

EFFECTS OF A CONVICTION FOR DRIVING WHILE INTOXICATED

Discussed below are several of the common effects and issues that can arise in DWI, DUI, ADWI or DWAI cases. Please review this information, so that you have a better understanding of the penalties that could be imposed should there be a conviction under any section of VTL § 1192 for Aggravated Driving While Intoxicated [ADWI], Driving While Intoxicated [DWI or DUI] or Driving While Ability Impaired [DWAI].

SUSPENSIONS PENDING PROSECUTION (NY VTL § 1193[2](e)(7))

If you submitted to a chemical test of your blood (the most common method being a breath test) and "scored" .08 BAC or more, your license *shall* be suspended at arraignment. If you had a valid driver's license prior to the suspension pending prosecution and did not have a prior conviction for Driving While Intoxicated or Impaired, or complete the Drinking Driver Program within the proceeding five (5) years, you may be eligible for a conditional license after the expiration of 30 days. The conditional license will be issued by the Department of Motor Vehicles.

Contact us to discuss your rights further.

THE HARDSHIP LICENSE

Sometimes a driver *may* be eligible for a hardship license. The court which conducts your arraignment will decide your eligibility for this limited license. To be eligible, the court must determine that you will be subject to "extreme hardship" without this license. NY VTL § 1193[2] (e) (7)e defines "extreme hardship" as: ". . . *the inability to obtain alternative means of travel to or from the licensee's employment . . .*" This hardship license only allows the driver to operate their vehicle to and from their place of employment. It does not allow a driver to operate a vehicle *for work*.

AGGRAVATED DRIVING WHILE INTOXICATED vs. DWI vs. DWAI

If your BAC was .18% or higher, you will face a charge called Aggravated Driving While Intoxicated, which, like Driving While Intoxicated, is an unclassified misdemeanor. ADWI, however, carry stiffer fines and harsher sanctions to your driver license.

If you are uncertain as to whether or not you have sustained a prior alcohol-related conviction (or the type of conviction), contact us, and we

can make arrangements with the Department of Motor Vehicles to obtain a printout of your driving history.

CHEMICAL TEST REFUSALS (NY VTL § 1194)

It is important to understand that there are two types of breath tests. If you refuse a "screening test" *prior* to an arrest, you may be issued a ticket and, if convicted, be fined for refusing. *After* an arrest, you may be requested to take a chemical test. This chemical test, which is usually a breath test but may also be a test of blood, urine, or saliva, is the test used as evidence in court. If you "refuse" to take this chemical test, there is a different set of penalties.

A chemical test refusal mandates suspension of your license at your arraignment, which usually occurs at your first appearance before a judge. At your arraignment the judge will direct that you provide him or her with your driver's license. The court will mail your license to the Department of Motor Vehicles in Albany, New York. Although there is no hearing associated with the judicial suspension of your license, the court will schedule a "refusal hearing" with the Department of Motor Vehicles. This hearing must be scheduled within 15 days of your arraignment or your license will be reinstated by the Department of Motor Vehicles. A refusal hearing is an evidentiary proceeding conducted before an Administrative Law Judge. If the Administrative Law Judge concludes that you, in fact, refused to take a chemical test as requested by a member of law enforcement, then your license must be revoked for a minimum of one (1) year. In addition to revocation of your license, you will be required to pay a \$500.00 civil penalty prior to restoration of your "full" driving privileges pursuant to NY VTL § 1194[2](d)(2). A refusal adjudication will also affect future suspensions and revocations arising out of unrelated alcohol-related convictions. For instance, a second chemical test refusal within five years of an initial refusal or alcohol conviction carries an enhanced civil penalty of \$750.00. More serious, however is the fact that a second refusal revocation within five years of a previous alcohol violation or refusal results in a mandatory minimum eighteen month revocation of your license.

If your license is "revoked" by the administrative law judge at the refusal hearing, it means your license is canceled. To get a new license, you must re-apply to the Department of Motor Vehicles once the revocation period is over. The Department of Motor Vehicles will decide whether or not you will be issued a new license. You do not have an absolute right to speak to an attorney before agreeing to submit to a breath test. Instead, in New York State you have a qualified right to speak with an attorney. In *People v. Gursey*, 22 NY2d 224, 292 NYS2d

416, 239 NE2d 351 (1968), the New York State Court of Appeals held:

Where the defendant wishes only to telephone his lawyer or consult with a lawyer present in the station house or immediately available there, no danger of delay is posed. But, to be sure, there can be no recognition of an absolute right to refuse the test until a lawyer reaches the scene. *Gursey* at p. 229.

A New York State Appellate Division court ruled in 1994 that a motorist who sought to first consult with his attorney before submitting to a test was, in essence, refusing.

Contact us if you need to discuss an issue concerning your alleged refusal of a DWI chemical test.

THE DRINKING DRIVER PROGRAM (NY VTL § 1196)

The New York State Drinking Driver Program (DDP) consists of weekly classes for approximately seven weeks and involves a total of approximately fifteen (15) classroom hours. The cost to enroll in the DDP is approximately \$225.00. Participation in the DDP is limited. Repeat offenders are not permitted to participate in the program if the time from their prior completion of the program to the date of their next arrest is less than five years. The five years runs from the date *the DDP was completed* until the date of the most recent arrest. It does *not* run from the date of your last conviction.

A CONDITIONAL LICENSE

If you are permitted to participate in the DDP, and if you are also eligible for a conditional license, you will be allowed to drive under the following conditions:

- a. To and from your employment and during employment when required;**
- b. To and from a class or activity that is part of your rehabilitation program;**
- c. To and from classes at an accredited school or vocational institute;**
- d. To and from any court ordered probation activities;**
- e. To and from the DMV for the transaction of business associated with**

the license or program;

f. To and from medical treatment for yourself or a member of your household (requires a letter from a licensed medical practitioner);

g. During a period of three consecutive daytime hours;

h. To and from a place, including a school, where your children are cared for and that is necessary to maintain your employment or enrollment in school.

(See Section 1196[7](a) of the Vehicle and Traffic Law.)

The cost for the conditional license is approximately \$75.00, and this fee is in addition to the fee to enroll in the DDP. It will cost you an additional \$25.00 to return your conditional license to the DMV. One third of all DDP attendees are sent for additional assessments and/or treatment. If the Department of Motor Vehicles determines that he/she is in need of additional counseling, failure to complete that treatment will result in the revocation of all driving privileges including a conditional license.

DRUG TREATMENT COURT PROGRAMS

Several courts in New York State now have "drug court" programs. Some individuals arrested for alcohol related driving offenses may be eligible for these programs. The specific criteria for each program varies from court to court. Some courts may strongly encourage participation in a drug court program as a way to avoid incarceration.

Drug court programs divert the defendant, while the charge remains pending, into an intensive, court monitored program of group and individual counseling. The defendant waives his or her constitutional rights and consents to such conditions as random breath tests and regularly reporting to the court. The length of this program varies, but it typically lasts from six to eighteen months or longer. If the defendant fails to comply with the conditions of the program, there are several different sanctions, including jail time, that may be imposed. If the defendant successfully completes the program, he or she usually will receive a lesser sentence.

Contact us if you are considering entering into a Drug Treatment Court program to discuss your rights.

IGNITION INTERLOCK DEVICE

An "ignition interlock device" is, to put it simply, a breath test machine attached to the ignition of an automobile. The driver must blow into the device and register no alcohol in his or her breath before being able to start the car. If you are convicted of Aggravated Driving While Intoxicated and receive a sentence of probation, the court must require that an ignition interlock device be installed as a condition of your probation. Also, Section 1193[1-a](c) of the Vehicle and Traffic Law makes ignition interlock devices mandatory for individuals convicted of Driving While Intoxicated or Driving with .08% or Greater BAC two or more times within five years. This new law requires that ignition interlock devices be attached to all vehicles owned by the convicted driver. Such devices must remain installed during any period of license revocation. Moreover, after the revocation period has ended, they may remain installed for an additional period as determined by the court. If you are required to install such a device, you will be responsible for the installation fee and monthly charge associated with its operation. This fee is generally several hundred dollars, along with a monthly monitoring fee.

Contact us if you have questions concerning your rights before you agree to an interlock device.

MANDATORY ALCOHOL ASSESSMENTS

New York State has enacted a system requiring different levels of alcohol and drug use evaluation and potential treatment for different offenses. At arraignment or, at the discretion of the court, prior to sentencing, you shall be required undergo either mandatory *screening* or a mandatory *assessment*. First time violators charged with Driving While Ability Impaired by Alcohol, Driving While Intoxicated, or Driving While Intoxicated per se and either had a breath test result of less than .15% or refused the chemical test, must be screened by treatment professional using a standardized written screening test. If your screening indicates that you are abusing or dependant upon alcohol or drugs, you then must undergo the mandatory assessment. You will be required to undergo a mandatory assessment under any of the following circumstances:

1. The screening process set forth above indicates abuse or dependance upon alcohol or drugs;
2. You have been charged with Driving While Intoxicated or Driving While Intoxicated per se and had a BAC score of .15% or greater;

3 You have been charged with Aggravated Driving While Intoxicated;

4. You have been charged with violating any provision of VTL § 1192 and have either (a) a prior conviction for any provision of VTL § 1192, Vehicular Assault or Vehicular Manslaughter within the last 5 years, or (b) two such convictions within ten years.

The assessment must be forwarded to you and the court within thirty days. If it indicates that treatment is required, the court must require such treatment as a condition of any sentence of probation or conditional discharge. All screenings and assessments, along with any treatment arising from such assessment, must be conducted by an "alcohol or substance abuse professional" or "licensed agency" approved by the New York State Office of Alcoholism and Substance Abuse Services. While many alcohol counselors are professionally licensed by the New York State Education Department and/or approved by the Department of Motor Vehicles, this level of approval is not sufficient to participate in the new court-mandated program.

DRIVER RESPONSIBILITY ASSESSMENT

Section 1199 of the Vehicle and Traffic Law requires that, in addition to any other court imposed fines, a driver convicted of ADWI, DWI, DWAI, or of having refused a chemical test, must pay a mandatory "driver responsibility assessment" to the Department of Motor Vehicles in the amount of \$250 *per year for three years*.

If you are convicted of any of these offenses, you will be notified by the Department of Motor Vehicles through the US mail regarding the time and manner of making these payments. Failure to pay any portion of this assessment will result in a suspension of your driver license or, if you do not have a driver license, suspension of your privilege to obtain a license, until it is paid in full. You may also wish to speak with the DMV about your payment options.

ALCOHOL-RELATED CONVICTIONS AND YOUR AUTOMOBILE INSURANCE

Suspension or revocation of your driver's license as a result of an alcohol-related conviction is just cause for your insurance company to cancel your automobile insurance policy. An alcohol-related conviction increases the probability that your insurance company will not renew your present insurance policy. Assuming no other company agrees to offer you insurance, you will be relegated to the New York Automobile Insurance Plan (i.e., the "risk pool") at a substantially higher cost. In

general, alcohol-related convictions remain on insurance company records and are used as a factor to determine premiums for between five (5) and ten (10) years.

ENTRY INTO CANADA AND OTHER COUNTRIES

If you are convicted of any alcohol-related offense, you may be barred from entering Canada. Canada generally bars any U.S. citizens who have been convicted of a misdemeanor from entering their country. Canada has also been known to exclude individuals convicted of Driving While Ability Impaired by Alcohol (VTL § 1192[1], a traffic infraction) from entering the country. To obtain entry to Canada following any conviction, you may need to apply for a Minister's Permit with the Canadian Consulate. Approval of this application would allow you to enter into Canada for a short term visit. An individual convicted of a crime may not obtain long term entry into Canada until at least five years have passed from the date his or her sentence was completed. At that time, he or she may apply to the Canadian Consulate for "rehabilitation." If granted rehabilitation, a U.S. citizen with a criminal record may enter Canada in the same manner as if he or she had no criminal record. The impact of a conviction upon your ability to enter other foreign countries varies from country to country. If being barred from traveling to a particular country could have a negative effect on your business or other dealings, you should inform your attorney so that this aspect of your case may be more thoroughly explored.

EFFECT ON YOUR PISTOL PERMIT

If you hold a pistol permit, the mere fact that you were arrested may result in an immediate suspension of your right to possess a firearm. If you are convicted of any section of VTL § 1192, a hearing will be held to determine the length of any revocation period. This hearing would be conducted separately from your case and may be before a judge or a judge's law clerk.

EFFECT ON YOUR PROFESSIONAL LICENSES

If you hold a professional license, such as a license to practice law, a nursing license, an engineering license, or a certified personal accounting license, you should be concerned about the potential impact of a conviction on that license. If you hold a professional license, please bring this fact to the attention of your attorney. A conviction under VTL § 1192 may have to be reported to your professional licensing board and could trigger a hearing before the board to determine if your professional license should be suspended or revoked. Additionally, financial sanctions

may also be imposed. Because of the impact this would have on your career, it is very important that the regulations surrounding your license and the impact of any conviction be fully examined before any determination is made regarding how to proceed with your case.

EFFECT ON YOUR BUSINESS LICENSE

If your business holds a special license issued from a government agency (e.g., the New York State Liquor Authority), a conviction under VTL § 1192 may have adverse consequences to that license.

FINGERPRINTS AND MUG SHOTS

Pursuant to NY CPL § 160.50, if you are convicted of the violation of driving while ability impaired or driving while intoxicated, your fingerprints and mug shots will not be returned to you and/or sealed by the court. Rather, they are permanently on file.

EFFECT ON YOUR ABILITY TO PERFORM JURY DUTY

If you are convicted of Driving While Intoxicated as a felony, you will no longer be eligible for to serve on a jury. This applies to both grand juries and petit (trial) juries. If you are convicted of Driving While Intoxicated as a misdemeanor or Driving While Ability Impaired by Alcohol (a traffic infraction), it will not impact your ability to serve as a juror.

CONCLUSION

Contact us immediately for a private and confidential conference to discuss your arrest on a drinking and driving charge.