

D.W.I. LINK

A newsletter by Taheri & Todoro, P.C., devoted to Driving While Intoxicated law in New York State

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Volume Seventeen

January 2004

New Law Requires Additional Penalties for Repeat DWI Offenders

On September 30, 2003, a new subsection of the Vehicle and Traffic Law became effective. This new section, VTL § 1193[1-a], provides additional penalties for repeat violators of New York State's Driving While Intoxicated laws. These new penalties include, under certain conditions, mandatory jail time or community service for repeat offenders, and the mandatory installation of ignition interlock devices on vehicles owned by the offender. The details of these new penalties are set forth below.

Two violations of VTL § 1192[2] or VTL § 1192[3] within 5 years

Vehicle and Traffic Law Section 1193[1-a](a) now provides that any driver convicted of violating VTL § 1192[2] (Driving While Intoxicated per se) or VTL § 1192[3] (Driving While Intoxicated) who also has previously been convicted of Driving While Intoxicated or Driving While Intoxicated per se within the preceding five years, shall be subject to the following penalties in addition to the normal penalties imposed for such a conviction:

be sentenced to a term of *imprisonment of five days or*, as an alternative to such imprisonment, be required to *perform thirty days of service for a public or not-for-profit corporation, association, institution or agency* as set forth in paragraph (h) of subdivision two of section 65.10 of the penal law¹ as a condition of sentencing for such violation. Notwithstanding the provisions of this paragraph, a sentence of a term of imprisonment of five days or more pursuant to the provisions of subdivision one of this section shall be deemed to be in compliance with this subdivision. (Emphasis added)

Three violations of VTL § 1192[2] or VTL § 1192[3] within 5 years

Vehicle and Traffic Law Section 1193[1-a](b) now provides that any driver convicted of violating VTL § 1192[2] (Driving While Intoxicated per se) or VTL § 1192[3] (Driving While Intoxicated) who also has previously been convicted *twice* within the preceding five years of violating either Driving While Intoxicated or Driving While Intoxicated per se, shall be subject to the following penalties in addition to the normal penalties imposed for such a conviction:

be sentenced to a term of *imprisonment of ten days or*, as an alternative to such imprisonment, be required to *perform sixty days of service for a public or not-for-profit corporation, association, institution or agency* as set forth in paragraph (h) of subdivision two of section 65.10 of the penal law¹ as a condition of sentencing for such violation. Notwithstanding the provisions of this paragraph, a sentence of a term of imprisonment of ten days or more pursuant to the provisions of subdivision one of this section shall be deemed to be in compliance with this subdivision. (Emphasis added)

Mandatory Ignition Interlock Devices and Alcohol Assessments

Vehicle and Traffic Law Section 1198 authorizes courts to require the installation of an "ignition interlock device" in the vehicles of individuals convicted of alcohol-related offenses and placed on probation. This device is essentially 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. VTL § 1193[1-a](c) now makes ignition interlock devices mandatory for individuals convicted of Driving While

Intoxicated or Driving While Intoxicated per se two or more times within five years. This new section of the Vehicle and Traffic Law states:

A court sentencing a person pursuant to paragraph (a) [second conviction for DWI or DWI per se within five years] or (b) [third conviction for DWI or DWI per se within five years] of this subdivision shall: (i) order the installation of an ignition interlock device approved pursuant to section eleven hundred ninety-eight of this article on each motor vehicle owned by the person so sentenced. Such devices shall remain installed during any period of license revocation required to be imposed pursuant to paragraph (b) of subdivision two of this section, and, upon the termination of such revocation period, for an additional period as determined by the court....

Moreover, this new subsection goes on to require that, under these circumstances, the Court "order that such person receive an assessment of the degree of their alcohol abuse. Where such assessment indicates the need for treatment, such court is authorized to impose treatment as a condition of such sentence."

¹ Penal Law Section 65.10[2](h) provides that as part of any sentence of probation or a conditional discharge, the Court may require that the defendant:

Perform services for a public or not-for-profit corporation, association, institution or agency, including but not limited to services for the division of substance abuse services, services in an appropriate community program for removal of graffiti from public or private property, including any property damaged in the underlying offense, or services for the maintenance and repair of real or personal property maintained as a cemetery plot, grave, burial place or other place of interment of human remains.

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.

Edited by James F. Orr

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