
New York Toughens DWI Laws, Part Two

In this issue, we continue our overview of the new drinking and driving laws taking effect November 1, 2006.

5. Penalties for Refusing to Submit to Chemical Test

The penalties for refusing to submit to breath, blood or urine test have been increased. Upon a finding of refusing to submit to a chemical test, the driver license of a first time offender will now be revoked for at least one year instead of six months. For individuals with a prior refusal, VTL § 1192 conviction or VTL § 1192-a conviction within the past five years, the revocation period is extended to at least eighteen months.

If a driver holds a commercial driver license, the commercial portion of the license will be revoked for eighteen months for refusing a chemical test. This extra revocation is not contingent upon the driver operating a commercial motor vehicle at the time of the offense.

Finally, the fine for refusing the test the first time has been increased from \$300 to \$500 (\$550 if the offender was driving a commercial motor vehicle). The fine for subsequent offenses within the next five years remains \$750.

6. Permanent License Revocation

New York State now has two levels of permanent revocation for multiple offenders of VTL § 1192 or refusing the breath test. These two levels are outlined below.

Permanent Revocation with Re-application in Five Years

A defendant's driver license will be permanently revoked, with eligibility for re-application with the Department of Motor Vehicles in five years, if he or she either refused the breath test or is convicted of any VTL § 1192 offense and has any of the following:

1. In the past four years, either:
 - a. two prior VTL § 1192 convictions, at least one of which is a crime, or
 - b. two prior convictions of the Penal Law of which a VTL § 1192 violation is an element, at least one of which is a crime, or
 - c. two prior breath test refusals, or
 - d. any combination of two of the above not arising from the same incident.

2. In the past eight years, either:
 - a. three prior VTL § 1192 convictions, at least two of which are crimes, or
 - b. three prior convictions of the Penal Law of which a VTL § 1192 violation is an element, at least two of which are crimes, or
 - c. three prior breath test refusals, or
 - d. any combination of three of the above not arising from the same incident.

Under these circumstances, a defendant may apply for a conditional license after three years. After five years, the defendant may apply to the Department of Motor Vehicles for full reinstatement of driving privileges. This application requires the following:

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1. That the defendant not have been convicted of any of the above-listed offenses, refused the breath test, or been convicted of any unlicensed driving offense under VTL § 511 during that five years.
2. Documentation that the defendant has voluntarily enrolled in and completed a rehabilitation program acceptable to the Department of Motor Vehicles.
3. A Certificate of Relief from Disabilities granted by the sentencing court.

Permanent Revocation with Re-application in Eight Years

A defendant's driver license will be permanently revoked, with eligibility for re-application with the Department of Motor Vehicles in ten years, if his or her license is revoked for either refusing the breath test or for a conviction of any VTL § 1192 offense and he or she has any of the following:

1. In the past four years, either:
 - a. three prior VTL § 1192 convictions, or
 - b. three prior convictions of the Penal Law of which a VTL § 1192 violation is an element, or
 - d. any combination of three of the above not arising from the same incident.
2. In the past eight years, either:
 - a. four prior VTL § 1192 convictions, or
 - b. four prior convictions of the Penal Law of which a VTL § 1192 violation is an element, or
 - d. any combination of four of the above not arising from the same incident.

There is no conditional license available under this provision. After eight years, a defendant may apply to the Department of Motor Vehicles for full reinstatement of driving privileges. This application requires the following:

1. That the defendant not have been convicted of any of the above-listed offenses, refusing the breath test, or been convicted of any unlicensed driving offense under VTL § 511 during that eight year period.
2. Documentation that the defendant has voluntarily enrolled in and completed a rehabilitation program acceptable to the Department of Motor Vehicles.
3. After that documentation is accepted, the court of sentencing must grant a Certificate of Relief from Disabilities.

7. Modifications to Vehicular Assault in the First Degree and Vehicular Manslaughter in the First Degree

Where the driver who caused an automobile accident is accused of being under the influence of alcohol or drugs and a serious physical injury or death occurs, that driver may be charged with Vehicular Assault in the Second Degree (a class E felony), or Vehicular Manslaughter in the Second Degree (a class D felony), respectively.

Now, such a charge may be enhanced to a charge of Vehicular Assault in the First Degree (a class D felony) or Vehicular Manslaughter in the First Degree (a class C felony) under any one of the following circumstances:

1. The defendant has a BAC of .18% or greater;
2. The accident results in either serious physical injury to multiple people (for Vehicular Assault) or multiple deaths (for Vehicular Manslaughter);
3. The defendant has a prior conviction for Vehicular Assault or Vehicular Manslaughter;
4. The defendant has two or more prior VTL § 1192 convictions in the last five years, one of which is a misdemeanor or felony;
5. The defendant has three or more prior VTL § 1192 convictions in the last ten years, one of which is a misdemeanor or felony.