

## 2010 NEW YORK DWI LAW CHANGES

### I. The Child Passenger Protection Act - Leandra's Law

On November 18, 2009, Governor Patterson signed into law some of the toughest penalties in the nation in response to the tragedies that have taken the lives of children who died while passengers in a vehicle driven by an intoxicated person on New York roadways. The consequences of driving a motor vehicle containing a child passenger when the driver is intoxicated or impaired by drugs are severe and apply even to first time offenders.

- First time offenders arrested for Driving While Intoxicated ("DWI") (.08 Blood Alcohol Content (BAC) or more) or Driving While Ability Impaired by Drugs (DWAI) **while a child of younger than 16 years old is in the vehicle** may be charged with a class E felony punishable by up to 4 years in State prison.
- Individuals charged with driving with a blood alcohol level of .08 or greater and with a child under the age of 16 in the vehicle would automatically have their license suspended pending prosecution.
- People who drive while intoxicated or impaired by drugs and **cause the death of a child younger than 16** in the car may be charged with a Class B felony, punishable by up to 25 years in State prison.
- People who drive while intoxicated or impaired by drugs and **cause serious physical injury to a child** in the vehicle may be charged with a Class C felony, punishable by up to 15 years in State prison.
- The **parent, guardian, custodian or otherwise legally responsible person** for a child who is charged with DWAI alcohol or DWAI drugs while that child is a passenger in the car would be **reported to the Statewide Central Register of Child Abuse** and Maltreatment by the arresting agency.
- This law became effective on December 18, 2009.

## **II. Mandatory Ignition Interlock Device**

Leandra's law also changed the sentencing provisions for motorists convicted of misdemeanor or felony DWI.

In addition to imposing fines and mandatory license suspensions or revocations as previously provided by law, Courts must order all drivers convicted of misdemeanor or felony DWI to install and maintain an ignition interlock on any vehicle owned and operated by such driver for at least 6 months.

The interlock device requirement is in addition to any term of imprisonment.

The Department of Probation and Correctional Alternatives will issue regulations that will provide counties with different options for supervising the use of interlocks, so as to ensure that they can determine the most appropriate mechanism for their needs.

**The ignition interlock device provisions will take effect on August 10, 2010**

### III. Civil Forfeiture of Vehicles in Westchester County

Westchester County has enacted a tough new law to crack down on motorists who operate their motor vehicles while under the influence of alcohol or drugs or who engage in speed contests. The County cited 2007 statistics revealing there were nearly 9500 alcohol related motor vehicle accidents in New York resulting in 373 deaths and 7175 persons injured.

Here some of the important provisions of the Forfeiture Law (Local Law §699)

- The Westchester County Attorney may commence a civil action for forfeiture of a vehicle to the County of Westchester **Effective on December 10, 2010**
- The forfeiture law applies to vehicles used by a person arrested for and convicted of a violation of any subdivision of the drunk driving statute (Section 1192 of the Vehicle & Traffic Law) or
- Vehicles used in violation of the Drag Racing Statute (Section 1182 of the Vehicle & Traffic Law) and
- The forfeiture law applies to vehicles driven by people who are convicted of DWAI (Driving While Ability Impaired By Alcohol) - a non-criminal offense [VTL 1192(1)] and to people convicted of the crime of DWAI- Drugs [VTL 1192(4)].
- The arrest must be made by a Westchester County Police Officer.
- Forfeiture Proceedings may be commenced by the Westchester County Attorney's Office within 60 days following a conviction.
- The County must notify the vehicle owner by certified mail, return receipt requested that the vehicle may be subject to a forfeiture proceeding
- The vehicle owner must notify the County of the owner's intention to transfer ownership or possession of the vehicle subject to forfeiture at least fifteen days before the transfer
- Forfeiture under this law is a civil proceeding. It is totally separate from the criminal prosecution of the motorist. If the driver and owner are the same person, they must enter into a separate agreement with the attorney defending against the criminal charges.

## Forfeiture Law Innocent Owner Affirmative Defense

Where the owner and operator of the vehicle subject to civil forfeiture are not one in the same, an affirmative defense may be raised by the owner in the forfeiture proceeding. The **owner alone** may establish that he or she:

- Did not have actual or constructive notice that the vehicle would be used in violation of the drunk driving or speed contest laws or
- Took reasonable precautions to prevent use of the vehicle by the person who was later arrested.
- The person wishing to assert an innocent owner defense may not be able to retain the same attorney who represents the driver in the criminal proceedings as there may be a conflict of interest precluding the attorney from doing so. This issue must be addressed by both the owner and the criminal defense attorney.

## Hardship Relief

The vehicle owner may apply to the court for hardship relief if the court determines that the vehicle is to be forfeited. The application must be made on notice to the County and establish that:

- Loss of the vehicle would cause a substantial and unwarranted hardship because
- The owner has no reasonable access to public transportation and to the use of another vehicle **and**
- lacks financial resources to purchase or lease another vehicle **and** the vehicle is a
- “Necessary incident to his or her”
- Employment, Business, Trade, Occupation, or Profession **or for**
- Travel to and from School, or to obtain
- Medical treatment for the owner or a member of the owner’s household or
- Travel to and From a necessary medical examination.

The Court may grant hardship relief if these factors are established, but may set conditions including requiring the installation of **an ignition interlock device**

## What Happens to My Vehicle if a Judge Rules in Favor of the County?

The Westchester County Department of Public Safety may take any of the following steps should it prevail at a forfeiture proceeding:

- Retain the vehicle for its own use
- Transfer it to another agency within the county for official use
- Transfer it to a county funded agency or organization for use by the organization
- Sell it at public auction by public notice of at least five days

### **What if my Vehicle is Leased?**

The new law provides that a leasing company may still exercise its rights to recover the vehicle set forth in the contract or under applicable law.

### **What if there is lien on My Car?**

The innocent owner defense applies to lien holders. The interest of a lien holder shall not be subject to forfeiture, though it will not entitle the lien holder to more than the outstanding balance of the lien.