

*A newsletter by Taheri & Todoro, P.C., devoted to Driving While Intoxicated law in New York State*  
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## **Those Troubling Traffic Tickets**

(This article was prepared by Glenn Edward Murray, Cornell Mansion, 484 Delaware Avenue, Buffalo, NY 14202, telephone number: 716-884-0139, and is reprinted with his permission. Mr. Murray served as Village of Williamsville prosecutor for over 10 years and has served as a criminal defense attorney in Western New York for over 20 years.)

People most commonly encounter the criminal justice system through traffic tickets they (or their children) are issued. This article addresses various questions about traffic charges and does not include enhanced penalties applicable to underage and commercial drivers. For further information, the New York State Department of Motor Vehicles (NYDMV) maintains an informative web site, including forms which may be downloaded, at: <http://nydmv.state.ny.us/index.htm>.

### ***1. What happens if I fail to timely answer or pay a traffic ticket?***

If the ticket is returnable in the Traffic Violations Bureau (TVB) of Buffalo or Rochester, the failure to answer will result in a default conviction and suspension of the driver's license if the fine is not timely paid. In the suburban courts, failure to appear or pay a fine will result in indefinite suspension of a driver's license.

### ***2. What happens if I am caught driving on a suspended license?***

You will be charged with Aggravated Unlicensed Operation, a misdemeanor, which is defined as a "crime" under New York Law. If convicted and ever asked: "Have you been convicted of a crime?" the truthful answer, for the rest of your life, is "Yes." To reinstate a suspended license requires a \$35 reinstatement fee to NYDMV for each ticket in default. In some suburban courts the motorist is expected to appear on the court date and time stated on the ticket. In other courts, the court date and time stated on the ticket are used as a deadline date to answer by mail, and upon the court's receipt of a not guilty plea, the motorist is mailed a notice of a later date to appear in court. I recommend that the court clerk be contacted to verify the appearance date.

### ***3. How many points will be assessed if I am convicted of a traffic violation?***

Below is a list of the points assessed for some of the most common traffic violations. A complete list of the point schedule is available on the DMV website.

- Speeding (MPH over speed limit):
 

1 - 10 MPH	3
11 - 20 MPH	4
21 - 30 MPH	6
31 - 40 MPH	8
More than 40 MPH	11
- Failed to obey a traffic signal, a Stop sign, or a Yield sign 3
- Failed to yield the right-of-way 3

### ***4. How many points trigger license suspension and insurance increases?***

If you accumulate 11 points within 18 months, NYDMV suspends your license. If you have 3 speeding convictions within 18 months (based on the offense dates), NYDMV revokes your license. Insurance companies have point systems different that are from the NYDMV point system.

### ***5. What are the costs of a traffic ticket besides the fine paid to the court?***

If on or after November 18, 2004 you receive 6 or more points on your license within 18 months, you must pay NYDMV a Driver Responsibility Assessment (DRA). For six points during 18 months, the annual DRA is \$100 for three years, for a total of \$300. There is an additional \$25 annual assessment for three years with each point more than the original six points.

**6. I heard that if I request a Supporting Deposition and it is not provided, the charge might be dismissed. Is that true?**

In the suburban courts, the motorist can request a supporting deposition (statement of facts), which, if not timely provided to the motorist (30 days after received by the court) mandates dismissal of the charge. At TVB, the motorist is not entitled to request a supporting deposition.

**7. If I have equipment violations corrected, will the ticket be dismissed?**

At both TVB and all of the suburban courts, some enumerated equipment violations (such as an inoperable headlight), if corrected within 24 hours, mandate dismissal of the ticket if proof of repair from the police or DMV-approved inspection station is provided to the court. Such automatic dismissal does not apply to charges of illegal tint on vehicle windows or unsafe brakes (which is a misdemeanor crime).

**8. Does conviction of a traffic ticket require proof beyond a reasonable doubt?**

TVB is an administrative tribunal, not a court, and a conviction at TVB requires proof only by “clear and convincing evidence,” not “proof beyond a reasonable doubt. “Proof beyond a reasonable doubt” is the much higher burden of proof applicable in criminal courts, including the City, Town and Village Courts. TVB can adjudicate only non-criminal traffic charges.

**9. If I am issued a traffic ticket can I plea bargain to have the charge or points reduced?**

There is no plea bargaining for tickets issued adjudicated by the TVB. Plea bargaining is allowed in most suburban courts where the motorist may request that the prosecutor consent to reduction of the charge, but any such consent must be approved by the judge.

**10. If I demand a trial, could the sentencing penalties be worse than if I pleaded guilty?**

Yes. In all courts the sentencing penalties are usually greater if convicted after trial, compared to sentencing upon a plea bargain. At TVB, where there is no plea bargaining, I saw a motorist who requested a hearing and after he was convicted the DMV Administrative Law Judge (ALJ) fined him \$300.00 and revoked his license, even though if he had pled guilty by mail the fine would have been \$140.00 and he would have kept his license. Also, an appeal of a guilty finding and penalties imposed by the ALJ to DMV in Albany may result in harsher penalties, including license revocation.

**11. Will I have to attend the Driver Improvement School to have points on my license avoided or reduced?**

In some of the suburban courts, completion of the 4-hour Driver Improvement Program (DIP) is required to obtain a dismissal or reduction of traffic charges. Some courts require that you pay your fine with the understanding that the conviction will not be placed on your record, or the charge will be reduced, but only if you complete DIP by a prearranged deadline. Under this system you must pay twice – once for the fine and again for the school.

**12. If I already have points on my license, can I have them reduced by going to school?**

Any motorist who attends a Point and Insurance Reduction Program (PIRP) can reduce their driver violation point total by 4 points, and save 10% on automobile liability and collision insurance premiums. Points may only be reduced once in any 18-month period and you may take the PIRP once every 36 months to maintain insurance reduction benefits. This 6-hour program can be scheduled by contacting the Proactive Safety Council at 716-877-1703.

**13. If I had an accident and I was charged with a traffic violation, will a conviction or guilty plea affect my civil liability for monetary damages should I be sued?**

A conviction after trial for a non-criminal traffic infraction won't, but a guilty plea will affect civil liability. That's why, because of potential civil liability, some motorists are better off being convicted after trial than entering a guilty plea. If you plead guilty, your admission of guilt may result in civil liability, but a conviction for a traffic infraction can not be used to establish civil liability.

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If readers have any additional questions regarding this topic or are seeking legal representation on a traffic ticket, they are invited to contact Mr. Murray at 716-884-0139 for further information.

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: [lawyers@taheriantodoro.com](mailto:lawyers@taheriantodoro.com). Edited by James F. Orr

