

A newsletter by **Taheri & Todoro, P.C.**, devoted to Driving While Intoxicated law in New York State  
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## The Hardship License: A Pre-Conviction Driving Option

If a driver stopped for Driving While Intoxicated takes a breath test and registers a score of .08% or greater, section 1193[2](e)(7)a of the Vehicle and Traffic Law requires that his or her driver license be suspended no later than the conclusion of arraignment. Under such circumstances, the driver may not obtain a conditional license until at least thirty days have passed since the suspension began, and he or she cannot legally drive during that time period.

If the driver cannot make alternative arrangements for getting to or from work or school, this complete loss of driving privileges could have more serious consequences than the legislature intended when passing this law. As a result, VTL § 1193[2](e)(7)e provides that if suspension of a defendant's license will result in extreme hardship to the defendant, then the Court may grant a hardship privilege allowing the defendant driving privileges under certain circumstances. The statute defines "extreme hardship" as:

...the inability to obtain alternative means of travel to or from the licensee's employment, or to or from necessary medical treatment for the licensee or a member of the licensee's household, or if the licensee is a matriculating student enrolled in an accredited school, college or university travel to or from such licensee's school, college or university if such travel is necessary for the completion of the educational degree or certificate.

### Limitations on the Hardship Privilege

VTL § 193[2](e)(7)e states that the "hardship privilege":

shall permit the operation of a vehicle only for

travel to or from the licensee's employment, or to or from necessary medical treatment for the licensee or a member of the licensee's household, or if the licensee is a matriculating student enrolled in an accredited school, college or university travel to or from such licensee's school, college or university if such travel is necessary for the completion of the educational degree or certificate.

### Factors Considered by the Court

While the statute defines extreme hardship, it does not set forth a specific set of criteria for courts to consider when determining if a driver is eligible for the hardship privilege. In *People v. Bridgman*, 163 Misc2d 818, 622 NYS2d 431 (City Court of Canandaigua 1995), the court set forth eight factors that it believed should be considered when determining if extreme hardship exists. These factors were:

(1) the presence or absence of licensed persons present in the licensee's household; (2) the ability of other licensed household members to provide transportation for the licensee; (3) the occupation and health condition of the licensee; (4) the proximity of the licensee's place of employment, health care provider or school to his or her household; (5) the presence or absence of any public transportation or taxi service to or from the licensee's household to the place of employment, health care provider or school; (6) a consideration of the licensee's ability to afford public transportation or taxi service as an alternative means of transportation; (7) the presence or absence of co-workers, friends or family members who may assist in the licensee's transportation; and, (8) any other factor that the court deems appropriate to the determination.

While different courts may consider other factors

when determining if a driver meets the requirements for the hardship privilege, the factors in *Bridgman, supra*, are indicative of the type of analysis courts will usually employ when making a determination regarding this subject.

### Presenting Evidence

VTL § 1193[2](e)(7)e goes on to state that "[a] finding of extreme hardship may not be based solely upon the testimony of the licensee." The statute does not specifically set forth what other evidence may be presented, the form it should be presented in, or the weight to be given this evidence when determining eligibility for the hardship privilege.

For the driver attempting to obtain the hardship privilege, it may be helpful to have some or all of the following information available at arraignment:

1. Proof of employment or enrollment in school;
2. A map verifying the distance from home to work or school;
3. Bus schedules indicating that travel by bus is not feasible;
4. Estimates from several taxi services setting forth the cost of taking a taxi to work or school;
5. An affidavit from the driver's employer verifying employment, lack of transportation provided by the company, and the value of the employee to the company.

Having such information readily available would satisfy the requirement for additional evidence beyond the testimony of the driver and assist the court in analyzing the applicability of the hardship privilege.

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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