

NASSAU ACADEMY OF LAW



DEAN'S HOUR

DWI FROM A-Z



MONDAY, APRIL 11. 2011

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DWI from A-Z

April 11, 2011

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DWI is a very difficult area to practice, especially in Nassau County. You have to deal with the criminal courts, the DA's policies, the DMV rules and policies, probations rules and policies and the county attorney's policy regarding forfeiture and the changes in the law.

ARRAIGNMENT

VTL section 1193(2)(e)(7) the prompt suspension law. The prompt suspension law applies when a defendant is charged with 1192(2), (2a), (3) or (4a). It does not apply to 1192.1 or 1192.4. It is only applied when there is a reading of a .08 or higher. It does not apply when there is a refusal of a chemical test.

In order to suspend the license the court must find:

- 1) the accusatory instrument must be sufficient and conform to CPL 100.40.
- 2) there is reasonable cause to believe that the defendant operated a motor vehicle with a .08 BAC or higher as shown by a chemical test.

REFUSAL

At the arraignment, the court is required to temporarily suspend the defendant's driving privileges pending the outcome of a DMV refusal hearing. If the hearing does not take place within 15 days of the arraignment, privileges must be reinstated.

With a refusal it is important to note that the refusal hearing will take place at the Department of Motor Vehicle. Some lawyers do not attend or tell their clients not to attend. **BIG MISTAKE**

First, about half the time the officer does not show up. If it is the first time on, the Judge will adjourn the hearing. **YOU MUST ASK THE JUDGE TO REINSTATE YOUR CLIENT'S PRIVILEGES.** They used to give a piece of paper showing that the suspension was lifted, but I do not think they are doing that anymore in Nassau (it doesn't hurt to ask for it).

If the officer shows up, it is a great opportunity for discovery. You get to question the officer under oath and find out a lot more about your case.

Remember the only issues for a refusal hearing:

- 1) Was there reasonable suspicion to stop the vehicle
- 2) Was there probable cause to arrest
- 3) Was it a knowing and voluntary refusal

Refusal hearings are hard to win. Whether or not your client is guilty of DWI is irrelevant. In fact, you can be found guilty of a Refusal and found not guilty on the DWI (which causes a lot of other problems to be discussed later).

If the officer does not show up a second time, the Judge will put the paperwork in and if he/she finds all the elements are met, he/she will find a refusal without the officer present. Your client, of course, has the right to testify. You have the right to appeal any findings of refusal (and ask for a stay of the revocation).

*Note, the ADA now comes to these hearings, but you should object if they say a word because they have no standing.

If a defendant is found guilty of a refusal, there is a 1 year revocation of their license without the eligibility of a conditional, hardship, restricted or any type of license unless and until there is a conviction and your client is sentenced.

CONDITIONAL LICENSE (pre-conviction and post-conviction) and DDP

See NYS DMV attachment.

After arraignment, you must determine if your client is eligible for a conditional license 30 days after the date of arraignment. The Judge has the option of suspending a defendant's license pursuant to VTL section 510(3a). If this discretionary suspension is issued, then you cannot get any type of license. The remedy in that situation is to get your client into therapy and then go before the Judge who issued the suspension. Most Judges will not lift another Judge's suspension, so you must go see the Judge who issued the suspension.

ELIGIBLE FOR DDP, BUT NOT FOR CONDITIONAL LICENSE

Some motorists are eligible for the DDP, but not for a conditional license because they:

- _ were convicted of homicide, assault, criminal negligence or criminally negligent homicide while driving;
- _ were in a fatal crash and convicted of an alcohol or drug offense;
- _ do not have a renewable NYS driver license;
- _ were mandated by the court to attend DDP, but were convicted of a prior alcohol/drug violation within the preceding five years from the current alcohol/drug violation.
- _ were convicted of another offense which carries a mandatory suspension or revocation, when convicted of the present alcohol or drug offense;
- _ had two or more other suspensions or revocations in the last 3 years;

- _ were convicted of reckless driving more than once in the last 3 years;
- _ have suspended/revoked licenses for moving violations other than the current DWI/DWAI;
- _ have driving records suggesting an unusual or immediate highway risk;
- _ are prohibited by probation conditions from having licenses;
- _ were convicted while driving a school bus, taxi, bus or livery with passengers;
- _ are ineligible for a conditional use license due to conviction of an alcohol violation subject to the penalties under V & T Section 1193-1(d) while operating a CMV (Commercial Motor Vehicle).

If license was not suspended pursuant to 510.3, your client may be eligible for a conditional license. They are NOT eligible if they have a prior within the past 5 years (they can only take the DDP once every five years, but you cannot “bank” the DDP).

If they are eligible, 30 days after arraignment they got to DMV, Driver Improvement window, pay \$75 and get their pre-conviction conditional license, which is good until sentence.

HARDSHIP LICENSE

- In Nassau County, the ADAs generally doesn’t consent
- Burden on defendant to show “extreme hardship”
- Must have independent witness or corroboration
- Violation of conditions is a crime
- Exact times

Extreme hardship shall mean the inability to obtain alternative means of travel to or from the licensee’s employment, or to or from necessary medical treatment for the licensee or member of their household, or if the licensee is a matriculating student enrolled in an accredited school or college and such travel is necessary to obtain a degree.

The hardship hearing must be held within 3 business days.

THERAPY AND OASAS certified providers

<http://dasis3.samhsa.gov> is the website that will provide you with OASAS certified providers in every state. In Nassau County, the court requires that every person be screened for treatment needs. Other counties, it varies by BAC level whether a screening is required.

Differences between 1192.2 and 1192.2a- what does aggravated really mean??

PLEA-BARGAINING

Plea bargaining varies by county. Nassau County will offer an impaired if the BAC is below a .13 and there are no aggravating factors (such as high speed, etc). There will be no offer if there is a prior impaired or DWI, regardless of how long ago it was. There is a plea policy on refusals, but they have softened up lately and analyze the cases on a case by case basis. You must see Laura Carroll if you need a supervisor conference.

The first time the case is on, you can adjourn it for VDF's (voluntary disclosure forms). This means the ADA will turn over the documents that they are required to by statute (you can also serve a demand for discovery).

The next time the case is on, the People will have their recommendation and offer. You can conference with the Judge for a commitment or put it over for a motion schedule. That is when you and your client must decide whether a plea or trial is in their best interests.

PLEA

* remember to ask for a 20 day stay at sentence

Plea to impaired: Generally if the People offer the impaired in Nassau, they will require community service through the EAC program, VIP program, DDP and fine and there will be a 90 day suspension of the license. Ignition interlock is NOT mandatory and I have never seen it done on an impaired, however the Judge does have the authority to mandate it. The Judge can issue a 20 day stay of the suspension. The pre-conviction conditional license is no longer valid.

Plea TTC with a conditional discharge- If the Judge gives a conditional discharge, there will generally be community service, and as long as it is non-aggravated, there will be a 6 month license suspension, fines, DDP. They must go down to the AIM to discuss ignition interlock.

Plea Probation/Jail- If the defendant is going to get probation, the court will order a pre-sentence report and the defendant must report to probation. If the defendant gets rearrested or fails to cooperate with probation, the judge is not bound by his commitment. If the judge cannot honor his commitment, he will give the defendant his plea back.

PROBATION

Consecutive to any jail sentence

Ignition interlock as a condition of probation

Permission of probation before you apply for any license (delay in Albany getting letter)

Out of county probation *important*

Conflict between probation and the statute

DDP post conviction conditional license
Do not get a 20 day stay if suspended for refusal because cannot stay that suspension.
If cannot afford interlock waiver form
Good cause orders if no car

September 2010: Leandra's Law, Mandatory Ignition Interlocks and New Sentencing Provisions in DWIs

Leandra's Law: DWI with a child passenger 15 years old or younger.
Effective date Friday, December 18, 2009

New section: VTL §1192-2a(b)
E felony;

Sanctions: are the same as for other DWI felonies in VTL 1193(1)(c) (except for existing mandatory ignition interlock for Aggravated DWIs, which applies)

Fine: \$1,000 - \$5,000

Jail: Same as Penal Law (PL) E felonies; up to 1 and 1/3 – 4 years.

Probation, Conditional Discharges (CD) and Jail/Probation split sentences are possible

No Unconditional Discharge.

Sentence of Probation or CD must include a fine. [VTL §1193(1)(e)]

Mandatory Ignition Interlock: All sentences for a conviction of either subsection of

VTL §1192(2-a) [Aggravated DWI, including Leandra's Law] that include a period of probation require an ignition interlock as a condition [VTL §1193(1)(b)]

Ignition Interlocks for any DWI offense currently require a probation sentence

[VTL §1198(1)(2)].

Effective August 15, 2010, interlocks can be a condition of a conditional

discharge [Newly amended VTL §1198].

Conditions of Probation or Discharge: Victim Impact Panels, Community Service

and Alcohol or Drug treatment are all possible [PL §65.10]

Alcohol "Screening" is required for all DWI defendants with a BAC under .15 or a

refusal. An Alcohol "Assessment" is required prior to sentencing for all BACs of

.15 or higher, or anyone determined in the screening to be abusing or dependent on alcohol [VTL 1198-a(2)(a)(b)(c)].

License Sanction: Upon conviction, one year revocation [VTL §1193(2)(b)(2)]

Pending Prosecution suspensions [VTL §1193(2)(e)(7)] and Refusal revocations [VTL §1194(2)(d)(1)] apply. Conditional licenses may be obtained pursuant to VTL §1196.

Elements:

Aggravated DWI; Child in Vehicle

- 1) Operation of a motor vehicle
- 2) On a public highway within the county
- 3) a)*With a BAC of .08 or higher [in violation of VTL §1192(2)]; OR
 - b) In an intoxicated condition [in violation of VTL §1192(3)]; OR
 - c) Impaired by drugs [in violation of VTL §1192(4)]; OR
 - d) Impaired by the combined influence of drugs or drug(s) and alcohol [in violation of VTL §1192 (4-a)]
- 4) And with a child passenger who is 15 years old or less.

*The statute does not specify Aggravated DWI with a BAC of .18 or more [in violation of VTL §1192(2-a)]. The legislature apparently believed there could not be an Aggravated DWI charge without a violation of VTL §1192(2). Both crimes should be charged when appropriate.

Miscellaneous:

Plea Restrictions: Both subdivisions of Aggravated DWI (including Leandra's

Law) prohibit a plea in satisfaction of the charge to a Driving While Impaired by

Alcohol. The plea must include Aggravated DWI or any misdemeanor DWI

unless the district attorney finds the evidence does not support the charge. The court must put the basis of any disposition outside these limitations on the record. [VTL §1192(10)(d)]

Simplified Traffic Informations/UTTs: The officer must make a “CIV” notation in the “Description of Violation” section when there is a charge of DWI and there is a “Child in Vehicle” (CIV) who is 15 years old or less. [VTL §1192(12)(a)]

Child Protective Services (CPS) Notification: Where the officer determines the driver is the parent, guardian, custodian or is otherwise legally responsible for the child, 15 years old or less, in the vehicle, the officer must notify CPS or other appropriate agency under article 6 of the Social Service Law. [VTL §1192(12)(b)]

Assaults and Homicides:

Vehicular Assault 1^o PL §120.04(6) [Class D, Non-violent felony]
New Subdivision:

- A person is guilty of first-degree Vehicular Assault when he or she commits Vehicular Assault in the Second Degree and commits such crime while operating a vehicle while a child who is 15 years old or less is a passenger in such motor vehicle and causes serious physical injury to such child.

Aggravated Vehicular Assault PL §120.04-a (6) [Class C, Non-violent felony]

New Subdivision:

- A person is guilty of Aggravated Vehicular Assault when he or she engages in reckless driving [VTL §1212], commits Vehicular Assault in the Second Degree and commits such crime while operating a motor vehicle while a child who is 15 years old or less is a passenger in such motor vehicle and causes serious physical injury to such child.

Vehicular Manslaughter in the First Degree PL §125.13(6)
[Class C, Non-violent felony]

New Subdivision

- A person is guilty of Vehicular Manslaughter in the First Degree when he or she commits the crime of Vehicular Manslaughter in the Second Degree and commits such crime while operating a motor vehicle while a child who is 15 years

old or less is a passenger in such motor vehicle and causes the death of such child.

Aggravated Vehicular Homicide PL §125.14(7) [Class B, Non-violent felony]

New Subdivision

- A person is guilty of Aggravated Vehicular Manslaughter in the First Degree when he or she engages in reckless driving [VTL §1212], commits the crime of Vehicular Manslaughter in the Second Degree, and commits such crime while operating a motor vehicle while a child who is 15 years old or less is a passenger in such motor vehicle and causes the death of such child.

Elements:

The existing rebuttable presumption that the defendant's manner of driving, that caused the death or serious physical injury, resulted from his or her alcohol or drug impairment applies to each of the new "Leandra's Law assault and homicide sections:

Existing Presumption:

"If it is established that the person operating such motor vehicle, caused such serious physical injury while unlawfully intoxicated or impaired by the use of alcohol or a drug, then there shall be a rebuttable presumption that, as a result of such intoxication or impairment by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, such person operated the motor vehicle, in a manner that caused such serious physical injury, as required by this section."

1^o Vehicular Crimes:

- 1) Operation of a motor vehicle
- 2) On a public highway within the county
- 3) a) With a BAC of .08 or higher [in violation of VTL §1192(2)]; OR
b) With a BAC of .18 or higher [in violation of VTL §1192(2-a)]; OR
c) In an intoxicated condition [in violation of VTL §1192(3)]; OR
d) Impaired by drugs [in violation of VTL §1192(4)]; OR
e) Impaired by the combined influence of drugs or drug(s) and alcohol [in violation of VTL §1192 (4-a)]
- 4) With a child passenger who is 15 years old or less

- 5) a) [Vehicular Assault 1°] And causes serious physical injury to such child passenger;
- b) [Vehicular Manslaughter 1°] And causes the death of such child passenger.

Aggravated Vehicular Crimes:

- 1) Operation of a motor vehicle
- 2) On a public highway within the county
- 3) a) With a BAC of .08 or higher [in violation of VTL §1192(2)]; OR
- b) With a BAC of .18 or higher [in violation of VTL §1192(2-a)]; OR
- c) In an intoxicated condition [in violation of VTL §1192(3)]; OR
- d) Impaired by drugs [in violation of VTL §1192(4)]; OR
- e) Impaired by the combined influence of drugs or drug(s) and alcohol [in violation of VTL §1192 (4-a)]
- 4) While engaged in reckless driving (to wit___)
- 5) With a child passenger who is 15 years old or less
- 6) a) [Aggravated Vehicular Assault] And causes serious physical injury to such child passenger;
- b) [Aggravated Vehicular Homicide] And causes the death of such child passenger.

Mandatory Ignition Interlocks: *Effective date August 15, 2010**

*Subject to “sunset” or statutory repeal on September 1, 2011 unless extended by the legislature. VTL §1198 has been extended many times over the years.

Mandatory. A conviction for any misdemeanor or felony DWI under VTL sections 1192(2),(2-a) or (3), or a conviction for any Penal Law charge that has a violation of those VTL §1192 sections as an essential element, requires a *mandatory* sentence: 1) to install an ignition interlock device on any car owned or operated by the defendant for at least 6 months;

2) prohibiting the defendant from operating any vehicle without an ignition interlock device [VTL 1198(9)(d)]; and 3) requiring DMV to note the interlock restriction on the defendant’s operating record* [VTL §1198(4)(b)]. There is no mandatory provision to install an interlock device on a DWAI but the court may make it a condition of a sentence of a conditional discharge in its discretion. [PL §65.10 (2)(k-1)].

(*DMV will now mark the physical license of anyone sentenced to an ignition interlock with a restriction code on the front of the license. The back of the license reflects that the restriction requires interlock use. The annotation is generally accomplished through the acquisition of a conditional license. If the driver does not obtain a new physical document, the computer record indicates the restriction.)

Monitoring. The Division of Probation or Correctional Alternatives has promulgated regulations [VTL §1193(1)(g)] at 9 NYCRR 358:

- 1) governing the monitoring of compliance
- 2) providing standards for monitoring by departments of probation
- 3) providing alternatives to probation monitoring that counties may adopt.
- 4) providing a system of payment plans or waivers for indigent defendants.

[VTL §1198(5)(a)]

Cost. The defendant is required to pay for the ignition interlock device (installation, monthly interlock provider fee and removal fee). If the court determines the defendant is “financially unable” to pay for the device, a payment plan will be devised or the fee “waived” in accordance with the Division of Probation or Correctional Alternatives regulations or “such other agreement as may be entered into for provision of the device.” [VTL §1198(5)(a)] DPCA has created a “Financial Disclosure Form” to assist the court in determining whether a defendant can “afford” an interlock. It is not the same analysis used in determining a defendant’s eligibility for a constitutional right to legal representation.

Criminal Charges for Interlock Violations:

- VTL §1198(7)(a) [Misdemeanor]: Any requirement of this article or the penal law that a person operate a vehicle only if it is equipped with an ignition interlock device shall apply to every motor vehicle operated by that person including, but not limited to, vehicles that are leased, rented or loaned.
- VTL §1198(7)(b) [Misdemeanor]: No person shall knowingly rent, lease, or lend a motor vehicle to a person known to have had his or her driving privilege restricted to vehicles equipped with an ignition interlock device unless the vehicle is so equipped. Any person whose driving privilege is so restricted shall notify any other person who rents, leases, or loans a

motor vehicle to him or her of such driving restriction.

- VTL §1198(9)(a) [Class A Misdemeanor]: No person whose driving privilege is restricted to operate a motor vehicle only with an ignition interlock device pursuant to the Vehicle and Traffic Law or the Penal Law shall request, solicit, or allow any other person to blow into an ignition interlock device , or to start a motor vehicle equipped with the device, for the purpose of providing the person so restricted with an operable motor vehicle.
- VTL §1198(9)(b) [Class A Misdemeanor]: No person shall blow into an ignition interlock device or start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to a person whose driving privilege is so restricted.
- VTL §1198(9)(c) [Class A Misdemeanor]: No person shall tamper with or circumvent an otherwise operable ignition interlock device.
- VTL §1198(9)(d) [Class A Misdemeanor]: No person subject to a court ordered ignition interlock device shall operate a motor vehicle without such a device.

Other Sanctions:

- Failure to provide proof of compliance with the ignition interlock requirement may result in the revocation, modification, or termination of the defendant's sentence of probation or conditional discharge. The defendant may be re-sentenced as provided by law. [VTL §1198(4)(a)]
- Failure to install or maintain an ignition interlock may result in the revocation of the defendant's post-revocation conditional license. [VTL §1198(3)(c)]

*Note: There are several references in the statutes that nothing in these sections permits the court to authorize a defendant's operation of a motor vehicle if he or she is not otherwise eligible.

Sentencing Provisions: *Effective date August 15, 2010*

Application: Applies to defendants who have committed on or after November 18, 2009 and sentenced on or after August 15, 2010.

Non-prison sentences: When a defendant is convicted of a misdemeanor or felony DWI under VTL §1192(2),(2-a) or (3)* and receives any sentence of incarceration including upstate prison time and/or local jail time up to one year, the court **must** also sentence the defendant to a period of probation or conditional discharge [VTL 1193(1)(c)] to run **consecutively** to any sentence of incarceration. [PL §60.21 – New section]

New PL §60.21 creates a specific exception to existing PL §60.01(2)(d) for DWI cases. Currently under PL §60.01(2)(d) when a defendant is sentenced to a period of probation, the statute prevents an additional jail sentence in excess of 60 days on any misdemeanor and 6 months on any felony. Those restrictions no longer apply to DWIs as of August 15, 2010. This creates the possibility of a one year jail sentence with a consecutive period of 3 years probation on misdemeanors or 5 years probation on felonies.

*PL §60.21 does not specify that the DWI-related Penal Law felonies of Vehicular Assault, Vehicular Manslaughter, or Aggravated Vehicular Assault are subject to the consecutive probation or CD provision. Therefore, if a defendant pleads guilty to one of those felonies the prosecution should require a separate plea to one of the DWI sections to obtain consecutive probation or a CD for the purpose of monitoring the mandatory interlock **whether or not the defendant is receiving an upstate prison sentence.**

Prison sentences: Where a defendant is sentenced to upstate prison on any DWI-related felony, including Vehicular Assault, Vehicular Manslaughter, Aggravated Vehicular Assault or Homicide, and the defendant is released on parole or conditional release, new subdivision 15-a of Section 259-c of the Executive Law requires the defendant to install and maintain an ignition interlock device during the term of parole or conditional release. The new section also states the parole board is not empowered to allow a defendant to drive who is not otherwise eligible.

Authorized Dispositions: New Penal Law section 60.36 specifies that where a court is imposing a mandatory ignition interlock device as a part of its sentence, the court may still impose any other authorized penalty

The Drinking Driver Program

Alcohol & Drug Rehabilitation Program

NYSDMV

If you are convicted of an alcohol or drug related driving violation, your license or privilege to drive in New York State will be revoked or suspended. However, you may be eligible for a conditional license or a conditional driving privilege if you participate in New York State's Drinking Driver Program (DDP).

If you qualify for a conditional license or conditional driving privilege, you will be allowed to legally drive within certain limitations. A conditional license is not valid for driving a vehicle that requires the operator to hold a commercial (CDL) driver license.

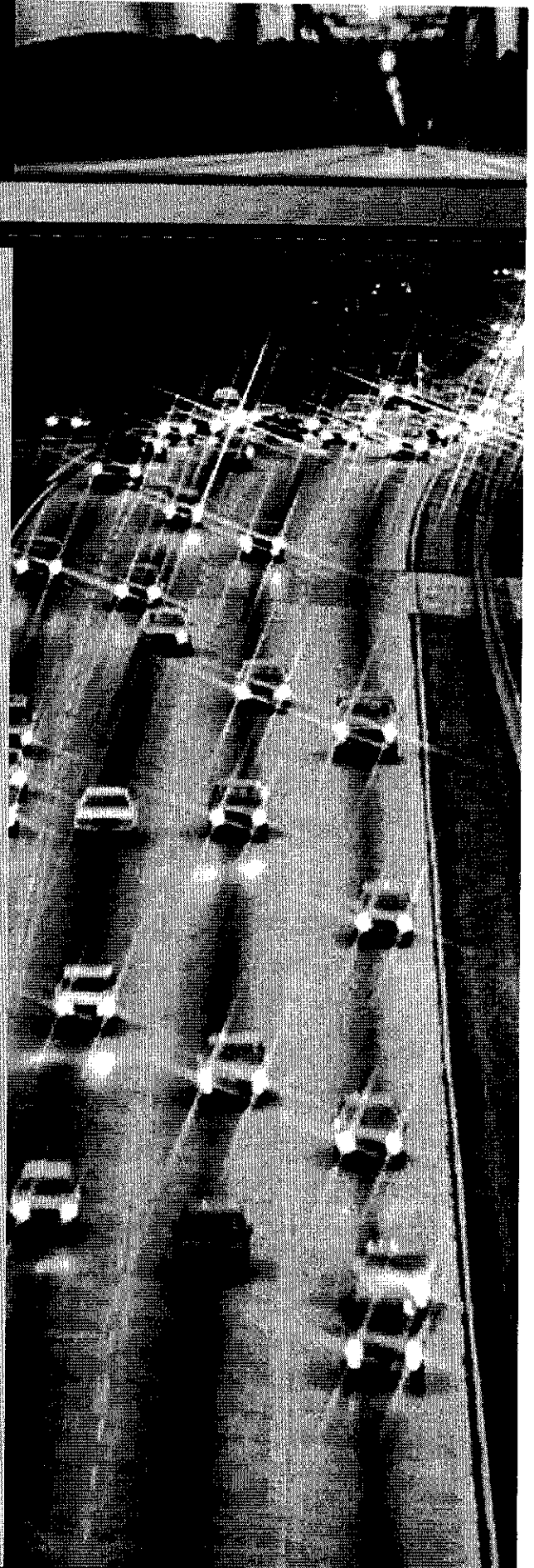
To receive a conditional license or conditional driving privilege, you must participate in the DDP.

Your "Order of Suspension or Revocation" (MV110.1L) from the Department of Motor Vehicles (DMV) will indicate a state or county motor vehicle office where you may enroll in the Drinking Driver Program.

To enroll, you must present your driver license or other proof of identity with signature. A list of the current acceptable proofs of identity (form "MV-44.1") is available from the DMV Internet Office, by request from a DMV Call Center, and at any motor vehicle office. You also must pay the program fees described in this publication. If you are placed on probation because of this conviction, you also must bring written permission from the sentencing court, or your probation officer, that allows you to apply for a conditional license.

If you are licensed in another state or province of Canada and you want to restore your New York State driving privilege, see section "Out-Of-State Issues - DDP Entry."

Before you decide to not participate in the Drinking Driver Program, please read "If You Do Not Participate."



ABOUT THE PROGRAM

The Drinking Driver Program is part of New York State's effort to reduce personal and property losses caused by drivers under the influence of alcohol and/or drugs.

The DDP helps the participants examine the arrest experience and the reason for their arrest. It also helps them learn to make appropriate driving decisions for the future. During the DDP introductory session, participants are asked to consider the reasons and goals of the program, and its requirements for completion. Under the guidance of the director and staff, participants discuss the social, medical, legal, and driver safety problems caused by alcohol and other drug abuse. The program includes classroom education, screening, and if warranted evaluation and treatment.

CLASSROOM PHASE

As a DDP participant, you must attend all seven weekly classroom sessions. Each session takes 2 to 3 hours, for 16 hours total. When you satisfactorily complete the classroom sessions, your involvement in the DDP will end, UNLESS the program refers you for formal evaluation, and any resulting treatment.

SCREENING AND REFERRAL

Some DDP participants are referred from the classroom phase for formal substance abuse evaluation.

Referral can result from:

- the results of a written self-inventory.
- two or more alcohol or drug-related driving convictions within 10 years.
- arrest for an alcohol or drug-related driving violation while enrolled in the DDP.
- attending class under the influence of alcohol or drugs.
- a request by the student for help with a substance abuse problem, or an admission that the student is currently in treatment.

If you are referred for evaluation, you may choose a provider from a list supplied by the DDP. If you are not satisfied with the results of the evaluation, you may contact the DDP director and request a second evaluation. However, you must accept the findings of the second evaluation.

After evaluation, you may be required to complete a formal substance abuse treatment program. If you fail to complete required evaluation or treatment, you will be dropped from the DDP and your conditional license will be revoked.

COMPLETION

You will receive a "Notice of Completion" (MV-2026) when you have completed all the requirements of the Drinking Driver Program. A copy of your completion notice will be sent to the DMV. Depending on your license status and driving record, your license will be restored or you will be eligible to apply for a new license. You may not be allowed to apply right away if:

- your conditional license is under revocation.
- you were under 21 when the alcohol or drug-related driving violation occurred.
- you refused an alcohol or drug test on the date of the violation.
- you committed the alcohol or drug-related violation while operating a commercial motor vehicle.

DROPS, RE-SENTENCING, RE-ENTRY

You will be dropped from the DDP and lose your conditional license if you:

- do not attend class, any required evaluation, or treatment; or,
- do not otherwise satisfactorily participate in the program; or,
- do not pay the program fees.

If you are dropped from the DDP, you may not re-enter without a written letter of consent from the DDP director. Bring the letter to any state or county motor vehicle office for additional information about re-entering. A re-entry fee of \$50 is required, payable to the DDP. There are restrictions on the number of times that a participant may re-enter the program and keep a conditional license.

At the time of sentencing, the court may issue you a conditional discharge (CD) that requires DDP completion. The DMV will notify the court if you do not enroll in the program, or are dropped from it. The court then may call you in for re-sentencing.

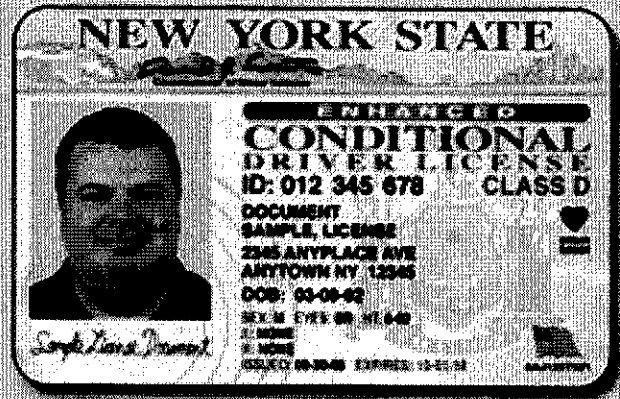
PROGRAM FEES

When you enroll in the Drinking Driver Program, you must pay the Department of Motor Vehicles (DMV) a nonrefundable fee of \$75. Other fees also may be required in certain cases. Checks or money orders must be made payable to the "Commissioner of Motor Vehicles."

After enrollment, you also must pay a fee directly to the agency that will conduct your DDP classes. The maximum DDP enrollment fee is \$225, payable to the program you attend. Motor vehicle staff will tell you the exact fee and who to pay. Payment is expected when you attend the first class. There will be additional fees if you transfer to another DDP or apply to re-enter a program you have been dropped from.

During the DDP course, you may be referred to an OASAS approved health care provider for formal evaluation and, if necessary, any resulting treatment. If formal evaluation or treatment is needed, you will have to pay additional fees to the agency that provides those services.

THE CONDITIONAL LICENSE



NOTE: The limitations for using a conditional license, and the reasons for its revocation, also apply to conditional driving privileges issued to participants licensed in other states.

WHERE AND WHEN YOU MAY DRIVE

A conditional license is not valid for driving a taxicab or any motor vehicle that requires the driver to have a Commercial Driver License (CDL).

If you receive a conditional license, it is valid to drive only:

- to and from work, and during work if driving is part of your job
- to and from a class at an accredited school or college.
- to transport your child to and from a child care facility or school when necessary to maintain your employment.
- to and from DDP classes and any required evaluation or treatment.
- to and from a state or county motor vehicle office for business related to your conditional license.
- to and from court-ordered probation activities.
- to and from medical examinations or treatment for you or a member of your family, as certified in writing by a physician.

If your job or school changes location, you must immediately notify the DMV. To do this, a "Conditional License-Privilege Attachment" (MV-2020, available at most motor vehicle offices), and submit it to a state or county motor vehicle office.

CONDITIONAL LICENSE REVOCATION

Your conditional license will be revoked if you are convicted of violating any condition listed in "Where And When You May Drive" or of any moving violation, including those concerning cell phones, seat belts, or child safety seats or systems.

After the conditional license is revoked, you may continue to attend the Drinking Driver Program, but you must not drive under any circumstances. If you are over 21 years old and complete the program without additional convictions, your full license will be restored at the end of the program. If you are under 21 and your conditional license is revoked, you must serve a one-year revocation even if you complete the DDP.

Your conditional license also will be revoked if you are convicted or found guilty of any additional alcohol or drug-related violation, or any other violation or incident that usually results in license revocation. If your conditional license is revoked you may continue to participate in the DDP without driving, but you will not be re-licensed immediately after you complete the program. The DMV will consider your re-licensing only after you have completed the DDP and have served any required revocation period. You must turn in the revoked conditional license to a state or county motor vehicle office to receive credit toward the revocation period.

If you are dropped from the Drinking Driver Program, your conditional license will be revoked, and your original license suspension or revocation will be reinstated for its full length.

You must turn in your conditional license immediately upon receiving a revocation order. If you wait, your return to full license status may be delayed.

RE-LICENSING AFTER DDP

You may be eligible for full non-CDL (non-commercial driver license) driving privileges after you complete the DDP, all recommended formal evaluations, and any resulting treatments. Your CDL (Commercial Driver License) or commercial driving privileges will remain suspended or revoked until the end of the original suspension or revocation. After the end of the CDL suspension or revocation, you must go to a motor vehicle office to apply for restoration of your CDL or commercial driving privileges.

If your original license had been suspended, you must take these steps:

- complete the DDP;
- go to any state or county motor vehicle office to have your license restored;
- pay a \$25 suspension termination fee; or, if your license had been suspended following a violation of the "Zero Tolerance Law," you must pay a \$100 suspension termination fee and a \$125 civil penalty;
- and, pay any required license fees, such as for license renewal.

If your original license had been revoked, you must take these steps:

- complete the DDP;
- bring your DDP "Notice of Completion" (MV-2026) and conditional license to the state or county motor vehicle office that issued the license;
- meet all DMV requirements and criteria for re-licensing;
- and, pay any required license fees such as for license renewal, or for any required skills tests for Commercial Driver Licenses.

Note: Re-licensing after revocation is not automatic. DMV must review your application.

OUT-OF-STATE DDP PARTICIPATION

STATE OF LICENSE	STATE OF CONVICTION	DESIRED DDP LOCATION	WHAT TO DO
NY	NY	Out of State	Contact the Driver Improvement Adjudication Unit (DIAU) for information about equivalent out-of-state programs. The out-of-state program need not be identical in length or number of sessions as the DDP. After you enroll in an approved program, bring or mail proof to a NY state or county motor vehicle office. If you are eligible, that office will issue you a conditional license. If you qualify, your license must remain in conditional status for at least 60 days.
NY	Out of State	NY	If you have not received an order of suspension or revocation, it is possible that the DMV has not received proof of your out-of-state conviction. Contact the DIAU for information about entering your out-of-state conviction onto the DMV's record. When it has been entered, you will be mailed a suspension or revocation order, and information about the DDP and conditional license options.
Out of State	NY	NY	After your alcohol/drug conviction is on the DMV record and eligibility has been determined, go to a NY state or county motor vehicle office and enroll in the DDP. At enrollment, you must present a driving record (abstract) from your home state before the DMV can issue a conditional driving privilege.
Out of State	Out of State	NY	This is called a "courtesy" enrollment in the DDP, which may satisfy another state's requirements. Check with the other state to verify whether they will accept the New York State DDP. Bring proof of your out-of-state conviction to a NY state or county motor vehicle office. No driving abstract is needed, as a New York license privilege will not be issued.

The DMV cannot consider your application for re-licensing until the end of the revocation period if you originally had refused a request for an alcohol or drug test, had committed the alcohol or drug-related violation while driving a commercial motor vehicle, or were under 21 at the time of your arrest. However, if you complete the DDP and have a conditional license, you may continue driving in conditional status during the remainder of the revocation period.

OUT-OF-STATE ISSUES – DDP ENTRY

Most DDP participants are New York State licensed drivers convicted of alcohol or drug-related driving offenses that occurred in New York State. To participate in the DDP, those drivers should follow the instructions previously described in this publication. The situation of other drivers may fit the “out-of-state” circumstances described in “Out-of-State – DDP Participation.” Proof of alcohol or drug-related conviction is required. For more information, contact the DMV Driver Improvement Adjudication Unit (DIAU).

IF YOU DO NOT PARTICIPATE

If you are eligible to participate in the Drinking Driver Program, even if you choose not to participate, you will not be eligible again for the program or a conditional license for the next five years. Under some plea-bargain agreements, the court may order you to participate even if you already had attended the DDP within the previous five years. However, you will not be eligible for a conditional license.

Note the effective date on your “Order of Suspension or Revocation” (MV-110.1L). Unless you already have turned in your license to the court, you must turn it in to a DMV office or a county motor vehicle bureau by this date.

If you do not participate in the DDP, your license suspension or revocation officially begins at your hearing or sentencing in court, unless the court gives you a “Continuation of Driving Privileges” (MV-1192). Your credit for serving the suspension or revocation begins on the effective date of the order. If you receive a “Continuation,”

your suspension or revocation will begin 20 days after sentencing. You must then turn in your license at a motor vehicle office, unless it has already been taken by the court. If your license is missing, contact a state or county motor vehicle office for guidance about what to do.



It is a criminal offense to drive a motor vehicle while your license is suspended or revoked. If you are convicted of driving under suspension or revocation, you will be fined at least \$500, and you will be sentenced to jail or probation. In addition, the police may impound the vehicle you were driving when arrested.

RE-LICENSING FOR NON-PARTICIPANTS

New York State Licensed Drivers: If your driver license is suspended, it will be restored after the end of the suspension period and payment of the suspension termination fee. You may pay the fee at, or mail it to, any state or county motor vehicle office. You may also mail it to the DMV Driver Improvement Adjudication Unit (DIAU).

If your driver license is revoked, you must apply directly to the DIAU for a new license, and pay a non-refundable re-application fee of \$50, (\$100 for revocations after 7/06/2009), and any other license fees. Your application cannot be approved before the minimum revocation period is served, but the DMV will accept it for review up to 45 days before the revocation ends. If you are on probation, you must present written permission (also called, "probation clearance") from the sentencing court or your probation officer.

If your CDL and non-CDL driving privileges are both revoked, you may apply to the DIAU at the end of the non-CDL sanction for restoration of your full non-CDL privileges. Then, at the end of the CDL revocation, you may apply at any motor vehicle office for the restoration of your CDL privileges.

If your driving record contains two or more alcohol or drug-related incidents in 10 years, the DMV requires written evidence, before your application will be considered, that substance abuse treatment is not required or has been completed. See "Information About Evaluation and Treatment Providers".

If your license is revoked for a second "Zero Tolerance Law" violation (driving after consuming alcohol, under age 21), the reapplication fee is \$100, and you must pay a \$125 civil penalty. You must also pay a civil penalty fee of \$300 (\$750, second offense) if you had refused to submit to a chemical test at the time of arrest.

You must submit a completed "Application For Driver License" (MV-44), available from the DMV Internet Office, a DMV Call Center, or any motor vehicle office.

Payment must be by check or money order only, payable to the "Commissioner of Motor Vehicles." Mail your application and payment to:

**Driver Improvement Adjudication Unit
Department of Motor Vehicles
6 Empire State Plaza
Albany, NY 12228
Phone: (518) 474-0774**

The DMV will review your driving record and notify you by mail whether your application is approved or denied. If approved, you must bring it to a state or county motor vehicle office for processing. You may be required to pass qualifying tests. After your license is issued, you must serve a six-month probationary period.

For Drivers Licensed Outside New York State:

After you complete your period of suspension or revocation, you may request the restoration of your New York State driving privilege. Send a letter requesting restoration to the DMV Driver Improvement Adjudication Unit (DIAU). Your letter should include your full name and date of birth. Also enclose a check or money order of \$25 for the restoration fee, payable to the "Commissioner of Motor Vehicles." You must not resume driving in New York State until the DMV notifies you, in writing, that your driving privilege has been restored.

DRIVER RESPONSIBILITY ASSESSMENTS

In addition to paying any fines, fees, penalties and surcharges authorized by law, you must pay a "Driver Responsibility Assessment" for certain violations that result in a conviction or administrative finding. Your learner permit, driver license, or driving privileges will be suspended if you do not make these payments. If you are convicted of Driving While Intoxicated (DWI), Driving While Ability Impaired (DWAI) or Driving While Ability Impaired by Drugs, or if you are found to have refused to submit to a chemical test, you will be required to pay a driver responsibility assessment of \$250 each year for the next three years.

Participation in the Drinking Driver Program (DDP) will not prevent, reduce, or delay any fines, fees, or penalties imposed under the driver responsibility assessment program. The most recent information about the "Driver Responsibility Assessment" program is available from the DMV Internet Office.

INFORMATION ABOUT EVALUATION AND TREATMENT PROVIDERS

A driving record with two or more alcohol or drug-related incidents occurring within a ten-year period establishes a history of alcohol or drug abuse as defined in Part 136.1(b)(3) of the Regulations of the Commissioner of Motor Vehicles. If your license, learner permit, or privilege to drive in New York State has been revoked and your driving record contains a history of such alcohol or drug abuse, at the end of your revocation period, an application for a new driver license, learner permit or clearance of your NYS driving privileges cannot be approved until you show proof that you have completed alcohol or drug rehabilitation. Acceptable proof of alcohol or drug rehabilitation must be submitted on DMV form DS-449 "Alcohol and Drug Abuse Rehabilitation Program Summary"; and, include evidence that you have had an alcohol or drug evaluation within one year from the date you reapply, and that: 1) treatment was not recommended; or 2) that you have successfully completed all stages of an alcohol or drug treatment program, and that no further treatment is necessary.

The letter or Order of Suspension or Revocation you received from DMV regarding your alcohol/drug conviction provides information about your eligibility to participate in the New York State Drinking Driver Program (DDP). Successful completion of the DDP may satisfy the rehabilitation requirement described above. However, if you choose not to participate in DDP, or if you are not eligible to participate in DDP, you can find acceptable evaluation and treatment providers within and outside of NYS by accessing the NY State Office of Alcoholism and Substance Abuse Services (OASAS) website at [DWI Screening and Assessment Information](#).

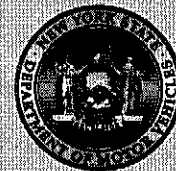
If you choose an alcohol or drug evaluation/treatment provider, the provider must appear on the listing. A provider will not be accepted unless they have been approved by OASAS. To get on this approval list the provider must contact OASAS at 1-800-482-9564 for instructions.

If the provider is found on this site, and does not have the DMV form DS-449 "Alcohol and Drug Abuse Rehabilitation Program Summary"; they may contact Driver Improvement Bureau, Receiving and Control Unit, Room 220, 6 Empire State Plaza, Albany, NY 12228, fax: 1-518-402-2991, to obtain this form. Any Federal Department of the Interior or Department of the Secretary program, conducted on military bases would be deemed acceptable. If you do not have access to the Internet and would like a copy of the acceptable providers mailed to you, please call 1-800-482-9564.

Evidence of completing rehabilitation from providers who are not on the website or provider listing will be accepted or rejected by this department after a review of the providers qualifications by OASAS.

Please take this notice to the agency conducting your evaluation.

NOTE: Participation in ONLY a Detoxification Program or in an Alcoholics Anonymous or Narcotics Anonymous Program will NOT be accepted as evidence of rehabilitation.



NEW YORK STATE DEPARTMENT
OF MOTOR VEHICLES
Andrew M. Cuomo, Governor

SAMPLE

NASSAU COUNTY PROBATION DEPARTMENT
CRIMINAL DIVISION

ADDITIONAL CONDITIONS OF PROBATION
PERTAINING TO ALCOHOL

NAME: _____ DOCKET NO.: _____

Your probation is subject to the following additional conditions:

1. Abstain from the use of intoxicating beverages.
2. Do not frequent places where alcoholic beverages are consumed without permission of the Probation Officer.
3. Submit to any recognized tests that are available to determine whether you have been consuming alcohol , including but not limited to a continuous alcohol monitoring device.
4. Do not drive a motor vehicle or possess or apply for a driver's license or maintain the privilege to drive, without the permission of the Court or the Probation Department.
5. An Ignition Interlock device will be installed and maintained in any vehicle owned or operated by you.
6. Other: _____

Upon review of the defendant's Financial Disclosure Form filed with the court, the court has determined and ORDERED that:

- the defendant is NOT able to afford the usual fees/charges associated with the installation and servicing of an Ignition Interlock Device. All such fees/charges are hereby waived; OR
- the defendant is ordered to enter into a specific payment plan with the Ignition Interlock Device vendor, and such written plan/agreement shall be provided to the above-referenced monitoring entity; OR
- the defendant is able to afford the immediate fees/charges associated with the installation and servicing of an Ignition Interlock Device(s) and shall enter into a written agreement to that effect with the Ignition Interlock Device Vendor.

DATED

this _____ day of _____, 20 _____

Judge

I have read or have had read to me and understand the above additional conditions of probation. I agree to abide by them. I have been furnished with a copy of them.

DATED

this _____ day of _____, 20 _____

Probationer

WITNESS:

Probation Officer / Court Clerk

SAMPLE

NASSAU COUNTY PROBATION DEPARTMENT
Alcohol Interlock Monitoring/AIM PROGRAM
99 MAIN STREET, LOWER LEVEL ROOM 41
HEMPSTEAD, NY 11550
Phone: (516)572-2448/2449 Fax: (516)572-2446

ATTESTATION / GOOD CAUSE ORDER

DEFENDANT NAME: _____

DOCKET # _____

NEW YORK STATE MOTORIST ID # _____

By signing the below you are attesting to the following:

- 1) I do not currently own or operate a motor vehicle..
- 2) I understand that I am required to notify the AIM Program within three business days if I become the owner of a motor vehicle or intend to drive a motor vehicle during the period of interlock restriction.
- 3) I understand this attestation will be filed with the sentencing court and if it contains any knowingly false statements, I can be prosecuted for the Class A Misdemeanor of Offering a False Instrument for Filing in the Second Degree pursuant to Penal Law section 175.30.
- 4) I authorize the Nassau County Probation Department to access my motor vehicle record to determine whether I own a motor vehicle or have one registered in my name.

Defendant signature

Date

GOOD CAUSE ORDER:

Based upon the forgoing sworn statement by the defendant that he/she does not currently own or operate a motor vehicle, the Court finds, at this time, that good cause exists for this defendant not to provide proof of compliance pursuant to Vehicle and Traffic Law section 1198(4).

Judge of the District Court Nassau County

Date