Q What is the "zero tolerance" law?

A Effective November 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 blood alcohol content ("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 contain an equal amount of alcohol: 12 oz. of beer, 5 oz. glass of wine at 12% content, 1 1/2 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 standard 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.

STOP DWI New York

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 time 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 Blood Alcohol Content 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, but 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 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 chose 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.

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 State 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.

A Message From County Executive Steve Levy

Amazing as it may seem, we still have to remind people from time to time about the dangers of drunk driving and its tragic consequences.

Nationwide, in just the past decade, nearly a quarter of a million people have had their lives cut short simply because someone attempted to drive drunk. It is an appalling statistic that causes family heartbreak from Suffolk County to San Francisco and nearly everywhere in between.

But in Suffolk, we are working hard to eliminate this plague of our roadways by treating it as the violent crime it is. Our police force has made tens of thousands of DWI arrests in just the past six years, and we have convicted more drunk drivers than ever before. By doing so, and by using better equipment and better methods of detection, we have cut the number of alcohol-related fatalities in half. And we are going to keep working to bring that number down.

If you care about eliminating drunk driving, you can do your part by reading this brochure and sharing it with those you care about. If you have any questions or require further information please call (631) 853-5715.

Sincerely,

Steve Levy

Steve Levy
County Executive

STOP DWI New York

SUFFOLK COUNTY

New York's Zero Tolerance Law

Questions and Answers

.08
Don't blow it.

New York State
STOP-DWI Foundation