

A newsletter by **Taheri & Todoro, P.C.**, devoted to Driving While Intoxicated law in New York State
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Limitations on Plea Bargaining in DWI Prosecutions

First time offenders charged with Driving While Intoxicated frequently ask if there is any chance they can plead guilty to “a couple of traffic tickets” and thus avoid suspension or revocation of their driver license. Unfortunately for these drivers, there are strict statutory limits on plea bargaining in DWI cases which make it highly unlikely that they will be able to plead to a non-alcohol related offense. These limitations are set forth in VTL § 1192[10].

In any case where the defendant is charged with Driving While Intoxicated, Driving While Intoxicated per se, and/or Driving While Ability Impaired by Drugs, VTL § 1192[10](a) provides that any plea of guilty *must* include a plea of guilty to at least one of the provisions of VTL § 1192. In other words, the lowest possible charge that may be obtained through plea bargaining in such a case would be a plea to Driving While Ability Impaired by Alcohol (VTL § 1192[1]).

As the only exception to this rule, VTL § 1192[10](a) does provide that if the district attorney determines that a charge of violating VTL § 1192 “is not warranted,” he or she may consent to a plea of guilty to a charge outside of VTL § 1192. In such a case, however, “the court shall set forth on the record the basis for such disposition.”

Under normal conditions, no such limits on plea bargains are set forth when a driver is charged with Driving While Ability Impaired by Alcohol (VTL § 1192[1]). VTL § 1192[10] does, however, set forth additional limitations on defendants operating commercial motor vehicles and those under age 21. When a defendant is operating a commercial motor vehicle and charged with Driving While Ability Impaired by Alcohol or Driving a Commercial Motor

Vehicle While Intoxicated, per se – level II (VTL § 1192[6], which requires a blood alcohol level of more than .07% but less than .10%), any plea bargain *must* include a plea to one of the provisions of VTL § 1192. In such a case, the district attorney may review the case as set forth above and, if he or she determines that a VTL § 1192 charge is not warranted, consent to a plea of guilty to another charge; *see* VTL § 1192[10](b).

If a defendant is under the age of 21 and charged with Driving While Ability Impaired by Alcohol (VTL § 1192[1]), he or she *must* plead guilty to the charge; *see* VTL § 1192[10](a). The only exception to this is set forth in VTL § 1192[10](c), which provides that a DWAI charge may be satisfied if both parties consent to action being taken against the defendant’s license by the Commissioner of Motor Vehicles pursuant to VTL § 1194-a. The hearing provided for under that statute must be waived as a part of the plea bargain, resulting in an automatic six month suspension of the defendant’s license if he or she is a first time offender.

If a driver is both under the age of 21 and operating a commercial motor vehicle, the provisions for commercial motor vehicles take precedence over those for drivers under the age of 21.

Other plea bargaining limitations are frequently imposed not by statute, but instead by the specific policy of the district attorney’s office in that jurisdiction. For example, many district attorney’s offices will not consent to plea to a lesser charge when there has been an accident, the defendant has been convicted of a prior alcohol related offense within a certain number of years, or the defendant’s blood alcohol exceeded a certain level.

Many district attorney’s offices also will not consent to a plea to a lesser charge when the defendant has refused the breath test. This policy is generally followed because the defendant’s license is automatically revoked for at least six months by the DMV following a refusal, but he or she cannot gain access to the Drinking Driver Program to obtain a conditional license without being convicted of some provision of VTL § 1192. As a result, there is little benefit to most defendants to seek a complete acquittal at trial, and they are more likely to plead to the charge.

With the exceptions of the statutory limitations for drivers under the age of 21 and operators of commercial motor vehicles previously discussed, there are no statutory limitations imposed on plea bargaining for a charge of Driving While Ability Impaired by Alcohol or Driving a Commercial Motor Vehicle While Intoxicated, per se – Level I (VTL § 1192[5], which requires a blood alcohol content of at least .04% but not greater than .07%). As a result, any plea bargaining regarding these charges is usually governed by the policy of the district attorney’s office in that jurisdiction.

Absent additional circumstances, such as an accident or prior conviction, many district attorney’s offices will allow a defendant charged with Driving While Ability Impaired by Alcohol to plead guilty to Failure to Stop for a School Bus (VTL § 1174(a)). This traffic infraction carries five points under the Driver Violation Point System, but such a plea would avoid the 90 day driver license suspension for Driving While Ability Impaired by Alcohol.

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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