

**COMMITTEE ON LEGISLATION
Meeting Jointly With
COMMITTEE ON PUBLIC SAFETY
MINUTES MAY 4, 2009**

LEGISLATION MEMBERS IN ATTENDANCE:	Chairmen: Burton, Pinto; Legislators: Nonna, Rogowsky, Abinanti, Bronz, Myers, Jenkins and Harckham
ALSO IN ATTENDANCE:	County Executive: A. Neuman, B. Randolph, K. Pasquale County Attorney: E. Cipollo; J. Anin, M. Gleeson Board of Legislators Staff: R. Pezzullo; J. Sold, T. Martin, Probation Department R. Pozzi, L. Conte, J. Levin, L. Snyder, E. Shields Others Present: J. Pappalardo, Jr., Esq., Dr. R. Marcus, G. McKinstry, C. Zelicof, K. Tenenbaum

The Committees on Legislation and Public Safety, each meeting with a quorum present, were called to order by Chairman Burton of the Legislation Committee and Chairman Pinto of the Public Safety Committee at 1:34 p.m.

DWI VEHICLE FORFEITURE LAW

The committees received comments from (a) representatives of the Probation Department, including Commissioner Rocco Pozzi, (b) a member of the defense bar, Mr. John Pappalardo, and (c) Dr. Robert Marcus, Chief of Emergency Medicine of Northern Westchester Hospital with respect to the proposed DWI Vehicle Forfeiture Law.

Mr. Pozzi explained that the Probation Department currently actively supervises from 1400-1700 persons for DWI offenses. He further stated that 84% of convictions for DWI result in some form of probation, constituting approximately 22% of all probationers. There is a nationally recognized DWI program in Westchester, which has been recognized by NTSI- the only probation department that has received an award. A recent change in the law has made more people eligible for probation and the number of persons arrested for DWI has also increased. There are

more misdemeanors than felonies; the Department of Probation will provide a breakdown to the committee.

It was represented that the policies of the Probation Department are more stringent than those of the state DMV. If there have been injuries or death as a result of a DWI, it is likely that the period of revocation will be coextensive with the entire period of probation. The committee noted the contrast between the revocation of the license versus the goal of the proposed legislation, which is to remove access to the vehicle entirely.

The Probation Department described the typical conditions of probation. For misdemeanors, the license is revoked and the probationer must complete treatment and demonstrate a period of sobriety before they may drive again. Other conditions include: report to probation officers, home visits, prohibitions on moving or leaving the jurisdiction without notice, prohibitions against consumption of or possession of alcohol, completion of treatment, limitations on where/when they may drive (if at all), installation of an interlock device. The Probation Department will provide a list of conditions to the committee.

A new state statute will go into effect in April 2010 that will expand the use of interlock devices, which are only used if the probationer is eligible to drive. Interlock devices generally cost \$90 a month for monitoring. There is supposed to be a pool of money for the indigent. There is a law against facilitating unlicensed operation if someone allows a probationer to use their car to avoid the interlock device. The Probation Department will provide the committee with a copy of the new law.

The committee asked how frequently the Probation Department sees recidivism. The first arrest usually results in a conditional discharge and fine. The Probation Department agreed to provide the committee with further statistics about arrests, convictions and pleadings. The Probation Department will also provide further information about the budget allocable to DWI probation (officers assigned); however they may not have information on the number of first time offenders who have received conditional discharge for DWAI.

There was some discussion as to whether the proposed vehicle seizure law would be a further disincentive to drunk driving. Some members of the Probation Department thought that where a non-offending family member was involved, there could be more pressure on the alcoholic member in order to avoid losing the car. It was acknowledged that hardship is a tough problem although many people have had to use public transportation or taxis to manage without their cars.

The Probation Department representatives thought the legislation should have some further language that addressed the role of probation in the process. They thought it would be helpful that if an offender were on probation and was caught driving the car again, they would lose the car, even if they had a hardship defense originally. However, they would prefer to have the forfeiture as an additional tool for probation rather than an initial penalty.

Dr. Marcus then conveyed his experience in the emergency medicine. DWI accidents produce severe trauma, requiring extensive and expensive health care costs. He thinks that the lectures at high schools and programs for rides home, MADD and SADD programs have helped reduce DWI injuries from when he first moved to Westchester.

Mr. Pappalardo then described the typical procedures for DWI from the perspective of the criminal system. The first arrest generally results in a conditional discharge and fines. Every court now requires a TASS evaluation to monitor that the probationer is alcohol and drug free, completion of an OASIS state-approved program, a MADD program at the Westchester County Center, and a drinker-driver program (through the DMV) for 7 weeks. If there is a negative report issued for non-compliance, the probationer may get one more chance and then perhaps jail time.

More recently it has become harder to get an arrest reduced to driving while impaired. There is very little tolerance in the courts- there are many layers of fines and surcharges, amounting to almost \$1000 for court fees/expenses, then an additional number of civil penalties from the DMV amounting almost another \$1000. There is also revocation of the license for a period of time.

Mr. Pappalardo further indicated that the second arrest would be treated as misdemeanor, that there would be 3 years of probation and treatment programs, heavier fines and surcharges and a huge increase in the cost of insurance. After a third arrest, the county courts would impose even higher fines, 5 years of probation and the Probation Department may not permit relicensing until the end of the entire probation period rather than just one year.

There was some discussion about the effect of a refusal to take a breathalyzer test. Upon such refusal, the arrest is based on common law DWI based on the observations of the arresting officer. A new law mandates a one year revocation for such a refusal. If a person drives without a license after a license is revoked, the offense is termed "aggravated driving without a license." This can be a probation violation which may result in a prison term of 1 1/3 to 4 years. However, if there

is an injury, there won't be a conditional discharge, even for a first arrest; there may be probation and even jail time. There is less tolerance for multiple offenses in the courts now.

It was observed if the Probation Department was handling 1400-1700 cases of mostly second offenses, then something isn't working because that indicates is a high recidivism rate. Mr. Pappalardo agreed but said that the tougher laws are also having some beneficial effect.

There was some further discussion about the cost to the County of sending someone to jail (\$250/day) and what would motivate persons to go to trial versus pleading to a lesser offense. Mr. Pappalardo indicated that most people would go to trial to avoid jail and also if avoid losing their car. This happens frequently in Nassau County where there is zero tolerance (no hardship defenses). Mr. Pappalardo noted that in NYC there is a settlement process in place to avoid clogging the courts. He said that the District Attorney has the authority to seize vehicles in the case of felonies, although he believes that they generally do not.

The committee also discussed the impact on families, particularly those with one car. There was discussion among committee members about the need to develop legislation that would be fair and equitable. It was also mentioned that the committee might ask the local representatives from MADD and/or SADD to meet with the committee.

The committee solicited any further suggestions from the witnesses. Mr. Pappalardo mentioned (1) limiting it repeat offenders (2) avoid imposing forfeiture for violations for impairment (3) making sure that the legislation would be fair and equitable among all residents and (4) establishing some form of settlement standards.

At this point, the Chairman of the Public Safety Committee, Mr. Pinto, entertained a motion from Mr. Nonna to adjourn that committee, which was seconded by Ms. Myers. The motion was carried unanimously by that committee.

HOME RULE REQUESTS

Karen Pasquale explained the two Home Rule Requests to the Legislation Committee. The first is with respect to a pilot program to permit electronic responses to bids for bond financing. The other request addresses the extension of the sales tax in Westchester.

On the sales tax extension, it was requested that the Legislation Committee obtain further information from the Law Department as to whether the sales taxes are distributed to special act school districts.

The stated benefit of electronic bidding would be the greater universe of potential bidders and administrative efficiencies. It was noted that this proposal was consistent with the County's efforts to encourage small businesses and women and minorities to get involved via an internet website.

Legislator Myers moved, seconded by Legislator Jenkins, to approve the Home Rule Request with respect to the extension of the sales tax and the Home Rule Request with respect to the electronic bond pilot program. The motion was approved 8-0 by the Legislation Committee, with Legislator Abinanti voting without prejudice with respect to the electronic bond pilot program.

MINUTES

Legislator Jenkins moved, seconded by Legislator Harckham to accept the minutes. Motion approved 8-0.

Legislator Rogowsky made a motion to adjourn, seconded by Legislator Abinanti. Motion approved 8-0. The Committee adjourned at 3:05 pm.

AUDIO RECORDING ON FILE FOR REVIEW UPON REQUEST