

Your Online Legal Resource: www.granitelaw.com

GRANITE LAW

Valuable Legal Information from Jordan, Gfroerer & Weddleton



Arrested For Driving While Impaired (DWI) Can I represent myself? What can a lawyer do for me?

First, the law in New Hampshire is “impaired to any degree,” not intoxicated. You may recall the last newsletter which talked about someone being arrested for DWI because she admitted to drinking--but it was only a glass of wine hours earlier. She was released after blowing a 0.0, but not after the fear, humiliation, inconvenience, and cost of being arrested.

Anyone arrested for DWI can represent themselves--but it is not generally considered a good idea. “Drunk driving” is a complex legal matter with increasingly harsh consequences. Although a first offense in New Hampshire is a violation (not a crime), DWI defense is a minefield of complicated procedural, evidentiary, constitutional, sentencing and administrative license issues.

An attorney experienced in DWI defense first looks to see if the police have made any mistakes. Remember, the State has to prove “beyond a reasonable doubt” that you were impaired to any degree. Yes, that’s right, “impaired to any degree.” That is the standard in New Hampshire. You do not have to be a .08. You do not have to be “drunk.” If the facts and circumstances surrounding your stop, arrest and subsequent field sobriety tests demonstrate that you were impaired, you can be found guilty, regardless of any breathalyzer result.

An attorney can help by representing you at the administrative license suspension hearing. Depending upon the facts, the attorney can seek to suppress illegal evidence and compel the Court to order information favorable to you like the calibration and maintenance records for the breath machine. The

attorney can negotiate for a lesser charge, like reckless operation or a reduced sentence. If trial is necessary, the attorney can obtain expert witnesses and prepare them for trial.

What defenses are there in a DWI case?

As lawyers like to say, that depends. And it does on the facts of your case, but most DWI stops and arrests revolve around a few issues. Aside from proving you were impaired, the State must prove “beyond a reasonable doubt” that:

- You were driving or in control of the vehicle.
- There was probable cause to stop you.
- You were given Miranda warnings after you were arrested.
- You were given Implied Consent Warnings.
- The sobriety tests were administered correctly.
- The breathalyzer machine was operating correctly and the operator followed required procedures.
- Testing was done during the absorptive phase. The blood, breath or urine test will be unreliable if performed while you are still actively absorbing alcohol (it takes 45 minutes to three hours to complete absorption; this can be delayed if food is present in the stomach). Thus, drinking “one for the road” can cause inaccurate test results.

Top 20 Symptoms Police Officers Look For When Searching For Drunk Drivers

According to the National Highway Traffic Administration, the following is a list of symptoms in descending order of probability that the person observed is driving while impaired.

1. Turning with a wide radius
2. Straddling center of lane marker
3. “Appearing to be drunk”
4. Almost striking object or vehicle
5. Weaving
6. Driving on other than designated highway
7. Swerving
8. Speed more than 10 mph below limit
9. Stopping without cause in traffic lane
10. Following too closely
11. Drifting
12. Tires on center or lane marker
13. Braking erratically
14. Driving into opposing or crossing traffic
15. Signaling inconsistent with driving actions
16. Slow response to traffic signals
17. Stopping inappropriately (other than in lane)
18. Turning abruptly or illegally
19. Accelerating or decelerating rapidly
20. Headlights off

SPRING 2002

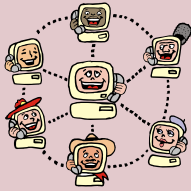
DID YOU KNOW? ...

The classic tale of "Little Red Riding Hood" was banned in the Town of Empire, California, in 1990. The book cover showed a bottle of wine in Little Red Riding Hood's basket. The local school board was afraid that the story encouraged the drinking of alcohol.

In San Salvador, drunk drivers can be punished by death before a firing squad.



Identity theft happens to 500,000 people a year in the U.S. The Federal Trade Commission says identity theft, up 23%, is the number one complaint on the consumer fraud list for 2001, making up 42% of consumer complaints. Number two on the list is Internet auctions at 10%.



Fast Track Trials

Nevada now permits one day civil trials for cases up to \$40,000. Lawyers get just three hours to put on their case. There are only four jurors and three out of four must agree to reach a verdict. Even the judges do not have to be judges, but can be lawyers with at least 15 years experience. This fast-track procedure may or may not provide a more fair hearing of case, but it definitely will give people more time to get back to the gambling tables.

It Depends What You Mean By Funny ...

Three FM radio employees were fired for encouraging someone to commit a crime. It seems that a couple of teenagers kept calling the station requesting the playing of a certain song which station refused to do. To finally get rid of the boys, the station employees told the boys they would win a prize if they called a certain 800 number and said "I am going to kill the President." The number was the White House. Since the kids thought it was a joke, they gave their names and addresses to the secret service who promptly arrived and interviewed the boys. To make matters worse, when the secret service went to the radio station, the employees thought it was a joke and refused to let the secret service in. They were fired.

We Don't Make This Stuff Up ... Real Cases, Real Names

Easter Seals Society For Crippled Children v. Playboy, 815 F.2d 323, (5th Cir. 1987)

United States v. 11 1/4 Dozen Packages of Article Labeled in Part Mrs. Moffet's Shoo Fly Powders for Drunkenness, 40 F. Supp. 208 (W.D.N.Y. 1941)

Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971)

Silver v. Gold, 211 Cal.App.3d 17, 259 Cal.Rptr. 185 (1989)

Plough v. Fields, 422 F.2d 824 (9th Cir. 1970)

Klump v. Duffus, 71 F.3d 1368 (7th Cir. 1995)

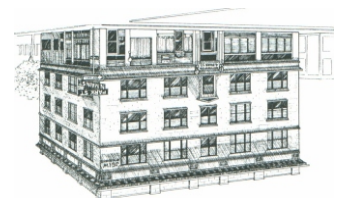
United States v. Estate of Grace, 395 U.S. 316 (1969)

United States v. Caesar, 368 F. Supp. 328 (1973)

State of Indiana v. Virtue, 658 N.E.2d 605 (1995)

Concord, NH 03301-6329
Four Park Street

Jordan, Gfroerer & Weddleton
ATTORNEYS AT LAW



ADDRESS SERVICE
REQUESTED

PRESORTED STANDARD
U.S. Postage Paid
Permit No. 11
New London, NH