

## TO ALL OPERATORS OF MOTOR VEHICLES IN NEW YORK STATE

Alcohol or drug impairment is a major problem involving not only the impaired driver, but other innocent drivers and pedestrians. We are constantly reminded of the serious consequences of drinking and driving, yet property damage, injuries and deaths caused by alcohol or drug-impaired driving continue to be a major problem. In fact, studies (such as those published in "Fatality Facts 2010" by the Insurance Institute for Highway Safety – Highway Loss Data Institute) show that alcohol or drug use is a contributing factor in a significant number of all fatal motor vehicle accidents, as shown in the following table.

**Percent of Fatally Injured Passenger Vehicle Drivers (with BAC > or = .08%)**

Overall	33%
Nighttime (9 p.m. - 6 a.m.)	58%
Weekends (6 p.m. Friday - 6 a.m. Monday)	45%
Weekdays	25%
Nighttime single-vehicle crashes	68%

In recent years New York State has made significant changes to strengthen its driving while intoxicated laws, and these changes have extremely serious consequences for motorists who choose to drive while intoxicated or impaired by alcohol or drugs. A new crime of aggravated driving while intoxicated ("Agg DWI") was created, which prohibits: driving a motor vehicle while having a blood alcohol content ("BAC") of .18% or more; or committing most driving under the influence of alcohol or drugs offenses while a child who is 15-years-old or younger is a passenger. In addition, a new crime of driving while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs ("DWAI Combined Influence") was created.

The law generally prohibits "plea bargaining" to a non-alcohol/drug-related driving offense. Moreover, every motorist who is convicted of driving while intoxicated ("DWI") or Agg DWI must be sentenced to probation or conditional discharge (in addition to any fines or imprisonment) and in connection with that sentence, must install at the motorist's own expense an ignition interlock device ("IID") in all vehicles that the motorist owns or operates (with the exception of certain employer-owned vehicles) for at least six months. In addition to the criminal penalties associated with driving under the influence of alcohol or drugs convictions, such convictions also carry with them substantial driver's license suspension or revocation periods. Motorists who are convicted of any alcohol or drug related driving offense (even if it is a traffic infraction as opposed to a crime) must pay a \$750 driver responsibility assessment ("DRA") in addition to fines, mandatory surcharges, and other related fees and penalties.

In addition to facing prosecution for the various alcohol and drug-related driving offenses defined in the Vehicle and Traffic Law ("VTL"), motorists who injure or kill others while driving under the influence of alcohol or drugs may be charged with committing crimes under the Penal Law. New laws have increased the penalties for vehicular assault and vehicular manslaughter, and new crimes of aggravated vehicular assault and aggravated vehicular homicide have been created as part of New York's continuing efforts to punish intoxicated and impaired drivers who injure or kill others.

This notice provides general information on the penalties for convictions of operating a motor vehicle while under the influence of alcohol or drugs. Be aware that stiffer penalties are levied in certain situations involving a motorist who holds a commercial driver's license ("CDL") or for convictions of such impairment while operating a commercial vehicle, especially when transporting certain hazardous materials.

Please familiarize yourself, and anyone else who operates your vehicle, with this important information. Please remember: **if you drink, don't drive!**

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## **BASIC PENALTIES, DEGREE OF IMPAIRMENT AND INSURANCE PENALTIES**

If you are convicted of an alcohol or drug related driving offense defined in the VTL, then there are extremely serious consequences. Some of the consequences are criminal or penal in nature, while others are civil or administrative in nature.

The criminal consequences may include all or some of the following: court imposed fines and surcharges, a sentence of probation or conditional discharge with a condition that you install and maintain an IID in all vehicles you own or operate, and imprisonment.

If you cause a death or serious injury as a result of a traffic accident while intoxicated or impaired by alcohol or drugs, then you may face additional criminal charges under the Penal Law for vehicular assault, aggravated vehicular assault, vehicular manslaughter, and aggravated vehicular homicide, punishable by up to 15-25 years in prison.

The civil or administrative consequences will include fines, mandatory surcharges and related fees levied by the Department of Motor Vehicles ("DMV"), and the suspension or revocation of your driver's license by DMV. You also will be charged a \$750 DRA payable in three annual payments of \$250, in addition to any fines and mandatory surcharges and related fees that are imposed. If you fail to make a required DRA payment, then your license will be suspended indefinitely until the amounts owing are paid.

If you are convicted of an alcohol or drug related driving offense in New York State, then depending on the severity of the offense or if you had prior offenses, your license will be suspended for 90 days at a minimum or revoked for a minimum of six to 18 months.

If you are convicted of an alcohol or drug related driving offense inside or outside of New York State that you committed when you were under the age of 21, then the license consequences are generally more severe: if it is a first offense, then your license will be revoked for at least one year and if it is a second or subsequent offense, then your license will be revoked for at least one year (18 months for Agg-DWI offense in NYS) or until you become 21, whichever is longer.

If you are age 21 or older and you are convicted of an out-of-state alcohol-related driving offense, then in addition to the penalties imposed by the state where the offense occurred, your New York driver's license will be revoked for at least 90 days; if the out-of-state offense is a drug-related driving offense, then your driver's license will be revoked for at least six months.

If you are the holder of a CDL and you commit an alcohol or drug-related driving offense (regardless of whether you were driving an automobile or a commercial vehicle at the time of the offense), then your CDL will be revoked for at least one year. A motorist holding a CDL who commits two such violations will have his or her CDL revoked for at least 10 years and a third violation will cause a permanent, lifetime revocation.

Although refusing to take a chemical test (of breath, blood, or urine) is not a crime or traffic infraction, a driver who meets the criteria for being considered a "first offender" and who refuses to take a chemical test may have his or her driver's license revoked for at least one year (18 months for a CDL) and must pay a civil penalty of \$500 (\$550 for a CDL). If you are considered a repeat offender due to a prior refusal or conviction for an alcohol or drug-related driving offense or for certain other offenses, then you will be required to pay a civil penalty of \$750 and may have your driver's license revoked for at least one year (10 years minimum for a CDL).

If your license is suspended or revoked for commission of an alcohol or drug-related driving offense, then you may be eligible for a conditional license ("CL") that will afford you some limited driving privileges during the sanction period (no CDL privileges are granted by a CL). In order to obtain a CL, you will have to enroll in an approved drinking driver program ("DDP") pay the required fees, and meet other eligibility requirements. DMV charges a \$75 administrative fee upon DDP enrollment, and the DDP charges an additional course fee of up to \$225. You may be referred by the DDP for formal substance abuse evaluation or treatment at an additional cost. If you fail to complete the DDP or any required evaluation or treatment, then your CL will be revoked. If you commit almost any traffic infraction while holding a CL, then the CL will be revoked. Typically, if your CL is revoked, your original license suspension or revocation will be reinstated for its full length with no credit being given for the time you held the CL. During a suspension or revocation period, you may not lawfully drive for any reason.

If you do not have a CL and you drive while your license is suspended or revoked due to an alcohol or drug-related driving conviction or a chemical test refusal, you may be convicted of aggravated unlicensed operation of a motor vehicle ("AUO") in the second degree, subject to a fine of \$500 to \$1,000, and sentenced to either imprisonment for seven to 180 days, or probation with a possible condition of alcohol or drug treatment imposed.

#### HOW MANY DRINKS MAKE YOU LEGALLY INTOXICATED?

In New York State, you are legally intoxicated when your Blood Alcohol Content (BAC) reaches .08%. You are considered to be driving while ability impaired ("DWAI") when your BAC is more than .05%, but less than .08%.

Any amount of drinking will affect your judgment and coordination. The degree of impairment depends on four basic factors:

- (a) how much you drink;
- (b) how long you drink;
- (c) eating before or during drinking, as food slows absorption of alcohol; and
- (d) your body weight.

A 12-ounce can of beer, 5-ounce glass of wine, or a shot of 86-proof liquor all contain the same amount of alcohol. Your body metabolizes about one drink each hour. Only time will truly sober you up, not coffee, a walk, or a cold shower.

Therefore, if you consume more than one drink per hour, the likelihood is that you are at least DWAI if you weigh around 110 pounds and had two drinks, or DWAI if you had three drinks and weigh 170 pounds or more. As a rule of thumb, for an average 140-160 pound person, BAC level rises .02% per hour per drink.

As an example, a 140-pound person who consumes five drinks in a two-hour period will have a .08% BAC (deducting .02% for the passage of time). Even if no more alcohol is consumed, that individual may not safely drive for at least four hours. Remember, any elevation in BAC will impair your judgment and coordination.

#### ALCOHOL/DRUG-RELATED CONVICTIONS AND YOUR AUTOMOBILE INSURANCE POLICY

Suspension or revocation of your drivers license or the driver's license of any person who normally operates an automobile insured under your policy is just cause for your insurance company to cancel your automobile insurance policy.

A conviction of driving while impaired or intoxicated through the use of alcohol or drugs will probably result in non-renewal of your insurance policy, and in your inability to obtain insurance with another company in the voluntary market. You will then find yourself relegated to the New York Automobile Insurance Plan ("Assigned Risk Plan") at a substantially higher cost.

Currently, under the Assigned Risk Plan, a conviction of operating a motor vehicle while intoxicated or impaired by the use of alcohol or drugs will result in a 75% surcharge, increasing your automobile insurance premiums for three years. Most automobile insurance companies also will surcharge your premiums substantially for any convictions of operating a motor vehicle while under the influence of alcohol or drugs.

#### NO-FAULT EXCLUSIONS/CONDITIONS

Another reason for not driving in an intoxicated or impaired condition due to drinking or drugs is that your no-fault insurance benefits will not be available to you if you are injured as a result of this condition, except for necessary emergency health services rendered in a general hospital or by an ambulance attendant. Subsequent basic economic loss (such as general medical expenses, wage loss, other necessary expenses, or a death benefit) attributable to your own bodily injury would fall outside of the no-fault insurance system. It is important to be aware that your auto insurance company may seek to collect from you the amount paid or payable for the emergency health services provided to you if you are found guilty of operating the vehicle while under the influence of alcohol or drugs pursuant to the VTL. If you permit a "designated driver" (i.e. a non-DWI or non-DWAI person) to drive your vehicle for you, then full no-fault insurance benefits will be available to you and all occupants of your vehicle in case of an accident.

Here, then, are the sobering facts:

**ALCOHOL/DRUG-RELATED DRIVING OFFENSES**

According to the New York State Vehicle and Traffic Law, the following penalties will be imposed for the noted violations:

**AGGRAVATED DRIVING WHILE INTOXICATED  
AGG-DWI (.08 AND HIGHER BAC [BLOOD ALCOHOL CONTENT])**

CONVICTION	FINE ONLY <sub>1</sub>	JAIL SENTENCE	LICENSE ACTION & REQUIREMENTS <sub>2</sub>	
			AGE 21 & OLDER	UNDER AGE 21
1 <sup>st</sup> Offense (Misdemeanor)	Minimum \$1000 Maximum \$2500	Up to 1 Year	- Minimum 1-Year Revocation	Minimum 1-Year Revocation
2 <sup>nd</sup> Offense within 10 Years (Class E Felony)	Minimum \$1000 Maximum \$5000	Up to 4 Years	- Minimum 18-Month Revocation	18-Month Revocation or until age 21, whichever is longer
3 <sup>rd</sup> Offense or more within 10 years (Class D Felony)	Minimum \$2000 Maximum \$10000	Up to 7 Years	- Minimum 18-Month Revocation	18-Month Revocation or until age 21, whichever is longer

**DRIVING WHILE INTOXICATED (DWI or .08 and higher BAC)  
DRIVING WHILE IMPAIRED BY DRUG (DWAI-DRUG)  
DRIVING WHILE IMPAIRED BY COMBINED ALCOHOL & DRUG  
(DWAI-Combination)**

CONVICTION	FINE ONLY <sub>1</sub>	JAIL SENTENCE	LICENSE ACTION & REQUIREMENTS <sub>2</sub>	
			AGE 21 & OLDER	UNDER AGE 21
1 <sup>st</sup> Offense (Misdemeanor)	Minimum \$500 Maximum \$1000	Up to 1 Year	- Minimum 6-Month Revocation	Minimum 1-Year Revocation
2 <sup>nd</sup> Offense within 10 Years (Class E Felony)	Minimum \$1000 Maximum \$5000	Up to 4 Years	- Minimum 1-Year Revocation	1-Year Revocation or until age 21, whichever is longer
3 <sup>rd</sup> Offense or more within 10 years (Class D Felony)	Minimum \$2000 Maximum \$10000	Up to 7 Years	- Minimum 1-Year Revocation	1-Year Revocation or until age 21, whichever is longer

**DRIVING WHILE ABILITY IMPAIRED BY ALCOHOL  
DWAI (MORE THAN .05 UP TO .07 BAC)**

CONVICTION	FINE ONLY <sub>1</sub>	JAIL SENTENCE	LICENSE ACTION & REQUIREMENTS <sub>2</sub>	
			AGE 21 & OLDER	UNDER AGE 21
1 <sup>st</sup> Offense (Traffic Infraction)	Minimum \$300 Maximum \$500	Up to 15 Days	- 90-Day Suspension	Minimum 1-Year Revocation
2 <sup>nd</sup> Offense within 5 Years (Traffic Infraction)	Minimum \$500 Maximum \$750	Up to 30 Days	- Minimum 6-Month Revocation	1-Year Revocation or until age 21, whichever is longer
3 <sup>rd</sup> Offense or more within 10 years (Misdemeanor)	Minimum \$750 Maximum \$1500	Up to 180 Days	- Minimum 6-Month Revocation	1-Year Revocation or until age 21, whichever is longer

**ZERO TOLERANCE LAW (ZTL)  
FOR DRIVER UNDER AGE 21 WITH .02 TO .07 BAC<sup>4</sup>**

CONVICTION	FINE ONLY <sup>1</sup>	JAIL SENTENCE	LICENSE ACTION & REQUIREMENTS <sup>2</sup>
1st Offense	\$125 civil penalty and \$100 fee to terminate suspension	N/A	6-Month Suspension
2nd Offense	\$125 civil penalty and \$100 re-application fee	N/A	1-Year Revocation or until age 21, whichever is longer

**CHEMICAL TEST REFUSAL (CTR)**

CONVICTION	FINE ONLY <sup>1</sup>	JAIL SENTENCE	LICENSE ACTION & REQUIREMENTS <sup>2</sup>
Chemical Test Refusal (CTR)	\$500 civil penalty	N/A	- Minimum 1-Year Revocation
CTR within 5 years of a previous DWI-related charge/CTR	\$750 civil penalty	N/A	- Minimum 18-Month Revocation - 1-Year Revocation or until age 21, whichever is longer, for drivers under age 21
CTR-under Zero Tolerance Law (ZTL)	\$300 civil penalty and \$50 re-application fee	N/A	- Minimum 1-Year Revocation
CTR-Second or subsequent under ZTL	\$750 civil penalty and \$50 re-application fee	N/A	- Minimum 1-Year Revocation

**OUT-OF-STATE DRIVING UNDER THE INFLUENCE CONVICTIONS**

CONVICTION	FINE ONLY <sup>1</sup>	JAIL SENTENCE	LICENSE ACTION & REQUIREMENTS <sup>2</sup>
Driving Under the Influence (Out-of-State)	N/A	N/A	- Minimum 90-Day Revocation - Minimum 1-Year Revocation for drivers under age 21
Driving Under the Influence (Out-of-State) with any previous alcohol-drug violation	N/A	N/A	- Minimum 90-Day Suspension (longer with certain prior offenses) - Minimum 1-Year Revocation or until age 21, whichever is longer, for drivers under age 21

<sup>1</sup> Conviction fine only. Does not include any mandatory conviction surcharge, crime victims assistance fee or \$750 DRA, as applicable.

<sup>2</sup> The DMV determines when your license may be returned or reinstated based on state law or regulation.

<sup>3</sup> If a prior conviction is aggravated DWI, then revocation is 18-months or until age 21, whichever is longer.

<sup>4</sup> If your BAC is .05 or higher, then DWAI or DWI may be charged

**NOTE:** Penalties (including fines and jail terms) may be higher for a person with multiple offenses, a CDL, or for violations while transporting certain types of passengers or materials.

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