

A newsletter by **Taheri & Todoro, P.C.**, devoted to Driving While Intoxicated law in New York State
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Alcohol-Related Driving Offenses and Drivers under the Age of Twenty-One

In 1996, new laws were enacted in New York State that provide additional penalties for drivers under the age of twenty-one who are arrested for an alcohol-related driving offense. The details of these special provisions for underage drivers are set forth below.

Zero Tolerance Law

A driver under the age of twenty-one in New York State will be penalized if he or she is found to have operated a motor vehicle while having a blood alcohol content of between .02%-.07% (VTL § 1192-a). Violations of this law are not handled in criminal court, but instead by the Department of Motor Vehicles (*see* VTL § 1192-a).

A violator of this provision is not legally considered to have been arrested on this charge, and his or her driver license will not be suspended or revoked *prior* to a hearing conducted before an Administrative Law Judge at the Department of Motor Vehicles. He or she will receive a notice from the Department of Motor Vehicles scheduling such a hearing. Any other tickets issued to the driver are handled in the local criminal court.

Unlike criminal court, where any charges must be proven beyond a reasonable doubt for a conviction to occur, the standard of proof at a Department of Motor Vehicle hearing is much lower. The police officer only needs to establish the allegation against the underage driver by "clear and convincing evidence" for the Administrative Law Judge to find the driver guilty of violating the Zero Tolerance Law. The hearing before the Administrative Law Judge is limited to the following issues:

1. Whether the driver "operated" a motor vehicle on a public highway;

2. Whether a valid request to submit to a chemical test was made by the police officer;
3. Whether the driver was less than twenty-one years of age at the time of the offense;
4. Whether the chemical test was properly administered;
5. Whether the test found that the driver had consumed alcohol and his or her BAC was between .02% and .07%;
6. Whether the police officer's stop of the vehicle was lawful.

If, at the conclusion of the hearing, the Administrative Law Judge finds all of these issues in the affirmative, then the driver will be found guilty of violating the Zero Tolerance Law set forth at VTL § 1192-a. If the ALJ finds any one of these issues in the negative, he or she must find that the driver did not drive after having consumed alcohol, and no further action will be taken.

Potential Penalties

When a driver is found guilty of violating the Zero Tolerance Law, and this is his or her first alcohol-related driving offense, the following penalties are imposed:

Civil Fine: \$125
Driver License: Suspension of license for six months

If a driver is found guilty and has previously been convicted of Driving While Intoxicated, Driving While Ability Impaired by Alcohol or of violating the Zero Tolerance Law, the following penalties are imposed:

Civil Fine: \$125
Driver License: Revocation for one year or

until twenty-one, whichever is greater

Conditional License

If this is a driver's first alcohol-related driving offense, he or she is eligible to participate in the Drinking Driver Program and obtain a conditional license. This program 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 \$175.00.

Because the driver may participate in the DDP, absent any aggravating factors, he or she is also eligible for a conditional license. Although there are limitations imposed on the holder of a conditional license, he or she can drive to and from school and his or her place of employment. 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 Department of Motor Vehicles determines that a driver is in need of additional counseling, failure to complete that treatment will result in the revocation of all driving privileges, including a conditional license.

If a driver is found guilty of violating the Zero Tolerance Law and has previously been convicted of Driving While Intoxicated, Driving While Ability Impaired by Alcohol or of violating the Zero Tolerance Law, then he or she may not participate in the DDP and cannot obtain a conditional license.

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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