

ITSMR Research Note



KEY FINDINGS

Enforcement of the ADWI Law

- 41,099 drivers were arrested for impaired driving (VTL 1192) in 2018, down from 47,763 in 2014, a decline of 14%.
- 34,497 of 41,099 drivers in 2018 were arrested under the TSLED system, a decrease of 5% from the 2014 TSLED arrests.
- 19%-20% of drivers arrested under TSLED each year, 2014-2018, had a BAC \geq 0.18.
- 93%-94% of the drivers with a BAC \geq 0.18 were charged with ADWI (VTL 1192.2a).

Adjudication of the ADWI Law

- 29%-32% of the approximately 6,000 drivers charged with ADWI each year, 2014-2018, were convicted of ADWI.
- In accordance with the ADWI law, of the drivers convicted of ADWI:
 - ✓ 97%-98% had their license revoked
 - ✓ 96%-97% were sentenced to ignition interlock
 - ✓ 89%-94% were fined between \$1,000 and \$2,500 (if the fine was reported)

CONCLUSIONS

- The ADWI law is being implemented as designed, with almost all drivers with a BAC \geq .18 being charged with ADWI (VTL 1192.2a).
- Despite the charge of ADWI, only 3 out of 10 drivers are convicted of ADWI.
- Since almost all drivers convicted of ADWI are being sentenced to an ignition interlock which is a proven countermeasure to reduce drinking and driving, the issue of a low ADWI conviction rate should be addressed.

New York State's Aggravated DWI (ADWI) Law

INTRODUCTION

New York State has historically taken an aggressive approach to the problem of impaired driving through legislation, enhanced and innovative enforcement efforts and increased public information and education initiatives. The success of this multi-faceted approach is evidenced by the reduction in the number of alcohol-related fatalities over the past three decades, with fatalities dropping from 979 in 1981 to 284 in 2018. In accomplishing this, New York has been a nationally recognized leader in developing and implementing innovative anti-drinking and driving programs and enacting legislation that provides stiff penalties and sanctions for alcohol-impaired driving.

On November 1, 2006, New York State implemented its Aggravated DWI Law (ADWI), cited as Section 1192.2a of the state's Vehicle and Traffic law (VTL). The law provided for stiffer fines and penalties for drivers with a BAC at or above the 0.18 level. Funded by New York's Governor's Traffic Safety Committee (GTSC), this study examined how well the law is functioning today, more than a decade after its implementation. The study was also undertaken to provide information to the state's Advisory Council on Impaired Driving to support its efforts to examine the nature and causes of impaired driving and develop recommendations for reducing impaired driving.

Information about the ADWI Law and the drivers arrested for violation of the ADWI law is presented as follows:

- Provisions of the ADWI law
- Enforcement of the ADWI law
- Characteristics of drivers arrested for ADWI
- Adjudication & conviction of ADWI cases
- Penalties & sanctions for ADWI convictions

Focusing on the five year period, 2014-2018, the data for the study were obtained from the NYS DMV's Traffic Safety Law Enforcement & Disposition system (TSLED) and the New York City Police Department (NYPD).

PROVISIONS OF THE ADWI LAW

The specific provisions of the ADWI law (VTL 1192.2a) can be summarized as follows:

- BAC: 0.18% or higher
- Fine: \$1,000 - \$2,500
- Jail: Not more than one year
- License Action: Revocation for at least 1 year
- Plea to lesser charge of DWI: Mandatory Drinking Driver Program (now known as the Impaired Driver Program), assessment & treatment, if needed
- Convicted of 1192.2a and sentenced to probation: Mandatory ignition interlock

ENFORCEMENT OF THE ADWI LAW

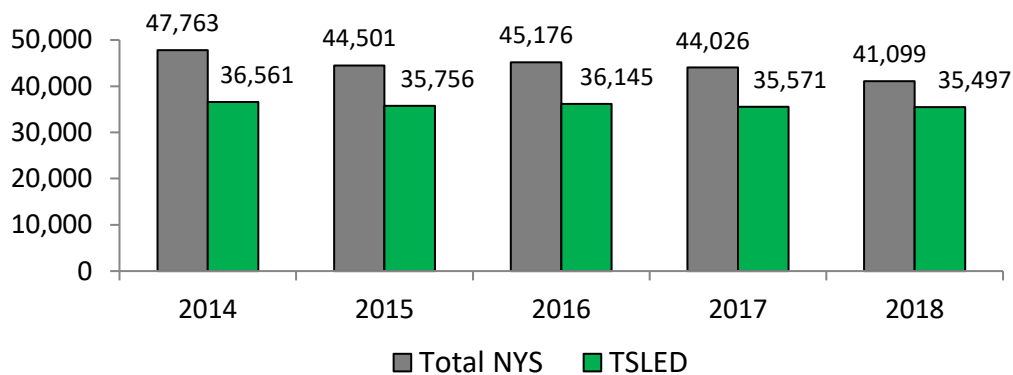
Analyses were conducted to examine the total number of drivers arrested for impaired driving, the BAC of drivers arrested, the number of drivers charged with ADWI and the location of where those arrests are occurring.

Drivers Arrested for Impaired Driving

As shown in Figure 1, the total number of drivers arrested for impaired driving statewide (TSLED &

NYPD) dropped from 47,763 in 2014 to 41,099 in 2018, representing a decline of 14%. In comparison, the number of drivers arrested for impaired driving under the TSLED system dropped from 36,561 in 2014 to 35,497 in 2018, a decrease of 3%. Since the data from the NYPD does not allow for analysis by the specific BAC level, the remaining analyses focused only on the data obtained from the TSLED system.

FIGURE 1
Drivers Arrested for Impaired Driving



Drivers Arrested by BAC Level (TSLED Only)

Drivers arrested with a BAC at or above 0.18 remained fairly constant at 19%-20% in each of the five years, 2014-2018 (Table 1). The proportion of drivers arrested with a BAC of greater than 0.00 and less than 0.18 remained constant at 52%- 53%

between 2014 and 2017, then dropped to 49% in 2018. The BAC for 27%-28% of the drivers arrested each year 2014-2017 and 32% of the drivers in 2018 was unknown. Table 1 also shows that the mean or average BAC remained constant over the five years at 0.1467-0.1483.

TABLE 1
Drivers Arrested for Impaired Driving
BAC LEVEL (TSLED)

	2014 N=35,126	2015 N=33,946	2016 N=34,258	2017 N=33,622	2018 N=35,269
BAC > 0.0 & < 0.18	52.6%	51.7%	52.0%	53.1%	49.1%
BAC ≥ 0.18	19.1%	20.1%	19.4%	19.7%	18.5%
BAC Unknown	28.3%	28.2%	28.6%	27.2%	32.4%
Mean BAC	0.1467%	0.1483%	0.1476%	0.1469%	0.1475%

Drivers Arrested for Aggravated DWI (ADWI)

To determine whether the ADWI law is being enforced as intended, analyses were conducted to identify what proportion of drivers with a BAC of 0.18 or greater were appropriately charged with ADWI. As shown in Table 2, the proportion of drivers with a BAC of 0.18 or above who were arrested for ADWI remained constant at 93%-94%

over the five years, 2014-2018. This finding provides evidence that the ADWI law is being implemented as designed. Of those drivers not cited under the ADWI provision of the law, 4%-5% were cited each year for driving while intoxicated (VTL 1192.3) and approximately 2% each year were cited for a violation of the Per Se section of the law (VTL 1192.2).

TABLE 2
Drivers Arrested With a BAC ≥ 18
SECTION OF VTL 1192 CHARGED (TSLED)

	2014 N=6,721	2015 N=6,818	2016 N=6,665	2017 N=6,613	2018 N=6,520
VTL 1192.2a (ADWI)	92.6%	93.5%	93.6%	93.0%	92.9%
Other Section of VTL 1192	7.4%	6.5%	6.4%	7.0%	7.1%
<i>1192.1 (DWAI)</i>	<0.1%	<0.1%	<0.1%	<0.1%	0.2%
<i>1192.2 (Per Se)</i>	2.6%	2.2%	1.8%	2.4%	2.4%
<i>1192.3 (DWI)</i>	4.7%	4.3%	4.6%	4.4%	4.5%
<i>1192.4 & 4a (Drugs/Drugs+Alc)</i>	0.1%	<0.1%	<0.1%	0.1%	0.1%

To determine where the ADWI arrests are occurring, analyses were also conducted by county. Since the data showed only small variations from year to year, the data were aggregated for the five-years, 2014-2018. The analysis found that five

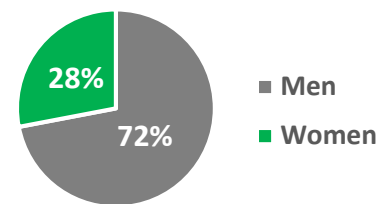
counties accounted for one-third (33%) of all the ADWI arrests under the TSLED system: Erie (8.5%), Nassau (6.4%), Monroe (6.2%), Westchester (6.0%) and Onondaga (5.8%). A complete list of the counties is presented in Appendix A.

CHARACTERISTICS OF DRIVERS ARRESTED FOR ADWI (TSLED ONLY)

Driver Gender

Because the data did not vary from year to year, it was aggregated for the five year period, 2014-2018. During the five years, 72% of the drivers arrested for ADWI were men and 28% were women (Figure 2).

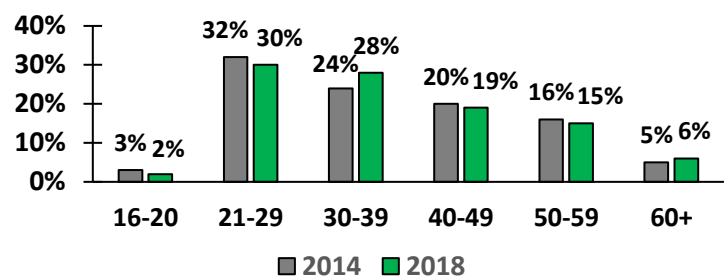
FIGURE 2
Drivers Arrested with BAC \geq 0.18 (ADWI)



Driver Age

Over the five years, 2014-2018, some differences did occur in the age distribution of drivers arrested with a BAC of 0.18 or greater. To show that difference, the data for 2014 and 2018 are presented in Figure 3. As shown in Figure 2, the proportion of drivers arrested for ADWI who were 30-39 years of age increased from 24% in 2014 to 28% in 2018.

FIGURE 3
Drivers Arrested with BAC \geq 0.18 (ADWI)



ADJUDICATION AND CONVICTION OF ADWI CASES (TSLED ONLY)

Adjudication of ADWI Cases

Analyses were conducted to determine the adjudication status of cases involving drivers with a BAC of 0.18 and above. Table 3 shows that at the time of this study 93%-96% of the 2014-2017 cases had been adjudicated, with the vast majority resulting in a conviction (90-93%). As would be

expected, the proportion of adjudicated cases dropped to 77% in 2018 due to the large proportion of cases that were still pending (23%). Table 3 also shows that 2%-3% of the cases each year were either dismissed or the person was acquitted of the charges.

TABLE 3
Drivers Arrested with a BAC \geq 0.18 & Charged with ADWI (VTL 1192.2a)
ADJUDICATION STATUS (TSLED)

	2014 N=6,220	2015 N=6,370	2016 N=6,236	2017 N=6,153	2018 N=6,053
Cases Pending	4.1%	5.3%	7.3%	7.5%	23.4%
Cases Adjudicated	95.9%	94.7%	92.7%	92.5%	76.6%
Dismissal/Acquittal	3.3%	2.8%	2.8%	2.3%	2.6%
Conviction	92.6%	91.9%	89.9%	90.2 %	74.0%

Convictions for ADWI

To determine the extent to which offenders arrested for ADWI were convicted of ADWI and sanctioned in accordance with the ADWI law, analyses were undertaken based on the cases that had been adjudicated. Of the drivers convicted, further analyses were conducted to determine the extent to which they were convicted as charged. As indicated in Table 4, of the drivers with a BAC at or above 0.18 who were arrested for ADWI, 29%-32% were convicted of ADWI. Two-thirds (66%-

68%) were convicted of another section of VTL 1192, which would likely subject them to lesser sanctions and penalties than if convicted of ADWI. Of the drivers convicted of another section of VTL 1192, the largest proportion each year (37%-41%) was convicted of 1192.3 (DWI); 12%-16% were convicted of VTL 1192.1 (DWA) and approximately 14% were convicted of VTL 1192.2 (Per Se).

TABLE 4
Drivers Arrested with a BAC \geq 0.18, Charged with ADWI (VTL 1192.2a) and Convicted
TYPE OF CONVICTION (TSLED)

	2014 N=5,738	2015 N=5,836	2016 N=5,588	2017 N=5,529	2018 N=4,465
Convicted as charged (ADWI-1192.2a)	31.9%	30.9%	30.3%	30.8%	29.4%
Convicted on other 1192	66.4%	67.4%	67.8%	66.8%	67.8%
1192.1 (DWA)	12.4%	11.9%	12.7%	14.6%	15.6%
1192.2 (Per Se)	13.9%	14.3%	14.0%	13.2%	14.4%
1192.3 (DWI)	39.9%	40.9%	40.9%	38.8%	37.4%
1192.4 (Drugs/Drugs + Alcohol)	0.2%	0.3%	0.2%	0.2%	0.4%
Convicted on charge from different event/non-impairment violation	1.7%	1.7%	1.9%	2.4%	2.8%

PENALTIES & SANCTIONS FOR ADWI CONVICTIONS (TSLED ONLY)

As indicated above, the ADWI law strengthened the state's impaired driving laws by providing for stricter penalties and sanctions for drivers with BACs at or above 0.18. Those penalties include a one year license revocation, fine of \$1,000-\$2,500 or jail of up to one year or both a fine and jail. The law requires that any person convicted of a violation of 1192.2a and sentenced to probation shall install and maintain as a condition of probation an ignition interlock device. The court may not, however, authorize the use of an ignition interlock while the person's privilege to operate a motor vehicle has been revoked. Detailed analyses of the data associated with convictions were conducted to assess whether these penalties were imposed on drivers convicted of ADWI and the extent to which other penalties may have been imposed. The results of the analyses are summarized in Table 5.

- 97%-98% of the drivers arrested and convicted of ADWI each year had their license revoked.
- 44%-49% were sentenced to probation and an Interlock.
- 48%-54% were sentenced to an Interlock only.
- 18%-23% were sentenced to jail.

TABLE 5
Drivers With a BAC \geq 0.18 and Arrested and Convicted of ADWI
Penalties & Sanctions (TSLED)

	2014 N=1,831	2015 N=1,803	2016 N=1,693	2017 N=1,701	2018 N=1,313
License Revocation	98.2%	97.8%	97.3%	97.8%	96.6%
Probation + Interlock	46.5%	48.5%	48.1%	46.3%	43.7%
Interlock Only	50.4%	47.6%	47.7%	50.1%	53.7%
Jail	22.7%	21.6%	19.8%	20.1%	18.3%
Secondary Sentences					
<i>Victim Impact Panel</i>	24.8%	26.0%	24.3%	23.1%	23.2%
<i>Impaired Driver Program</i>	15.9%	17.1%	14.8%	11.0%	8.7%
Fine Known	N = 1,410	N = 1,405	N = 1,270	N = 1,307	N = 865
\$0 - \$999	10.2%	8.6%	6.0%	7.3%	6.8%
\$1,000 - \$1,499	73.8%	72.8%	78.2%	75.2%	74.0%
\$1,500 - \$2,500	15.6%	18.4%	15.7%	17.1%	19.0%
More than \$2,500	0.4%	0.1%	0.1%	0.4%	0.2%

Secondary Sentences

In addition to a license sanction, probation/interlock and jail, motorists convicted of impaired driving are often subject to secondary sentences which can include mandated participation in the DMV's Impaired Driver Program (IDP) and in a Victim Impact Panel (VIP). Table 5 above shows that the proportions of drivers arrested and convicted of ADWI who were sentenced to a VIP has remained fairly constant in recent years. In comparison, the proportion of drivers sentenced to the IDP has been on a general downward trend over the five-year period, 2014-2018, dropping from 16% in 2014 to 9% in 2018.

Fines

Table 5 also provides information on the fines levied against drivers convicted of ADWI. According to the TSLED system, information on the amount of the fine levied against the driver was available for about three-quarters (75%-78%) of the drivers in 2014-2018 and 66% of the drivers in 2018. As indicated in Table 5, of the drivers for whom the fine amount is known, 89%-94% of them were fined in accordance with the law (\$1,000-\$2,500) each year.

SUMMARY AND CONCLUSIONS

The key findings from the analyses of the data obtained from the TSLED system can be summarized as follows:

- ❖ Enforcement of the ADWI Law appears to be working as intended. During the most recent five-year period, 2014-2018, more than nine out of ten drivers arrested with a BAC \geq 0.18 are being charged with ADWI (VTL 1192.2a).
- ❖ In contrast, those charged with ADWI are not being adjudicated in full accordance with the ADWI law. In each of the five years, 2014-2018, only three out of ten drivers charged with ADWI were convicted of ADWI.

In accordance with the law, almost all of the drivers convicted of ADWI have their license revoked for one year and are being sentenced to an ignition interlock. Since the use of an ignition interlock device is a proven deterrent to drinking and driving, ways in which the conviction rate for ADWI can be improved should be explored.

In addition, it is important to recognize that the analyses presented in this report showed that BAC information was not available for 27%-32% of the impaired drivers arrested each year 2014-2018. Because more complete BAC data would strengthen the findings of the study, efforts should be undertaken to increase the reporting of BAC information to the TSLED system.

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