

A newsletter by **Taheri & Todoro, P.C.**, devoted to *Driving While Intoxicated law in New York State*  
**Taheri & Todoro, PC, 388 Evans Street, Williamsville, NY 14221, Telephone: (716) 633-0374**

## Conditional Licenses for Foreign Drivers

New York State recognizes the validity of driver licenses issued by many foreign countries and allows citizens licensed by these countries who are visiting New York to drive during their stay. Occasionally, a foreign citizen will be stopped in New York State for Driving While Intoxicated. If this individual plans on staying in New York for an extended period – for example, someone who has been hired to perform a specific task for a company in New York State – his or her arrest, and any resulting conviction, may have an impact on both their driver license in the place of origin and their right to drive in New York State.

The impact of this arrest and any conviction on an individual's ability to drive in his or her own country will be determined by the issuer of the driver license. If the country recognizes convictions in New York State, a convicted driver's right to drive in his or her own country may be impacted. What that specific impact will be is dependent upon the laws of the driver's country of origin. Of more immediate concern, especially for a foreign citizen staying in New York State for an extended period of time, is the impact of the arrest and any potential conviction on his or her right to drive while remaining in New York State.

Fortunately for these visitors to New York State, the New York State Vehicle and Traffic Law extends to them the same opportunities to obtain a conditional license that it extends to

New York State citizens. Such a license allows the convicted driver to continue driving to and from work, school, and other activities set forth in VTL § 1196(7) *after* their right to drive in New York State has otherwise been suspended or revoked. VTL § 1196(4) provides that any driver convicted of a drug or alcohol-related driving offense will usually be eligible for participation in the Drinking Driver Program (DDP) if they meet the following criteria:

- a. They do not have a prior drug or alcohol-related driving conviction within five years of their arrest on the current charge; and
- b. If arrested for an alcohol-related offense, they submitted to a breath or blood test.

As with New York State citizens, the Court and the Department of Motor Vehicles reserve the right to deny a foreign driver access to the DDP even if they meet these requirements; *see* VTL § 1196(4).

This provision also applies to foreign citizens staying in New York State.

Foreign citizens are also extended the same driving rights as New York State citizens *prior* to any conviction. This means that while a foreign citizen's right to drive in New York State will be suspended at arraignment, if his or her case is not resolved within thirty days after this suspension is imposed, he or she is eligible for a pre-conviction conditional license; *see* VTL § 1193[2](e)(7)d.

According to the Department of Motor Vehicles, the only additional burden imposed on a foreign citizen seeking a conditional license in New York State is that he or she must present a letter from the licensing bureau that issued his or her driver license in the country of origin stating that he or she holds a valid driver license in that country. Such a letter must be translated into English for it to be accepted by the Department of Motor Vehicles as evidence that the driver holds a valid foreign driver license.

## Driving While Drowsy

New Jersey has become the first state to pass a law specifically providing for the prosecution of individuals who drive while feeling fatigued or tired.

Under Maggie's Law, if there is evidence that a fatal accident was caused by a sleepy driver, that driver may be charged with vehicular homicide. This felony is punishable by up to ten years of incarceration and a fine of up to \$100,000.

While such a law is not yet in effect in New York State, a similar bill is pending, and New York State has previously prosecuted drivers whose lack of sleep led to a fatal accident. For example, in May of 2003, a tour bus driver was sentenced to ten years of incarceration following an accident that killed five people. The driver had admitted to skipping sleep to gamble the night before while the church groups he was driving visited Niagara Falls.

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](mailto:taheri@localnet.com).

Edited by James F. Orr

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