

VEHICLE & TRAFFIC LAW

VTL 1192 RESOURCE GUIDE

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Suspension Pending Prosecution under VTL 1193(2)(e)(7) – Excessive Blood Alcohol Content (BAC)

Where the Defendant is charged with:

VTL 1192.2 and/or
VTL 1192.2(a) and/or
VTL 1192.3 and/or
VTL 1192.4(a)

Determine if you have

- (i) a valid accusatory instrument (i.e. it conforms to CPL 100.40) AND
- (ii) A certified Blood Alcohol Content test result showing a BAC of .08% or more.

If you do not have both of these, you cannot suspend pending prosecution under VTL 1193(2)(e)(7).

If you have both of these, proceed with suspension, however:

- The Defendant must either have counsel present or have been afforded an opportunity to have counsel present.
- The Defendant is entitled to a *Pringle* hearing to present evidence to rebut the Court's finding that the accusatory instrument is valid, and/or that the Certified BAC result is in a proper form. Defendant is entitled to a short adjournment to prepare for the *Pringle* hearing.

If, after the *Pringle* hearing, the Defendant has failed to rebut the Court's initial findings of validity, the court can suspend the defendant's driver's license pending prosecution under VTL 1193(2)(e)(7):

- Take the defendant's physical NYS Driver's License. (You cannot physically take an out of state driver's license, however, you suspend the out of state driver's privilege to drive in New York State).
- The Court MAY grant a hardship privilege to the Defendant but only if the Defendant requests it AND the Defendant can prove "Extreme Hardship" resulting from the suspension.

"Extreme Hardship" is defined 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."

The Defendant must prove such extreme hardship to the court, and such proof CANNOT consist solely of the testimony of the Defendant, i.e. the Defendant must present additional evidence beyond his/her own testimony.

- The Court must give its reasons for granting or denying the hardship privilege on the record or in writing. Use Form MV-1193 for the suspension pending prosecution and/or hardship privilege.

Suspension Pending Prosecution under VTL 1193(2)(e)(1) – Prior conviction

Where the Defendant is charged with:

VTL 1192(2); and/or
 VTL 1192(2-a); and/or
 VTL 1192(3); and/or
 VTL 1192(4); and/or
 VTL 1192(4-a)

AND EITHER:

- the defendant is charged with a felony under article 120 or 125 of the Penal Law arising out of the same incident, or
- the defendant has been convicted of ANY violation under VTL 1192 within the preceding 5 years: *then*

Suspend pending prosecution under VTL 1193(2)(e)(1)

- The Defendant must either have counsel present or have been afforded an opportunity to have counsel present.
- The Defendant is entitled to make a statement regarding the charges and to present evidence tending to rebut the court's findings.

If the Defendant fails to rebut the Court's findings of validity, suspend the defendant's driver's license pending prosecution under VTL 1193(2)(e)(1).

- Take the defendant's physical NYS Driver's License. (You cannot physically take an out of state driver's license, however, you suspend the out of state driver's privilege to drive in New York State).

Suspension under VTL 1193(2)(e)(1) shall occur no later than twenty days after the holder's first appearance before the court on the charges or at the conclusion of all proceedings required for the arraignment.

There is **NO** hardship privilege allowed for a suspension under VTL 1193(2)(e)(1).

Use form MV-1193 for the suspension.

Suspension Pending Prosecution under VTL 1193(2)(e)(7)(a-1) – Junior Operator

Where the defendant, who is under 18 years old (junior driver's license (DJ) or junior motorcycle license (MJ)) is charged with:

VTL 1192(1) and/or
 VTL 1192(2) and/or
 VTL 1192(2-a) and/or
 VTL 1192(3)

Suspend pending prosecution under VTL 1193(2)(e)(7)(a-1)

You do NOT need a certified BAC result to suspend.

Suspension should occur at next regularly scheduled court session.

- The Defendant must either have counsel present or have been afforded an opportunity to have counsel present.
- Take the defendant's physical NYS Driver's License. (You cannot physically take an out of state driver's license, however, the out of state driver's privilege to drive in New York State is suspended).
- The Court MAY grant a hardship privilege to the Defendant but only if:
 - The Defendant holds either a DJ license or an MJ license. A DJ permit or an MJ permit are not eligible for a hardship privilege.
 - The Defendant requests a Hardship Privilege AND the Defendant can prove "Extreme Hardship" resulting from the suspension.

"Extreme Hardship" is defined 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."

- The Defendant must prove such extreme hardship to the court, and such proof CANNOT consist solely of the testimony of the Defendant, i.e. the Defendant must present additional evidence beyond his own testimony.
- The Court must give its reasons for granting or denying the hardship privilege on the record or in writing.

Use Form MV-1193 for the suspension pending prosecution and/or hardship privilege.

Chemical Test Refusals under VTL 1194(2)(B)(3)

Where the defendant is charged with any VTL 1192 offense, and the defendant refused to take a Chemical Test, there should be a Report of Refusal (Form AA-134) filed by the police.

- Arraign the defendant;
- Suspend the defendant's license and privilege to drive in New York State – this is an immediate suspension, do NOT adjourn the matter without first suspending;
- If the defendant has a New York State License, take the physical license from the defendant and destroy it;
- If the defendant has an out of state license, you cannot take the physical license, but you must suspend the defendant's privilege to drive in New York State;
- Schedule a Refusal Hearing with DMV for the next available hearing date in your county. DMV issues the refusal hearing schedule every six months.
- Complete form AA-137 and remit form AA-137 AND the Report of Refusal form (AA-134) to DMV and the arresting officer within 48 hours of the arraignment.

There is NO hardship privilege allowed for a Chemical Test refusal under VTL 1194(2)(B)(3).

Court Ordered Screening pursuant to VTL 1198-a

VTL 1198-a mandates that either a Screening or an Assessment be performed on any defendant charged with violating VTL 1192.

Order a screening either at arraignment or at any time prior to sentencing where:

A Defendant is charged with a first offense of:

VTL 1192(1) and/or
 VTL 1192(2) and/or
 VTL 1192(2-a) (b) and/or
 VTL 1192(3) and/or
 VTL 1192(4)

and the BAC is less than .15%

OR

Defendant refused to submit to a chemical test.

- Use the "Notice of Court Ordered Alcohol and Substance Abuse Screening and/or Assessment" form to order the screening.

Court Ordered Assessment pursuant to VTL 1198-a

VTL 1198-a mandates that either a Screening or an Assessment be performed on any defendant charged with violating VTL 1192.

Order an Assessment either at arraignment or at any time prior to sentencing where:

(A) The Defendant is charged with:

VTL 1192(1) and/or

VTL 1192(2) and/or

VTL 1192(2-a) (b) and/or

VTL 1192(3) and/or

VTL 1192(4)

and the BAC is greater than .15%

OR

(B) The Defendant is charged with:

VTL 1192(1) and/or

VTL 1192(2) and/or

VTL 1192(2-a) (b) and/or

VTL 1192(3) and/or

VTL 1192(4) and/or

VTL 1192(4-a)

AND

The Defendant has one VTL 1192 conviction in the preceding 5 years or two VTL 1192 convictions in the preceding 10 years

OR

The Defendant has one Vehicular Assault 1st or 2nd Degree or one Vehicular Manslaughter 1st or 2nd Degree in the preceding 5 years or two Vehicular Assault 1st or 2nd Degree or two Vehicular Manslaughter 1st or 2nd Degree in the preceding 10 years

OR

The screening evaluation indicates that the defendant is dependent upon or abusing alcohol and/or drugs.

- Use the "Notice of Court Ordered Alcohol and Substance Abuse Screening and/or Assessment" form to order the Assessment.

Pre-sentence Ignition Interlock Device (IID) option upon conviction

PRIOR TO THE SENTENCE, upon conviction for VTL 1192(2), 1192(2-a), and/or 1192(3), the court may impose a condition, upon defendant's request, requiring the installation of an Ignition Interlock Device in all vehicles the defendant owns and/or operates.

- The defendant MUST complete form MVOA – the Motor Vehicle Ownership Affidavit attesting to the ownership or non-ownership of vehicles.
- The defendant should be sworn in on the record and asked if he/she owns any motor vehicles and if so, their make, model and VIN number.
- Complete form UCS 956 and order the defendant to install an IID on all vehicles he/she owns and/or operates.
- Complete form AA 497 and send it to DMV within 5 business days of the IID order.
- Complete form DCJS/OPCA-510 IIN and send to the probation department/monitor within 5 business days of the date of the order.

The defendant has 10 days from the date of the order to install the IID in all vehicles he owns and/or operates.

Forms:

MVOA

UCS 956

AA497

DCJS/OPCA-510 IIN

Sanctions

The requirements imposed upon a defendant must be done through either a Conditional Discharge or Probation.

Sanctions include:

- Fines
- Surcharges
- Impaired Driver Program (IDP)
- Victim Impact Program (VIP)
- Ignition Interlock Device: VTL 1198 mandates the installation of an Ignition Interlock Device for any person who has been convicted of violating VTL 1192(2), 1192(2-a) or 1192(3). It is ordered as a term of a Conditional Discharge or as a term of Probation. The IID must be installed for a MINIMUM of 12 months but can be ordered for up to the full term of the sentence.

If the defendant is being sentenced to a period of incarceration, the Ignition Interlock order is still imposed. The period of installation commences upon the defendant's release from incarceration.

Even if the defendant does not own a motor vehicle, or does not have a license, the ignition interlock requirement must still be ordered at sentencing.

- Appropriate terms and conditions of Conditional Discharge
 - Appropriate terms and conditions of Probation
- *If the Screening or Assessment indicated that the defendant is abusing or dependent upon alcohol and/or drugs, treatment MUST be ordered as a mandatory component of either the conditional discharge or probation.
- Incarceration

Impaired Driver Program

The Impaired Driver Program (IDP) was formerly known as the Drinking Driver Program (DDP). As this new name is being implemented, you may see the two names interchangeably.

The court may order the defendant to complete the Impaired Driver Program. The court may mandate participation, even if DMV may deem the defendant otherwise ineligible to participate (e.g. prior convictions, defendant completed IDP within the preceding five years, defendant has a permanent revocation).

Completion of the IDP should be ordered as a condition of either a Conditional Discharge or a condition of Probation.

Victim Impact Program

VTL 1193(f) allows for the defendant to be required to attend a single session of a "Victim's Impact Program" (VIP)

Completion of a VIP should be ordered as a condition of either a Conditional Discharge or a condition of Probation.

Early De-installation of Ignition Interlock Device

Defendants may be eligible for early de-installation of the IID, but only after the device has been installed and monitored pursuant to court order for a period of at least six months. Whether to grant early de-installation is a discretionary matter for the court.

If a request for early de-installation is made to the court:

- Contact the monitor for proof of installation, service history and compliance;
- Review the response received from the monitor, including any recommendations made by the monitor;

If the court decides to grant early de-installation, notify the monitor within five business days of the decision using form DCJS/OPCA-510-IIN-MOD or an appropriate court order.

If approved by the court and returned to the monitor, the monitor will instruct the service provider to the removal of the device. The monitor will also provide the defendant with paperwork to take to the DMV in order to have the license restriction removed.

Notification of Violations

The monitor will notify the court of non-compliance issues by filing either: OPCA-133CR-IID or VOCD – Violation of Conditional Discharge or VOP – Violation of Probation.

The OPCA-133CR-IID form contains a section on the back to be completed by the court in response to recommendations by the monitor.

There are three avenues available to the court in response to a notification of non-compliance.

1. Informal Route
2. Formal Route via Declaration of Delinquency for Violation of Probation
3. Formal Route via Declaration of Delinquency for Violation of Conditional Discharge

Informal Route:

In lieu of the court signing and issuing a Declaration of Delinquency:

- Send a letter to counsel of record scheduling a court appearance for the defendant to discuss the alleged non-compliance;
- Give the defendant an opportunity to be heard regarding the alleged non-compliance;
- Warn defendant about consequences of non-compliance (i.e. Formal Route); or
- Issue a Declaration of Delinquency.

Formal Route for Violation of Probation:

If the Court determines that there is reasonable cause to believe the defendant was delinquent (i.e., violated a condition of probation):

- Issue a Declaration of Delinquency setting forth the condition(s) violated and a reasonable description of the violation.

Signing a Declaration of Delinquency tolls the period of conditional discharge or probation.

If Probation files a Violation of Probation (VOP) and requests a Declaration of Delinquency from the Court, the Court must determine whether there is reasonable cause to believe the defendant was delinquent within **72 hours** of receipt of the request.

- Have the defendant appear with counsel before the Court either through a Notice to Appear or a Warrant; and
- Give the defendant an opportunity to be heard regarding the violation/non-compliance

Court may: Revoke, Continue, or Modify the Sentence.

- Notify the monitor of the court's decision

