

# Top Ten DWI Questions and Answers for Legal Practitioners



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Due to our DWI-centric practice, we are frequently asked questions by other attorneys regarding DWI issues. Here are our top ten DWI questions and answers for legal practitioners. We would also like to thank Administrative Law Judge Glenn E. Murray for the acronyms set forth herein, which have become commonplace among local DWI practitioners.



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**1. Can a license be suspended pending prosecution (SPP) on a NY VTL § 1192(4) driving while impaired by drugs?**

No. NY VTL §1193(2)(e)(7) does not authorize this for a charge of 1192(4). However, if the case involved a refusal of a Breathalyzer or a blood test, the court is authorized to suspend the driver's license at arraignment.

**2. Can a court suspend pending prosecution based on a blood test?**

Yes. NY VTL §1193(2)(e)(7) allows a SPP when the driver is "alleged to have had .08 of one percent or more by weight of alcohol in such driver's blood as shown by chemical analysis of blood, breath, urine or saliva." However, in our experience, we have not had one occasion where the blood test results have been available at the time of arraignment. It usually takes months to receive blood test results. Generally, without the actual test results before the court, the court cannot take your client's driver's license pending prosecution. See NY VTL §1193(2)(e)(7)(b).

**3. How long does a hardship privilege last?**

NY VTL §1193(2)(e)(7)(e) authorizes the imposition of a hardship privilege when the driver qualifies for the same and when the SPP would pose "extreme hardship" on the driver. However, the statute does not clearly state when the hardship privilege is terminated. Practically speaking, the hardship privilege extends during prosecution of the case only and the privilege ends upon conviction or dismissal.

**4. What if my client has driving needs which are beyond the scope of their hardship privileges?**

Pursuant to 15 NYCRR §134.18, assuming there is no refusal and the motorist is CDL eligible, 30 days following the SPP, a person will automatically qualify for a pre-conviction conditional license with a broader scope than the hardship, which includes additional non-work related driving. This applies even if a court denies hardship privileges at arraignment.

**5. What is the difference between a suspension and revocation of a driver's license?**

A suspension of a driver's privilege involves a license being taken away for a period of time before it is returned, usually after payment of a suspension termination fee. A revocation involves the cancellation of a license by the DMV. After a revocation, the driver must pay a license re-application fee and request approval from the DMV. Before a revoked license will be returned, the DMV will do a lifetime analysis of the driver's record and if the driver is "high risk," their relicensing can be denied, in some cases permanently. A suspension does not trigger this DMV analysis. Generally, a DWAI or zero tolerance conviction leads to a suspension, while all other alcohol/drug-related convictions result in a revocation.

**6. Do multiple DWAI (NY VTL §1192(1)) convictions always result in a suspension?**

No. Pursuant to NY VTL §1193(2)(a) and (b), generally only the first §1192(1) conviction will result in a suspension. If a second conviction under this section occurs within five years of the first one, it will result in a revocation. If a third conviction under this section occurs within 10 years of the first one, it will also result in a revocation.

**7. Does a person qualify for a conditional license after conviction if that person had a prior conviction for any alcohol/drug related driving offense?**

Generally, a person only qualifies for a conditional license if: 1) their license has no other scofflaws on it other than the SPP for the present offense; 2) the court allows it; and 3) they qualify to attend the Drinker Driver Program (DDP).

NY VTL §1196(4) states that: "no person shall be permitted to take part in such program if, during the five years immediately preceding commission of an...offense...such person has participated in [a DDP]." This five-year window for qualification commences on the day the person has successfully completed their initial DDP and runs until the date of the new arrest.

**8. Can early completion of the DDP lead to an earlier restoration of the driver's license?**

Yes, but only in the case of a suspension. If a person's driver's license has been revoked, it will not be returned to the driver until all of the DMV's requirements for relicensing have been met.

**9. Can the DDP require an alcohol assessment to satisfy its requirements?**

Yes. Pursuant to 15 NYCRR §136.1, the DMV can restrict relicensing if they determine that the person would present a potential danger to other drivers. Generally, this is determined if the person has had two or more alcohol/drug related driving violations within 25 years. However, this can also be determined by a questionnaire which is completed during the DDP, self reporting or showing up to class under the influence of drugs or alcohol. If these requirements are imposed, the client must meet with a provider approved by the New York State Office of Alcohol and Substance Abuse Services (OASAS) and, upon successful completion of treatment, the provider must submit Form DS-449 to the DMV.

**10. Are there any other hidden costs we should know about?**

Yes. With any drug/alcohol related driving conviction, the DMV is authorized to impose a driver responsibility assessment. The cost of this assessment starts at \$750, which is payable over three years in equal installments of \$250. Make sure your clients are aware of this, as we have had many Aggravated Unlicensed Operations charges against past clients who would otherwise have valid licenses except that they had not yet paid this assessment.