

Q What if the police officer does not show?

A The administrative law judge may dismiss the charge – but is not required to do so.

Q If my license is suspended under this law, can I get a conditional license?

A Yes. If you do not have any prior alcohol-related convictions on your license, you may be eligible for a conditional license. However, in order to receive such a license, you must enroll in and complete the NYS Drinking Drivers Program. Both the program and the conditional license carry additional costs to you over and above those costs mentioned previously. A conditional license will allow you to drive back and forth to work and school and other essential places, but it is not the same as a full license.

Q How long will this remain on my record?

A Three years or until you are 21, whichever is longer.

Q Let's back up for a minute. What if I refuse to take a breath test?

A You will be subject to license revocation of at least one year. You will, however, be entitled to a hearing if you wish.

Q What happens to people whose BAC is more than .06%?

A Those people will be charged with the offense of Driving While Ability is Impaired by Alcohol, and will be arrested and dealt with in criminal court. They will be punished more harshly if convicted. If the BAC is .08% or more, the charge will be Driving While Intoxicated. These matters are also handled in criminal court and carry even harsher penalties – including jail time.

LOCAL RESOURCES

Updated 9/2010



New York's Zero Tolerance Law

Questions and Answers

.08

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New York State
STOP-DWI Foundation

Q What is the “zero tolerance” law?

A Effective Nov. 1, 1996, it is a violation of law for a person under the age of 21 to consume alcohol and operate a motor vehicle.

Q Will any evidence of alcohol consumption constitute a violation of law?

A Actually, the law states that any person under the age of 21 who is caught operating a motor vehicle with a BAC of .02 of 1% or more but not more than .07% of 1% will be guilty of a “zero tolerance” violation.

Q How much alcohol is .02%?

A The average person would have a BAC of .02% after consuming just one drink. Each of the following drinks contains an equal amount of alcohol: 12 oz. of beer, 5 oz. glass of wine at 12% content, 1 ½ oz. shot of 80 proof liquor, or 12 oz. of wine cooler.

Q If it is called “zero tolerance” why is .01% not a violation?

A Since certain cough syrups and mouthwashes contain alcohol, and since some families will permit the consumption of small amounts of alcohol as part of religious or family functions, the Legislature decided to set the standards at .02% in order to address only those young people who had willfully consumed alcohol and operated a motor vehicle. Additionally, some breathalyzers used by the police have a margin of error of approximately .01%. By setting the standard at a more reasonable .02%, the number of unfair stops will be reduced or eliminated.



Q Does this mean I can have one drink before I have a problem?

A Not really. There are many factors which lead to a BAC reading, including a person’s weight, the consumption of food, and the timing of the drink or drinks. It’s important to note that it’s not how many drinks you’ve had but how impaired you are while operating a motor vehicle. Separate from the Zero Tolerance Law, driving while impaired violates other sections of New York State’s DWI laws. The best bet is don’t drink at all before you drive.

Q What happens to me if I am stopped by a police officer for having consumed alcohol?

A If the officer deems you are younger than 21 and appear to have consumed alcohol, but does not believe you are driving while intoxicated or while impaired, you will be “temporarily detained” for the purpose of taking a breathalyzer test, usually at the police station.

Q Am I under arrest?

A Not unless you are suspected of being impaired or intoxicated, or have committed some other criminal act.

Q What happens next?

A If your BAC turns out to be between .02% and .07%, you will be charged with the traffic offense of “driving after having consumed alcohol.” You will then be provided with a notice to appear for a hearing before an administrative law judge of the Department of Motor Vehicles. Note: If you are found to have a BAC of .06% or .07%, the police will have the option of charging you with driving while ability is impaired by alcohol (DWAI) and prosecuting the matter in criminal court. Anyone found driving with a BAC of .08% or greater will be charged with a Class A Misdemeanor Driving With a BAC of .08% or greater.

Q May I have a lawyer present at this hearing?

A Yes.

Q What happens at the hearing?

A The police officer must prove, by clear and convincing evidence, that: (1) You were the person who operated the motor vehicle; (2) You were younger than 21 at the time; (3) A valid request was made to submit to a chemical test (e.g., breathalyzer); (4) The chemical test was properly administered; (5) The test showed you had consumed alcohol (.02% or more); and (6) The police officer made a lawful stop of the vehicle. You will be entitled to provide evidence in your defense, including any witnesses. If, after both sides have been heard, the police officer has carried his burden of proving the case, the administrative law judge will make a finding that you drove after having consumed alcohol.

Q What happens then – could I go to jail?

A No. While this is a serious violation of the law, it is not designated as a crime and you cannot go to jail for this alone. However, you will have your license suspended for 6 months and pay a civil penalty of \$125. You must also pay an additional \$100 fee when your license is returned. Also, if you have any prior alcohol related traffic offenses on your record, your license will be revoked for one year or until you reach the age of 21, whichever is longer.

Q What happens if I do not show up for the hearing or choose to waive my right to appear?

A Failure to show will result in the imposition of a temporary suspension, but you may reschedule your hearing. An official waiver will waive your right to a hearing and will result in the imposition of a suspension or revocation, as appropriate.