

A newsletter by **Taheri & Todoro, P.C.**, devoted to Driving While Intoxicated law in New York State
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New Mandatory DMV Assessments on All DWI Convictions

On November 18, 2004, section 1199 was added to the Vehicle and Traffic Law. This new section, entitled Driver Responsibility Assessment, provides new penalties for all individuals either found to have refused a chemical test or convicted of any offense under Vehicle and Traffic Law 1192, including Driving While Ability Impaired Alcohol, Driving While Intoxicated, and Driving While Ability Impaired by Drugs. VTL § 1199 reads:

1. In addition to any fines, fees, penalties and surcharges authorized by law, any person convicted of a violation of any subdivision of section eleven hundred ninety-two of this article, or any person found to refused a chemical test in accordance with section eleven hundred ninety-four of this article not arising out of the same incident as a conviction for a violation of any of the provisions of section eleven hundred ninety-two of this article, shall become liable to the department for payment of a driver responsibility assessment as provided in this section.

2. The amount of the driver responsibility assessment under this section shall be two hundred fifty dollars [\$250.00] per year for a three-year period.

3. Upon receipt of evidence that a person is liable for the driver responsibility assessment required by this section, the commissioner shall notify such person by first class mail to the address of such person on file with the department or at the current address provided by the United States postal service of the amount of such assessment, the time and manner of making required payments, and that failure to make payment shall result in the suspension of his or her driver's license or privilege of obtaining a driver's license.

4. If a person shall fail to pay any driver responsibility assessment as provided in this section, the commissioner shall suspend such person's driver's license or privilege of obtaining a license. Such suspension shall remain in effect until any and all outstanding driver responsibility assessments have been paid in full.

5. The provisions of this section shall also be applicable to any person convicted of any violation of section forty-nine-a of the navigation law, any person convicted of a violation of section 25.24 of the parks, recreation and historic preservation law, or any person found to have refused a chemical test in accordance with the applicable provisions of either the navigation law or the parks, recreation and historic preservation law not arising out of the same incident as such conviction.

Lawyers representing individuals charged under VTL § 1192 should make their clients fully aware of this provision. Should a driver be convicted under any provision of VTL § 1192, they will be required to pay the Department of Motor Vehicles \$750 over the next three years. Given that for a first time offender convicted of Driving While Ability Impaired by Alcohol the maximum court imposed fine is \$500, this is a substantial increase in the penalty imposed.

In conjunction with this law, section 503 of the Vehicle and Traffic Law was amended by adding subdivision four. This new subdivision provides for a Driver Responsibility Assessment, separate from the one set forth above, to be imposed on any person who has accumulated six or more points on his or her driving record within an eighteen month period. The amount of this assessment shall be \$100, plus \$25 for each point over six, per year for three years. The manner of collection and penalty for not paying this assessment is the same as that

set forth in VTL § 1199. For purposes of the Driver Responsibility Assessment, points may not be reduced by taking an approved accident prevention course.

While this second new provision will have less impact on DWI cases than VTL § 1199, the possibility of this assessment being imposed if a defendant will accumulate six or more points – either through acceptance of a plea offer or if convicted at trial – must be considered by defense attorneys when advising their clients on how to proceed.

Aside from the information set forth directly in the statutes for these assessments, a review of the DMV website, www.nysdmv.com, indicates the following additional information:

* The DMV will send a statement to individuals that it has determined owe this assessment. This statement will include information regarding how to pay this assessment on-line, by phone, or by mail.

* The DMV requires payment of the assessment within 30 days to avoid suspension of driving privileges. The date of payment will appear on the statement.

* Individuals facing an assessment may pay all three years in one payment, if they wish.

* With regards to the assessment for accumulating six or more points within eighteen months, all six of these points must be accumulated after the date the statute was enacted (November 18, 2004). The DMV uses the date the individual was ticketed, not the date of conviction, to determine when the eighteen

This newsletter does not offer specific legal advice. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. If you have any questions or would like a specific topic covered in the newsletter, please contact Michael S. Taheri, Esq., or Peter J. Todoro, Esq., at Taheri & Todoro, PC, 388 Evans Street, Williamsville, NY 14221, telephone no. (716) 633-0374, e-mail: taheri@localnet.com.
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