



GRIBETZ & LOEWENBERG, PLLC
ATTORNEYS AT LAW

Kenneth Gribetz
Deborah Wolikow Loewenberg
Admitted in New York

Richard S. Pakola, Jr., Associate
Admitted in New York & Pennsylvania

DWI BACKGROUND INFORMATION

We provide this handout as a courtesy to our clients to give background information on how Driving While Intoxicated (DWI) cases are handled in New York. We realize that there is more information here than directly concerns your case, but still include it because most of our clients appreciate having it. Also, if you have any additional questions, or anything is not clear, you should always feel free to contact us.

SUSPENSIONS PENDING PROSECUTION (VTL § 1193(2)(e)(7))

If you submitted to a chemical test (the most common being a breath test), which resulted in a .08 blood alcohol content (BAC) or more, your license will be suspended at arraignment, in other words, the first time you are brought before the judge and formally charged.

If you had a valid driver's license prior to the suspension pending prosecution and did not have a prior conviction for DWI or impaired, or complete the Drinking Driver Program within the proceeding five (5) years, you may be eligible for a hardship license (issued by the Court) or a conditional license after the expiration of 30 days (issued by the Department of Motor Vehicles (DMV)). The DMV will send you information on the availability of the pre-plea conditional license usually within three weeks after arraignment. (Note: the pre-plea conditional license terminates at time of conviction or the entry of a guilty plea, at which time you will be eligible for a post-plea conditional license, discussed further below).

THE HARDSHIP LICENSE

You may be eligible for a hardship license, which will give you the ability to drive to certain prescribed places, such as your place of employment and medical offices where you are being treated. The court that conducts your arraignment will determine whether you receive one. In order for the court to grant a hardship license, the court must determine that you will be subject to "extreme hardship" without this license. Vehicle and Traffic Law (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, or to or from necessary medical treatment for the licensee or a member of the licensee's household, or if the licensee is a matriculating student enrolled in an accredited school, college or university travel to or from such licensee's school, college or university if such travel is necessary for the completion of the educational degree or certificate. VTL § 1193(2)(e)(7)(e).

FELONY DWI, ADWI, DWI vs. DWAI

At the end of this letter is a chart that sets out the mandatory minimum and maximum penalties a court may impose for all alcohol-related offenses.

If your BAC was .18% or higher, you will face a charge called Aggravated Driving While Intoxicated (ADWI). ADWI, like DWI, is a misdemeanor, but because it is more serious than a DWI, it carries a more significant fine and harsher sanctions relating to your driver's license.

Also, there is a separate offense called Driving While Ability Impaired by Drugs (DWAI Drugs), which is also a misdemeanor.

Whereas ADWI, DWI and DWAI Drugs are crimes (usually misdemeanors, but in certain circumstances, such as committing a DWI with a child as a passenger or being charged with a second DWI, it may even be a felony), Driving While Ability Impaired (DWAI) is a "violation" and not considered a crime. In other words, if you plead guilty to DWAI, you will NOT have a criminal record. Also, the penalties for DWAI are less severe, as is spelled out in the chart of penalties at the end of this letter.

In general, our goal in your case will be to obtain the best possible result for you.

CHEMICAL TEST REFUSALS (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 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. Thereafter, the court will mail your license to the DMV 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 DMV. This hearing must be scheduled within 15 days of your arraignment or your license will be reinstated by the DMV.

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 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 (18) months 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 DMV once the revocation period is over. The DMV will decide whether or not you will be issued a new license.

Additionally, on refusal cases, the court cannot issue a hardship license and the DMV will not issue a pre-plea conditional license. However, after a conviction or entry of a guilty plea, the DMV can issue a post-conviction conditional license.



ALCOHOL ASSESSMENTS

Under the VTL, you may be required to obtain an “assessment” from a state OASAS (Office of Alcoholism and Substance Abuse Services) certified provider prior to the resolution of your case. We will provide you a list of providers that you can chose from. If the assessment is good, it may assist us in negotiating the best possible plea bargain on your case.

THE DRINKING DRIVER PROGRAM (VTL § 1196)

If this is your first alcohol-related arrest, and you are convicted of either DWI or DWAI, then you are eligible to participate in the New York State Drinking Driver Program (DDP). This program consists of weekly classes for approximately seven weeks and involves a total of approximately fifteen (15) classroom hours. There is a \$75 administrative fee payable to the DMV and a \$225 program fee paid directly to the agent conducting the program.

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.

In general, upon successful completion of the DDP, you will be eligible to have full driving privileges restored, even if your suspension or revocation time period has not expired (exceptions are if you refused a breath test, you were under 21 when the offense occurred, or you have two or more alcohol/drugged-driving related convictions or incidents within the preceding 25 years).

THE CONDITIONAL LICENSE

If you are permitted to participate in the DDP, then, absent any aggravating factors, you are also eligible for a conditional license. Although there are limitations imposed on the holder of a conditional license, it does allow you 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; and
- 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*, VTL § 1196(7)(a).

The cost for the conditional license is approximately \$75.00; this is in addition to the fee to enroll in the DDP.

One third of all DDP attendees are sent for additional assessments and/or treatment. If the DMV determines that an attendee is in need of additional counseling, failure to complete that treatment will result in the revocation of all driving privileges including a conditional license. It is important for you to keep in mind that if you are referred for additional treatment, this will be to a private agency that will charge you for its services and you and/or your insurance will be responsible for these costs.

IGNITION INTERLOCK DEVICE

Effective August 15, 2010, every person who is convicted of common law DWI, per se DWI, or per se Aggravated DWI (i.e., crimes under VTL §§ 1192(2), (2-a) or (3)) will be required to install an ignition interlock device in any vehicle that the person owns or operations for at least six (6) months. Note that installation of the device is not required for those who plead or are found guilty of DWAI under VTL § 1192(1),

An “ignition interlock device” is basically 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. Additionally, the interlock device will require the driver at random time periods to pull over and breathe into the device again in order to re-start the car.

MANDATORY INCARCERATION OR COMMUNITY SERVICE FOR SOME REPEAT OFFENDERS

Section 1193(1-a) of the VTL requires mandatory incarceration *or* the performance of community service by individuals convicted of DWI or Driving with .08% or Greater BAC who also have one or more prior convictions for those offenses within the previous five years. The length of mandatory incarceration or community service depends on the number of prior convictions as set forth below:



	Mandatory Incarceration	Community Service
One prior Driving While Intoxicated or Driving with .08% or Greater BAC conviction within the past five years	at least Five days; or	at least 30 days
Two or more prior Driving While Intoxicated or Driving with .08% or Greater BAC convictions within the past five years	at least 10 days; or	at least 60 days

MULTIPLE OFFENDERS

Applicants for a driver's license with three or four alcohol/drugged-driving related convictions or incidents within the preceding 25 years, whose revocation does not result from an alcohol or drugged driving conviction or incident, will be denied relicensing for two years in addition to the statutory revocation period, and then will be relicensed with a problem driver restriction for two years.

Applicants for a driver's license with three or four alcohol/drugged-driving related convictions or incidents within the preceding 25 years, whose revocation results from an alcohol or drugged driving conviction or incident, will be denied relicensing for five years in addition to the statutory revocation period, and then will be relicensed with a problem driver restriction for 5 years with an ignition interlock.

Applicants for a driver's license with three or four alcohol/drugged-driving related convictions or incidents within the preceding 25 years, with a serious driving offense will be permanently denied re-licensure, subject to compelling or extenuating circumstances. A serious driving offense means a fatal accident, a driving-related penal law conviction, a conviction of two or more violations for which five or more points are assessed, or 20 or more points from any violations.

Applicants for a driver's license with five or more alcohol/drugged-driving related convictions or incidents on their lifetime driving record will be permanently denied relicensing, subject to compelling or extenuating circumstances.

IMMIGRATION



If you are not a U.S. citizen, you should inform us of this fact. Depending upon the facts of your case, a DWI conviction could negatively impact your status in this country or even lead to deportation.

DRIVER RESPONSIBILITY ASSESSMENT

Section 1199 of the VTL requires that, in addition to any other court imposed fines, a driver convicted of DWI, DWAI, or of having refused a chemical test, must pay a mandatory “driver responsibility assessment” to the DMV 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 DMV through the U.S. 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.

COMMERCIAL DRIVER LICENSE

Effective September 30, 2005, section 1196(7)(g) of the VTL was changed to read as follows:

Notwithstanding anything to the contrary contained in a certificate of relief from disabilities issued pursuant to article twenty-three of the correction law, any conditional license or privilege issued to a person convicted of a violation of any subdivision of section eleven hundred ninety-two of this article shall not be valid for the operation of any commercial motor vehicle. In addition, no such conditional license or privilege shall be valid for the operation of a taxicab as defined in this chapter. VTL § 1196(7)(g).

As a result, even if you were not driving a commercial motor vehicle at the time of your arrest, you will be *barred* from holding a Commercial Driver License (CDL) if you are convicted of any alcohol-related driving offense.

Obviously, if you need a CDL as a part of your job, this law could seriously impact your employment. You should make your attorney aware that you hold such a license immediately so that you may explore your options. Because the only legal mechanism by which an individual charged with an alcohol-related offense may continue operating a commercial motor vehicle without interruption is full acquittal from all alcohol-related charges, the need for a CDL may seriously impact the manner in which you choose to proceed with your case.



A certificate of relief from disabilities, which may be issued by the sentencing judge, is not sufficient to have your privilege to drive a commercial motor vehicle reinstated.

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.

FINGERPRINTS AND MUG SHOTS

Pursuant to CPL §160.50, if you are found guilty of the violation of DWAI, DWI, ADWI, or DWAI Drugs, your fingerprints and mug shots will not be returned to you or be sealed by the court. Rather, they are permanently on file, and there is no expunging of these records in New York.

JURY DUTY

If you are convicted of Driving While Intoxicated as a felony, you will no longer be eligible to serve on a jury. This applies to both grand juries and petit (trial) juries. If you are convicted of DWI as a misdemeanor or DWAI, these convictions will not impact your ability to serve as a juror.

OUT-OF-STATE LICENSES

If you have an out-of-state license, a New York court does not have authority to seize your license or to impact driving privileges outside of New York, but does have authority to suspend and revoke driving privileges within New York. For this reason, all provisions of New York law and regulation, although not applying to your driver's license, will apply to your New York driving privileges, to include suspensions and revocations, as well as hardship and conditional driving privileges.



Also, clients who have out-of-state licenses should keep in mind that New York and most other states are parties to the Driver License Compact (DLC), which is an interstate agreement whereby states exchange information concerning license suspensions and revocations of non-residents. Because of this, your home state (if it is a signatory of the DLC) will likely be notified of any conviction and sentence of a suspension or revocation of New York driving privileges. Further, your home state may have provisions of law that require it to also suspend your driver's license based upon the New York conviction.

FINES & PENALTIES OF DWI AND RELATED OFFENSES

Offense	Mandatory Fines Minimum Fines and Maximum Fines	Maximum Jail Term	Mandatory Penalties to License
Driving While Ability Impaired (VTL §1192(1))⁽¹⁾			
First Conviction	\$300 - \$500 ⁽²⁾⁽³⁾⁽⁶⁾	15 days	90 day suspension
Second Conviction within 5 years of either a conviction for DWAI	\$500 - \$750	30 days	Revoked at least 6 months
Driving While Intoxicated (VTL §1192(2) and (3))⁽¹⁾			
First Conviction	\$500 - \$1,000 ⁽⁴⁾⁽⁶⁾	1 year Misdemeanor	Revoked at least 6 months
Second Conviction	\$1,000 - \$5,000 ⁽⁵⁾⁽⁶⁾	4 years "E" Felony	Revoked at least 1 year (18 months if prior conviction is for ADWI) ⁽⁷⁾
Third Conviction	\$2,000-\$10,000 ⁽⁵⁾⁽⁶⁾	7 years "D" Felony	Revoked at least 1 year (18 months if at least one prior conviction is for ADWI) ⁽⁷⁾
Aggravated DWI (VTL §1192(2-a))⁽¹⁾			
First Conviction	\$1,000 - \$2, 500 ⁽⁴⁾⁽⁶⁾	1 year Misdemeanor	Revoked at least 1 year
Second Conviction within 10 years (prior ADWI of DWI)	\$1,000 - \$5,000 ⁽⁵⁾⁽⁶⁾	4 years "E" Felony	Revoked at least 18 months ⁽⁷⁾

The information in this document is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation. We invite you to contact us and welcome your calls, letters and electronic mail. Contacting us does not create an attorney-client relationship. Please do not send any confidential information to us until such time as an attorney-client relationship has been established. Call Gribetz & Loewenberg any time at 845-634-9500.



Third Conviction within 10 years (prior ADWIs and/or DWIs)	\$2,000 - \$10,000 ⁽⁵⁾⁽⁶⁾	7 years “D” Felony	Revoked at least 18 months ⁽⁷⁾
------------------------------------------------------------	--------------------------------------	--------------------	-------------------------------------------

Note: This chart only sets forth court imposed sanctions; separate and additional sanctions may also be imposed by the DMV.

(1) All convictions under VTL 1192 require the payment of a Driver Responsibility Assessment to the DMV in the amount of \$250 per year for 3 years in addition to the mandatory fines set forth in this chart.

(2) First alcohol or drug-related violation by a driver under the age of 21: 1 year revocation. Second alcohol or drug-related violation by a driver under the age of 21: revocation until the age 21 or 1 year, whichever is longer.

(3) If the case is in Town or Village court, the mandatory surcharge is \$260, otherwise \$255, in addition to mandatory fines.

(4) If the case is in Town or Village court, the mandatory surcharge is \$400, otherwise \$395, in addition to mandatory fines.

(5) The mandatory surcharge is \$300.00, with an additional surcharge in the amount of \$170.00, and a \$25.00 crime victim assistance, which are in addition to mandatory fines.

(6) Chemical Test Refusal Revocation: \$500 civil penalty; Chemical Test Refusal with prior refusal or alcohol-related violation within five years: \$750 civil penalty, *see* VTL 1194.

(7) Additional licensing penalties may arise if the prior offenses occurred within 4 years of the current offense.

VICTIM IMPACT PROGRAM

Where court imposes a sentence for a violation of VTL §1192, the court will usually also require the driver to attend a single session of the Victim Impact Program (VIP); *see* VTL §1193. The VIP will consist of a presentation by one or more people who have been impacted by a drunk driver, for example, the spouse of a person killed in an accident caused by a drunk driver.



RE-LICENSING FEE

If a driver's license is *revoked* as a result of an alcohol-related conviction, the driver must *re-apply* for a new license. When *re-applying* for a new license, the driver must pay a \$100 non-refundable re-application fee with his application.

If a driver's license is *suspended*, the driver must pay a \$50 termination of suspension fee to the court that suspended his or her license. The court may not lift the suspension of the driver license until that fee is paid.

CONCLUSION

We look forward to representing you in this case.

If you have any questions about your case or any of the information presented above, please free to contact us and we will be glad to answer any questions you may have.

Very truly yours,

GRIBETZ & LOEWENBERG, PLLC
155 North Main Street
New City, New York 10956
(845) 634-9500