§ 1194-a. Driving after having consumed alcohol; under twenty-one; procedure. 1. Chemical test report and hearing. (a) Whenever a chemical test of the breath, blood, urine or saliva of an operator who is under the age of twenty-one indicates that such person has operated a motor vehicle in violation of section eleven hundred ninety-two-a of this article, and such person is not charged with violating any subdivision of section eleven hundred ninety-two arising out of the same incident, the police officer who administered the test shall forward a report of the results of such test to the department within twenty-four hours of the time when such results are available in a manner prescribed by the commissioner, and the operator shall be given a hearing notice as provided in subdivision one-a of this section, to appear before a hearing officer in the county where the chemical test was administered, or in an adjoining county under such circumstances as prescribed by the commissioner, on a date to be established in accordance with a schedule promulgated by the commissioner. Such hearing shall occur within thirty days of, but not less than forty-eight hours from, the date that the chemical test was administered, provided, however, where the commissioner determines, based upon the availability of hearing officers and the anticipated volume of hearings at a particular location, that the scheduling of such hearing within thirty days would impair the timely scheduling or conducting of other hearings pursuant to this chapter, such hearing shall be scheduled at the next hearing date for such particular location. When providing the operator with such hearing notice, the police officer shall also give to the operator, and shall, prior to the commencement of the hearing, provide to the department, copies of the following reports, documents and materials: any written report or document, or portion thereof, concerning a physical examination, a scientific test or experiment, including the most recent record of inspection, or calibration or repair of machines or instruments utilized to perform such scientific tests or experiments and the certification certificate, if any, held by the operator of the machine or instrument, which tests or examinations were made by or at the request or direction of a public servant engaged in law enforcement activity. The report of the police officer shall be verified by having the report sworn to, or by affixing to such report a form notice that false statements made therein are punishable as a class A misdemeanor

pursuant to section 210.45 of the penal law and such form notice together with the subscription of the deponent shall constitute verification of the report.

(b) Every person under the age of twenty-one who is alleged to have operated a motor vehicle after having consumed alcohol as set forth in section eleven hundred ninety-two-a of this article, and who is not charged with violating any subdivision of section eleven hundred ninety-two of this article arising out of the same incident, is entitled to a hearing before a hearing officer in accordance with the provisions of this section. Unless otherwise provided by law, the license or permit to drive or any non-resident operating privilege of such person shall not be suspended or revoked prior to the scheduled date for such hearing.

(i) The hearing shall be limited to the following issues: (1) did such person operate the motor vehicle; (2) was a valid request to submit to a chemical test made by the police officer in accordance with the provisions of section eleven hundred ninety-four of this article; (3) was such person less than twenty-one years of age at the time of operation of the motor vehicle; (4) was the chemical test properly administered in accordance with the provisions of section eleven hundred ninety-four of this article; (5) did the test find that such person had driven after having consumed alcohol as defined in section eleven hundred ninety-two-a of this article; and (6) did the police officer make a lawful stop of such person. The burden of proof shall be on the police officer to prove each of these issues by clear and convincing evidence.

(ii) Every person who is entitled to a hearing pursuant to this subdivision has the right to be present at the hearing; the right to be represented by attorney, or in the hearing officer's discretion, by any other person the operator chooses; the right to receive and review discovery materials as provided in this subdivision; the right not to testify; the right to present evidence and witnesses in his own behalf, the right to cross examine adverse witnesses, and the right to appeal from an adverse determination in accordance with article three-A of this chapter. Any person representing the operator must conform to the standards of conduct required of attorneys appearing before state courts, and failure to conform to these standards will be grounds for

declining to permit his continued appearance in the hearing.

(iii) Hearings conducted pursuant to this subdivision shall be in accordance with this subdivision and with the provisions applicable to the adjudication of traffic infractions pursuant to the following provisions of part 124 of title fifteen of the codes, rules and regulations of the state of New York: paragraph (b) of section 124.1 regarding the opening statement; paragraph (b) of section 124.2 regarding the right to representation and to remain silent and paragraphs (a) through (e) of section 124.4 regarding the conduct of the hearing, procedure and recusal; provided, however, that nothing contained in this subparagraph shall be deemed to preclude a hearing officer from changing the order of a hearing conducted pursuant to this subdivision as justice may require and for good cause shown.

(iv) The rules governing receipt of evidence in a court of law shall not apply in a hearing conducted pursuant to this subdivision except as follows:

(1) on the merits of the charge, and whether or not a party objects, the hearing officer shall exclude from consideration the following: a privileged communication; evidence which, for constitutional reasons, would not be admissible in a court of law; evidence of prior misconduct, incompetency or illness, except where such evidence would be admissible in a court of law; evidence which is irrelevant or immaterial;

(2) no negative inference shall be drawn from the operator's exercising the right not to testify.

(v) If, after such hearing, the hearing officer, acting on behalf of the commissioner, finds all of the issues set forth in this subdivision in the affirmative, the hearing officer shall suspend or revoke the license or permit to drive or non-resident operating privilege of such person in accordance with the time periods set forth in subdivision two of section eleven hundred ninety-three of this article. If, after such hearing, the hearing officer, acting on behalf of the commissioner, finds any of said issues in the negative, the hearing officer must find that the operator did not drive after having consumed alcohol.

(vi) A person who has had a license or permit to drive or non-resident operating privilege suspended or revoked pursuant to the provisions of this section may appeal the finding of the hearing officer in accordance with the provisions of article three-A of this chapter.

(c) Unless an adjournment of the hearing date has been granted, upon the operator's failure to appear for a scheduled hearing, the commissioner shall suspend the license or permit to drive or non-resident operating privilege until the operator petitions the commissioner and a rescheduled hearing is conducted, provided, however, the commissioner shall restore such person's license or permit to drive or non-resident operating privilege if such rescheduled hearing is adjourned at the request of a person other than the operator. Requests for adjournments shall be made and determined in accordance with regulations promulgated by the commissioner. If such a request by the operator for an adjournment is granted, the commissioner shall notify the operator of the rescheduled hearing, which shall be scheduled for the next hearing date. If a second or subsequent request by the operator for an adjournment is granted, the operator's license or permit to drive or non-resident operating privilege may be suspended pending the hearing at the time such adjournment is granted; provided, however, that the records of the department or the evidence already admitted furnishes reasonable grounds to believe such suspension is necessary to prevent continuing violations or a substantial traffic safety hazard; and provided further, that such hearing shall be scheduled for the next hearing date.

If a police officer does not appear for a hearing, the hearing officer shall have the authority to dismiss the charge. Any person may waive the right to a hearing under this subdivision, in a form and manner prescribed by the commissioner, and may enter an admission of guilt, in person or by mail, to the charge of operating a motor vehicle in violation of section eleven hundred ninety-two-a of this article. Such admission of guilt shall have the same force and effect as a finding of guilt entered following a hearing conducted pursuant to this subdivision.

1-a. Hearing notice. The hearing notice issued to an operator pursuant to subdivision one of this section shall be in a form as prescribed by the commissioner. In addition to containing information concerning the time, date and location of the hearing, and such other information as the commissioner deems appropriate, such hearing notice shall also

contain the following information: the date, time and place of the offense charged; the procedures for requesting an adjournment of a scheduled hearing as provided in this section, the operator's right to a hearing conducted pursuant to this section and the right to waive such hearing and plead guilty, either in person or by mail, to the offense charged.

2. Civil penalty. Unless otherwise provided, any person whose license, permit to drive, or any non-resident operating privilege is suspended or revoked pursuant to the provisions of this section shall also be liable for a civil penalty in the amount of one hundred twenty-five dollars, which shall be distributed in accordance with the provisions of subdivision nine of section eighteen hundred three of this chapter.

3. Refusal report and hearing. (a) Any person under the age of twenty-one who is suspected of operating a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this chapter, and who is not charged with violating any subdivision of section eleven hundred ninety-two of this article arising out of the same incident, and who has been requested to submit to a chemical test pursuant to paragraph (a) of subdivision two of section eleven hundred ninety-four of this article and after having been informed that his license or permit to drive and any non-resident operating privilege shall be revoked for refusal to submit to such chemical test or any portion thereof, whether or not there is a finding of driving after having consumed alcohol, and such person refuses to submit to such chemical test or any portion thereof, shall be entitled to a hearing in accordance with a schedule promulgated by the commissioner, and such hearing shall occur within thirty days of, but not less than forty-eight hours from, the date of such refusal, provided, however, where the commissioner determines, based upon the availability of hearing officers and the anticipated volume of hearings at a particular location, that the scheduling of such hearing within thirty days would impair the timely scheduling or conducting of other hearings pursuant to this chapter, such hearing shall be scheduled at the next hearing date for such particular location.

(b) Unless an adjournment of the hearing date has been granted, upon

the operator's failure to appear for a scheduled hearing, the commissioner shall suspend the license or permit to drive or non-resident operating privilege until the operator petitions the commissioner and a rescheduled hearing is conducted, provided, however, the commissioner shall restore such person's license or permit to drive or non-resident operating privilege if such rescheduled hearing is adjourned at the request of a person other than the operator. Requests for adjournments shall be made and determined in accordance with regulations promulgated by the commissioner. If such a request by the operator for an adjournment is granted, the commissioner shall notify the operator of the rescheduled hearing, which shall be scheduled for the next hearing date. If a second or subsequent request by the operator for an adjournment is granted, the operator's license or permit to drive or non-resident operating privilege may be suspended pending the hearing at the time such adjournment is granted; provided, however, that the records of the department or the evidence already admitted furnishes reasonable grounds to believe such suspension is necessary to prevent continuing violations or a substantial traffic safety hazard; and provided further, that such hearing shall be scheduled for the next hearing date.

If a police officer does not appear for a hearing, the hearing officer shall have the authority to dismiss the charge. Any person may waive the right to a hearing under this subdivision.

(c) The hearing on the refusal to submit to a chemical test pursuant to this subdivision shall be limited to the following issues: (1) was a valid request to submit to a chemical test made by the police officer in accordance with the provisions of section eleven hundred ninety-four of this article; (2) was such person given sufficient warning, in clear or unequivocal language, prior to such refusal that such refusal to submit to such chemical test or any portion thereof, would result in the revocation of such person's license or permit to drive or nonresident operating privilege, whether or not such person is found to have operated a motor vehicle after having consumed alcohol; (3) did such person refuse to submit to such chemical test or any portion thereof; (4) did such person operate the motor vehicle; (5) was such person less than twenty-one years of age at the time of operation of the motor

vehicle; (6) did the police officer make a lawful stop of such person. If, after such hearing, the hearing officer, acting on behalf of the commissioner, finds on any one said issue in the negative, the hearing officer shall not revoke the operator's license or permit to drive or non-resident operating privilege and shall immediately terminate any outstanding suspension of the operator's license, permit to drive or non-resident operating privilege arising from such refusal. If, after such hearing, the hearing officer, acting on behalf of the commissioner, finds all of the issues in the affirmative, such hearing officer shall immediately revoke the license or permit to drive or any non-resident operating privilege in accordance with the provisions of paragraph (d) of subdivision two of section eleven hundred ninety-four of this article. A person who has had a license or permit to drive or non-resident operating privilege suspended or revoked pursuant to the provisions of this section may appeal the findings of the hearing officer in accordance with the provisions of article three-A of this chapter.