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## New York Toughens DWI Laws, Part One

Both houses of the New York State Legislature have passed sweeping changes to the state's drinking and driving laws, and it is anticipated that the Governor will sign this legislation. These changes, which will take effect November 1, 2006, are so extensive that we have devoted the next two newsletters to providing a summary of this legislation. This volume will cover the new alcohol-related crimes that have been created, modifications made to existing Vehicle and Traffic 1192 offenses, and the new mandatory alcohol screening and assessment process. In the next issue, we will examine the enhanced penalties for refusing to submit to a chemical test, permanent driver license revocation, and modifications made to the laws surrounding Vehicular Assault and Vehicular Manslaughter.

### 1. Aggravated Driving While Intoxicated (VTL § 1192[2-a])

When drivers take a breath, blood or urine test and the result is a score of .18% or higher blood alcohol content, they will now be charged with Aggravated Driving While Intoxicated (ADWI). Like DWI, ADWI is an unclassified misdemeanor with a maximum term of incarceration of one year. Unlike DWI, however, it carries an increased fine of \$1,000 to \$2,500 and a license revocation of at least one year for first time offenders. First time offenders remain eligible for a conditional license. If a driver is convicted of ADWI and has a prior conviction within the past ten years for ADWI, Driving While Intoxicated, Driving While Intoxicated per, Driving While Ability Impaired by Drugs, or Driving While Ability Impaired by Alcohol and Drugs, the license revocation is extended to eighteen months. Likewise, the revocation is extended to eighteen months if a driver has a prior conviction for ADWI and is later convicted of any of the above charges within ten years of the date of the prior conviction.

ADWI also has its own plea limitations. Absent a finding by the District Attorney that the charge is not warranted, a defendant is limited to being offered a plea to either the original charge, Driving While Intoxicated or Driving While Intoxicated per se. Also, with any such plea the defendant *must* be required by the court to attend the Drinking Driver Program, unless he or she has already entered an alcohol treatment program pursuant to the new mandatory screening/assessment requirements of VTL § 1198-a or other good cause is shown.

If the defendant is found guilty of ADWI and is placed on probation, he or she is required to have an ignition interlock device installed on his or her vehicle. As with other misdemeanor VTL § 1192 offenses, ADWI is a predicate offense for a future charge to be raised to Feloniously Driving While Intoxicated if the defendant is rearrested within the next ten years.

Finally, committing ADWI while driving certain vehicles, such as a taxicab, livery, school bus or commercial motor vehicle, or other vehicle weighing from 18,000-26,000 lbs. raises the offense to a class E felony. Driving such vehicles while transporting various types of hazardous material is a class D felony.

### 2. Driving While Ability Impaired by Drugs and Alcohol (VTL § 1192[4-a])

Apparently written to limit a loophole in the law, the new offense of Driving While Ability Impaired by Drugs and Alcohol prohibits the operation of a motor vehicle while impaired by the influence of a combination of different drugs or of alcohol and drugs. In terms of its sentencing options, plea limitations, etc., it is in all ways the same as the offense of Driving While Ability Impaired by Drugs (VTL § 1192[4]). It is a predicate offense for a charge to be raised to Feloniously Driving While Intoxicated if the defendant is rearrested within the next ten years.

A defendant accused of Driving While Ability Impaired by Drugs and Alcohol may not be allowed to enter a plea of guilty to the reduced charge of Driving While Ability Impaired by Alcohol (VTL § 1192[1]) absent the court requiring attendance at the Drinking

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Driver Program, unless he or she has already entered an alcohol treatment program pursuant to the new mandatory screening/assessment requirements of VTL § 1198-a or other good cause is shown.

### **3. Modifications to Existing VTL § 1192 Offenses**

Two major changes have been made to the law surrounding existing VTL § 1192 offenses. As set forth above, if a driver is convicted of Driving While Intoxicated, Driving While Intoxicated per, Driving While Ability Impaired by Drugs, or the new offense Driving While Ability Impaired by Alcohol and Drugs and has a prior conviction for Aggravated Driving While Intoxicated within the past ten years, his or her driver license revocation will be extended to at least eighteen months.

Also, a driver may no longer plead guilty to the reduced charge of Driving While Ability Impaired by Alcohol unless the court requires participation in the Drinking Driver Program, the driver has entered into a treatment program under the new mandatory screening/assessment requirements of VTL § 1198-a or other good cause is shown.

### **4. Mandatory Alcohol Screening/Assessment**

New York State has enacted a system requiring different levels of alcohol and drug use evaluation and potential treatment for different offenses. At arraignment or, at the discretion of the court, prior to sentencing, a defendant shall be required undergo either mandatory *screening* or a mandatory *assessment*. The details of this system are broken down below.

#### *Mandatory Screening*

First time violators charged with Driving While Ability Impaired by Alcohol, Driving While Intoxicated, or Driving While Intoxicated per se and either had a breath test result of less than .15% or refused the chemical test, must be screened by treatment professional using a standardized written screening test. If the screening indicates that the defendant is abusing or dependant upon alcohol or drugs, the defendant then must undergo the mandatory assessment as set forth below.

#### *Mandatory Assessment*

Defendants are required to undergo a mandatory assessment under any of the following circumstances:

1. The screening process set forth above indicates abuse or dependance upon alcohol or drugs;
2. The defendant is charged with Driving While Intoxicated or Driving While Intoxicated per se and has a BAC score of .15% or greater;
3. The defendant is charged with Aggravated Driving While Intoxicated;
4. The defendant is charged with violating any provision of VTL § 1192 and has either (a) a prior conviction for any provision of VTL § 1192, Vehicular Assault or Vehicular Manslaughter within the last 5 years, or (b) two such convictions within ten years.

The assessment must be forwarded to the defendant and the court within thirty days. If it indicates that treatment is required, the court must require such treatment as a condition of any sentence of probation or conditional discharge.

#### *Miscellaneous Provisions regarding Screening/Assessment/Treatment*

All screenings and assessments, along with any treatment arising from such assessment, must be conducted by an “alcohol or substance abuse professional” or “licensed agency” approved by the New York State Office of Alcoholism and Substance Abuse Services. While many alcohol counselors are professionally licensed by the New York State Education Department and/or approved by the Department of Motor Vehicles, this level of approval is not sufficient to participate in the new court-mandated program.

In the case of defendant pleading guilty to a charge of Driving While Ability Impaired by Alcohol, participation in the Drinking Driver Program shall be considered compliance with the mandatory treatment program.