

The Student Guide To N.H. Criminal Law

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Preamble

This presentation is made as part of the overall goal of this institution to provide its students with a well-rounded education. Society is made up of laws. The laws in effect today are not the same laws that were in effect five, ten, or fifteen years ago. They are not the same laws that were in effect when your parents and siblings were in college. The motivation behind this program is to share information and to educate you about some of the laws that could affect you during your college experience. We hope that after you participate in this session, you will be able to make better informed choices, both in terms of some of the things the law prohibits and in terms of the potential consequences for violating those laws. It is only fair that you be told the rules before you are expected to play the game.

Overview of Materials

These materials are divided into five (5) sections. The first section discusses criminal law in New Hampshire generally. The next three (3) sections discuss various legal issues that you may be faced with during your college experience while: walking down the street; driving in a car; and living in a residence. The last section focuses on the process of being arrested.

These materials are not an exhaustive list of prohibited acts, nor are they a complete list of all the potential punishments allowed under the law; rather, they are a collection of information concerning prohibited conduct and potential punishments that we feel is most likely to aid you as you attempt to navigate the college experience.

I. OVERVIEW OF NEW HAMPSHIRE CRIMINAL LAW

The so-called “Common Application” and many other applications for schools and employers alike will, at some point, ask the applicant to note whether she has ever been convicted of a *crime*.¹ Under New Hampshire Law, all *felonies* and *misdemeanors* are crimes;² while *violations*, *ordinances*, and *delinquency findings* are not crimes.³

Felonies are crimes for which the penalty is, potentially, imprisonment in excess of one year. Felonies are further broken down by N.H. law into *class A felonies* and *class B felonies*. Class A felonies are crimes that carry a potential sentence in excess of seven (7) years imprisonment. Class B felonies are crimes that carry a potential sentence in excess of one (1) year and less than seven (7) years imprisonment.

Misdemeanors are broken down by N.H. law into *class A misdemeanors* and *class B misdemeanors*. Class A misdemeanors carry a potential sentence of up to one year (1) in jail. Class B misdemeanors carry a potential sentence that does not allow for incarceration, but does allow for a fine.⁴ If you financially qualify, you have a right to court appointed counsel only when charged with an offense that carries a potential sentence that involves incarceration. One of the practical differences between being charged with a class A misdemeanor and being charged with a class B misdemeanor is the difference between having the right to a court appointed lawyer and being faced with having to retain a lawyer on your own.

There are other classes of prohibited acts under New Hampshire law that are not, technically, crimes. These are *violations*, *ordinances*, and *delinquencies*. Violations are

¹ Some applications ask the applicant to list only felonies, while others ask for “offenses,” a less clearly defined term. The term “crime” is specifically defined in the NH criminal code. The term “offense” is not clearly defined.

² See RSA 625:9

³ The laws in each state are different, these materials discuss the laws of New Hampshire and some federal laws.

⁴ A Class A Misdemeanor carries a potential fine of up to \$2,000.00 plus statutory penalty assessment of 20%. A Class B Misdemeanor carries a potential fine of up to \$1,200.00 plus statutory penalty assessment of 20%.

punishable by a fine of up to \$1,000.00. Ordinances are specific to particular cities or towns and prohibit acts within the city or town limits. One example of an ordinance is the prohibition of overnight parking in Concord. Ordinances are generally punishable by fines. Violations and ordinances involve prohibited acts that are less serious than crimes.

Subject to certain exceptions⁵ if a person is under the age of seventeen (17) when she commits a crime the State will bring a *delinquency* petition against her. Delinquency hearings occur in juvenile court and are controlled by much different rules than hearings in adult criminal court. Proceedings in juvenile court are confidential and not open to the public.⁶ If the charges in the petition are found to be *true* by a court, the juvenile will be deemed delinquent. This finding triggers a number of potential consequences that can include placement in state custody, fines, juvenile probation and counseling. Even if the conduct alleged in the delinquency petition would have been a crime if committed by an adult,⁷ the delinquency finding is not equivalent to being convicted of a crime. Therefore, a student who has been adjudicated delinquent need not list that delinquency finding on an application that asks for disclosure of prior criminal convictions or crimes.⁸

II. WALKING DOWN THE STREET

This section discusses some of the potential criminal issues you may encounter while walking down the street on any given Saturday night. Some of the issues discussed in this section

⁵ 169-B:32 does not apply to persons over 16 who are charged with a violation of the motor vehicle laws; aeronautics laws; laws relating to navigation or boats; fish and games laws; laws relating to the possession of tobacco; laws relating to title XIII; laws relating to fireworks and any ordinance providing for a penalty not exceeding \$100. These sorts of accusations will not be brought in juvenile court.

⁶ RSA 169-B:2.

⁷ In certain circumstances the State can seek to have a juvenile certified and treated as an adult. This occurs, after a hearing, in cases involving more serious allegations. In these circumstances the certified juvenile's conviction will be considered a "crime."

⁸ In fact, under RSA 169-B juvenile delinquency proceedings are strictly confidential and it is a misdemeanor to disclose anything concerning a person's juvenile proceedings, charges, or punishments. There are certain limited exceptions to this law.

are: how to tell when you are in custody when interacting with a police officer; what constitutes possession of alcohol and the potential punishments for doing so if you are underage; and how much resistance qualifies as resisting arrest.

Custody

It's Saturday night and a group of students have headed to town to get off campus for a while. They are blowing off some steam and making some noise as they make their way down the sidewalk on Main Street. They figure, they are not driving so they don't have to worry about being hassled by the police. Then a local police officer pulls up in his cruiser and approaches the group. He begins to ask them what they are doing and where they are coming from. Do the students have to answer him? Are they free to leave? What would happen if they simply walked away from the police officer?

When you are not free to walk away from a police officer you are in *custody*. There are many legal protections that are triggered depending on whether you are or are not in custody. It can be difficult to tell whether you are free to walk away from a police officer. Generally, people feel as if they should respect the authority of a police officer and that walking away from an officer is disrespectful. When interacting with a police officer it is important to respect his authority while also keeping your rights in mind.

If a police officer stops you and begins asking you questions, it is appropriate for you to ask the officer whether you are free to leave. If the officer says you are free to leave then you should do so if you wish. If you are not in custody then courts may consider your further conversations with the officer to be voluntary. This can affect the admissibility of any incriminating statements or other evidence the officer may discover as a result of having further

contact with you. If you are free to leave and choose to continue contact with a police officer, you do so at your own peril.

If you are in custody you should not physically resist a police officer in any way. At the same time if you are in custody you should exercise your right to remain silent and you should refuse to answer any questions (other than standard *booking questions*, discussed later in the materials) until you are allowed to speak to a lawyer. Police officers are trained to try to manipulate you into making statements. A police officer may say something like: “If you don’t have anything to hide, why wouldn’t you tell me your side of the story?” or “If we get a lawyer involved I won’t be able to help you out of this situation.” You should not be fooled by these kinds of attempts to get you to incriminate yourself. All statements can and will be used against you. If you say nothing, you are protecting yourself in the best way possible. If you speak to a police officer, you allow the officer to either misrepresent or misinterpret what you are saying in a way that could hurt your interests if you are later charged with a crime. You should also refuse to give up (waive) any other rights. You should not verbally consent to allowing the police officer to search anything under your control. However, under no circumstances should you physically resist the officer in any way.

Alcohol

A group of underage students are hanging out on a Saturday night at a party. There is a keg there. The students get pretty drunk and decide to leave the party and walk around. They make sure not to bring any alcohol with them so they figure nothing bad can happen to them. While stumbling down the street from the party they come across a police officer. Can they be arrested? If so, what’s the worst that can happen?

Many underage students will come across alcohol during their college experience. If you are under the age of twenty-one (21), mere possession of alcohol is a violation. If you are found guilty of possession of alcohol you will be fined no less than \$300.00⁹ (no less than \$600.00 for a subsequent offense). Additionally the court may, in its discretion, revoke your driver's license even if you were not driving.¹⁰ *Possession* includes the concept of *internal possession*. This means that you can be convicted of possession of alcohol if you have alcohol in your body and not on your person. If a police officer does not see you physically drinking the alcohol, he will have to prove there is alcohol in your body. Evidence of internal possession can be any statements you have made. That is, if you tell the officer you have been drinking, he can testify about your statement at trial to prove you possessed alcohol. Your Blood Alcohol Content ("BAC") can also be evidence of internal possession of alcohol. The alcohol content of your blood reflects the amount of alcohol you have consumed. In order to determine your BAC, you would have to agree to provide the police officer with a breath, blood or urine sample. If you are under twenty-one (21) a BAC over a .02 is considered evidence of intoxication and thus, of possession of alcohol. You have a right to refuse to provide statements about how much you have had to drink. You have a right to refuse to provide a breath, blood or urine sample.¹¹ You have a right not to aid a police officer in his attempts to collect evidence that will be used against you.

If a police officer believes you are so intoxicated that you are a danger to yourself or to others, the officer can take you into *protective custody*. Protective custody means the officer

⁹ RSA 179:10

¹⁰ RSA 263:56-b provides any person under 21 years of age who is convicted, found to be delinquent (RSA 169-B) or found to be in need of services (RSA 169-D) of any offense involving the sale, possession, use or abuse of alcohol or controlled drugs may, at discretion of the court, be subject to revocation or denial of a driver's license or privilege to drive for:

- Not less than 90 days but not more than one year for a first finding/conviction; and
- Not less than 6 months but not more than 2 years for a subsequent finding/conviction.

¹¹ See the discussion of the Implied Consent law in the DWI section of these materials.

takes you into custody but has no intention of charging you with a crime or a violation. If you are taken into protective custody you will be held until you sober up. If you resist the efforts of a police officer trying to place you into protective custody, the act of resistance is chargeable as separate crime.

*Resisting arrest*¹² is a misdemeanor and therefore a crime. Although verbal protestations alone are not sufficient to qualify as resisting arrest, any physical resistance of a police officer's attempt to arrest or detain you qualifies as resisting arrest. Thus, if a police officer is attempting to handcuff you and you tense your arms, or pull away from the officer, these slight actions are enough to be charged with the crime of resisting arrest. If a police officer is trying to take you into custody you should not physically resist the officer in any way. It does not matter if the officer has a right to arrest or detain you. Even if a police officer is attempting to arrest you for a crime that you did not commit, resisting the arrest is a separate crime. Being ultimately found not guilty of the underlying offense is not a defense to the resisting arrest charge.

Although verbal protestations alone are not sufficient for a police officer to charge you with resisting arrest, they can be sufficient to be charged with *disorderly conduct*.¹³ Disorderly conduct is a misdemeanor and thus, a crime. This crime prohibits behavior that can include both physical and verbal protestations. If you engage in violent, tumultuous, threatening or obscene behavior in a public place you may be committing an act of disorderly conduct.

Consider the group of students who were walking down the street from the party. Let's say the police officer thinks one of the students is so drunk she is in danger of harming herself. The officer may decide to take her into protective custody. If she resists his attempts to handcuff

¹² RSA 642:2

¹³ RSA 644:2 includes a large list of prohibited behavior, some of which is not covered in these materials.

her, she may be charged with resisting arrest. If some of her friends start to raise their voices at the police officer in protest, they may be charged with disorderly conduct.

Crimes Against The Person

Confrontations which begin as nothing more than verbal sparring can easily escalate into words or actions that constitute crimes. Two of these potential crimes are *simple assault* and *criminal threatening*. Simple assault¹⁴ is, in most cases, chargeable as a misdemeanor. A simple assault is nothing more than unprivileged physical contact with another. Punching, hitting, shoving and even spitting on another can be chargeable as a simple assault. If an assault causes more serious injuries to the other person it can be charged as a felony.

Criminal Threatening¹⁵ is also chargeable as a misdemeanor in most cases. Like an assault, a more serious threat can be charged as a felony. A criminal threat can be physical conduct or verbal conduct. Generally a threat is conduct that is intended to coerce or terrorize another person.¹⁶

If a *deadly weapon*¹⁷ is used to either threaten or assault another, the potential consequences are far more serious. For example, under N.H. law there is a mandatory minimum sentence of three (3) years imprisonment for using a firearm while committing any crime. If you are convicted of using a firearm to commit a threat, you will be sentenced to no less than three (3) years imprisonment. Use of a deadly weapon is a fairly broad concept. It is not necessary to point a gun at someone to use it. Simply having possession of a gun when a threat is uttered can be considered using it for purposes of this sentence enhancement.

¹⁴ RSA 631:2-a

¹⁵ RSA 631:4

¹⁶ RSA 631:4 criminalizes a wide variety of conduct including threatening to commit any crime against another.

¹⁷ State v. Hatt, 144 N.H. 246 (1999) (unloaded handgun considered “deadly weapon” for purposes of sentencing under 651:2, II-g)

Property Crimes

Most types of vandalism and theft are property crimes. The severity of a property crime will be determined by the value of the property damaged or stolen.¹⁸ Acts of vandalism are charged as *criminal mischief*. Criminal mischief is the damaging of the property of another. You need not know who owns the property damaged in order to be chargeable with this offense. It is enough that you knowingly or recklessly caused the damage.

Receiving stolen property is the crime of possessing stolen property. It does not matter that you were not the one who actually stole the property. If you possess property that you reasonably should know was stolen, you have committed this crime. Thus, if a person drives up to you in a van and offers to sell you a \$5,000.00 television that is in the back of the van for \$50.00, you may be committing a crime if that television turns out to be stolen. The old adage “if it looks too good to be true, it probably is” should always be kept in mind.

Issuing bad checks is a crime.¹⁹ This crime can range from being chargeable as a class A felony (if the amount is over \$1,000.00) to being chargeable as a class A misdemeanor (if the amount is less than \$500.00). Essentially this crime is committed when you pass a check that is refused by your bank or credit union. It is a partial defense for you to pay the amount of the check within fourteen (14) days of receiving notice that payment of the check was refused.

III. DRIVING IN THE CAR

There are numerous motor vehicle offenses under New Hampshire law. Some general topics addressed in this section are: when you must pull over for a police officer; driving with a suspended license; and driving while under the influence.

¹⁸ Property crimes are generally charged as misdemeanors or felonies depending on the value of the property damaged/taken. However, value can be aggregated if more than one item of property is involved. Thus damaging four tires of a car may result in enough aggregated damage to charge the person with a felony.

¹⁹ RSA 638:4.

Some Motor Vehicle Offenses

*Disobeying a police officer*²⁰ is a crime that affects you when you are the driver of a vehicle. If you do not pull over when ordered to do so by a police officer you can be charged with disobeying a police officer. Once you are pulled over you can be charged with this crime if you refuse to give the officer your name, address, date of birth, or the name and address of the owner of the vehicle. If you are convicted of this crime you can have your license and registration suspended. If a police officer has to pursue you because you do not pull over and an injury results from the pursuit, you can be charged with a felony. If a police officer signals to pull over, you should do so as soon as it is possible to do so safely.

Speeding is a violation. If your speed is more than 25 mph over the posed limit or if there are other aggravating circumstances such as poor weather, or being in a residential neighborhood, you could be charged with *reckless operation*. Reckless operation carries a higher mandatory fine as well as a sixty (60) day loss of license for the first offense.

Driving while your license or privilege to drive is under suspension is chargeable as a violation for the first offense.²¹ You must keep the Department of Motor Vehicles (“DMV”) updated about your correct mailing address. The DMV can suspend your driver’s license because of unpaid fines (even fines that do not relate to a motor vehicle offense) and for various other reasons. When the DMV suspends your license, they will send notice of the license suspension to your last known address. You will be presumed to know you are under suspension even if you do not receive the notice. Therefore, you could be driving around with a suspended license without knowing it and a court would punish you as if you did.

²⁰ RSA 265:4

²¹ RSA 263:64, in certain circumstances this offense can be charged as a felony as well.

Driving While Under The Influence

Driving on a public way while under the influence of alcohol or controlled drugs is a crime.²² A common misperception is one must be drunk to commit this crime. This is not the case. If you drive with a BAC over the legal limit, you have committed this crime. The legal limit for a person over the age of twenty-one (21) is a BAC of .08. If the person is under the age of twenty-one (21) the legal limit is .02. Two people could consume the same amount of alcohol in the same time period and have different BACs. Your BAC is greatly affected by your metabolism and body weight. Two people who weigh the same and have the same BAC may feel the effects of alcohol much differently. One may feel drunk and the other may feel sober depending on their respective tolerance for the effects of alcohol.

Even if the State does not know your BAC, you can still be charged with this crime. If there is no BAC the State will have to prove you drove while you were *impaired to any extent* by alcohol, or drugs or some combination of the two. If you are not drunk, but are partially impaired by being tired, partially impaired by being stressed about your exams, and also impaired by the three drinks you had earlier in the night, you are committing a crime by driving on a public way in New Hampshire.

The penalties for a *DWI first offense* are constantly being changed. As of January 1, 2007 the mandatory minimum penalties are a fine of no less than \$500 and a loss of license for no less than nine (9) months.²³ If you under twenty-one (21) the license loss is for no less than one (1) year. There are more significant penalties for subsequent DWI convictions.

²² RSA 265-A:2

²³ Six (6) months of the nine (9) months of license loss can be suspended if the Defendant enters the relevant alcohol treatment class within forty-five (45) days of their conviction date.

There are also more significant penalties for a conviction of an *aggravated DWI*.²⁴ If you are convicted of an aggravated DWI you will be guilty of a class A misdemeanor. The mandatory minimum fine for an aggravated DWI conviction is \$750 and the loss of license is no less than eighteen (18) months. Additionally, a conviction for an aggravated DWI requires you to serve ten (10) days, three (3) of which are served at the house of corrections and seven (7) of which are served at an in-patient alcohol treatment facility.

There are a number of factors that can turn a regular DWI into an aggravated DWI. These aggravating factors are: (1) driving at a speed more than 30 mph over the legal limit; (2) causing a motor vehicle collision resulting in serious bodily injury; (3) attempting to elude pursuit by law enforcement; (4) carrying a person under the age of sixteen (16); or (5) having a BAC of .16 or greater.

The BAC is the strongest evidence the State can use against you to prove that you were driving while under the influence. If the State is unable to ascertain your BAC, its evidence of impairment will be based on the observations of a police officer. These observations begin before the officer pulls your car over. A police officer will often travel behind a vehicle noting the driver's operation. If you are impaired by alcohol or drugs you may have difficulty controlling your vehicle.

Once you are stopped, the officer will make observations of your appearance and demeanor. The officer will note if you have mood swings. The officer will note if you have red or glassy eyes, smell of alcohol, or slur your speech. The officer will note if you have difficulty getting out of your car or if you have to hold onto your car for support. The officer will also note if you sway or lose your balance. These are all observations that will go into the officer's report and that the officer will testify about in court to prove you were under the influence.

²⁴ RSA 265-A:3

Another source of evidence is any statement made by you to anyone. People will often have the impulse to tell a partial truth to a police officer. They think the officer will be more likely to let them go if they are perceived as being honest and truthful. This will often result in incriminating and contradictory statements. Thus, you may admit to having had two or three drinks when, in truth, you had more. Your admission of having had any alcohol is a statement that the officer will note in his report and that the officer will testify to at trial. You are under no obligation to make any statements concerning how much you may have had to drink. This is another situation where police officers are trained to attempt to get you to talk and incriminate yourself. Unless you are completely sober, when a police officer stops you to investigate whether you are operating under the influence, you will likely be arrested regardless of what you say. If you truly are not under the influence of alcohol or drugs, you should communicate this to the officer. If, however, you have questions in her own mind about whether you may be under the influence of alcohol or drugs, you should not provide the officer with evidence that will be used against you. You should not make statements about where you were that night or what you had consumed. It is your right to choose not to incriminate yourself and you ought to exercise that right and remain silent.

Field Sobriety Tests

If you are stopped and are being investigated for DWI, the police officer will likely request that you perform some *field sobriety tests* (FSTs). You are within your rights to refuse to perform these tests, but you will likely have your driver's license suspended for your refusal. This is discussed later under the *implied consent law* section. When considering whether to agree to take FSTs you should consider the purpose of these tests. Field sobriety tests are designed to allow the officer to make observations that will later support the conclusion that you are

impaired by alcohol or drugs. By agreeing to perform FSTs you are agreeing to furnish the police officer with evidence that will be used against you.

There are three standardized FSTs: the Horizontal Gaze Nystagmus test (HGN); the Walk and Turn test; and the One Leg Stand test.²⁵ The police officer has been trained to administer and grade these tests. You will not be told how you are being graded while you are performing the FSTs. FSTs are divided attention tests. They divide your attention between the *instruction phase* and the *performance phase*. At the beginning of each of these FSTs the officer will instruct you to maintain a standing position while the instructions are given. The officer will then instruct you on how to perform the test. If you begin any of the FSTs before the officer instructs you to begin, this will be noted as a clue. DWI stops often occur at night on the side of a road. You will be nervous and will have a difficult time concentrating. If you do not listen to and follow each of the officer's instructions, the officer will conclude that you are failing to do so because of impairment. If you elect to take FSTs, you must be prepared to concentrate on every instruction given by the officer and then on performing each aspect of the test exactly as instructed.

You will not be able to determine whether you passed or failed the HGN test. This test is designed to allow the officer to spot *nystagmus* which is an involuntary jerking of your eye. If the officer spots nystagmus at certain points, the officer will note it as an indication of impairment. The officer will instruct you not to move your head and to keep your hands at your sides. The officer will have a stimulus (usually a pen) that the officer will tell you to follow with your eyes without moving your head. The officer will then watch your eyes as you perform this test. You will not be able to control or feel the onset of nystagmus.

²⁵ Some police officers will also administer some non-standardized FSTs, these material discuss the three standardized FSTs that all police officers should administer.

The Walk and Turn FST involves walking heel-to-toe on a straight line. You will be instructed to place your left foot in front of your right foot with the toe of your right foot against the heel of the left foot. You will be instructed to maintain this position during the instruction phase and will be instructed to take steps in this fashion while performing this test. You will be instructed to keep your hands at your sides at all times. If you raise your hands for balance or take an improper step, this is considered an indication that you are impaired. You will be instructed to take nine (9) steps out, turn by keeping one foot on the line and taking a series of small steps, and then to take nine steps back. You will also be instructed not to stop walking until the test is complete and to count each step. Each separate instruction is a separate clue that the officer will watch for. A score of two clues or more is considered failure of this FST.

The One Leg Stand test involves balancing on one foot. You will be instructed to stand, during the instructions phase, with your feet together and to keep your arms at your sides at all times. You will be instructed to raise one of your legs six (6) inches off the ground and to count (“one thousand one, one thousand two...”) to thirty (30). If you fail to follow any of these instructions it will be considered an indication of impairment (i.e. a clue). Two or more clues are considered a failure of this test.

If you have difficulty maintaining your balance during either the instruction or the performance phase of any of the FSTs, it will be considered an indication of impairment. Because balance is important to the successful performance of the FSTs, it is very important for you to tell the officer if you have any mental or physical conditions that would potentially affect your ability to balance. You should take note of the conditions under which you are being asked to perform these tests. You should note if it is windy, cold, or dark. You should note if cars are driving by at a high rate of speed or very close to the area where you are being asked to perform

the FSTs. You should note if the ground is uneven, or if you are on a hill, or an incline. These poor conditions could affect your ability to balance and concentrate. The police officer will take notes during his administration of the FSTs. You should always keep a pen and some paper in your car and should take notes immediately after or even during your interaction with a police officer so that you can remember each important detail later.

Implied Consent Law

If you are stopped by a police officer who is investigating whether you have committed a DWI, you may be asked to supply a breath, blood, or urine sample. If you refuse to supply a breath, blood, or urine sample to an officer who legally requests one, you will violate the *implied consent* law and your driver's license will be suspended. If you provide a sample that indicates you were driving with a BAC over the legal limit, you will also have your license suspended.

There are two different times when a police officer may request a breath sample from you, at the scene of a motor vehicle stop, and back at the station. If the officer requests you to supply a breath sample at the scene of the stop you should almost always refuse. The test at the scene is called a *preliminary breath test* and is taken using a hand-held testing device.²⁶ If you agree to take the preliminary breath test, the results of the test may be used against you. If you refuse to take this test, the refusal will not result in suspension of your license and the fact that you refused cannot be used against you in any future proceeding. Preliminary breath tests are far less reliable than the breath test administered at the police station.

If the officer arrests you and asks you to supply a breath test at the police station you have the right to refuse. By driving on a public way in the State of New Hampshire you have impliedly consented to submitting to physical tests (i.e. FSTs), and to providing breath, blood, or

²⁶ RSA 265-A:15

urine samples if requested to do so by a police officer.²⁷ If you refuse a lawful request by a police officer to perform FSTs or to provide a breath, blood or urine sample, your license will be revoked by the DMV. If you have a license from another state, your privilege to drive in the State of New Hampshire will be revoked and the other state will likely revoke your driver's license as well. If you provide a breath, blood, or urine sample that indicates you were driving with a BAC over .08 (or over .02 if under twenty-one (21)) then the DMV will revoke your driver's license.

A police officer who has arrested you for DWI will transport you to the police station where he will read you your Administrative License Suspension rights. The officer will ask you to sign a form indicating that you have been put on notice that you have the right to refuse to give a breath, blood or urine sample, and that your driver's license shall be suspended if you refuse or if the sample reveals a BAC over the legal limit. The officer does not need to allow you to consult with a lawyer, your parents or anyone else when you decide whether to provide the sample. If you take too long to decide or do not cooperate with the officer's attempts to obtain the sample, the officer may deem you to have refused. Generally police officer's will have a machine (the Intoxilyzer 5000) which you will be asked to blow into to collect a breath sample. Police officers rarely request blood or urine samples unless they suspect you have been using drugs other than alcohol. You do not have the right to choose what kind of sample you provide, it is up to the officer.

Any person under the age of 21 who is convicted of any violation, or crime, or who has been adjudicated delinquent or a child in need of services (CHINS) based on an allegation involving the sale, possession, use or abuse of alcohol or controlled drugs may have her driver's

²⁷ RSA 265-A:14

license suspended.²⁸ The suspension period is not less than ninety (90) days and not more than one (1) year for a first offense. If the student is under the age of twenty-one (21) on the date of the incident, she shall lose her driver's license for no less than one (1) year.²⁹

IV. IN THE RESIDENCE

During your college experience, you may live on-campus in student housing such as a dormitory or school apartment, or you may live in an apartment or house that is off-campus. You may live with roommates, or you may live alone. You may also choose to continue to live at home in your parents' house while you attend school. There are many different criminal issues that you may face while in your residence. This section will discuss some of those issues such as: police searches of your residence; hosting a house party; and possession of controlled drugs.

Police Searches Of The Residence

A group of students rent a house in town. One night they decide to host a party. All sorts of people show up. There is drinking and some of the people who attend the party even bring illegal drugs. There is loud music and dancing and even the occasional argument. Suddenly there is a knock at the door. One of the students who lives in the house opens the door to find a police officer. He tells her there have been some noise complaints and asks whether everything is all right. He wants to come in the house and have a look around. Does the student have to let him in? What happens if she does?

Generally, the police must have a warrant to search your residence. This is true regardless of whether that residence is on-campus or off-campus. The school and its department of campus safety may reserve the right to freely enter and search on-campus housing. You should carefully

²⁸ RSA 263:56-b

²⁹ RSA 265:-A:18

review the student handbook and housing contract to determine the rights the school retains to enter and search on-campus housing.

If a police officer knocks on the door of your residence and asks to enter and search the residence, you should immediately ask whether the officer has a search warrant. If the officer has a search warrant he has a right to enter the residence and search it. You should not attempt to interfere in any way with a police officer who is searching your residence pursuant to a warrant. If you find yourself in such a situation you should exercise your right to remain silent until you have an opportunity to consult with a lawyer. Any statements you make to the officer will be additional evidence to be used against you.

If a police officer asks to search your residence without a warrant, you are under absolutely no obligation to agree to allow the officer to enter the residence and search it. In certain circumstances a police officer may have the power to demand entry into your residence without a warrant. These circumstances will depend on the specific facts and circumstances of which the officer is aware. One example would be if a police officer knocks on the door and, while speaking to a student the officer hears gun shots and screams coming from inside the residence. There is a fine line between an officer demanding entrance into your residence and you're consenting to the officer's entrance of the residence. If you are unsure whether the officer is telling you he is going to enter or asking whether he has permission to enter, you should ask questions to clarify this point. Regardless of the situation, you should never attempt to physically hinder a police officer in any way. Physical resistance will always put you in jeopardy of being charged with a crime (See prior sections on *resisting arrest* and *simple assault*).

Whether or not you consent (i.e. give permission) to a police officer to enter and search your residence will greatly affect whether evidence the officer finds can be used against you at

future hearings and at trial. There is significant and nuanced law about the admissibility of evidence found during a police search that you need not understand. You should understand that you have the right to refuse to consent to a police officer's request to enter and search your residence. Further, you should understand that if you do consent to a police officer's entrance and subsequent search of your residence, it is likely that whatever evidence the police officer finds will be able to be used against you. If you are unsure what to do you should not consent to anything until you are able to consult with a lawyer.

House Parties

A student lives at home with her parents. As the student nears her twenty-first (21) birthday her parents decide to throw a party for her. They don't want her, or her friends, out driving drunk. They tell her to invite all of her friends and they will provide food and alcohol. Some of the student's friends are under twenty-one (21). The parents advise everyone to bring tents and that they will be collecting everyone's keys so no one can drive who is drinking. Can the parents get into trouble for this? Can the student?

New Hampshire Law Enforcement is very concerned about preventing underage drinking. As a result, there has been an increase in enforcement and prosecution of adults who provide alcohol to minors. Law enforcement has taken a "zero tolerance" stance towards anyone who facilitates a house party at which minors are allowed to drink or to do illegal drugs. It is a misdemeanor to do anything to *facilitate a drug or underage alcohol house party*.³⁰ The N.H. law defines a drug or underage alcohol house party as a gathering of five (5) or more people under the age of twenty-one (21) who are unrelated to the person who owns the residence where at least one (1) of those people unlawfully possesses or consumes alcohol or an illegal drug. This applies to students who live in any on-campus or off-campus housing. It also applies to both a

³⁰ RSA 644:18

student and her parents if the student lives in her parents' house. Even the smallest action can qualify as facilitation of such a party. Taking the keys of the people who are at the house to prevent them from driving, or even simply giving them plastic cups could qualify as helping to facilitate the party. If this crime is charged as a class A misdemeanor the person facilitating the party could be sentenced to a year in jail and a \$2,000.00 fine if convicted. Additionally, a person facilitating such a party could be exposed to civil penalties. If one of the underage minors at such a party gets drunk and is injured she, or her parents, could sue the person who facilitated the party. Even if you are under twenty-one (21), you could still be charged with this crime if you get caught facilitating this kind of party in your residence.

Controlled Drugs

Possession of a controlled drug is a crime unless you have a prescription for that drug.³¹ Possession of a controlled drug can be charged as a misdemeanor or as a felony depending on the particular drug possessed, the quantity of the drug, and other aggravating factors. There are both federal and state laws that prohibit possession of a controlled drug, therefore, if you are charged with illegally possessing a controlled drug you may face prosecution by both the State of New Hampshire as well as the Federal Government. This section will discuss some of the penalties and consequences for being convicted of illegally possessing a controlled drug.

A conviction for possessing a controlled drug can impact your eligibility for federal financial aid.³² In general, if you have been convicted of any offense under any state or federal law involving the possession or distribution of a controlled drug you shall not be eligible to receive grants, federal student loans, or federal work assistance for a period of time. If you are convicted of a drug offense involving mere possession and if you do not have any prior drug

³¹ RSA 318-B

³² 20 U.S.C. § 1091 (r) (1) and (2)

convictions you will be ineligible for one (1) year. If you are convicted of a drug offense involving distribution and you do not have any prior drug convictions you will be ineligible for two (2) years. The periods of ineligibility increases if you have prior drug convictions. If you are ineligible to receive federal financial aid for a drug conviction you may petition to resume eligibility prior to the end of the ineligibility period if you complete a drug rehabilitation program or if the drug conviction is reversed, set aside, or otherwise rendered nugatory. Your state financial aid and any scholarships you receive may also be affected by a drug conviction.

Both the State of New Hampshire and the Federal Government can take your property if you are convicted of a drug offense by means of *civil forfeiture*.³³ There are many categories of property that can be subject to forfeiture. Your vehicle, house and even your money can be subject to a forfeiture proceeding. Essentially, if the State/Government can show that the property was used to procure, manufacture, conceal, deliver or distribute illegal drugs, it may be subject to forfeiture.

The State and Federal drug laws prohibit possession of the same kinds of controlled drugs.³⁴ Penalties will greatly be affected by the quantity of the controlled drug possessed. Under New Hampshire law, the potential sentence for possession of more than one (1) ounce but less than five (5) pounds of marijuana is up to seven (7) years imprisonment and a fine of up to \$100,000.00. The potential sentence for possession of less than one (1) ounce of marijuana is up to three (3) years imprisonment and a fine of up to \$25,000.00. The potential sentence for possession of more than one half (1/2) an ounce and less than five (5) ounces of cocaine is up to twenty (20) years imprisonment and a \$300,000.00 fine. The potential sentence for possession of less than one half (1/2) an ounce of cocaine is the same as the potential sentence for possession

³³ RSA 318-B:17-b

³⁴ Go to <http://www.usdoj.gov/dea/pubs/scheduling.html> for a complete list of drugs which are controlled under state and federal law

of more than one (1) ounce and less than five (5) pounds of marijuana. If you have a prior drug related conviction the potential sentences will be much more severe.

If you are convicted of a drug related offense within 1,000 feet of a *school zone* you will be subject to enhanced penalties.³⁵ A school zone is defined as real property comprising a public or private elementary, secondary, or vocational-technical school.

Sexual Assault

Many students will form romantic and sexual relationships during their college experience. There can be significant criminal consequences for mistreating an intimate partner. This school has specifically addressed some of the issues that can arise between two students who are involved in an intimate relationship. This section will supplement the information already provided by the school on this topic.

A *sexual assault* is a crime that can be a misdemeanor or a felony depending on the circumstances. In New Hampshire a person under the age of sixteen (16) cannot legally consent to have sex or any sexual contact. If a minor is fifteen (15) years and three hundred (300) days old and that minor tells a nineteen (19) year old adult that she wishes to have sex, she has not legally consented. If the adult and the minor have sex under these circumstances the adult has committed the crime of sexual assault. This would be a sexual assault even if the minor showed the adult an altered form of identification indicating she was over the age of sixteen (16). In New Hampshire it does not matter that the adult has reason to think the minor is sixteen (16) or over at the time they have sex.

If the two parties are over the age of sixteen (16), sex or sexual contact must be consensual. Consent is something that can be freely given and taken away at any time. This is a particularly important issue when the parties are intoxicated. A woman may tell a man that she

³⁵ RSA 318-B:26, V

wishes to have sex with him while they are at a party, but then she may change her mind and say she no longer wishes to have sex when they get back to the man's room. The fact that she said she wished to have sex at the party has no bearing on her ability to change her mind at a later point. Additionally, a person must be physically able to consent to sex prior to having it. A person can be so intoxicated that, although conscious, she may be mentally unable to consent. If you have any doubt whatsoever about whether your partner truly consents to having sex or to any kind of sexual touching, you should not do so.

There are severe penalties for a sexual assault conviction. If you are convicted of a misdemeanor sexual assault you face a potential year in jail as well as the requirement that you register as a *sexual offender* for ten (10) years. If convicted of a felonious sexual assault there are much larger potential incarceration periods and the requirement of lifetime registration as a sex offender. These registration requirements are mandatory and can affect where you will be able to live and what kinds of jobs you may be able to have.

Crimes of Domestic Violence

Many of the crimes discussed in these materials can be crimes of *domestic violence* if they occur between two people who are family or household members or if they are current or former sexual or intimate partners.³⁶ If you threaten to kill another student, you have committed a criminal threat. If the threatened student is a former girlfriend/boyfriend, that criminal threat may also be charged as a crime of domestic violence.

Although the penalties for crimes charged as crimes of domestic violence are not enhanced, there are additional consequences. Generally, courts will require people convicted of domestic violence crimes to undergo domestic violence counseling to avoid incarceration. This kind of counseling can be time-consuming and expensive. Another consequence is you may not

³⁶ RSA 173-B:1

be able to legally possess any firearms if you are convicted of a crime of domestic violence. This is discussed in a later section regarding firearm possession.

Stalking is a crime that encompasses many different acts.³⁷ It is often charged as a domestic violence offense. A person commits stalking if he engages in a course of conduct targeted at another that threatens her or causes her to fear for the safety of a member of her family. A *course of conduct* means two or more acts that could include: threats; following a person or members of her family; appearing in close proximity to a person's residence, place of employment or school; damaging a person's property or the property of her family; injuring a person's pet or her family's pet; and harassing a person or her family members. A person also commits stalking if he violates the terms of an order of protection.

If you have a legitimate fear that another person will abuse you, you can obtain an *order of protection* that makes it a crime for the abusive person to have any contact with you.³⁸ Courts issuing such orders have broad powers to order the abuser into counseling, to deal with issues of custody and even to restrict who may live in the residence if the parties live together. If you seek an order of protection you will have to go to court and fill out a document briefly laying out the facts that demonstrate why you fear an immediate and present danger of *abuse*. Abuse means a fear that the other person will commit some crime or combination of crimes against you. Once the order of protection is issued law enforcement will serve the order on the person being restrained. When the person is served he will have to relinquish all firearms and will not be able to legally possess any firearms or ammunition so long as the order remains in effect. It is a crime to violate any of the terms of an order of protection. If there is a valid order of protection forbidding contact between two students and both students decide they wish to reconcile and

³⁷ RSA 633:3-a

³⁸ RSA 173-B:4, B:5

have contact, it will be a crime for them to do so while the order remains in effect. Only the restrained student would be committing the crime under these circumstances.

Firearms

It is unlawful for you to receive or possess any firearm or ammunition if: you are convicted of any felony; are convicted of any crime of domestic violence; are an unlawful user or are addicted to any controlled drug; or if you are subject to a valid order of protection.³⁹ The right to possess a firearm may be restored if the conviction is annulled or overturned. If you commit any crime using a firearm, as discussed previously, you will be subjecting yourself to an enhanced sentence with a mandatory minimum sentence of three (3) years incarceration.

Computers

Many students will use either school owned computers or personal computers using school owned servers during their college experience. There are a number of online chat rooms and personal sites designed for people to meet and trade images. When you are using a school computer or server your communications are in the possession of the school. If the police subpoena the records of your communications, the school would be forced to turn them over to the police. You should be very careful to ensure that your use of the school's computers and servers are for legal purposes only.

V. So You've Been Arrested

If you have been arrested the police will attempt to get you to incriminate yourself before you have a chance to speak to a lawyer. It is important for you to keep in mind that you have an absolute right to remain silent. This right is waived if you voluntarily make *statements*. A statement can be oral, written or any other form of communication. If you answer questions you are making statements. If you simply tell your side of the story you are making statements.

³⁹ 18 U.S.C. 922 (g)

Anyone who can hear what you say about an incident can later be called as a witness to testify about the statements you made. Often the strongest evidence the police collect are statements of the accused. If you have just been arrested you will be nervous. When people are nervous they tend to become talkative. You must resist this urge. The police do not have to inform you about what they think you have done. You will not know what statements could hurt you. Never make any statements to the police until you have an opportunity to consult with a lawyer.

Generally when the police arrest you they will advise you of your *Miranda* rights. *Miranda* rights include the right to remain silent and the right to consult with an attorney. The police do not have to advise you of your rights in order to place you under arrest. Even if a police officer neglects to do so, the arrest is still a valid arrest. Regardless of the situation, you always possess the right to remain silent and the right to consult with an attorney prior to making any statements to the police.

Once you have been arrested you will be taken to the police station for *booking*. Booking consists of the police gathering your background information and taking your fingerprints and photograph. At some point you will be allowed to make a phone call. You should call someone competent to contact a lawyer on your behalf and to post bail if bail is set.

Once the booking process is completed you will be asked if you wish to use the services of a bail commissioner. If you choose not to use a bail commissioner you will be held until you can appear in front of a judge. If you choose to use a bail commissioner it will cost you \$30.00 for the service. The commissioner will then be summoned to the police station and will set bail based on the offense and on your record. You must be truthful when answering the questions of the bail commissioner because if you are not it is a crime. Bail is set based on the perceived risk of flight and the danger you pose to the community if released. You will enjoy a presumption of

personal recognizance (P.R.) bail. PR bail means you do not have to actually post the bail money to be released. Instead you will sign a bond agreeing to pay the bail amount if you violate any of your bail conditions. It is a separate crime to violate any of the conditions of your bail. Bail can also be set at cash or surety. Bail bondsmen are sureties who will post bail for a fee and a deposit which will be based on a percentage of the total bail amount. Cash only bail means you must actually post the bail money in order to be released.

In domestic violence cases bail conditions will often contain a condition of no contact with the victim. This condition remains in effect, just like an order of protection, until the court changes it. Even if both parties decide they want to reconcile, a violation of a no contact bail condition is a crime and will result in the arrest of the defendant.

VI. Conclusion

If you have any interaction with any member of law enforcement and you are not sure what you should do, contact a lawyer to help you decide. If you do not have the opportunity to contact a lawyer, make no statements and do not give up any of your rights until you get the opportunity to contact a lawyer. You should do everything in your power to ensure that every decision you make is an informed one.