

## **DID YOU KNOW???**

### **CHEMICAL ANALYSIS TESTING FOR DWI**

For a person arrested for DWI, you often see two separate charges; in addition to the charge of DWI, you may also see a charge of “driving with a blood alcohol content of .08 of one percent or greater”. Essentially, both charges are the same, except the BAC of .08 percent is based on a chemical analysis and the DWI per se is based on observations. Both hold up in court. Vehicle and Traffic Law (VTL), section 1192 (2) is DWI with a BAC of .08 percent or above; VTL section 1192 (3) states “No person shall operate a motor vehicle while in an intoxicated condition”. By charging a person with both sections, if one is dismissed for some reason, the other charge can be used against the driver.

Chemical tests use blood, breath, urine or saliva to measure a person’s BAC. If you are arrested for an alcohol or drug-related violation, the police officer will almost surely request that you submit to a chemical test. Under NYS’s “Implied Consent” law, by driving a car in this state you are considered to have already given your consent to take such a test.

#### **Chemical test refusal**

Chemical test refusal is a separate issue from whether or not you were guilty of an alcohol-related or drug-related violation. If you refuse to take the test after being arrested, your license will be suspended when you are arraigned in court on the alcohol or other drug-related charge. Also, the fact that you refused a chemical test may be introduced in court when you are tried on the alcohol or drug-related charge. If a DMV hearing later confirms you did refuse the test, your license will be revoked even if you are found not-guilty of the alcohol or other drug-related violation.

For drivers over age 21, the license revocation is a minimum of one year. If it’s within five years of a prior refusal revocation or any alcohol or drug-related violation, the revocation is for a minimum of 18 months.

For drivers under age 21, the revocation is for a minimum of one year for a first time violation; for a second time, the revocation is for a minimum of one year or until age 21, whichever is longer.

Furthermore, if you are over 21 years old and are convicted of an alcohol or drug-related driving violation (i.e. DUI) in any other state or the provinces of Quebec and Ontario, your NYS driver license will be revoked for at least 90 days. If you are under 21, your NYS license will be revoked for at least one year.

Driving a motor vehicle in New York is a privilege. The consequences of drinking and driving are too severe to try it. Killing or injuring yourself, your loved ones, or a stranger is not a scenario you ever want to experience. Don’t lose your privilege to drive, or worse, killing or injuring someone, by one stupid mistake of drinking and driving.

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