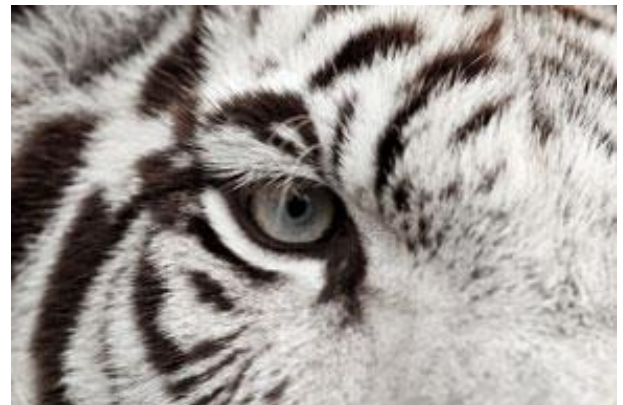
Plea bargaining is the process whereby we can negotiate a compromise with the Prosecutor to have your DWI charges (and penalty) reduced by pleading guilty to a lesser charge. Under some circumstances this can be a realistic and beneficial option for you, but in other cases this particular strategy may not always serve your best interest or may not even be an available option. Plea bargaining is discouraged in some WNY courts, especially for the more severe DWI charges or for defendants with a history of multiple DWI offences.

Your Defense Attorney will help you understand when a plea bargain might or might not be in your best interest, *and an experienced local DWI Attorney should be able to negotiate the greatest possible reduction in charges for you.*

5. The Discovery Process & Pre-Trial Motions

An experienced DWI Defense Attorney will "Discover" and analyze every item of the evidence against you to make sure that your legal rights are fully protected and that the Jury's decision cannot be contaminated by irrelevant factors.

Following *Discovery*, we should know all of the Prosecutions' evidence against you. Your Defense Attorney will need to carefully analyze this information and will then frequently need to file motions, or conduct a hearing, to have some types of legally irrelevant, but potentially damaging, evidence from being presented to the court. *For example an irrelevant item such as a couple of dropped empty beer cans that have been lying in your car since a recent trip to the recycle facility may be turned into severely incriminating evidence by a ruthless Prosecuting Attorney.*



6. Your DWI Trial & Sentencing

If your case has not been resolved by this point, you will attend a court trial where you will present your defense in front of a Judge and Jury. This will not be a game and, although there are well-enforced rules of procedure that should be followed, to the uninitiated a DWI trial can seem more like a savage personal attack than a fair debate of the facts conducted by civilized people.

Your Prosecuting Attorney Will NOT Be A Pussycat. Get An Experienced Local DWI Defense Lawyer On Your Side!

ADVISORY - You Must Understand - *It is the Prosecutors job to make sure that you are prosecuted, and he or she will use every ounce of their experience and guile to make sure that you are found guilty as charged!*

In all of our Western New York courts, the Prosecutor will be an experienced Attorney who may have tried hundreds or thousands of criminal or DWI cases in that court. Usually, the evidence against you will be ruthlessly presented to cast you as an outright menace to society who deserves no less than the harshest penalty that the court can confer.



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Sentencing in the WNY Courts can now be very harsh. Our Prosecutors and Judges are under immense pressure from the media, the police, and many in our community, to deter drinking and driving by making an intimidating example of every DWI case that they try.



DWI conviction in WNY will certainly cost you a substantial sum in fines and surcharges, and, depending upon your charges, you may also be sentenced to jail, probation, or a suspended sentence with restraining conditions on your liberty. You may also be required to undergo rehabilitation or counseling to treat any signs of consistent substance abuse.

More recently, the WNY courts are also imposing the installation of an *ignition interlock device* on any vehicle which you may potentially drive (including your spouse's car). These devices are designed to sample the drivers' blood alcohol content before the vehicle can be started and driven. They are also very expensive to install, service, and then uninstall when your sentence is complete.

If you are facing a trial on DWI charges we believe that your best chance of coming away from your trial with the most favorable possible verdict will be obtained by you retaining a local seasoned legal professional who knows the specific WNY court that your case is assigned to and understands every intricacy of the law and procedures as they apply specifically to DWI cases in New York State.

If you are sent to trial, a **Turbo Team** DWI Defense Lawyer can manage all components of your [DWI Defense Strategy](#) in order to gain your maximum advantage, including:

- Jury Selection (if needed)
- Presenting Your Opening Statement
- Presenting any Witness Testimony that supports your case
- Cross-Examining the Prosecution's Witnesses, including Police Officers
- Motions and Hearings against the Prosecutors evidence when necessary
- Presenting the optimal Closing Arguments that summarize your case in your favor



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Widely known as "*The WNY DWI Lawyer*", Tom, and his team of experienced local DWI Defense Attorneys, focus on DWI defense in the 8 counties of Western New York.
To contact Tom directly call 716.222.2222
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Turbo Team - Lawyers Keeping You In The Driving Seat

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