

DWI License Suspensions Pending Prosecution in New York State

Suspension Pending Prosecution and Fraud Upon the Court in Olean New York

Has your license ever been suspended pending prosecution?



Stay Until:
Reason:

Reason:

Reason: PEND PROSECUTION-CT

Order:

Batch:

Case Num:

Period: INDEFINITE

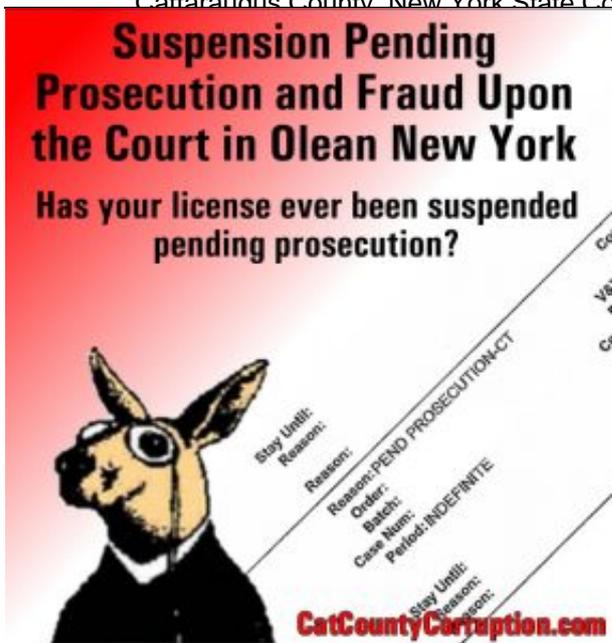
Stay Until:
Reason:

Reason:

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In New York State not only can you have your license suspended for up to a year for your failure to provide of blood, breath, urine or saliva samples for your blood alcohol content, you can also have your license suspended indefinitely pending prosecution pursuant [Vehicle and Traffic Law § 1193 \[2\] \[e\] \[1\]](#) [People v Giacopelli, 171 Misc 2d 844](#) or [Vehicle and Traffic Law § 1193 \[2\] \[e\] \[7\]](#). **However a sample by chemical analysis of blood, breath, urine or saliva is required. It must have to been taken in order to suspended indefinitely a drivers license.** [VTL § 1193 \[2\] \[e\] \[1\]](#) involves.....DWI's concerning accidents or prior DWI convictions within five years, while [§ 1193 \[2\] \[e\] \[7\]](#) involves excessive blood alcohol content, which in New York State is considered 0.08% BAC. Not the aggravated BAC amount 0.18%.

[New York is attempting to lower the BAC to 0.05% level for DWI](#), that isn't even one beer in most cases. Why do people go out a



nd have a beer or two? Simple, its ingrained in the American persona, the Declaration of Independence, its called "life, liberty and the pursuit of happiness", which Cattaraugus County New York has made illegal, the very purpose of government in the first place. Is it any wonder why it is considered the [least free state in the country ?](#)

Further, breathalyzer tests simply cannot be trusted, and juries can't be trusted to know that because many lawyers are too afraid to discuss it. Its called the **"thin black line"** [[People v. T & C Design, Inc. and Carmela Cardoza, 178 Misc 2d 971, 680 N.Y.S.2d 832 \(1998\) NY Misc. LEXIS 555](#)] and it is well practiced in Cattaraugus County New York.

Breathalyzer tests results are so mistrusted that in [Washington DC nearly 400 people were convicted of driving while intoxicated in the District since fall 2008](#) based on inaccurate results from breath test machines and half of them went to jail. D.C. Attorney General Peter Nickles said the machines were **improperly "adjusted" by city police**. The jailed defendants generally served at least five days, he said. Further **breathalyzer's [have an error rate that ranges from 20 percent](#)**, or 10 percent on either side of a result. In other words, a person whose breathalyzer test measures .08 percent could have an actual blood alcohol concentration of anywhere from .07 percent to .09 percent. There is no reason to expect the Olean Police Department not to commence in the same type of conduct. They have already covered up the criminal conduct of their prosecutor [Elizabeth Noelle Ensell LaFleur](#), a criminal in her own right.

Companies that make intoxilyzer's also refuse to reveal the computer source code that calculates the BAC level to see whether the test was accurate. They claim its a trade secret. In once case the victim of the police state here in New York [challenged this issue and won his case. which the police state appeals and it lost. The victim won.](#) Since then other victims have mounted similar challenges and many have won.

[With the Olean Police Department covering up crimes committed by themselves and the prosecutors that represent them, do you really trust them?](#) That little BAC window from 0.04% to 0,08% can easily be tampered with, especially when you are dealing with a corrupt police department like you have in Olean NY.

In both [Vehicle and Traffic Law § 1193 \[2\] \[e\] \[1\]](#) and [1193 \[2\] \[e\] \[7\]](#). **if a BAC sample has not been taken, the court and/or prosecutor cannot suspend your license indefinitely. PERIOD. Contact your Attorney immediately if this has occurred. [Fraud upon the court is a serious matter and we have acquired evidence of this occurring in the City of Olean.](#)**

Here is the 'law' on the subject, [Vehicle and Traffic Law § 1193 \[2\] \[e\] \[1\]](#) and [1193 \[2\] \(e\) \[7\]](#);

[VTL § 1193 \[2\] \(e\) \[1\]](#):

(e) Special provisions (1) Suspension pending prosecution; procedure.

(a) Without notice, pending any prosecution, the court shall suspend such license, where the holder has been charged with a violation of **subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two** [1192 (2); 1192 (2a); 1192 (3); 1192 (4); 1192 (4a)] of this article and either;

(i) a violation of a felony under article one hundred twenty or one hundred twenty-five of the penal law arising out of the same incident, or

(ii) has been convicted of any violation under section eleven hundred ninety-two of this article within the preceding five years.

(b) The suspension under the preceding clause 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. In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of **section 100.40 of the criminal procedure law** and there exists reasonable cause to believe that the holder operated a motor vehicle in violation of **subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two** of this article and either

(i) the person had been convicted of any violation under such **section eleven hundred ninety-two of this article within the preceding five years**; or

(ii) that the holder committed a **violation of a felony under article one hundred twenty or one hundred twenty-five of the penal law**. At such time the holder shall be entitled to an opportunity to make a statement regarding the enumerated issues and to present evidence tending to rebut the court's findings. Where such suspension is imposed upon a pending charge of a violation of a felony under **article one hundred twenty or one hundred twenty-five of the penal law** and the holder has requested a hearing pursuant to article one hundred eighty of the criminal procedure law, the court shall conduct such hearing. If upon completion of the hearing, the court fails to find that there is reasonable cause to believe that the holder committed a felony under **article one hundred twenty or one hundred twenty-five of the penal law** and the holder has not been previously convicted of any violation of section eleven hundred ninety-two of this article within the preceding five years the court shall promptly notify the commissioner and direct restoration of such license to the license holder unless such license is suspended or revoked pursuant to any other provision of this chapter.

[VTL § 1193 \[2\] \(e\) \[7\]](#):

(7) Suspension pending prosecution; excessive blood alcohol content.

(a) Except as provided in clause a-1 of this subparagraph, a court shall suspend a driver's license, pending prosecution, of any person charged with a **violation of subdivision two, two-a, three or four-a of section eleven hundred ninety-two of this article** [1192 (2); 1192 (2a); 1192 (3); 1192 (4); 1192 (4a)] who, at the time of arrest, 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**, made pursuant to subdivision two or three of section eleven hundred ninety-four of this article [1194 (2), 1194 (3)].

a-1. A court shall suspend a class DJ or MJ learner's permit or a class DJ or MJ driver's license, pending prosecution, of any person who has been charged with a violation of **subdivision one, two, two-**

a and/or three of section eleven hundred ninety-two of this article [1192 (1), 1192 (2), 1192 (2a), 1192 (3)]. b. The suspension occurring under clause a of this subparagraph shall occur no later than at the conclusion of all proceedings required for the arraignment and the suspension occurring under clause a-1 of this subparagraph shall occur immediately after the holder's first appearance before the court on the charge which shall, whenever possible, be the next regularly scheduled session of the court after the arrest or at the conclusion of all proceedings required for the arraignment; provided, however, that if the results of any test administered pursuant to **section eleven hundred ninety-four** of this article are not available within such time period, the complainant police officer or other public servant shall transmit such results to the court at the time they become available, and the court shall, as soon as practicable following the receipt of such results and in compliance with the requirements of this subparagraph, suspend such license. In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of **section 100.40 of the criminal procedure law** and there exists reasonable cause to believe either that;

(a) **the holder operated a motor vehicle while such holder had .08 of one percent or more by weight of alcohol in his or her blood as was shown by chemical analysis of such person's blood, breath, urine or saliva**, made pursuant to the provisions of section eleven hundred ninety-four of this article or

(b) the person was the holder of a class DJ or MJ learner's permit or a class DJ or MJ driver's license and operated a motor vehicle while such holder was in violation of **subdivision one, two and/or three of section eleven hundred ninety-two of this article**. At the time of such license suspension the holder shall be entitled to an opportunity to make a statement regarding these two issues and to present evidence tending to rebut the court's findings.

(c) Nothing contained in this subparagraph shall be construed to prohibit or limit a court from imposing any other suspension pending prosecution required or permitted by law.

(d) Notwithstanding any contrary provision of this chapter, if any suspension occurring under this subparagraph has been in effect for a period of thirty days, the holder may be issued a conditional license, in accordance with **section eleven hundred ninety-six** of this article, provided the holder of such license is otherwise eligible to receive such conditional license. A conditional license issued pursuant to this subparagraph shall not be valid for the operation of a commercial motor vehicle. The commissioner shall prescribe by regulation the procedures for the issuance of such conditional license.

Summary of statutes cited above;

- **VTL 1192 (1)** Driving while ability impaired. VTL 1192 (2) Driving while intoxicated; per se. No person shall operate a motor vehicle while such person has .08
- **VTL 1192 (2a)** Aggravated driving while intoxicated. (a) Per se. No person shall operate a motor vehicle while such person has .18 of one per centum or more
- **VTL 1192 (3)** Driving while intoxicated. No person shall operate a motor vehicle while in an intoxicated condition (Common Law)
- **VTL 1192 (4)** Driving while ability impaired by drugs.
- **VTL 1192 (4a)** Driving while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs. VTL 1194 (2) Chemical tests. (a) When authorized. Any person who operates a motor vehicle in this state shall be deemed to have given consent to a chemical test of one or more of the following: breath, blood, urine... VTL 1194 (3) for the purposes of this paragraph, "reasonable grounds" to believe that a person has been operating a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article shall be determined by viewing the totality of circumstances surrounding the incident which, when taken together, indicate that the operator was driving in violation of such subdivision.

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~~Cattaraugus County, New York State Corruption & the Powers of the NYS Jury & Grand Jury System~~

- **VTL 1196** Alcohol and drug rehabilitation program.
- **PL 120** Assault and Related Offenses
- **PL 125** Homicide, Abortion and Related Offenses CPL 100.40 Local criminal court accusatory instruments; sufficiency on face.

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