

Driving While Suspended In New York State

Aggravated Unlicensed Operation

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WHAT IS AGGRAVATED UNLICENSED OPERATION (AUO)?

Getting a traffic ticket can be more than upsetting, it can be downright confusing.

Depending on what the police officer writes on the ticket, you may not even know what you were charged with at first.

If a police officer issues you a traffic ticket that simply has “AUO” on the hand-written line along with VTL 511 on the ticket, you have been cited for driving on a suspended license.

“Aggravated Unlicensed Operation” (AUO) is the name New York has given to the offense of driving while your license is suspended or revoked and the law has been codified in section 511 of the New York Vehicle and Traffic Law (VTL).

This book is designed to help you become more familiar with: what AUO is and what the law means in plain English and practical terms. It will also provide some of the defenses against AUO.

WHAT CAUSES A SUSPENDED LICENSE IN NEW YORK?

Your New York driver’s license can get suspended for a number of reasons. These reasons result from several different kinds of events. Without knowing what these are, you run the risk of driving without even knowing that your license was suspended.

Moving Violations

- **11 Points in 18 Months [VTL 510(3)(i)].** In New York, if you receive 11 points or more within 18 months, the Department of Motor Vehicle (DMV) will suspend or revoke your driver's license. Every moving violation in New York comes with points that add up rather quickly. For example, if you receive [a cell phone ticket](#) (now a 5 point ticket) as well as a [speeding ticket](#) for going 21 miles over the limit (a 6 point ticket), you are already facing 11 points. If convicted of both, your license will automatically be suspended!

- **Speeding [VTL 1180].** Receiving 3 speeding convictions within 18 months or 2 [work zone speeding convictions](#) within 18 months will lead to license suspension [See VTL 510(2)(iv)].

- **Other.** There are several other violations that if convicted can lead to license suspension:
 1. **Abandoning Your Car on a Public Highway** [VTL 1224-7 & VTL 510(2)(ix)]

 2. **Being Convicted Three Times Within 3 Years for [Passing a School Bus](#)**
[VTL 1174(a) & VTL 510(2)(viii)]

 3. **Being Found at Fault in a Fatal Car Accident** [VTL 510(2)(i)]

4. Engaging in an [Unlawful Speed Contest](#) (i.e. “Racing”) [VTL 1182 & VTL 510(2)(vi)]
5. [Fleeing from a Police Officer](#) [NY Penal Law §270.25]
6. [Leaving the Scene of a Serious Personal Injury Accident Without Reporting](#) (i.e. a “Serious ‘Hit and Run’”) [VTL 600-2a & VTL 510(2)(iii)]

Driving Without Insurance [VTL 311]

- Most of us know that all vehicles in New York must be properly insured. However, many people do not know that a conviction for [driving without insurance](#) can lead to license suspension.

Driving While Ability Impaired (DWAI) [VTL 1192]

- Typically, people who are driving under the influence of drugs are charged with DWAI. The first time you get convicted of DWAI, your license will be suspended for 90 days.
- If you are convicted a second time within 5 years of the first, your license will be suspended for 6 months.

Driving While Intoxicated (DWI) [VTL 1192 & VTL 1193]

- If you are convicted of Driving While Intoxicated by drugs or alcohol (known in some states as “driving under the influence” or [DUI](#)), you are going to have your license suspended. If your blood alcohol content (BAC) was over 0.18% you will

be facing a charge for “Aggravated Driving While Intoxicated” which carries a 1 year suspension.

- If your BAC was less than 0.18% but above 0.08% you will be charged with Driving While Intoxicated (DWI). If convicted, your driver’s license will be suspended for 6 months (you may be eligible for a conditional license which carries its own set of special rules).

Junior License Holders

- If you are a [junior license holder](#) and are convicted of 1 serious traffic violation (i.e. a moving violation carrying 3 or more points) or 2 minor traffic offenses (i.e. a moving violation carrying under 3 points), your driving privileges can be ***suspended*** for up to 60 days.
- If you are subsequently convicted of 1 serious traffic violation or 2 other violations within the first 6 months of your license being restored after a suspension, your junior license will be ***revoked*** for 60 days.
- If you are convicted of DWAI by drugs or liquor, your junior license will be ***suspended*** for 90 days
- If you are convicted of DWI/DUI, your junior license will be ***revoked*** for 60 days

Offering a False Instrument for Filing

- If you are found guilty of [Offering a False Instrument for Filing](#) (e.g. giving false documentation to a DMV employee), your license will be suspended for at least

6 months. Depending on the severity of the infraction, it can be suspended for even longer.

Non-Driving Related Reasons

- This may be what New York drivers need to look out for the most! There are several things only tangentially related to driving that can lead to your driver's license being suspended without you even knowing. Some of the most common ones are:
 1. DMV Concluding That You Have a [Medical Condition That Severely Impairs Driving](#) [VTL 510(3)(b)]
 2. [Failing to Comply with a Court Judgment](#) [VTL 510-4a]
 3. [Failing to Respond to a Ticket](#) or Criminal Summons [VTL 510-4a(a)]
 4. Failure to Pay a New York Traffic Ticket Fine or Court Surcharge or Sending a Check to the DMV that is Returned for Insufficient Funds [VTL 510-4a(a)]
 5. [Failing to Appear for a Mandatory Court Appearance](#) [VTL 510-4a(c)]
 6. [Failing to File an Accident Report](#) Within 10 Days When Over \$1,000 of Property Damage Has Resulted
 7. [Failing to Pay Child Support](#) [VTL 510-4e]

As you can see, there are many ways for your license to get suspended in New York.

Unfortunately, there are a tremendous amount of drivers who are entirely unaware of the fact that their driving privileges were suspended.

Although the Department of Motor Vehicles (DMV) is supposed to provide a suspended driver with notice of the suspension, not every driver receives it. For instance, if you moved but did not update your address with DMV, the letter they send will go to your old address. If this happens, you can be driving while your license is suspended and not even know it!

Similarly, not every mail carrier gets it right 100% of the time. For all you know, your neighbor two houses over could have received your suspension letter and never forwarded it to you. Even if you do get a letter in the mail, things happen. It might have been unintentionally discarded by a family member before you had the chance to open it. Although this might seem unlikely, you would be surprised at how often mail that is sent to a home is not actually opened by the intended recipient. Imagine driving down the highway thinking everything is fine when you get pulled over by a police officer.

After looking down at your speedometer, you realize that you were speeding. You expect to receive a run-of-the-mill traffic ticket. However, after the officer heads back to his patrol car with your license and registration in hand, he notices in his database that your license has been suspended. Now, instead of just a speeding ticket, he is charging

you with AUO as well! Without even knowing it, your excursion was a criminal offense and you are facing serious consequences—including jail time. For far too many New Yorkers, this scenario is a reality.

AGGRAVATED UNLICENSED OPERATION (AUO) IN BRIEF

Aggravated Unlicensed Operation (AUO) in New York is a crime. Consequently, the penalties that you can face are more severe than those for standard non-criminal traffic violations.

New York Vehicle and Traffic Law Section 511 outlines three degrees of Aggravated Unlicensed Operation (AUO):

AUO in the Third Degree - NY VTL 511(1)

- You can be convicted of AUO in the third degree if you drive while knowing or having reason to know that your license is suspended.
- It is a misdemeanor, and if convicted will result in a permanent criminal record.
- A conviction results in a fine of \$200-\$500 and up to 30 days of jail time (not mandatory).

AUO in the Second Degree - NY VTL 511(2)

- You can be convicted of AUO in the second degree if (a) you were convicted of an AUO conviction that was committed within the previous 18 months; or (b) you drove when your license was suspended due to a DWI/DUI conviction or refusal to submit to a breathalyzer test; or (c) you drove when your license was suspended due to 3 or more suspensions on 3 different dates.
- AUO in the second degree is a misdemeanor, and will appear on your criminal record.
- A conviction will result in a mandatory fine of \$500-\$1,000 and you could face up to 180 days in jail.
- A minimum, **mandatory** jail term of 7 days **or** 3 years probation.

AUO in the First Degree - NY VTL 511(3)

- You can be convicted of AUO in the first degree if you drive when your license had 10 suspensions on 10 different dates.
- You can also be convicted of AUO in the first degree if you commit AUO in the second degree while intoxicated. In such a case, the penalty is increased.
- **AUO in the first degree is a felony.** If convicted, you will be required to pay a fine of \$1,000-\$5,000 and could go to prison for up to 4 years.

UNDERSTANDING THE AGGRAVATED UNLICENSED OPERATION LAW

In order to understand the Aggravated Unlicensed Operation (AUO) law in New York, it is crucial to take a look at the statute itself. While the statute is quite complex and wordy, the following section contains a detailed analysis of what this law means in plain English and how it affects you as a New York driver.

STATUTORY TEXT OF NY VEHICLE & TRAFFIC LAW 511

New York Vehicle and Traffic Law (VTL) 511. Operation While License or Privilege is Suspended or Revoked; Aggravated Unlicensed Operation.

1. Aggravated unlicensed operation of a motor vehicle in the third degree.

(a) A person is guilty of the offense of aggravated unlicensed operation of a motor vehicle in the third degree when such person operates a motor vehicle upon a public highway while knowing or having reason to know that such person's license or privilege of operating such motor vehicle in this state or privilege of obtaining a license to operate such motor vehicle issued by the commissioner is suspended, revoked or otherwise withdrawn by the commissioner.

(b) Aggravated unlicensed operation of a motor vehicle in the third degree is a misdemeanor. When a person is convicted of this offense, the sentence of the court must be: (i) a fine of not less than two hundred dollars nor more than five hundred dollars; or (ii) a term of imprisonment of not more than thirty days; or (iii) both such fine and imprisonment.

(c) When a person is convicted of this offense with respect to the operation of a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds, the sentence of the court must be: (i) a fine of not less than five hundred dollars nor more than fifteen hundred dollars; or (ii) a term of imprisonment of not more than thirty days; or (iii) both such fine and imprisonment.

2. Aggravated unlicensed operation of a motor vehicle in the second degree.

(a) A person is guilty of the offense of aggravated unlicensed operation of a motor vehicle in the second degree when such person commits the offense of aggravated

unlicensed operation of a motor vehicle in the third degree as defined in subdivision one of this section; and (i) has previously been convicted of an offense that consists of or includes the elements comprising the offense committed within the immediately preceding eighteen months; or (ii) the suspension or revocation is based upon a refusal to submit to a chemical test pursuant to section eleven hundred ninety-four of this chapter, a finding of driving after having consumed alcohol in violation of section eleven hundred ninety-two-a of this chapter or upon a conviction for a violation of any of the provisions of section eleven hundred ninety-two of this chapter; or (iii) the suspension was a mandatory suspension pending prosecution of a charge of a violation of section eleven hundred ninety-two of this chapter ordered pursuant to paragraph (e) of subdivision two of section eleven hundred ninety-three of this chapter or other similar statute; or (iv) such person has in effect three or more suspensions, imposed on at least three separate dates, for failure to answer, appear or pay a fine, pursuant to subdivision three of section two hundred twenty-six or subdivision four-a of section five hundred ten of this chapter.

(b) Aggravated unlicensed operation of a motor vehicle in the second degree is a misdemeanor. When a person is convicted of this crime under subparagraph (i) of paragraph (a) of this subdivision, the sentence of the court must be: (i) a fine of not less than five hundred dollars; and (ii) a term of imprisonment not to exceed one hundred eighty days; or (iii) where appropriate a sentence of probation as provided in subdivision six of this section; or (iv) a term of imprisonment as a condition of a sentence of probation as provided in the penal law and consistent with this section. When a person is convicted of this crime under subparagraph (ii), (iii) or (iv) of paragraph (a) of this subdivision, the sentence of the court must be: (i) a fine of not less than five hundred dollars nor more than one thousand dollars; and (ii) a term of imprisonment of not less than seven days nor more than one hundred eighty days, or (iii) where appropriate a sentence of probation as provided in subdivision six of this section; or (iv) a term of imprisonment as a condition of a sentence of probation as provided in the penal law and consistent with this section.

3. Aggravated unlicensed operation of a motor vehicle in the first degree.

(a) A person is guilty of the offense of aggravated unlicensed operation of a motor vehicle in the first degree when such person: (i) commits the offense of aggravated unlicensed operation of a motor vehicle in the second degree as provided in subparagraph (ii), (iii) or (iv) of paragraph (a) of subdivision two of this section and is operating a motor vehicle while under the influence of alcohol or a drug in violation of subdivision one, two, two-a, three, four, four-a or five of section eleven hundred ninety-two of this chapter; or (ii) commits the offense of aggravated unlicensed operation of a motor vehicle in the third degree as defined in subdivision one of this section; and is operating a motor vehicle while such person has in effect ten or more suspensions, imposed on at least ten separate dates for failure to answer, appear or pay a fine, pursuant to subdivision three of section two hundred twenty-six of this chapter or

subdivision four-a of section five hundred ten of this article; or (iii) commits the offense of aggravated unlicensed operation of a motor vehicle in the third degree as defined in subdivision one of this section; and is operating a motor vehicle while under permanent revocation as set forth in subparagraph twelve of paragraph (b) of subdivision two of section eleven hundred ninety-three of this chapter.

(b) Aggravated unlicensed operation of a motor vehicle in the first degree is a class E felony. When a person is convicted of this crime, the sentence of the court must be: (i) a fine in an amount not less than five hundred dollars nor more than five thousand dollars; and (ii) a term of imprisonment as provided in the penal law, or (iii) where appropriate and a term of imprisonment is not required by the penal law, a sentence of probation as provided in subdivision six of this section, or (iv) a term of imprisonment as a condition of a sentence of probation as provided in the penal law.

4. Defense.

In any prosecution under this section or section five hundred eleven-a of this chapter, it is a defense that the person operating the motor vehicle has at the time of the offense a license issued by a foreign country, state, territory or federal district, which license is valid for operation in this state in accordance with the provisions of section two hundred fifty of this chapter.

5. Limitation on pleas.

Where an accusatory instrument charges a violation of this section, any plea of guilty entered in satisfaction of such charge must include at least a plea of guilty to one of the offenses defined by this section and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, that if the district attorney upon reviewing the available evidence determines that the charge of a violation of this section is not warranted, he may set forth upon the record the basis for such determination and consent to a disposition by plea of guilty to another charge in satisfaction of such charge, and the court may accept such plea.

6. Sentence of probation.

In any case where a sentence of probation is authorized by this section, the court may in its discretion impose such sentence, provided however, if the court is of the opinion that a program of alcohol or drug treatment may be effective in assisting in prevention of future offenses of a similar nature upon imposing such sentence, the court shall require as a condition of the sentence that the defendant participate in such a program.

7. Exceptions.

When a person is convicted of a violation of subdivision one or two of this section, and the suspension was issued pursuant to subdivision four-e of section five hundred ten of this article due to a support arrear, the mandatory penalties set forth in subdivision one or two of this section shall not be applicable if, on or before the return date or subsequent adjourned date, such person presents proof that such support arrears have been satisfied as shown by certified check, notice issued by the court ordering the suspension, or notice from a support collection unit. The sentencing court shall take the satisfaction of arrears into account when imposing a sentence for any such conviction.

UNDERSTANDING VTL 511 & HOW IT AFFECTS YOU

In order to understand the statute, it will be necessary to define a few terms and to demystify some of its complicated language. First and foremost, the statute consistently uses the word **“operating.”** This word is used for a multitude of reasons. For starters, it directly involves the person who is behind the wheel, not necessarily the owner of the vehicle. For example, if your son or daughter is behind the wheel, he or she is the one who is “operating” it even if the car is registered in your name and belongs to you. Consequently, he or she will be charged with the crime of AUO, not you.

Additionally, “operating” is broad enough to include circumstances where you are not driving. Essentially, this term allows for a police officer to pull you over even at a time when you are not officially “driving” the vehicle and merely are “operating” it. You could be sitting at a red light, turning the ignition off after parking in a lot, or being involved in any kind of driving related activity while the vehicle is on and it will likely count as “operating” the vehicle. Although this distinction is largely a technicality, it is a

safeguard against people getting out of an AUO charge when they would otherwise deserve one.

The next word that requires some discussion is **“knowing.”** What counts as “knowing?”

Legal knowledge is usually broken down into three distinct categories: 1) actual, 2) constructive, and 3) implied. **Actual knowledge** is the strongest kind of knowledge. If you had actual knowledge that your license was suspended, this means you directly and clearly knew about the suspension. Opening up a letter sent in the mail from the DMV and reading that your license was suspended is an example of having actual knowledge.

Since the line between constructive knowledge and implied knowledge is blurred in the AUO statute, it is not necessary to segment them out here. The term the statute directly uses is **“having reason to know.”** If a reasonable person in your shoes would have been aware of the fact that your license was suspended, then a judge will likely conclude that you too should have known. When you “should have known” or “had reason to know” this will be just as good as having actual knowledge when it comes to being convicted of AUO in NY.

Therefore, if the DMV sent you a letter in the mail and your spouse accidentally threw it away along with a pile of other junk mail, the law will presume that you had notice of the suspension because you “had reason to know” about it. In other words, New York law will presume that because the average person in your situation would have seen, opened, and read the letter (and, therefore, know about the suspension), you ought to have known as well.

The area of “knowing” becomes a much trickier area when it is not so clear whether you had reason to know of the suspension. For example, it might be quite obvious if an officer pulls you over and tells you to your face that your license was suspended. However, imagine this scenario: you and your friend are out for lunch and you relate to him a story about getting pulled over for speeding on the New York Thruway and texting while driving. You told him you pled guilty because you did not want to pay for an attorney. After hearing your story, he tells you, “I think your license might be suspended.” Thinking nothing of it, you drive back to work and are pulled over by an officer for AUO. What then? Did you have “reason to know?” Maybe this is “actual knowledge?” Perhaps it does not count as “knowing” at all?

When situations like this arise, your New York traffic ticket attorney might argue that you did not have knowledge because your friend is not an expert and he himself only *thought* you *might* have been suspended. After all, no DMV official or authority informed you of a suspension. However, the prosecution would likely argue that your friend knew that your speed was so excessive that the speeding ticket you received combined with the texting ticket would push you over the 11 point threshold for a suspension. Also, it is presumed that a driver ought to know how many points a violation is worth and that 11 points will result in a suspension. Therefore, the prosecution would argue that you had reason to know of the suspension.

Ultimately, presuming a plea bargain was not reached and the matter went to trial, the judge would have to determine whether you truly had knowledge or not. Nevertheless, one can begin to see how complicated merely one or two words in the statute can be and how they can radically alter whether you get convicted of AUO in New York or not.

The statute also uses the terms “**suspension**” and “**revocation**” fairly often. It is worth noting that these two terms are not the same thing. A *suspension* is a temporary loss of one’s driving privileges for a fixed duration of time that terminates automatically. After the suspension ends, you will be allowed to drive again without having to apply for a new license. However, a *revocation* is an outright termination of one’s driving privileges for a minimum period of time. After that period of time, the driver will be permitted to reapply for a new driver’s license at his local DMV. Once his driving privileges are restored and he is officially issued a license, the driver will be allowed to drive again.

The restoration process can be long and involve paperwork and (sometimes) hearings.

Unfortunately, if your license was revoked indefinitely (i.e. the revocation was not for a set period of time), then you will permanently lose your ability to drive in the State of New York.

If you drive a truck or other heavy vehicle that weighs over 18,000 pounds, you stand to lose even more than a regular driver charged with AUO in New York.

According to subsection (c) of the statute:

“When a person is convicted of this offense with respect to the operation of a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds, the sentence of the court must be: (i) a fine of not less than five hundred dollars nor more than fifteen hundred dollars; or (ii) a term of imprisonment of not more than thirty days; or (iii) both such fine and imprisonment.”

Put simply, if you are convicted of AUO while operating a vehicle that weighs more than 18,000 pounds, you will be required to pay a fine of at least \$500 and it can be as high as \$1,500. This applies even though the regular fine associated with AUO might have been much less. Remember, a conviction for AUO when driving a vehicle weighing over 18,000 pounds is automatically at least \$500.

Why such an exorbitant fine simply because your vehicle was over 18,000 pounds? The State of New York understands that driving a large and weighty vehicle can cause more damage and destruction than a small and light one can. Consequently, in order to discourage drivers of vehicles that can cause death or serious bodily injury from driving when their license is suspended, the fine is that much steeper.

Although we mentioned briefly before that there are three different degrees of AUO and highlighted the penalties associated with each, it is worth expanding on this slightly in order for you to better understand each of the three degrees.

AUO in the third degree is the lowest level of AUO that you can be charged with. In order to be guilty of AUO in the third degree, the prosecutor will have to prove each of the following elements of the crime:

1. You **operated** a **vehicle**
2. While **knowing**
3. Or while you had **reason to know**
4. That your **license was suspended**.

If the prosecutor fails to prove even just one of these, you cannot be convicted of Aggravated Unlicensed Operation in New York. Based on the definitions we discussed previously, you can see how difficult it might be for the prosecutor to meet his burden of proof. Likewise, although you do not bear the burden of proof, it is important to have an experienced NY traffic ticket attorney try to disprove as many of these elements as possible and/or find a legal justification that exempts you from culpability (see [Case Law](#) and [Common Defenses](#) below).

A conviction of AUO in the third degree will be placed directly on your criminal record and it can make it even harder to keep or get a job in an already slumping economy. You

will also incur a \$200-\$500 fine, an \$85 surcharge, and your insurance premium could skyrocket (see Insurance Consequences, below). Imagine: you could be paying for car insurance at an even higher rate than you are now on a car the law will not even let you drive! Lastly, although this is rarely assigned, you can face up to 30 days in jail.

AUO in the second degree is a more serious charge than general AUO (i.e. AUO in the third degree). The prosecutor will have to again prove all of the same elements we delineated above, but he or she will also have to prove:

1. Your driver's **license was suspended**
2. Due to a **DWI/DUI conviction**
3. Or you were **suspended more than 3 times**
4. Or you **committed AUO** in the third degree a **second time within 18 months**

If the prosecutor cannot successfully prove these elements (in addition to the ones we already outlined above), you cannot be convicted. Remember, it is crucial to hire an experienced NY traffic ticket attorney who can help you mount the best defense possible. Judges will not give an individual much leeway when it comes to an offense as serious as AUO and typically will defer to the prosecutor. Consequently, make sure to have an attorney represent you and fight to keep you on the road.

AUO in the second degree is also a misdemeanor and will appear on your criminal record. The fine ranges from a **mandatory minimum** of \$500 to a maximum of \$1,000.

Most importantly, unless you receive 3 years probation, you will be required to serve at least 7 days in jail and, depending on the severity of your charge, could be facing up to 180 days in jail.

AUO in the first degree is the most serious AUO-related offense you can be charged with and carries with it extremely high penalties. Just like with AUO in second and third degree, in order to convict you, the prosecutor will have to prove all of the traditional elements we listed above, but he or she will also have to prove that you:

1. **Drove when** your license was already **suspended 10 times on 10 different dates**
2. Or **committed AUO in the second degree while intoxicated.**

AUO in the first degree is a felony, a very serious crime. A conviction can put you in prison for up to 4 years. The fine you face ranges from a mandatory minimum fine of \$1,000 to a maximum fine of \$5,000. It cannot be stressed enough how bad a felony conviction looks on a criminal record. Most employers can look past minor indiscretions, but felonies are usually deal breakers. Moreover, New York does not expunge criminal records. This means you can forever be scarred by this.

One of the most common questions we are asked is how a conviction for driving while suspended will affect auto insurance rates. Our standard response is that auto insurance underwriting (i.e. the process where the insurance company decides how much to charge you) is complex. Insurance underwriters are specially trained to evaluate risk and reach a decision as to what your insurance premium should be based on that risk.

For instance, if they find out that you were caught driving while suspended, your insurance carrier might conclude that you are a greater liability to them as a company, and, therefore, justify charging you more if you would like to stay on as a customer. We had a client who paid a combined insurance premium of around \$5,000 for two drivers. One driver was convicted of driving while suspended and thereafter received a “Safe Driver Surcharge” of **\$6,300** which was \$1,300 more than his base insurance rate!

Although each insurance company has different rules, it is clear that if you are facing AUO the prospect of increased auto insurance premiums gives you a real incentive to hire an attorney to fight the charges (notwithstanding the other potential penalties).

Built into the statute is a complete defense for those who commit AUO. The defense is reserved for those who have been issued a license by a foreign country, state, or the like. The section reads:

“It is a defense that the person operating the motor vehicle has at the time of the offense a license issued by a foreign country, state, territory or federal district, which license is valid for operation in this state in accordance with the provisions of section two hundred fifty of this chapter.”

In order to invoke this defense and successfully get your AUO charge dismissed outright, your attorney must be able to establish:

1. You were **charged with AUO**; and
2. You were the **operator** of the motor vehicle; and
3. You possessed a license issued by a **foreign country**; or a license issued by a **foreign state**; or a license issued by a **federal district**; and
4. That license was **valid for operation** in New York State at the time you were pulled over.

For example, if you have a driver’s license from Switzerland and it was valid for operation in New York, it is quite likely that you would be exempted from the AUO charge. Although this exception is not applicable for most of us, it is worth mentioning since it is built directly into the statute.

Being charged with Aggravated Unlicensed Operation in New York is so serious that the way in which you are allowed to negotiate a plea bargain is dramatically limited and curtailed.

According to the statute:

“Where an accusatory instrument charges a violation of this section, any plea of guilty entered in satisfaction of such charge must include at least a plea of guilty of one of the offenses defined by this section and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, that if the district attorney upon reviewing the available evidence determines that the charge of a violation of this section is not warranted, he may set forth upon the record the basis for such determination and consent to a disposition by plea of guilty to another charge in satisfaction of such charge, and the court may accept such plea.”

Do not let the complicated language confuse you. This provision prohibits a prosecutor from lowering your AUO charge to any VTL outside the AUO arena unless he admits that the charge was “unwarranted.”

In other words, if you were charged with AUO in the first degree, the prosecutor can only lower your charge to, at best, Facilitating AUO [VTL 511-a] (unless he admits on the record that the AUO charge was without merit).

This limitation makes self-representation much tougher than for the average traffic violation. The average individual who goes into court to have this charge lowered can find himself completely stuck. Say he was charged with AUO in the third degree. The prosecutor may tell him that he cannot go any lower than that by law. Now he is faced with only two options: (a) pleading guilty to AUO, which would lead to a permanent criminal record and possible jail time; or (b) taking the matter to trial and facing a significant likelihood that he will be convicted. After all, no self-respecting prosecutor is going to voluntarily admit, without hearing a compelling legal argument from an attorney, that the AUO charge was baseless. Consequently, the driver who tried to represent himself in court might sadly feel compelled to plead guilty and have to deal with all of the adverse consequences of a conviction for AUO.

However, if a driver hires an attorney who has dealt with complex AUO cases before, the prosecutor will be much more open to hearing why he should put on the record that the AUO charge was unwarranted. Moreover, a NY traffic ticket attorney is familiar with the most common ways in which the prosecutor will be willing to say the charge is unwarranted.

Subsequently, the prosecutor will be able to negotiate a plea outside the VTL 511 box and offer the driver a much better deal. Likewise, an attorney is familiar with other technical ways of getting your charge dismissed even if the prosecutor will not admit that your AUO charge was unwarranted.

In addition, the prosecutor knows that if the plea offer is not good enough, he will have to go up against an experienced attorney at trial which gives him more of an incentive to sweeten the plea bargain offer.

SENTENCE OF PROBATION UPON CONVICTION

Depending on what your original charge was, you might be faced with having to plead guilty to AUO. This is quite common in cases where a person is charged with AUO in the second degree or AUO in the first degree. However, it may be the case that you took the AUO charge to trial and were convicted.

One of the most favorable components of the statute for drivers convicted of AUO is the probation provision.

This section states:

“In any case where a sentence of probation is authorized by this section, the court may in its discretion impose such sentence, provided however, if the court is of the opinion that a program of alcohol or drug treatment may be effective in assisting in prevention of future offenses of a similar nature upon imposing such sentence, the court shall require as a condition of the sentence that the defendant participate in such a program.”

How does this affect you? Instead of being forced to go to jail or prison, your NY traffic ticket attorney can argue that you should receive probation. Essentially, the provision gives your attorney a wide-range of arguments to make in your favor. For example, if

you were charged with AUO in the first degree, it is highly unlikely that the prosecutor will lower your charge to anything less than third degree AUO.

Presume your experienced NY traffic ticket attorney is able to get your AUO 1st Degree reduced to AUO 3d Degree. You might think the battle is over because you got your charge reduced. In reality, the battle has just begun. Although you will not be going to prison for 4 years, you still face jail of up to 30 days (See the [Varying Degrees of AUO](#) above). Thanks to the probation provision of the statute, your attorney can vigorously argue for you to not get a stitch of jail time and, in the alternative, for you to only receive probation.

Probation is an alternative to jail that involves being assigned a probation officer who is responsible for “keeping tabs” on the individual during the specified term of probation. There is a whole laundry list of conditions that must be met when one is on probation. Some of these conditions include: not getting arrested, not taking drugs, allowing the probation officer to check in on the person at his residence unannounced. Although the list is long and might seem onerous, most people would prefer it to being in jail.

If your license was suspended because you were in arrears (i.e. you failed to pay money you owed for child support), the arrears exception might help you come sentencing time.

Under the arrears provision:

“When a person is convicted of a violation of subdivision one or two of this section, and the suspension was issued pursuant to subdivision four-e of section five hundred ten of this article due to a support arrears, the mandatory penalties set forth in subdivision one or two of this section shall not be applicable if, on or before the return date or subsequent adjourned date, such person presents proof that such support arrears have been satisfied as shown by certified check, notice issued by the court ordering the suspension, or notice from a support collection unit. The sentencing court shall take the satisfaction of arrears into account when imposing a sentence for any such conviction.”

Simply put, the arrears provision of the AUO statute allows a driver who was suspended due to being in arrears (e.g. not paying child support, etc.) to be given leniency at the time of sentencing if he or she paid back the full amount of what was owed. This provision, although not always helpful for a driver’s unique situation, is another tool that a skilled AUO attorney will be able to use to help put his client in the best possible situation.

CASE LAW AND COMMON DEFENSES TO AGGRAVATED UNLICENSED OPERATION (AUO) IN NEW YORK

The most common way to defeat a charge of any kind is to show that one or more of the elements are missing. If you can establish this, then the prosecutor cannot meet his burden of proof and your criminal charge must be dismissed.

One common way to do this when it comes to fighting an AUO charge is disproving the element requiring you to have “knowledge” of the suspension. To do this, your attorney must show that:

- You truly did not know your license was suspended.
- You had a legally defensible reason for why you could not have been expected to know about the suspension.

Depending on your unique situation, this might be an excellent defense that your NY traffic ticket attorney should raise. However, this will not work for all drivers. For example, if you received a letter from the DMV, but your spouse accidentally threw it away along with other “junk mail” (thinking it was garbage), this defense will not be helpful at all. As we noted above in the “Definitions and Legal Buzz Words” section, the law will presume that a reasonable person in that circumstance would have opened the letter and knew.

However, if you changed your address and notified the DMV about it, but they failed to update their records and sent the letter to the old address, then you will have a valid

defense against the AUO charge. In this case, you did your due diligence by informing the DMV about your move. The only reason you never received the letter was due to an internal error and the DMV's own negligence. All you would need to do in this case to get the charge dismissed would be to provide tangible evidence proving you: 1) notified the DMV of your new address, 2) never got the letter, and 3) had no other reason to have known of the suspension.

Another defense that attorneys sometimes use to help driver's avoid an AUO conviction involves proving that you were not the "operator" of the vehicle. It should be noted that this is exceptionally difficult (if not impossible) in most cases. Unless you were not behind the wheel, have an identical twin, or have an air-tight explanation, this will rarely hold up in plea negotiations, let alone in court before a judge.

In most cases, if the "knowing" element cannot be disproved conclusively, an attorney will assume the role of a goalie tending the net in a soccer game. It will become his duty to make sure that no incriminating evidence can come into court. To do this, he must have good command of the rules of evidence and all of the relevant case law that can help you.

In [*People v. Pacer*](#), 847 NE 2d 1149, a New York court determined that the sworn statement of a DMV official revealing that he or she had information and reason to believe that notice was truly given to the accused driver of his or her suspension will not—on its own—be admissible as evidence against a driver. The court explained that the Confrontation Clause of the Sixth Amendment to United States Constitution

guarantees a criminal defendant the right to confront his accuser. Additionally, testimonial pieces of evidence (e.g. affidavits, etc.) that are not subjected to cross-examination are inadmissible against a criminal defendant (See *Crawford v. Washington*, 541 U.S. 36). With both of these points in mind, the court fashioned a principle that is greatly helpful to drivers charged with AUO in New York.

- ***Point of Law 1: If the DMV tries to introduce a document that testifies to a certain “fact,” the document alone cannot be used against you. The person who wrote the document will have to come to court and be subject to cross-examination by your attorney. Otherwise, that document will be inadmissible. (See *People v. Pacer*, 847 NE 2d 1149; see also *Crawford v. Washington*, 541 U.S. 36.)***

In [People v. Pabon](#), 167 Misc. 2d 214, a clever defense attorney attempted to extend the “knowledge” requirement of the AUO statute a bit further than one might think it could go. The driver was charged with AUO in the second degree and was unaware of the fact that his license was suspended two other times prior. However, enough evidence revealed that he did have reason to know that his license was currently suspended. The defense attorney tried to argue that the prosecution was required to prove that the driver had knowledge of the fact that he drove while suspended twice before and this third time as well.

However, the court in *Pabon* disagreed and laid out a rule of law that is crucial for all New York drivers to know. According to the ruling:

- “The court therefore finds that the People are not required to plead and prove that defendant knew or had reason to know that he had, in effect, three or more suspensions imposed on at least three separate dates.” (See *People v. Pabon*, 167 Misc. 2d 214.)

How does this affect your case? Although the prosecutor is required by law to prove that you had knowledge of the current suspension and drove anyway, this case reveals that a prosecutor only has to prove the fact that you drove while suspended on two other occasions (not that you knew or had reason to know that you did so) in order to be convicted of AUO in the second degree. This might come as a shock to some drivers. However, the court properly points out that if the legislature wanted the “knowledge” requirement to extend to all of the prior times of driving, it would have explicitly mentioned this in the statute.

- **Point of Law 2: If you are charged with AUO in the second degree, the prosecution only has to prove the fact that you drove twice before while suspended, not that you knew or had reason to know that you did. (See *People v. Pabon*, 167 Misc. 2d 214.)**

In [People v. Kleiner](#), 174 Misc. 2d 261, a New York court established a general principle that helps AUO defendants tremendously. In that case, the court explored whether DMV compliance with the mailing statute was sufficient to give a driver accused of AUO in NY knowledge of or a reason to know about the suspension.

Ultimately, the court determined:

- “Whether the defendant ‘knew or had reason to know’ that his license was suspended or revoked is a question of fact which must be determined beyond a reasonable doubt. (*People v Gabriel*, 164 Misc 2d 473, 476 [Crim Ct, Queens County 1995].) Compliance with the mailing statute ‘merely gives the prosecution the benefit of a rebuttable presumption at the time of trial that the defendant knew or had reason to know that his privilege to drive had been suspended. It does not preclude the People from establishing knowledge by other means.’” (*supra*, at 476; *see also*, *People v Rodriguez*, 165 Misc 2d 684 [Crim Ct, Queens County 1995]; *People v Quarles*, 168 Misc 2d 638 [Rochester City Ct 1996]).

This is great news for you! According to this precedent, just because the DMV mailed you a letter and did all it was supposed to legally do, that alone does not prove anything against you. It simply shifts the burden to your attorney to provide an explanation for why you did not know or have reason to know of the suspension.

- ***Point of Law 3: Just because the Department of Motor Vehicles followed the proper laws and mailed you notice of your license suspension does not automatically mean you knew or had reason to know of the suspension.*** (See *People v. Kleiner*, 174 Misc. 2d 261.)

PRACTICAL CONSIDERATIONS

Before you can enter into a plea bargain with the prosecutor for your AUO charge, he or she will likely require you to have your suspension cured and cleared. This means you will be required to rectify the suspension as a prerequisite for receiving a plea bargain from a prosecutor for an AUO charge in New York.

Unfortunately, if your license was suspended for a specific term of time (e.g. your license was suspended for DWI in New York), then your suspension cannot be cleared. However, in the majority of cases, a skilled NY traffic ticket attorney can help you identify the basis of your suspension and help you cure and clear it.

HOW CAN I CLEAR MY SUSPENSION?

Depending on why your driver's license was suspended will directly determine how your license can be cleared. For example, if your driver's license was suspended due to failing to pay a fine, then your suspension can be cleared simply by paying the fine.

If your license was suspended due to failing to answer a NY traffic ticket, you might think that the best mode of action is to plead guilty to that traffic ticket. However, this could come with terrible consequences. Depending on what the ticket was, you could face points, fines, an insurance hike, and potentially worse. The best thing to do is to consult an attorney who will most likely advise you to pay a Suspension Termination Fee

(STF). This will usually allow your suspension to be lifted while still giving you an opportunity to fight the ticket.

It is worth noting that the Traffic Violations Bureau (TVB) will not allow you to plea bargain. In the TVB, you either are convicted or your ticket gets dismissed. Also, certain non-TVB courts will not lift the suspension—even if you pay the STF—until the ticket has been fully resolved. The reason certain courts do this is to ensure that you have successfully done everything you are required before they officially clear the suspension.

Additionally, if your license was suspended due to failing to respond to a TVB ticket within the 15 day time frame, and you were convicted by default, your attorney can help clear your suspension by filing a [Request to Reopen a Default Conviction](#). A default conviction results when you fail to respond to your traffic ticket or fail to show up in court when you are required to. When you ignore a TVB traffic ticket, an automatic conviction is assigned to you by “default.” It counts as an official conviction for the offense and you will be confronted with all of the penalties associated with it. However, if your request to reopen the case is granted, your attorney can help you fight against the conviction while simultaneously clearing your suspension. Remember, you will need a legally valid reason to reopen the case before your motion can be granted.

If you were suspended for: a) receiving 11 points on your license, b) getting convicted 3 times for speeding, or c) being convicted twice for speeding in a work zone within 18 months, it also is possible for your suspension to be lifted. In order to do this, your

attorney needs to make a Motion to Vacate. This is a request to have the court undo the last conviction and work with the prosecutor to further reduce your ticket to an offense that would not suspend your license (e.g. a non-speeding offense).

If your New York driver's license was suspended due to failing to pay child support, your attorney can work with Child Support Services to have them lift the suspension.

Sometimes this could involve a mere phone call and an explanation of your unique circumstances. However, it could also take some time before any real headway is made.

Furthermore, when your license is suspended for having a medical condition, you also have the ability to have the suspension cleared. This could be [quite involved](#). However, your attorney can make the process smoother and easier for you and will likely have much more success than if you were to try on your own. The key here is to make sure you appear at any and all accident re-examination days. If you failed to do so and were suspended, your attorney will need to provide a legally defensible reason for why you could not appear. Afterward, you may be required to appear for an eye exam or physical before your suspension can be cured. Remember, if your vision is impaired or you have a serious medical condition that prevents you from driving, the DMV may restrict your driving privileges even though your suspension has been cleared.

Also, if you were suspended for failing to satisfy a judgment resulting from a car accident, your attorney will be able to work the lawyer who filed the judgment and negotiate for the lifting of your suspension. Similarly, if your license suspension was due to not having insurance, your attorney might be able to arrange for you to pay a penalty

for each day you were uninsured in exchange for the clearing of the suspension.

Alternatively, your attorney might be able to argue that you truly were insured or that another individual happened to be driving the vehicle. Lastly, if your license was suspended due to a pending fraud investigation (e.g. investigators discovered that your photo was on two different driver's licenses), your attorney can work with the investigators to sort out the problem and have your suspension cleared.

CONCLUDING REMARKS

After reading this book, we hope that you have a better understanding of what Aggravated Unlicensed Operation in New York is and the various ways that a New York traffic ticket attorney can help defend your legal rights. AUO (i.e. VTL 511) can be a very scary charge and because it is a crime in New York, you stand to lose a great deal from a conviction.

Representing yourself in court for an AUO charge could be as problematic as trying to fix your own car if you are not a mechanic. Remember, trying to fight an AUO charge is no oil change. Consequently, it is absolutely vital to hire a traffic ticket attorney who knows the ins and outs of AUO, has plenty of courtroom experience, and has the knowledge and experience to help you get the results you want.



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