

STATE:

General Reference:

Basis for a DWI Charge:

Standard DWI Offense:

Illegal Per Se Law (BAC):

Presumption (BAC):

Types of Drugs/Drugs and Alcohol:

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Implied Consent Law:

Arrest Required (Yes/No):

**NEW YORK**

McKinney's Consolidated Laws of New York

Note: Most citations are to the Vehicle and Traffic Law (V and T Law).

I. Ability to operate a vehicle is impaired by the consumption of alcohol V and T Law §1192(1)

II. Operate a motor vehicle while in an intoxicated condition<sup>854</sup> V and T Law §1192(3)≥ **.08**<sup>855</sup> V and T Law §1192(2)**BAC > .05** but ≤ **.07** is *prima facie* evidence that such person was not in an intoxicated condition, but is "relevant evidence" regarding impairment. V and T Law §1195(2)(b) and (c)**BAC > .07** is *prima facie* evidence of impairment.**BAC ≥ 0.18** – "Aggravated Driving While Intoxicated": fine \$1,000 to \$2,000 or imprisonment for not more than one year or both; driver's license revocation – one year {18 months for a second offense within 10 years} if probation granted for first offense, it must be accompanied by ignition interlock for the duration of the probation. V and T Law §1193(b)**A Controlled Substance.**<sup>856</sup> V & T Law §§ 114-a & 1192(4) and Public Health Law § 3306.

Driving while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs. § 1192 (4) -A

**Yes** V and T Law §1194(1)(b) Note: The law does not specifically authorize the use of PBTs in all situations. The law only authorizes these tests in those situations where a driver has been involved in an accident or has committed a traffic law violation. A violation could include other offenses as well as DWI.**No**<sup>857and 858</sup> V and T Law §1194(2)

<sup>854</sup> The law provides that no one shall operate a motor vehicle while in an intoxicated condition. This condition could be the result of drug as well as alcohol ingestion.

<sup>855</sup> Standard: "Percent by weight" of alcohol in the blood. V&T Law §§1192(2) and 1195(2)(b) and (c) "Percent by weight" of alcohol in the blood may be expressed as grams of alcohol per 100 milliliters of blood. 10 NYCRR §59.1(b), *People v. Ritchie*, 511 N.Y.S.2d 482 (Sup. 1987), and *People v. McDonough*, 518 N.Y.S.2d 524 (A.D. 4 Dept. 1987) (App. denied 516 N.E.2d 1232 (N.Y. 1987))

<sup>856</sup> The law provides that no one shall drive while impaired by drugs as defined in the motor vehicle law.

<sup>857</sup> A DWI arrest is one basis for requiring a person to submit to an implied consent chemical test (V and T Law §1194(2)(a)(1)). However, an arrest is not required in all situations. If a PBT indicates that alcohol has been consumed, a request to submit to a chemical test under the implied consent law may be made without the need for a formal arrest. V and T law §1194(2)(a)(2)

<sup>858</sup> A person under 21 years old who has been stopped for operating a motor vehicle "after having consumed alcohol" cannot be arrested. However, they can be "temporarily detained" by law enforcement officers for the purpose of requesting a chemical test. V and T Law §1194(2)(a)(4)

Chemical Breath Tests for Alcohol Concentration:  
(con't)

Implied Consent Law Applies to  
Drugs (Yes/No):

**Yes** V and T Law §1194(2)(a)

Refusal to Submit to Chemical Test  
Admitted into Evidence:

**Yes** (Criminal and Civil Cases)  
V and T Law §1194(2)(f)

Other Information:

Under V and T Law §1194(3), a driver may be compelled via court order to submit to a chemical test of their blood for either alcoholic or drug content if he/she has been involved in an accident related to a DWI offense and there has been a fatality or a serious physical injury or if a PBT indicates alcohol consumption and the person has been arrested and has refused to submit to a chemical test.

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:  
Urine:  
Other:

**Yes** V and T Law §1194(2)(a)  
**Yes** V and T Law §1194(2)(a)  
**Saliva** V and T Law §1194(2)(a)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

**No**, but unconditional discharge for a DWI violation is prohibited. VT §1193(1)(e)

Anti-Plea-Bargaining Statute (Yes/No):

**Yes** Unless available evidence determines otherwise, plea-bargaining is allowed only to another DWI offense. V and T Law §1192(10)(a) A person charged with "Aggravated DWI" may plead to misdemeanor DWI. A person under 21 years old who has been charged with "driving while impaired" may satisfy such charge by agreeing to an administrative license suspension or revocation under V and T Law §1192-a. V and T Law §1192(10)(c)

Pre-Sentencing Investigation Law (PSI) (Yes/No):

**No** See Criminal Procedure Law §390.20 for the general requirements related to pre-sentence investigations following a conviction for either a misdemeanor or felony.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary  
Breath Test: Criminal Sanctions  
(Fine/Jail):

**Infraction**<sup>859</sup> First refusal: Jail – not more than **15 days**; Civil penalty - fine – not more than **\$500**;

<sup>859</sup> *People v. Steves*, 459 N.Y.S.2d 402 (Sup. 1983)

second refusal (within 5 years): Jail – not more than **45 days**; fine – not more than **\$750**; V & T Law §1800(b)

Administrative Licensing Action

(Susp/Rev):

Other:

**None**

Refusal to Take Implied Consent

**None**

Chemical Test

Criminal Sanction (Fine/Jail):

**None**

Administrative Licensing Action

(Susp/Rev):

**Revocation** for at least **6 months** (at least 1 year if under 21); **Revocation** for at least **1 year** for a second or subsequent refusal (within 5 years) or a first refusal where there has been a previous DWI offense conviction (within 5 years). These revocations are mandatory. Vand T Law §1194(2)(d) See 15 NYCRR (New York Code Rules and Regulations) 13 and 139.4 for a temporary license suspension prior to a hearing on a refusal. (1) Under V and T Law §1194(2)(b), a person who refuses to submit to a chemical test may have their license suspended at the time of arraignment based upon a sworn written police report.<sup>860</sup>

Other:

(2) First refusal – **\$300** (\$350 if operating a CMV) Civil Penalty; second or subsequent refusal (within 5 years) or a first refusal where there has been a prior DWI offense (within 5 years) **\$750** Civil Penalty Vand T Law §1194(2)(d)(2)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):

I. “Impaired” alcohol status offenses V and T Law §§1192(1) and 1193(1)(a) – first offense (Traffic Infraction) – Not more than **15 days**; second offense<sup>861</sup> within 5 years – Misdemeanor – Not more than **30 days**; third and any subsequent offense within 10 years – Misdemeanor – Not more than **180 days**

II. Per Se and Intoxicated status offense<sup>862</sup> – first offense (misdemeanor) – Not more than **1 year** VandT Law §1193(1)(b); second offense<sup>863</sup> (within 10 years) Class E felony – Not more than **4 years**<sup>864</sup>;

<sup>860</sup> For persons under 21 who have refused to submit to a chemical test and who have had either a previous alcohol/drug-driving offense conviction or a prior administrative violation for operating a motor vehicle after having consumed alcohol, revocation for 1 year or until they reach 21 whichever is the longer revocation period. VT §1194(2)(d)(1)(b); VT §1194-a(3).

<sup>861</sup> A previous alcohol offense conviction (of any type) is considered a previous offense.

<sup>862</sup> Includes driving while impaired by drugs.

<sup>863</sup> A previous offense also includes vehicle assault (Penal Law §§12.03 and 12.04) and vehicle homicide (Penal Law §§125.12 and 125.13)

<sup>864</sup> Penal Law §§7.00 and 8.00

	<u>third offense</u> (within 10 years) Class D felony – Not more than <b>7 years</b> Vand T Law §§1192 and 1193(1)(c)
	III. “Aggravated Driving While Intoxicated” {BAC-0.18 or more} fine: \$1,000 to \$2,000 or imprisonment for not more than one year or both; driver’s license revocation – <b>one year</b> .
Mandatory Minimum Term:	<b>None.</b> Penal Law §7.00(4) allows the court discretion to fix a definite sentence of 1 year or less in Class D and Class E felonies.
Fine:	
Amount (\$ Range):	I. “Impaired” alcohol status offenses – <u>first offense</u> – <b>\$300 to \$500</b> ; <u>second offense</u> (within 5 years) – <b>\$500 to \$750</b> ; <u>third and any subsequent offenses</u> (within 10 years) – <b>\$750 to \$1,500</b> V and T Law §1193(1)(a)
Mandatory Min. Fine (\$):	II. Per se and intoxicated status offense – <u>first offense</u> (misdemeanor) – <b>\$500 to \$1,000</b> V and T Law §1193(1)(b); <u>second offense</u> (within 10 years) Class E felony – <b>\$1,000 to \$5,000</b> ; <u>third offense</u> (within 10 years) Class D felony – <b>\$2,000 to \$10,000</b> V and T Law §1193(1)(c)
Other Penalties:	
Community Service:	I. “Impaired” alcohol status offenses – <u>first offense</u> – civil penalty - <b>\$500</b> ; <u>second and subsequent offenses</u> (within 5 years) – <b>\$750</b> ; Per se and intoxicated offense – <u>first offense</u> (misdemeanor) – <b>\$500</b> ; <u>second offense</u> (within 10 years) Class E felony – <b>\$1,000</b> ; <u>third offense</u> (within 10 years) Class D felony – <b>\$2,000</b> <sup>865</sup>
Restitution (e.g., Victim's Fund)	<b>Yes</b> As a condition of probation. Penal Law §65.10(2)(h) Effective 9/30/03, a second per se or intoxicated offense within 5 years requires either 5 additional days of jail, or 30 hours of public service, VT §1193 (1-a)(a), and a third per se or intoxication offense adds 10 days of jail or 60 hours of community service VT §1193(1-a)(b). <b>Yes</b> (1) The court may require restitution by a defendant to a victim. Penal Law §§60.27 and 65.10(2)(g) (2) A person may also receive compensation from the State’s victims’ compensation fund. Executive Law §620 et seq.
Other:	<b>Ignition Interlock</b> I. The use of an “ignition interlock” may be a condition of probation for an

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<sup>865</sup> These fines (for a felony conviction) may not be mandatory. *People v. Porter*, 522 N.Y.S.2d 88 (Co. Ct. 1987)  
**Special Note:** A person commits “Vehicle Assault,” a Class E felony, if they injure another in a criminally negligent manner while in violation of the DWI law. It is a Class D felony if the offender committed this offense while driving on a suspended or revoked license where such action was based either on a refusal to submit to a chemical test or a drunk-driving offense conviction. Penal Law §§12.03 and 12.04

illegal per se/intoxicated offense conviction or Aggravated Driving While Intoxicated. Penal Law §65.10(2)(k-1)

II. Ignition interlock is required for 2nd or 3rd subsequent per se or intoxicated offenses during period of revocation and thereafter by court order. VT §1193(1-a)(c).

**Surcharges. Felony-** Mandatory surcharge of **\$210** plus a \$10 crime victim assistance fee.

**Misdemeanor-** Mandatory surcharge of **\$110** plus a \$10 crime victim assistance fee Penal Law §60.35 Vand T Law §1809 provides that for any offense there is a mandatory surcharge of \$110 for misdemeanor and \$200 for any felony charge.

**School Bus Operators:** A person who operates a school bus with at least one student passenger in violation of the drunk-driving laws is subject to the following sanctions. First Impaired Status offense – (Class A Misdemeanor) – Imprisonment for not more than 1 year and/or a fine of \$500 to \$1,500. V and T Law §1193(1)(d)(1-a) and Penal Law §§55.10(2)(b) and 70.15 License revocation for 1 year V and T Law §1193(2)(b) (4-a)(a) subsequent Impaired Status offense within 10 years – (Class E felony) – Imprisonment for not more than 4 years and/or a fine of \$1,000 to \$5,000. Vand T Law §1193(1)(d)(1-a) and (4) and Penal Law §7.00 License revocation for 3 years VandT Law §1193(2)(b)(4-A)(b) Per Se, Intoxicated and driving while impaired by drugs offenses – (Class E felony) – Imprisonment for not more than 4 years and/or a fine of \$1,000 to \$5,000. Vand T Law §1193(1)(d)(4-a) and Penal Law §§7.00 and 8.00 License revocation for 1 year. (The law is not clear but a subsequent offender may receive a 3-year revocation.) V and T Law §1193(2)(b)(4-a) and (b)

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver’s Licenses (CDL):**

**Licensing Action:** A person will have their privilege to operate a CMV “revoked” for one mandatory year (three years mandatory if transporting hazardous materials) if, while operating a CMV they: (1) had a BAC  $\geq$  .04 (amount of alcohol in the blood), (2) violated any provision of the DWI law (VandT §1192, subs. 1, 2, 3 and 4) or (3) refused to submit to a chemical test for alcoholic/drug content {but for a violation of number (3), revocation for 18 months, fine: \$550.} For either (1) a second violation or (2) a combination of two violations of any of the above-listed items, there is a “disqualification” for at least 10 years, and a fine of \$750. For either (1) a third violation or (2) a combination of three violations of any of the above listed items, there is a mandatory permanent “disqualification”. Vand T Law §§501-a, 510-a, 530(5), 1193(2)(b)(5), 1193(2)(e)(3), 1194(2)(d)(1)(c) and (d) and 1196(5) **Criminal Sanctions: Infraction:** A person commits an “infraction” if they operate a CMV with a BAC at or above **.04 but below .06** (a CMV Per Se Level I Offense V and T Law §1192, subd. 5). The sanctions for this “infraction” are the same as for “impaired” driving. **Misdemeanor:** A person commits a misdemeanor if they operate a CMV with a BAC **at or above .06 but below .08** (a CMV per Se Level II Offense V and T Law §1192, subd. 6). For a first Per Se Level II Offense, the sanctions are a fine of \$500 to \$1,500 and/or a jail term of not more than 180 days. Either (1) for a subsequent Per Se Level II Offense (within five years) or (2) for a first offense where there has been a previous DWI offense conviction (within five years), the sanctions are a fine of \$500 to \$1,500 and/or a jail term or not more than one year. A person commits a misdemeanor if they operate a CMV and violate the regular provisions of the DWI law (V and T §1192, subs. 1, 2, 3 and 4). The sanctions for this offense are a fine of \$500 to \$1,500 and/or a jail term or not more than one year. **Felony:** A person commits a Class E felony if they are convicted of a Per Se Level II offense and have been convicted 2 or 3 times within 5 years of either (1) a Per Se Level II offense or (2) any DWI offense (One of these must be a misdemeanor.) A person commits a Class D felony if they are convicted of a Per Se Level II offense and have been convicted 4 or more times within 5 years of either (1) a Per Se Level II offense or (2) any DWI offense (One of these must be a misdemeanor.) Class E felony sanctions: A fine of \$1,000 to \$5,000 and/or a term of imprisonment of not more than 4 years. Class D felony sanctions: A fine of \$2,000 to \$10,000 and/or a term of

imprisonment of not more than 7 years. V and T Law §1193(1)(d)(1), (2), (3) and (4) and Penal Law §§55.10(1)(b), 55.10(2)(b), 7.00 and 70.15(1)(a)

**DWI Offenses Involving Other Motor Vehicles Used In Commerce:** The following sanctions apply to persons who operate taxicabs, liveries or a trunk weighing more than 18,000 lbs. but less than 26,000 lbs. while in violation of the regular provisions of the DWI law (V and T Law §1192, subs. 1, 2, 3 and 4). For a first offense the person commits a misdemeanor and may be fined \$500 to \$1,500 and/or a jail term of not more than one year; in addition, the license is revoked for 1 year. For a second offense within 10 years, a person commits a Class E felony and may be fined \$1,000 to \$5,000 and/or imprisoned for not more than 4 years; for a third offense (within 10 years), a person commits a Class D felony and may be fined \$2,000 to \$10,000 and/or imprisoned for not more than 7 years; in addition, such person is “disqualified” from operating these types of vehicles for at least five years. V and T Law §§1193(1)(d)(1), (2), (3) and (4), 1193(2)(b)(4) and 1193(2)(e)(3) and Penal Law §§55.10(1)(b), 55.10(2)(b), 7.00 and 70.15(1)(a) Note: Operating a vehicle weighing > 18,000 lbs while transporting flammable gas, radioactive materials or explosives and with Per Se, Intoxicated or driving while impaired by drugs offense is also a Class E felony with the criminal sanctions as noted above. V and T Law §1193(1)(d)(5)

#### Administrative Licensing

##### Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Persons Under 21 Years Old. Operating a motor vehicle “**after having consumed alcohol**”. A person is only considered to have consumed alcohol if their **BAC is  $\geq$  .02 but  $<$  .07**. Vand T Law §1192- a first action – **Suspension – 6 months**<sup>866</sup> V and T Law §1193(2)(a) subsequent action – **Revocation – 1 year** or until they reach 21 years old whichever is the greater period (mand)<sup>867</sup> V and T Law §1193(2)(b)(7) and (9). A civil penalty of \$125 shall also be assessed. VT §1194-1(2)

Other:

**Temporary suspension** is mandatory where a person is charged with a violation of V and T Law §1192(2), (3) and (4)<sup>868</sup> and he/she has a previous alcohol/drug-driving conviction of any type within 5 years. V and T Law §1193(2)(e)<sup>869</sup> “Impaired” alcohol status offenses<sup>870</sup> – first offense – **Suspension** (Revocation if person is under 21 years

<sup>866</sup> This suspension is not mandatory. A conditional license is available if the offender participates in an alcohol rehabilitation program. Vand T Law §1196(4) and (7)

<sup>867</sup> This revocation is mandatory even if the offender participates in an alcohol rehabilitation program

<sup>868</sup> Vand T Law §1193(2)(e)(7), the arraignment license suspension law, has been held not to violate constitutional principles of due process of law. *Pringle v. Wolfe*, 668 N.E.2d 1376 (N.Y. 1996) cert. denied 519 U.S. 1009, 136 L.E.2d 402, 117 S Ct. 513 (1996). In addition, a person who has been subjected to licensing action under Vand T Law §1193(2)(e)(7) may also be subsequently prosecuted and punished for a drunk-driving offense. Such subsequent criminal action does not violate the constitutional prohibition against double jeopardy. *Smith v. County Court of Essex County*, 649 N.Y.S.2d 507 (A.D. 3 Dept. 1996), *People v. Conrad*, 654 N.Y.S.2d 226 (Sup. 1996), *People v. Haishun*, 656 N.Y.S.2d 660 (A.D. 2 Dept. 1997), *People v. Steele*, 661 N.Y.S.2d 908 (Sup. App. Term 1997), *People v. Uzquanio*, 661 N.Y.S.2d 438 (Sup. App. Term. 1997), *People v. Busby*, 670 N.Y.S.2d 960 (Sup. App. Term. 1997), and *People v. Malone*, 673 N.Y.S.2d 809 (Sup. App. Term 1997)

<sup>869</sup> A violation of V and T Law §1192(2), (3) and (4) must be based upon “reasonable cause” before the court can impose this suspension.

<sup>870</sup> If a person is convicted of an “impaired” alcohol offense while operating a motor vehicle on a probationary license, such license is suspended for 60 days (mandatory). V and T Law §510-b(1)

Post DWI Conviction Licensing Action:

Type of Licensing Action (Susp/Rev):

old); subsequent offense (within 5 years of one alcohol driving offense of any type or within 10 years of two alcohol-driving offenses of any type) – **Revocation**

II. Per se and intoxicated offenses<sup>871</sup> – first offense – **Revocation**; second and any subsequent offenses (within 10 years) – **Revocation** V and T Law §1193(2) See Footnote No. <sup>872</sup>.

Term of License Withdrawal

(Days, Months, Years, etc.):

I. “Impaired” alcohol status offenses – first offense – **90 days**; subsequent offense (within 10 years of one alcohol-driving offense of any type or within 10 years of two alcohol-driving offenses of any type) – **18-month revocation.**

II. Per se and intoxicated offenses – first offense – At least **6 months**; second and any subsequent offenses (within 10 years) – At least **18 months** V and T Law §1193(2)(a) and (b)

Mandatory Minimum Term of Withdrawal:

I. “Impaired” alcohol status offenses – subsequent offense (within 5 years of one alcohol-driving offense of any type or within 10 years of two alcohol-driving offenses of any type) – **6 months** Per se and intoxicated offenses – second and any subsequent offenses (within 10 years) – **1 year**<sup>873</sup> V and T Law §1193(2)(a) and (b)

“Aggravated Driving While Intoxicated” - at least **18 months** 3 DUIs {including refusals} in 4 years or 4 DUIs in 8 years – “permanent revocation” – mandatory for 5 years; conditional license possible after 3 years<sup>874</sup>.

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

**Yes** for all offenses V and T Law §1196

**Yes** for all offenses V and T Law §1196

<sup>871</sup> Also includes driving while impaired by drugs under V and T Law §1192(4).

<sup>872</sup> **Bus/School Bus Operators (Disqualification).** A bus/school bus operator is disqualified from operating a bus/school bus for 5 years if they (1) are convicted of operating such vehicle in violation of any provision of the drunk-driving law or (2) have been convicted to two such offenses while operating any other type of vehicle. In addition, the law further provides that if a person has had his/her regular driving privileges suspended/revoked for a drunk-driving law offense they are disqualified from operation of a bus/school bus during such suspension/revocation. However, such disqualification must last for not less than 6 months. Vand T Law §§509-c and 509-cc

<sup>873</sup> Under V and T Law §1193(2)(c), if a person is convicted of two violations of either driving while intoxicated or driving while impaired by drugs (V and T Law §1192(3) and (4) where a personal injury has resulted in each offense, his/her license is permanently revoked.

<sup>874</sup> A person may be issued a conditional license while participating in a rehabilitation program. However, a person is not permitted to take part in such a program and obtain a conditional license (1) if the person has participated in such a program within a five-year period or (2) has been convicted of a subsequent alcohol-driving offense within 5 years. Successful completion of the program shall satisfy any sentence of imprisonment and allow an offender to apply for reinstatement of the driver’s license. V and T Law §1196(4) and (7)

Vehicle Impoundment/Confiscation:  
 Authorized by Specific  
 Statutory Authority:

Terms Upon Which Vehicle  
 Will Be Released:

Other:

**Forfeiture.** A defendant's vehicle may be subject to forfeiture if he/she has been convicted of a felony drunk-driving offense (e.g., a second or subsequent Per Se or Intoxicated offense within 10 years). This sanction is not mandatory. Civil Practice Law and Rules §1310(5) and 1311(1)(a) and *Holtzman v. Bailey*, 503 N.Y.S.2d 473 (Sup.1986)

N/A

**Registration Suspension/Revocation.** The registration of a defendant's vehicle may be suspended/revoked. Registration suspension/revocation periods are the same as the license suspension/revocation periods for DWI offense convictions. Applies also to persons under 21 years old. V and T Law §1193(2)(a) and (b)

Miscellaneous Sanctions Not  
 Included Elsewhere:

**Victim Impact Program.** A defendant may be required to attend a "victim impact program". This program consists of a single session in which prior DWI offenders discuss the impact that such an offense has had on them. V and T Law §1193(f)

**Civil Penalty.** A person <21 years old who has had a license suspension/revocation for driving "after having consumed alcohol" is liable for a civil penalty of \$125. VandT Law §1194-a (2)

**Probation.** A defendant may be placed on probation with conditions related to the offender's rehabilitation.<sup>875</sup> Penal Law §65.10(2)(1). Conditional discharge or probation must be accompanied by a sentence or a fine. VT §1193(1)(e)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

**Yes** Vehicle Manslaughter in the second degree—Class D felony -- Death of another based on criminally negligent action while in violation of the DWI laws. {Vehicular manslaughter in the first degree - Class C felony} – if committed with BAC  $\geq$  0.18 or violator caused the death of more than one person, or is a repeat violator, or had 2 or more previous DWIs within 5 years. Penal Law §125.12 See Footnote No. <sup>876</sup>.

<sup>875</sup> **Important.** Unless related to rehabilitation, a court cannot as a condition of probation, without specific statutory authority, (1) require a DWI defendant to affix to the license plates of the vehicles they operate a sign that states that he/she has been convicted of a drunk-driving offense or (2) place such a defendant on "electronic monitoring." *People v. Letterlough*, 655 N.E.2d 146 (N.Y. 1995), and *People v. McNair*, 665 N.E.2d 167 (N.Y. 1996)

<sup>876</sup> If a person kills another while operating a motor vehicle while his/her license is either suspended or revoked for either an alcohol or a drug-related driving offense or for refusal to submit to a chemical test, he/she has committed



Sanctions:	
Criminal Sanction:	Not more than <b>7 years</b> Penal Law §7.00(2)(d)
Imprisonment (Term):	
Mandatory Minimum Term:	<b>None</b>
Fine (\$ Range):	Not more than <b>\$5,000</b> Penal Law §8.00(1)(a)
Mandatory Minimum Fine:	<b>None</b>
Administrative Licensing Action:	<b>Revocation</b> Vand T Law §510(2)(a)(i)
Licensing Authorized and	
Type of Action:	At least <b>6 months</b> Vand T Law §510(6)
Length of Term of	
Licensing Withdrawal:	<b>6 months</b> Vand T Law §510(6)
Other:	Persons convicted of either first or second degree Vehicle Manslaughter are not eligible for the shock incarceration program. Correction Law §§865(1), 866 and 867 VT §511(2)(a)(ii) and (iii) See Footnote No <sup>877</sup> . Stops that reveal a violation of §511 must be legal to support any subsequent prosecution. <i>People v. Moya</i> , 648 N.W.S.2d 748 (County Ct 2002).
Vehicular Assault in the Second Degree:	DWI causes serious physical injury to another person – Class E felony.
Vehicular Assault in the First Degree:	DWI with BAC 0.18 or more causes serious physical injury to another person or driving While License Suspended or Revoked Where the Basis Was a DWI Offense: - Class D felony.
Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:	
Sanction:	
Criminal:	<b>Misdemeanor 7 to 180 days</b> V and T Law §511(2)(a)(iii) and (2)(b) See Footnote Nos. <sup>878</sup> , <sup>879</sup>

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Vehicle Manslaughter in the first degree which is a Class C felony. The sanctions for this offense are a jail sentence of not more than 15 years and/or a fine of not more than \$5,000. Penal Law §§7.00(2)(c), 8.00(1)(a) and 125.13. If a person injures another under the same circumstances, that person commits vehicular assault in the first degree, a Class D felony. Penal Law §12.04

<sup>877</sup> If a person operates a CMV during either the suspension or revocation of his/her CDL, they appear to be subject to the sanctions given in VandT Law §511. Also, if a person violates an out-of-service order, his/her CDL is suspended for 90 days. V and T Law §510-a(3)(d)

<sup>878</sup> Aggravated unlicensed operation of a motor vehicle in the second degree. As a condition of probation, the court may require a defendant to participate in an either alcohol or drug treatment program. V and T Law §511(2)(b) and (6) Also, under V and T §511-b, for a first or second offense, the vehicle used in the offense may be impounded; the vehicle may be “redeemed” to a person who has furnished satisfactory evidence of registration and financial security.

<sup>879</sup> A person who operates a motor vehicle while DWI and with a suspended or revoked license for a previous DWI conviction commits the offense of “aggravated unlicensed operation of a motor vehicle in the first degree” which is a Class E felony is subject to the following sanctions: Imprisonment – Not more than 4 years; fine – \$500 to \$5,000. As a condition of probation, the court may require a defendant to participate in either an alcohol or a drug treatment program. VandT Law §511(3) and (6) and Penal Code §7.00(2)(e) The defendant’s vehicle may also be subject to forfeiture. Civil Practice Law and Rules §§1310(5) and 1311(1)(a)

and <sup>880</sup>

Mandatory Minimum Term of Imprisonment: **None**

Fine (\$ Range): **\$500 to \$1,000** V and T Law §511(2)(b)

Mandatory Minimum Fine: **None**

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev): **None**

Length of Term of License

Withdrawal Action:

Mandatory Term of License

Withdrawal Action:

Habitual Traffic Offender Law: State Has Such a Law (Yes/No): **No**

Grounds for Being Declared an Habitual Offender:

Term of License Rev While Under Habitual Offender Status:

Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:

Sanctions Following a Conviction of Driving While on Habitual Offender Status:

Imprisonment (Term):

Mandatory Minimum Term of Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No): **Yes** County Law §674(3)(b)<sup>881</sup>

BAC Chemical Test Is Given to the Following Persons:

Driver: **Yes**

Vehicle Passengers: **No**

Pedestrian: **Yes** (If 16 years or older)

<sup>880</sup> A person who operates a motor vehicle following either suspension or revocation not associated with a drunk-driving offense is guilty of the misdemeanor offense of aggravated unlicensed operating of a motor vehicle in the third degree. The sanctions for this offense are an imprisonment term of not more than 30 days and/or a fine of \$200 to \$500 (\$500 to \$1,500 if the offender was operating a vehicle weighing more than > 18,000 lbs). V and T Law §511(1)

<sup>881</sup> The test shall not be made if there is reason to believe that the decedent is of a religious faith that is opposed to such test on religious or moral grounds. N.Y. County Law §674(3)(b)

Laws Establishing the  
Minimum Ages Concerning  
Alcoholic Beverages:  
Minimum Age (Years)  
Sale/Purchase:

**21**<sup>882</sup> Alcoholic Beverage Control Law §§65, 65-b  
and 82 and Penal Law

Minimum Age (Years)  
Possession:

**21**<sup>883</sup>

Minimum Age (Years)  
Consumption:

**21**

Dram Shop Laws and Related  
Legal Actions: State Has a Dram  
Shop Law (Yes/No):

**Yes** N.Y. Gen. Oblig. Law §§11-100 and 11-101

“Dram Shop Law” Concept Has Been  
Adopted Via a Change to the Common  
Law Rule by Action of the Highest  
Court of Record in the State (Case  
Citation):

**No** However, see *Berkeley v. Park*, 262 N.Y.S.  
2d 290 (Sup. 1965), a trial court opinion. But  
*Berkeley* was soundly questioned by *Conrad v.*  
*Beck-Turek, Ltd.*, 891 F. Supp 962 (S.D.N.Y.  
1995).

Dram Shop Actions-Social Hosts:

**Limited** Liability in situations where a person < 21  
years old is served alcoholic beverages.<sup>884and885</sup> N.Y.  
Gen. Oblig. Law §11-100  
In general, a provider of alcoholic beverages is not  
liable for the injuries sustained by a intoxicated  
patron (even a minor) due to their voluntary  
consumption of alcohol.<sup>886</sup> *Sheehy v. Big Flats*  
*Community Day, Inc.*, 541 N.E.2d 18  
N.Y. 1989)<sup>887</sup>

<sup>882</sup> It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a crime for a minor to use “written evidence” of his/her age that is “false” or “fraudulent” in order to obtain alcoholic beverages. Alcoholic Beverage Control Law §65-b

<sup>883</sup> Unlawful possession with intent to consume by persons under 21 years old. Alcoholic Beverage Control Law §65-c  
Exceptions: (1) Either a person under 21 years old is required as part of an educational curriculum to consume/taste alcoholic beverages or (2) such person has been provided alcoholic beverages by a parent or guardian.

<sup>884</sup> Under N.Y. Gen. Oblig. Law §11-100, a social host who unlawfully procures alcoholic beverages for consumption by an underage person may be held liable for any damages caused by such person who became intoxicated as a result of such consumption. *Cole v. O'Tooles of Utica, Inc.*, 643 N.Y.S.2d 283 (A.D. 4 Dept. 1996). Also, one who is “more than an unknowing by-stander and who plays an indispensable role in the scheme to provide alcohol to underage guests can be held liable for any damages caused by such person who became intoxicated as a result of such consumption.” *Rust v. Reyer*, 693 N.E.2d 1074 (N.Y. 1998)

<sup>885</sup> The court found no social host liability at a party given by a business where alcoholic beverages were furnished to an adult guest who caused injuries as a result of becoming intoxicated at the party. *Joly v. Northway Motor Car Corp.*, 517 N.Y.S.2d 595 (A.D. 3 Dept. 1987)

<sup>886</sup> Nevertheless, under the dram shop law, a licensee who serves alcoholic beverages to a minor child to the point of intoxication is liable to the child’s parents for any injuries sustained by the minor while in such an intoxicated condition. *Ray v. Galloway's Cafe*, 634 N.Y.S.2d 495 (A.D. 2 Dept. 1995)

<sup>887</sup> In *Sheehy*, the court held that there was no such liability either for a violation of Penal Law §260.20, which prohibits licensees from serving alcoholic beverages to minors, or under the common law. However, if such consumption was “imposed” on a person (e.g., via hazing to join a fraternity), liability may result. *Oja v. Grand Chapter of Theta Chi Frat.*, 667 N.Y.S.2d 650 (Sup. 1997)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

**Class A Misdemeanor**<sup>888and889</sup> §§65 and 130(5) of the Alcoholic Beverage Control Law and §§55.10(2)(b), 70.15(1) and 8.05(1) of the Penal Law

Term of Imprisonment:

**Not more than 1 year**

Fine (\$ Range):

**Not more than \$1,000**<sup>890</sup> (For corporations, the fine is not more than \$5,000.) §80.10(1)(b) of the Penal Law

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

**Yes** Suspension, cancellation, or revocation Alcohol Beverage Control Law §17(3)

Length of Term of License Withdrawal:

Not specified in the statute

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

**Class A Misdemeanor** §§65 and 130 of the Alcoholic Beverage Control Law and §§55.10(2)(b), 70.15(1), 8.05(1), 8.05(2), 80.10(1)(b), 80.10(1)(c) and 260.20 of the Penal Law

Term of Imprisonment:

**Not more than 1 year**

Fine (\$ Range):

**Not more than \$1,000** (Not more than \$5,000 for corporations)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

**Yes** Suspension, cancellation or revocation – Alcohol Beverage Control Law §§17(3), 119

<sup>888</sup> Penal Law §260.20(4), concerning the selling or giving of alcoholic beverages to a person under 21 years old, does not apply to the parent or guardian of such a person.

<sup>889</sup> Under N.Y. law, there are two provisions making it illegal to sell alcoholic beverages to persons under 21 years old. One is in the Alcoholic Beverage Control Law (§65). The other is in the Penal Law (§260.20).

<sup>890</sup> For a second or subsequent offense (within 5 years), there is a civil penalty of not more than \$500. Alcoholic Beverage Control Law §119(5)

Length of Term License Withdrawal:

Not specified in the statute

Anti-Happy Hour Laws/Regulations:

Yes<sup>891</sup> Alcoholic Beverage Control Law §117-a

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Yes<sup>892</sup> Driver and passengers V and T Law §1227

Anti-Consumption Law (Yes/No):

Yes Driver and passengers V and T Law §1227

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<sup>891</sup> Prohibits the selling or delivering of an unlimited number of drinks during any set period of time for a fixed price.

<sup>892</sup> Does not apply to vehicles operating under certain certificates or permits issued by the U.S. Dept. of Tran. V and T Law §1227