

A newsletter by **Taheri & Todoro, P.C.**, devoted to *Driving While Intoxicated* law in New York State  
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## **Youthful Offender Adjudication vs. Driving While Ability Impaired by Alcohol**

### **Youthful Offender Adjudication**

Under New York State law, individuals who are at least sixteen years old but less than nineteen years old who are charged with a *crime* (misdemeanor or felony) may be eligible for a “youthful offender adjudication.” Section 720.20 of the Criminal Procedure Law sets forth the circumstances under which a court may make a finding that a individual is a youthful offender. For purposes of misdemeanor convictions, such as first time DWI offenders, CPL § 720.20 states:

Upon conviction of an eligible youth, the court must order a pre-sentence investigation of the defendant. After receipt of a written report of the investigation and at the time of pronouncing sentence the court must determine whether or not the eligible youth is a youthful offender. Such determination shall be in accordance with the following criteria:

\* \* \*

(b) Where the conviction is had in a local criminal court and the eligible youth had not prior to commencement of trial or entry of a plea of guilty been convicted of a crime or found a youthful offender, the court *must* find he is a youthful offender. (Emphasis added.)

CPL § 720.20(d) provides that when an individual is found to be a youthful offender, “ the court must direct that the conviction be deemed vacated and replaced by a youthful offender finding;

and the court must sentence the defendant pursuant to section 60.02 of the penal law.”

Section 60.02(1) of the Penal Law limits the maximum sentence that may be imposed upon an individual adjudicated a youthful offender who otherwise would have been convicted of a misdemeanor to “a definite or intermittent sentence of imprisonment with a term of no more than six months....”

The requirement that eligible youth with no prior criminal convictions or youthful offender adjudications *must* receive youthful offender status when convicted of a misdemeanor poses an interesting dilemma when such youth are arrested for misdemeanor Driving While Intoxicated. Based on the specific circumstances surrounding the arrest, many of these youth are eligible to enter a plea of guilty to the lesser offense of Driving While Ability Impaired by Alcohol (VTL § 1192[1]), which is a traffic infraction, not a misdemeanor.

Unfortunately for such youth, youthful offender status only applies to *criminal* convictions, not to traffic infractions. As a result, such youth may be better served pleading guilty to the misdemeanor charge and receiving youthful offender status rather than entering a plea to the lesser charge of Driving While Ability Impaired by Alcohol (VTL § 1192[1]). The advantages and disadvantages of receiving youthful offender status versus pleading guilty to Driving

While Ability Impaired by Alcohol are set forth below.

### **Predicate Offense**

Criminal Procedure Law section 720.35[1] explicitly states that a “youthful offender adjudication is not a judgment of conviction for a crime or any other offense....” As a result, a youthful offender adjudication, even if it is being used to replace a misdemeanor conviction for DWI, cannot be used as a predicate offense for either purposes of sentencing enhancement in future cases or to increase the classification of the charge if the defendant is again arrested.

#### *1. Impact on potential future DWAI convictions*

A plea to Driving While Ability Impaired by Alcohol can be used a predicate offense for enhancing the sentence of a defendant who is convicted of Driving While Ability Impaired by Alcohol a second time within five years. Based on VTL § 1193[1](a), this would result in the penalties for the second conviction being increased from a \$300-\$500 fine and/or 15 days of incarceration to \$500-750 fine and/or 30 days of incarceration. Based on VTL § 1193[2](b)(a), the driver would face a 6 month revocation of his or her driver license instead of a 90 day suspension.

Moreover, Vehicle and Traffic Law

section 1193[1](a) provides that an individual convicted of Driving While Ability Impaired by Alcohol who has *two* prior alcohol related convictions is the past ten years shall be guilty of a misdemeanor, not a traffic infraction. A plea to Driving While Ability Impaired by Alcohol by an individual otherwise eligible for youthful offender status could serve a one of these two predicate offenses.

On the other hand, an individual convicted of misdemeanor DWI and granted youthful offender status would avoid having this conviction considered should he or she be re-arrested.

## 2. *Impact on potential future DWI convictions*

Normally, a misdemeanor DWI conviction would serve as a predicate offense that would enhance another arrest for DWI within the next ten years to E felony status. However, because a youthful offender adjudication is not considered a judgment of conviction for a crime or any other offense, it cannot be used to enhance another charge within the next ten years to felony status. Instead, youthful offenders who are arrested later in their lives for a second DWI are treated as first time offenders.

### **Driver License**

A conviction for Driving While Ability Impaired by Alcohol normally carries a driver license suspension of 90 days.

However, Vehicle and Traffic Law section 1193[2](b)(6) provides that anyone under the age of twenty-one at the time of the offense who is convicted under any subsection of VTL § 1192 or adjudicated a youthful offender shall have his or her driver license revoked for one year. Also, Vehicle and Traffic Law section 1193[2](b)(7) provides that if such an individual is again convicted of violating any subsection of VTL § 1192 or adjudicated a youthful based on such a charge, his or her driver license shall be revoked for one year or until he or she is twenty-one, whichever is greater.

As a result, whether an eligible youth pleads guilty to Driving While Ability Impaired by Alcohol or is adjudicated a youthful offender has absolutely no impact on his or her ability to drive. However, as set forth under the discussion of predicate offenses above, if he or she is again arrested for a violation of VTL § 1192[1] *after* reaching the age of twenty-one, a youthful offender adjudication cannot be used to increase the period of driver license revocation for this second offense.

### **Sentencing**

The sentence for a first time offender Driving While Ability Impaired by Alcohol is a fine or \$300-\$500 fine and/or 15 days of incarceration. The sentence for a offender adjudicated a youthful offender for a misdemeanor charge of DWI is a fine of \$500-\$1,000 and/or (pursuant to Penal Law section 60.02(1)), up to 6 months of incarceration.

As a result, an individual who receives

youthful offender adjudication will almost certainly pay a greater fine than an individual sentenced for Driving While Ability Impaired by Alcohol. He or she would also have greater exposure in terms of the potential term of incarceration. In practice, however, first time VTL § 1192 offenders, whether granted youthful offender status or not, rarely are sentenced to a term of incarceration. Even if so sentenced, absent extensive aggravating circumstances, it is unlikely that such a sentence would even approach the maximum period of 6 months authorized under the law for a youthful offender.

### **Conclusion**

Based on the above analysis, it may be beneficial for an eligible defendant to plead guilty to a misdemeanor charge of DWI and accept youthful offender adjudication instead of seeking a plea to Driving While Ability Impaired by Alcohol or proceeding to trial with the goal of being convicted of only this lesser offense. Although a plea to a misdemeanor and subsequent youthful offender adjudication would likely result in the defendant paying a greater fine, such a resolution could not be used against the defendant if he or she is again arrested for an alcohol related offense at a later date.