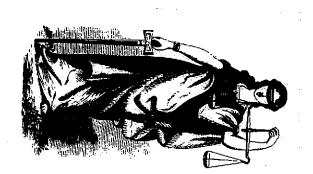
# CONTINUING LEGAL EDUCATION

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HANDLING THE DUI CASE - 2013 UPDATE

PETER GERSTENZANG, ESQ.



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### CHAPTER 55

### NEW DMV REGULATIONS AFFECTING REPEAT DWI OFFENDERS

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- W G 1  $\sigma$ related conviction/incident problem driver restriction New lifetime revocation #5 related conviction/incide Person while revoked g license for with new DWI A2

- ŲΣ G  $\vdash$ ۱. revocation + 5 more years + 5 more restricted use license with an IID Person has for a DWI has 3 or 4 DWIs, no SDOs, and is currently revoked DWI-related conviction/incident -- Statutory ion + 5 more years on an A2
- (/<u>)</u> ഗ്ര ហ  $\mathbf{\mu}$  $\infty$ revocation + 2 restricted use Person has for a nonson has 3 or 4 DWIs, no SDOs, and is current a non-DWI-related conviction/incident -cation + 2 more years + 2 more years
  tricted use license with no IID currently reverse statutory an A2 revoked
- Ø ĆП G ... |--Ö Applicability "permanently" revoked O H new pursuant regulations to VTL S o person who is § 1193(2)(b)(12)
- (2) C  $\Omega$ 20 Legal challenges to the new DMV regulations
- Ø ĊП Ç  $\sim$  $\vdash$ The Legislature has preempted the field of manner that limits the discretion of other government to expand the scope of the DWI DWI branches laws law of a
- C(Y)Ōπ . .  $\sim$ N The new DMV regulations conflict Generally with existing statutes
- (⁄) G Ġ N  $\omega$ The new regulations conflict with VTL Ø 1193(2)(b)(12)
- Ųλ S  $^{\circ}$ . .  $\sim$ 4 with The ഗ 5-year VTL § IID portion 1198, PL § of the new rec 65.10(2)(k-1) new regulations and case conflict law
- (2) G  $\Box$ .. N (J The The 25-year conflicts wi ar look-back portion of with numerous statutes the new regulations
- S CII ٠. N  $\circ$ The new doctrine egulations violate the separation οf powers
- W G ..  $\sim$  $\neg$ The new regulations are being applied retroactively
- W G ĆΠ .. N  $\infty$ Although regulations in "unusual, circumstances," in reality DMV can theoretically extenuating / this standa standard deviate ate from the cannot compelling be new met
- W  $\mathcal{G}$ Çn .. N Ø IID rules now apply to youthful offenders
- § 55:30 Duration of IID requirement
- W 5 31 "Good cause" for not installing IID defined
- ØΣ G G  $\omega$  $\sim$ Violating VTL now AUO 1st ⊘ 11 ં Ň while 9 ىم conditional licens Œ ۳ū

§ 55:1 In general

Starting in approximately 2011, a series of high publicity cases involving repeat DWI offenders led to a campaign to keep these drivers off the road. In this regard, certain politician attempted to pass legislation that would greatly increase the driver's license revocation periods for repeat DWI offenders. However, the proposed legislation was not enacted. icians

issue, Governor Cuo administrative regu legislative action Legislature could n repeat DWI offender existing treatment mat executive branch s into Governor Cuomo trative regula satisfied with the Legislature's lack of actiovernor Cuomo directed DMV to enact harsh new crative regulations that would render the need ive action moot. Stated another way, when the ure could not agree on how to best address the offenders —— and/or could not agree as to treatment of repeat DWI offenders was inadeced branch of government bypassed the Legislatuinto its own hands. atisfied gree as to whethe was inadequate -e Legislature and when the need action new the issue to whether O g th took of the the

effect on September 25, 2012. However, starting in Februar 2012 DMV stopped processing the applications for relicensure thousands of individuals whose driver's licenses were curred revoked and who either (a) had 3 or more DMI-related convictions/incidents within the new 25-year look-back perions for more DMI-related convictions/incidents within lifetimes. In this regard, DMV intentionally delayed the applications for relicensure of thousands of individuals who eligible for immediate relicensure under existing laws, existence and the DMV policy that had been in effect since repeat DMI offenders from being relicensed prior to the enactive of the harsh new regulations ordered by the Governor — so the (as yet non-existent) regulations could subsequently be retroactively applied to their applications for relicensure. The new DMV regulat ions ordered Λq Governor subsequently be for relicensure. Cuomo in February relicensure ok period, or ithin their the currently since at too SO existing enactment prevent who were 00 Ph Ph

a T ous. This is Chapter potential discusses challenges the r s the new DMV reto regulations, S well ัด

### Ø 55 55 •• N Summary o H pre-existing DMV policy

policy regasince at le a c Unless chemical pers as f Frior to the enactment of its new regulations, DMV had y regarding repeat DWI offenders that had been in effect at least January of 1986. See Appendix 53 ("Letter friment of Motor Vehicles Regarding Multiple Offenders"). Is the person (a) was underage, (b) had refused to subminimical test, or (c) was a commercial driver -- and as lowers provided proof of alcohol/driver -- and as lower provided provide 01 01 SMO submit long from policy to a S

2nd offenders -- if the Drinking Driver Program restored upon successfu ful person was e ("DDP"), the completion was eligible, the license thereof would 9 Ьe

Otherwis minimum Ś se, license restor statutory revocat Ľ red at the o O onc lus **j-r-**0 0 Η'n the

- N 3rd offenders -- 1 restored upon succontherwise, license -- if eligible for the successful completion sense restored after 1 the ω thereo months DDP, ₩ 1--
- $\omega$ 4th offenders restored upon Otherwise, li upon succ e, license Ŋ -- if eligible for t successful completic ense restored after tion there er 24 months. the DDP ₩ ; Ħ
- 4 5th offenders restored upon Otherwise, lic license -- if eligible for the successful completion sense restored after 30 e DDP, lic thereof. months DDP, ö
- $\Omega$ 6th and subsequent upon Court order. 0£ fenders 1 سر ۔نــر cense only Н Œ. Ø to red

were on period. only Pur cions, suant to this y taken into Ιn this into account if they occurred within a regard, prior to the enactment of the NYCRR § 136.1(b)(3) provided as follows this policy, DWI-related convictions/incidents f they occurred within a 10-year of the new follows:

vehicle white unalcoholic beverages a refusing to submit to refusing out of the s refusing to su arising out of such incident of this state. History of abu history of abu consist of a rwithin a 10 ye vehicle while state. O year period, of operating ile under the influence of beverages and/or drugs or or or submit to a chemical test tof the same incident, wherent was committed within or abuse of alcohol abuse of alcohol a record of [2] o or more operating or drugs shall 0 drugs. test whethe or o ff out пo a moto н

(Emphasis added).

6th DWI, but had no DWI-related convictions/incidents withing past 10 years, the person was treated as a 1st offender for purposes of the above policy -- and is still treated as a 1st offender for purposes of all existing DWI statutes. See, 6 VTL SS 1193(1)(a), 1193(1)(c)(i), 1193(1)(c)(ii), 1193(1)(c)(ii), 1193(1)(c)(ii), 1193(1)(c)(ii), 1193(1)(c)(ii), 1193(1)(c)(ii), 1193(1)(a), 1193(2)(b)(12)(a), 1193(2)(b)(12)(d), 1194(2)(d)(1), 1198(3)(a). See also PI 120.04(3), 120.04-a(3), 125.13(3) & 125.14(3). See general S 201(1)(k); CPL S 160.55(5)(c) (records pertaining to a VI 1192-a finding are required to be sealed after 3 years or vertex parts of the person turns 21, whichever is longer). for example, įį Ф person was as a 1st offender for still treated as a first DWI statutes. See, e.g., (1) (c) (ii), 1193(1) (d) (2), convicted incidents within the st offender for 0 his TTVŢ her Ś

# § 55:3 Effective date of new regulations

The effective date of the new DMV regulations is September 25, 2012. Critically, unlike new laws -- which generally only apply to offenses committed on or after the effective date thereof -- the new regulations are being applied retroactively. In fact, the new regulations were applied to applications for relicensure that were received in February of 2012 (as these applications were intentionally not decided until after the new regulations took effect)

### Ø 55:4 Summary of. new regulations ı Key definitions

de The new finitions: DMV regulations contain the following key

- Da ngerous repeat alcohol 20 drug offender"
- (a) any driver who, within his or her lifetime, has [5] or more alcohol- or drug-related driving convictions or incidents in any combination; or
- <u>(d</u> back period, has [3] or [4] alcohol- o drug-related driving convictions or incidents in any combination and, in addition, has [1] or more serious driving offenses during the 25 year looback period. look 100.k 0

See 15 NYCRR § 132.1(b).

- $\sim$ "Alcohol-incident" not cohol- or drug-related driving conviction dent" (hereinafter "DWI") -- any of the arising out of the same incident: following, 20
- (a) a conviction of a violation of VTL (1192 (or an out-of-state conviction operating a motor vehicle while under the influence of alcohol or drugs); under **(**⁄2) for
- <u>(a</u> a findi finding ci.e., the 0 of a v Zero violation Tolerance 0 law); VTL W 2
- (c) e S which Ω nich a ¹ ssentia conviction of a ich a violation l element of VTL Penal Or Law L S : v off 1192 e n Ċ S (D an for
- (d) a finding of a refusal to submit to a chemical test pursuant to VTL § 1194.

See 15 NYCRR §§ 132.1(a) & 136.5(a)(1)

 $\omega$ "High-point driv which 5 or more driving record. or more *driving vi* nore points violat are ion" assessed on Vio Ф olation person (c) Hh 0 Н

See 15 NYCRR (V) (V) 132. , 1 (c) Ŗ٦  $\vdash$ . W σ̈́ .5(a)(2)(iii)

- 4 the Se snor ollowing, driving offense" wing, within the (hereinafter 25-year loo! ō-year look-back "SDO") period o
- (a) a fatal accident
- চ ω driving-related Penal Law conviction;
- (c) conviction of 2 or more high-point driving violations; or
- (d) 20 or more total points from any violations.

See 15 NYCRR SS 132.1(d) & 136.5(a)(2).

The new regul constitute a conviction." Counsel's Off related Penal plea not ( operation of element. Th conviction ement. Thus, fo ea bargained to t constitute a d te a "driving-related ion." In this regard, 's Office advises that Penal Law offense is regulations l Law offense is one a motor vehicle is for example, a DWI that to Reckless Endangerment a driving-related Penal do regard, ses that not define one in which Penal Lav മ drivingan essent what would Law Law DMV would Ω Ή. 9 the

Œ prior to, offense. -year look-back and -back period" - including, the - the date time per eriod 25 ye revocable Уе œ

See Ġ NYCRR \$ \$ 132 .1(e), щ 36.1(b)(3) Ŗ٦  $\vdash$ w 6.5(a)(3)

 $\sigma$ accident than driver's licapplication Revocable le offense" that result license and for results in relicensure. and which the the : violation, in he revocation is the basis incident of a p the рe 0 ú on's

See 15 NYCRR § 136.5(a)(4)

evaluate any offen revocable offense of the revocal date of the revocal Upon revi eview reviewing the wing an application for relicensure, Diapplicant's entire driving record and ny offense committed between the date of fense and the date of application as deen committed immediately prior to describe the description of the description of the deen committed immediately prior to descriptions. revocable offense date of to date as if DMV the the will the

### See id.

For purposes of this definition, "date of the revolutionse" means the date of the earliest revocable offense that resulted in a license revocation that not been terminated by DMV. that revoc has able

### See id.

Q, License with "A2 driver's license license, <u>see</u> VTL will be revoked f revocation of following too (d) operating or (f) any two any two h "A2 problem driver restriction" -- a cense that is treated like a restricted use e VTL § 530; 15 NYCRR § 135.9(b), and which oked for the reasons that would lead to the of a probationary license (i.e., (a) oo closely, (b) speeding, (c) speed contest, ng out of restriction, (e) reckless driving, two other moving violations). driving, st,

<u>See</u> 510 15 NYCRR SS -b(1); DMV we \$§ 3.2(c)(4) website. & 136.4(b)(3); VTL ر/ک

If the revocable offense leading to the issuance license with an A2 problem driver restriction wa related, an ignition interlock device ("IID") requirement will be imposed. leading SPA 0 DWI

See 15 NYCRR \$\$ 136.5(b)(3)-(4) w 2(c)(4), <u>၂</u> 6.4(b)(1)-(3) Ŕ٦

### **(**) បា ហ Summary of new regulations 1 Кеу provisions

new The DMV Н sections egulations tha  $\mathcal{H}$ follow summarize the key provisions O Ēħ the

### 6 <del>ن</del> ن New regulations only apply ç repeat DWI offender

Ф re no changes The new regulations langes to the ru ns only affect rerules applicable repeat DWI .e to first offenders offender Ø Ther

### S 55:7 New license is revoked regulations generally only apply where person' W

generally only apply where the definevoked (as opposed to suspended). suspensions do not trigger either need to submit an application for revocations trigger both. ritical aspect of the new the new regulations is the the defendant's driver's pended). This is because This is because lies a full record review relicensure, whereas is that license license they or the the is Œ

he Thus, differ fference conviction between വ of DWAI a 90-day (as oppo opposed to suspension DWI) and can now li. fetime mean

license revocation. In this regard, however, is forgotten that there are several circumstances conviction results in a license revocation. Supra. See also Chapters 14 & 15, supra. See it must not in which a Chapter 46, эd DWAI

In addition, 15 NYCRR Part 132 is the primary the rule that the new regulations only apply where defendant's driver's license is revoked. Part 132 "dangerous repeat alcohol or drug offenders" who as high-point driving violations (which violations ger in and of themselves, even local violations ger alone of themselves, a revocation). even lead to See §§ 55:14 ടം മ violations generally do not, license suspension -- let 55:15, infra. who are the applies to e convicted except . 0 5  $\leftarrow$ ) f

### ū ω drugs" definition of now utilizes "history 25-year l look-back of abuse per 0£ pot. alcohol

н Ωŧ Ë cohol TOL 0 to drugs" September 25, 2012, : S DMV defined "history o H abus

consist of within a 1 vehicle wh alcoholic such incident was arising refusing this story g to submit of a reco a 10 year while und state. 10 year period, of opera hile under the influence beverages and/or drugs ( Of. abuse record of e same incident, whe committed within or 0 f alcohol [2] or more operating a or drugs 9 of whether *incidents,* ing a motor o ff not outside

Ġ NYCRR former Ø 136.1(b)(3) (emphasis added)

NYCRR Pursuant R § 136.1 uant to the 36.1(b)(3) is now new regulations, is now 25 years. the look-back period ίn ÇΠ

## § 55:9 Second offenders

driving por third little as had refudriver, outstanding license 1196(5). In other allowed the person refused S) D) privileges. In the person to privileges. In the defenders to as 7-8 weeks. successful to license old rules, submit to mit to a chemical to completion of the mit to a chemical test, or (c) was a completion of the DDP would terminate e suspension/revocation period. See V words, successful DDP completion generate apply for reinstatement of his or I in this regard, it was possible for to re-obtain their full licenses back unless person (a) Was underage, generally
; or her full ) for second back in as VTLcommerc any TL § 9 ial

rules), | prior to DWI-related still obtain Pursuant obtain but the nt to the new regulations, a person who has a sec conviction/incident within the past 25 years can n a conditional license (if eligible under the ol can no longer re-obtain his or her full license expiration the minimum suspension/revocation can old back

period (i.e., successful DDP completion no longer termin license suspension/revocation for second offenders). Se NYCRR §§ 134.10(b), 134.11 & 136.5(b)(5). Ō T **⊢**⊕ ເກີທ

### 55:10 Third offenders **1**Cense סמ longer eligible for conditional

conditional license approximately every five years. In this regard, a person was ineligible for a conditional license if the person, among other things, (a) had a prior VTL § 1192 convictions the past 5 years, (b) had participated in the DDP within the past 5 years, or (c) had 2 prior DWI-related convictions/incidents within the past 10 years. See VTL § 1196(4); 15 NYCRR § 134.7; Chapter 50, supra. er the old rules, a person was onal license approximately every a person was ineligible for a camong other things, (a) had a p rule generally eligible rs. In t the DDP within for the ρ ion

DWI-related convictions/incidents with ineligible for a conditional license. 134.7(a)(11)(i). Pursuant convictions/incidents within the See person erson who has 3 the past 25 year <u>e</u> 15 NYCRR S  $z_{\mathcal{I}}$ 0 ր. Ի more

### Ø 55:11 It driving record is often now necessary ç obtain person's lifetime

new DMV regulations apply tminimum of 25 ver-A K person's and non-DWI-related an abstract for nea publicly available to offenses/incidents going back a sometimes DMV driving abstract convictions/incidents forever only do the not goes

As a result, it is now often necessary full, lifetime driving record before giving how to proceed in a pending matter. At the appears that the only way to obtain such record request with DMV. See Form MV-15F. the only way to obtain such records with DMV. See Form MV-15F. to obtain a person's the person advice on present time, it present tin time, it to file

#### Ś Ü 5:12 New lifetime lifetime DWIs revocation #1 and Ŀ currently Person revoked has Сī 0 H more

# 15 NYCRR § 136.5(b)(1) provides that:

- conduct driving that: for (b) relicensing, the com-luct a lifetime review of Upon receipt of a Ф Commissioner person's ew of such ] application ner shall review person's shows
- drug-related driving convictions or inc in any combination within his or her or incident

lifetime, then the Commissioner shall deny the application.

with 5 or more li driver's license be relicensed 5 I other words, pursuant to the or more lifetime DWI-related s license is currently revoke to the new regulations a per lated convictions/incidents revoked for any reason will person never whose

#### Ø 55:13 Ne v and and lifetime 1 or more is curren or more currently revoked revocation SDOs within the #2 Person h 25-year has 3 or 4 r look-back period DWIS

- 15 NYCRR § 136.5(b)(2) provides that:
- (b) Upon receipt of a person's application for relicensing, the Commissioner shall conduct a lifetime review of such person's driving record. If the record review show that: \* \* \* shows
- serious d look back deny the (2) the person has [3] or [4] alc drug-related driving convictions in any combination within the 25 back period and, in addition, has period and, in addition, has [1] cous driving offenses within the 25 back period, then the Commissioner the application. then the Commissioner sha alcohol- or )ns or incidents 0 look shall more

with 3 within to current: H  $\omega$ other words, pursuant to the new regulations a per or 4 DWI-related convictions/incidents and 1 or mor the 25-year look-back period whose driver's license.ly revoked for any reason will never be relicensed. license or more person SDOs

#### Ø 55:14 Zew lifetime DWIs violation lifetime revocation #3 and is convicted 1 Person o f Ø high-point has ហ 9 more driving

ഗ NYCRR Ø 132.1(b) provides, цi pertinent rad ţ, th <u>1</u>6

"Dangerous means: repeat alcohol 01 drug offe ender"

(1) any driver who, with the lifetime, has [5] or more alcohol-related driving convictions or incany combination. incidents her or drug-nts in

## 15 NYCRR § 132.2 provides that:

Upon receipt of notice of a driver's conviction for a high-point driving

be appliant. revocation Such person request a h such propos person that th repeat alcohol or (Commissioner shall violation, review of the person he person convicted is a dangerous alcohol or drug offender, the convicted. the hearing of shall Ċ such Commissioner shall conduct a lifetime driving record of th ced. If such review indicates revocation Part 127 o or drug offender, any be advised of the right before an [ALJ], prior ocation taking effect. 127 of this Chapter sh person's issue such hearing. മ proposed shall driver license shall The to

## 15 NYCRR § 132.3 provides that:

take intrecord. circumstances exi order confirming the Commissioner. pursuant to this Part is to determine there exist unusual, extenuating and compelling circumstances to warrant that the revocation proposed by the Commissioner should not take effect unusual, making into confirming the such uch a determination, to account a driver's of Unless the [ALJ] find extenuating and compose purpose to this Unless extenuating exist, of a Part proposed by the not take effect. In mination, the [ALJ] and driver's entire driver [ALJ] finds that su revocation proposed by the hearing : compelling judge scheduled etermine wh shall and driving such issue whether finding shall a n

convicte be perm which he or she extenuating and th 5 or more nvicted of a permanently fect." the other words, pursuant composed convictions/ir ad of a traffic infraction carrying 5 or malently revoked unless the person requests e or she establishes that "there exist unusting and compelling circumstances to warrance revocation proposed by the Commissioner is exist unusual, s to warrant a regulations a personictions/incidents who is ng 5 or more points will should finding ld not ta Ġ. E e

The r Part 132 i person is reason v is a li subject why fetime revocat þ license revocation pure tion is that, one § 136.5(b)(1). pursuant once re revoked, th to NYCRR the supra.

violations. See new regulations a lifetime driver's Notably, not long after Part 132 was enacted cell phone and texting infractions were added to the list of high-point driving violations. See 15 NYCRR § 131.3(b)(4)(iii). Thus, under the new regulations a cell phone ticket can lead to a permanent, cell phone ticket license revocation ion

15 New and بر دی lifetime or more convicted of revocation SDOs within the ש thin the 25-year look-back pe high-point driving violation Person has 0 period

#### . ഗ NYCRR Ç'n $\vdash$ ω $\sim$ • $\vdash$ <u>g</u> provides, h Fi pert inent zed ť, (ha $\leftarrow$

"Dangerous repeat alcohol or drug offender" means: \* \* \*

(2) any driver who, during the back period, has [3] or [4] alcordated driving convictions or any combination and, in addition more serious driving offenses dyear look back period. (2) and back prelate who,
's [3] period. ions or incaddition, the alcoho. during incidents 25 has year the or drug-Look or 25 in

## 15 NYCRR § 132.2 provides that:

Upon receipt of notice of a driver conviction for a high-point drivin violation, the Commissioner shall review of the lifetime driving receive person convicted. If such review that the person convicted is a dan repeat alcohol or drug offender, to Commissioner shall issue a propose revocation of such person's driver such person shall be advised of the request a hearing before an [ALJ], provisions of be applicable proposed he person convicted is a dangerous alcohol or drug of a of notice of a driver's r a high-point driving e Commissioner shall conduct lifetime driving record of to revocation Part 127 of any issue a proposed
person's driver erson's driver licens advised of the right fore an [ALJ], prior such hearing. taking this [ALJ], prior Chapter shall the The ct O

## 15 NYCRR § 132.3 provides that:

pursuant to this Part 1. ...
there exist unusual, extenuating and compelling circumstances to warrant a fir that the revocation proposed by the Commissioner should not take effect. In making such a determination, the [ALJ] sl take into account a driver's entire drivercord. Unless the [ALJ] finds that such a count and compelling and compelling are shall iss order confirming the the Commissioner. 0 circumstances sole purpose to this of a and compelling the judge shall revocation propo hearing is to de scheduled etermine w hall issue proposed by driving t such whether finding sha an

unless establi with 3 or 4 DWI-related convictions/incidents and 1 within the 25-year look-back period who is convicted infraction carrying 5 or more points will be permane, unless the person requests a hearing. tablishe Ø person requests a s that "there exist exist unusual, extenuating convicted of permanently and she ೦೫ person more SDO: f a traff: compelling revoked SDOs raffic

cir by Ľ, the cums Stances to wa: Commissioner to war rrant a finding that the should not take effect. the = revocat ion propos ä

Part 13 person The r 132 d reason w is a li subject whу fetime t o b license revocation purse revocation is that, o 15 NYCRR § 136.5(b)(2). pursuant once revoked, th t 0 (A) 15 NYCRR the supra.

new regulations a lifetime driver's texting inf violations. infractions were added to the list of high-point drions. See 15 NYCRR § 131.3(b)(4)(iii). Thus, under to lations a cell phone ticket can lead to a permanent, driver's license revocation. driving the and

#### 55:16 New DWI-related conviction/incident A2 problem driver restriction lifetime revocation **#**5 Person while revoked on license H 9 new with

DWI-related 25-year look license cont In this rega Pursuant containing regard, 15 ted convictions/incidents -- but no SDOs -- within the look-back period may be eligible for a restricted use containing a so-called "A2 problem driver restriction." to the a so-called "A2 problem driver NYCRR § 3.2(c)(4) provides: new regulations, മ person who has within the

Az-Problem driver restriction. The operation of a motor vehicle shall be subject to the driving restrictions set forth in section 135.9(b) and the conditions set forth in section this restriction, the commissioner may require a person assigned the problem driver restriction to install an ignition interlock device in any motor vehicle that may be operated with a Class D license or permit and that is owned or operated by and the problem driver restriction to install an ignition interlock device in any motor vehicle that may be operated with a Class D license or permit and that is owned or operated by and the problem driver that is owned or operated by and the problem driver that is owned or operated by and the problem driver that is owned or operated by and the problem driver that is owned or operated by and the problem driver that is owned or operated by and the problem driver that is owned or operated by and the problem driver that is owned or operated by and the problem driver that is owned or operated by and the problem driver that is owned or operated by and the problem driver that is owned or operated by and the problem driver that is owned or operated by and the problem driver that is owned or operated by and the problem driver that the problem driver t noted licens attack attachment the driver on an must be license permit held attachment 20 carried permit. requirement to the driv Λq such аt h person.
all time driver's time Ø with Such and

ט, rovide Both that: NYCRR ζŊ 136.5(b)(3) and 15 NYCRR C() ω σ 5 (b) (4)

If sullater drug-such later approach to rehice ater such any :}e. person related revoked kind license with ed for a subsequent alcohol- or d driving conviction or incident shall thereafter be ineligible d of license to operate a motor with ದ್ದ **A**2 restriction ĽS.

Ś ហ ហ ū Person has 3 or 4 DWIs, no SDOs, and is curre revoked for a DWI-related conviction/incident Statutory revocation + 5 more years + 5 more an A2 restricted use license with an IID currently years 8

DWI-rel 25-yea: for a l bе revocation -year granted IID requ lated convictions/incidents -- but no SDOs -- within the I look-back period, and whose license is currently revoked DWI-related offense, will serve out the minimum statutory tion period plus 5 more years, after which the person may nted a license with an A2 problem Ariman requirement) for an an A2 problem additional 5 years.

pecifically, 15 NYCRR ζ'n 136.5(b)(3) provides in pertinent

- (b) Upor for reliconduct driving that: \* Upon receipt of a perceipt of a perceipt relicensing, the Commissioner shart fuct a lifetime review of such person's fuct a lifetime record review show shows
- or incident, then the Commissioner shall deny the application for at least [5] years after which time the person may submit an application for relicensing. Such waiting period shall be in addition to the revocation period imposed pursuant to the Vehicle and Traffic Law. After such waiting period, the Commissioner may in his or her discretion approve the application, provided that upon such approval, the Commissioner shall impose the A2 restriction on such person's license for a period of [5] years and shall require the installation of an [IID] in any motor the vehicle ov such [5]-y (3) (i drug-in an (i) the person has [3] or [4] g-related driving convictions any combination within the 25 owned or drug-related driving year or period. currently [5] years and shall of an (IID) in any operated by such pe within the 25 year look serious driving offenses look back period and (ii ently revoked for an conviction alcohol-or incide person incidents ar look and (ii)

(Emphasis added).

55 : 18 revoked for a non-DWI-related Statutory revocation + 2 more an A2 restricted use license Person has ω a non-DWI-related conviction/incident evocation + 2 more years + 2 more years icted use license with no IID years on

person may be granted restriction (with no suant nt to the new regulations, convictions/incidents --IID requirement) regulations, a person who has 3 or 4 ncidents -- but no SDOs -- within the and whose license is currently revoked for an ers, after which problem driver additional years the

part: Spec ifically, 15 NYCRR CD 136.5(b)(4) provides, in pertinent

- (b) Upon receipt of a person's approximation relicensing, the Commissioner conduct a lifetime review of such driving record. If the record revibat: \* \* \* review show application ner shall shows
- the person is not currently revoked as the result of an alcohol- or drug-related driving conviction or incident, then the Commissioner shall deny the application for at least [2] years, after which time the person may submit an application for relicensing. Such waiting period shall be in addition to the revocation period imposed pursuant to the Vehicle and such period shall be in addition to the revocation period imposed pursuant to the Vehicle and Traffic Law. After such waiting period, the Commissioner may in his or her discretion approve the application, provided that upon (4)(i) the person has [3] or [4] drug-related driving convictions in any combination within the 25 withi back equirement, hin the person approval, the restriction, period but no n the 25 vear <u>Դ</u> Տ for year the മ Commissioner shall impose with no ignition interlock period of [2] years. serious driving look back period or incidents year alcoho offenses and (ii)

(Emphasis added).

### 55:19 Applicability "permanently" of new regulation revoked pursuant regulations ç ç o person who is VTL § 1193(2)(b)(12)

Prior to the enactment of the new DMV regulations, VTL § 1193(2)(b)(12) already provided for 5- and 8-year permanent license revocations for repeat DWI offenders. See Chapter 46, supra. The new regulations consider these revocation periods be the minimum statutory revocation periods for purposes of 15 NYCRR § 136.5(b)(3). to

ťο  $\sigma$ Thus, 10 under 8-year the waivable new regulations, vle "permanent" where revocation b person is pursuant subject ct O VTL

O CO § 1193(2)(b)(12), a tatutory period DMV (1 the will now end of the either Ç 0 Н  $\infty$ ī Уe ρ н minimum

- (a) impose Ф lifetime license revocation; 0 5
- <u>d</u> pursuant the revoc driving p may be requirement revocat nt to 15 N vocation ( g privileg granted a ement for eges NYCRR § 136.5(b)(
  (for a total of 1)
  ges whatsoever),
  an A2 restricted
  contained: NYCRR (for a 10 (3), after use years. 9 r 13 years er which th license wi add ŲΠ more with the with no years person an

See 136. 5 1 15 NYCRR 5(b)(3). (/) (/) 136.10(b), 136.5(b)(1),136.5(b)(2)

In this regard,  $\vdash$ Ċ NYCRR S 36.10(b) provide Ø ω Ø follows:

- (b) Application arc.
  The Commissioner may waive the permanent correvocation of a driver's license, pursuant to [VTL §] 1193(2)(b)(12)(b) and (e), only if the statutorily required waiting period of either [5] or [8] years has expired since the imposition of the permanent revocation and, during such period, the applicant has not been found to have refused to submit to a chemical test pursuant to [VTL §] 1194 and convicted of any violation of violat is an waiver violation al control al control al control al control and the faction of any nessential eshall be control and the shall be control st pursuant to [VTL §] 1194 are no convicted of any violation of 2 or section 511 of such law of the Penal Law for which a f any subdivision of [VTL §] 1 tial element. In addition, the law granted only if: the 1192 the to
- The applicant presents proof of successful completion of a rehabilitation program approve Commissioner within [1] year p the date of the application for waiver; provided, however, if applicant completed such program year waive such t proof drug c live y dependency of the date rer; and time, О Н completed such program before, the applicant must present completion of an alcohol and date assessment within [ of application for approved n for if th ed by the prior to the the [1] the 9 Œ
- (2) The applicant submits to the Commissioner a certificate of from civil disabilities or a of good conduct pursuant to A of the Correction Law; and good conduct the Correct of relief a certificat Article 23  $\Box$ Ò

- (3) The application is not denied pursuant to section 136.4 or section 136.5 of this Part; and
- (4) waiver ticket the period prior to the the waiver, as indicate convictions or pending consideration of an app such ticket is or tribunal. are shall when no the рe incidents disposed applicant held in ak indicated the application 0f tickets. abeyance of by the of driving during application for Λq has accidents, the ы for a pending e until for The court

### Ø ហ 20 Legal challenges ξ the new DMV regulations

vigorously challenge being raised are set Αt the challenged on present time, forth below. numerous the new grounds. DMV regulations Some o f are being the issue ſΩ

#### 55:21 The government manner Legislature that ţ limits the expand the has preempted discretion scope of the the of field other DWI O Hi laws DWI branches ij 0f

inherently legislative activity on has been unable to reach agreement s arguably irrelevant. been The issue of. executive whether agreement Rather, the branch of new the DMV upon. of government an issue that issue regulations is whether, can the ar Legislature engage Ф under good T, idea the

are the Legislature has g DWI-related offenses, integrated" statutes Prescott, 95 N.Y.2d 6 would creative ative attempts inappropriate ld otherwise be Court o f Бе Appeals ţo valid. s covering 655, 659 ( given expand and even if su See, has has repeatedly made clear both (a) significant thought to the topic o has enacted "tightly and carefully the suchthese offenses, (2001), and (b) scope e.a. interpretat and (b) that, as a result of the relevant statutes terpretation of the laws that, People

- H prosecuted VTL § 511(3 traffic inf People v. driver's new DWI while on 511(3), but ic infraction license Rivera, for the felony of AUO 1st, in violation (3), but rather can only be prosecuted for fraction of VTL § 1196(7)(f)); b 16 N.Y.3d is revoked conditional license cannot 654 for DWI and who (2011)in violation of (defendant commits 99 whose വ the
- N prior to of elevatelony) People does no elevating not to November 1, allow Ballman, an new out-of-State 15 DWI 2006 z charge to be 3 Q 8 from DWI conviction occurring considered for purposes rom a misdemeanor to a (2010)(VTL

- $\omega$ People v. Litto, 8 N.Y.3d 692 (2007) (the term "intoxicated" in VTL § 1192(3) only applies to intoxication caused by alcohol -- not, as the Peop claimed, to intoxication caused by any substance); People
- Ψ. People with a ttempted Prescott, impted DWI); supra; and (a person cannot be charged
- . Сп <u>People v. Letterlough</u>, 86 N.Y.2d 259 (1995) (condition of probation that defendant would have to affix a fluorescent sign stating "CONVICTED DWI" to the licens plates of any vehicle that he operated is illegal). a license

Ŋ tha 7 the Court of Appeals specifically stated, inter

are cor degree In addition to criminal penalties, [VTL § 1193 further imposes mandatory minimum periods for license suspension or revocat. These sanctions, like the criminal penalt are correlated to the specific nature and degree of the section 1192 violation. ies, cion.

The Legislature placed great significance on the enforcement of specific statutory penalties for drunk driving. . . Thus, the Legislature has made it clear that the courts must look to section 1193 for the appropriate penalties and sentencing options for drunk driving offenses.

authority and cannot to accomplish what of 510(3)(a) (DMV's disdriver's license -- pursuant to VTL (1192). also Letterlough, 86 N.Y.2d at 269 ("While innovative ideas to address the serious problem of recidivist drunk driving are not to be discouraged, the courts must act within the limits of their authority and cannot overreach by using their probationary powers to accomplish what only the legislative branch can do"); VTL § 510(3)(a) (DMV's discretionary authority to suspend or revoke a driver's license -- or to deny a license to an unlicensed person -- pursuant to VTL § 510 does not apply to violations of VTL §

## 55: 22 The new DMV regulations conflict with existing statutes Generally

conflicts
Broidrick
the . . . conflicts with a statute : Broidrick v. Lindsay, 39 I the . . . regulations are authorization, [as well as State statutes"); Sciara v rs L axiomatic that മ<u>ട</u>] is illegal. See, e.g., Matter of N.Y.2d 641, 649 (1976) ("In conclusion, e invalid for lack of legislative as] for inconsistency with applicable v. Surgical Assocs. of Western New York New York,

and a regulation, regulations conflimplicitly -- in שן ש st.C Q D Ě 104 A.D.3d 1: lished that, .D.3d 1256, 1257 (4th Dep't 2013) that, in the event of a conflict ation, the statute controls"). I conflict with existing statutes -- in multiple key respects. p't 2013) conflict | The ("it ı between both directly new ۳-DMV Ġ ወ ٤  $\vec{\Phi}$ ល  $\Box$ ġ  $\dot{\mathbf{T}}$ ut and

#### G 23 The new regulations conflic đ with **TTV** Ś 11 93 (2) (b) (12)

permanent;
after 5 yea
is waivable reg 119 15 ] the permanent" years; swaivable af Perhaps the most direct conflict gulations and existing law is the c 93(2)(b)(12)(b) and 15 NYCRR Part 1 NYCRR § 136.10(b). Several existing issue of repeat DWI offenders. S and existing law is the conflict between VTL § 12)(b) and 15 NYCRR Part 132, 15 NYCRR § 136.5(b) and 136.10(b). Several existing statutes directly address f repeat DWI offenders. Specifically, there are three driver's license revocations: (a) one that is truly see VTL § 1193(2)(c)(3), (b) one that is waivable rs; see VTL §§ 1193(2)(b)(12)(a)/(b), and (c) one that after 8 years. See VTL §§ 1193(2)(b)(12)(d)/(e). . Эд twe en new

permanent = W 1193(2)(b)(12)(a)/(b) driver's license revoc /(b) provide revocation w where for മെമ rəd G -year nos Ľ. the

- (a) ha te ດ ດ ( $\omega$ 3 DWI-re. elated convi l findings) convictions ngs) within (and/or 4 years, years; chemi 0 ĸ 'n Ф <u>\_\_</u>
- ਰੇ test ha Ś refusa DWIre al 1-H D ated convi findings) convictions within (and/or 8 years. chemica

unical chemical chemical chemical chemical contain 8 years. Simultiple greater contain multiple greater triggered by as few as 3 DWI-L period of 25 years, they appear the system of 25 years, they appear the system of 25 years, where a personal contains a 5-year lice the chemical contains and the system of the icense the person has at least 3 DWI-related convictions (and/or at lest refusal findings) within 4 years, or at least 4 ated convictions (and/or chemical test refusal findings) 8 years. Since 15 NYCRR Part 132 and 15 NYCRR § 136.5(b) multiple greater-than-5-year license revocations that are ed by as few as 3 DWI-related convictions/incidents over a of 25 years, they appear to irreconcilably conflict with ſζ annot be ζ⁄Σ (2)(b)(12)(a)/(b) make "permanently" revoked -O Lear ar that a even for driver's years

result Litto, (2007). year licens regulations that trump the would ermanent" remaild legal, license nent" revocation statute seem that DMV cannot law tions that +----33 3 then VTL §§ 1193(2)(b)(12)(a)/(b) are "sbe avoided in statutory construction." IA.D.3d 625, 626 (2d Dep't 2006), aff'd, a person's DWI-related driving ar license revocation under th tute targeting repeat DWI offe lawfully enact administrative statute and impose a new greater-People 8 N.Y. superfluous regulat the fenders, than-3**d** ര് 0  $^{\circ}$ ά ب. ,

 $\exists$ addi († on, VTL €⁄b 1 93 (2) (b) (12) 8 provide Ø ᡤ hat

- such person has not been found to have refused a chemical test pursuant to [VTL 1194] while operating a motor vehicle and not been convicted of a violation of any subdivision of [VTL § 1192] or section [V. 511] or a violation of the penal law for which a violation of any subdivision of [V. § 1192] is an essential alamont. provided such pers refused a 1194] whi period of [5] years I imposition of such period that during required by clause (a) shall be waived by the The permanent years has expired since the such permanent revocation driver's e (a) of t permanent revocation,
  ig such [5]-year perio
   been found to have commissioner af element and either: s license this subp subparagraph period revocat TTV] for any and has ter [VTL § TTV] TOD
- (i) that such person provides acceptable documentation to the commissioner that such person has voluntarily enrolled in and successfully completed an appropriate rehabilitation program; or
- (ii) that such person is granted a certificate of relief from disabilities certificate of good conduct pursuant to [Correction Law Article 23]. granted 0 Ř

Provided, however, that the con a case by case basis, refusilicense which otherwise would pursuant to this item, in the public safety and welfare. refuse to commissioner may, ე მ interest restored terest of restore the עם

(Emphases added).

person has 3 DWI-related convirefusal findings) within 4 yea (and/or chemical test refusal generally required to immediat revocation after 5 years. Non regulations everyone who has 3 convictions/incidents within t DWI-related and the person driving record). greater-than-5-year license revocation 1193(2)(b)(12)(b) 3 DWI-relate years. No ne who has (unless clearly 4 DWI-related convictions provides hin 8 years), "permanent" chemical test that new DMV his even receive receive a driver's not or where DMV her ū

cense Thus, revocation the new DMV regulat on both: ions impos Φ ω gre at er-than-Уe

(a) people VTL S : 1193 are ineligible (2)(b)(12); and 92 മ G Уe H F revoc വ  $\Box$ on under

6 ט ט eople who fall within VTL § 1193(2)(b) tatutorily entitled to a waiver after 51 years 2) nq ä Ø

With regard requirement 136.10(b) pr nt in VTL provides †n the latter group, § 1193(2)(b)(that after 5 o, despite )(12)(b), r years DMV new the will e 5-year waive regulation of the ill either: 5-year 15 40 NYCRR (/)

- a impose a no revocation within the or nonon-waival (if the past 25 \_vabl ble permanent le motorist also years). See 1 lifetime license
  b has 1 or more SDOs
  15 NYCRR § 136.5(b)(2);
- 9 impose an additional 5-year "waiti driving privileges), plus another restricted driving privileges and requirement for the entire time. 136.5(b)(3). "waiting ទេខ មា ee years mandatory e 15 NYCRR period" with R S (¥ ≱ ť'n Ħ Ö

15 NYCRR § 136.10(b) irreconcilably conflicts with VTL § 1193(2)(b)(12)(b) in yet another way. Specifically, although VT: § 1193(2)(b)(12)(b) expressly provides that a 5-year "permanent" license revocation generally must be waived as long as the motorist:

- (1) has either c certificate certificate completed treatment or obta of relief from disabilitie of good conduct); and mine es ( (or ã മ Ф
- N has not been found guilty 1192, VTL § 1194 or a VTL offense during the revocat of violating § 1192-relate tion period; ed  $\leq$  $^{
  m T}$ Penal La Law

new revocation DMV regulation 15 on will only 9 NYCRR waived: CΩ 13 9 10(b) provide Ø († ha  $\dot{\vdash}$ the

- (a) after another 5 years; and
- (b) only if the motorist:
- has completed treatment; and
- (2) has dis and obtained abilities (or c certificate of . or a certificate H (P relief of go ief fr good :rom conduct);
- w sn't denior 1. .ed d relicen: 136. G pur a and suant  $\Box$ ö Ŋ NYC 꽃
- (4)hasn' VTL S Penal t been 1192, Law o offense found guilty 1194 or during or 0 the യ VIL § 1192-related VTL § 1192-related

hasn't dindicate t driven during the revocation ated by accidents, convictions per: pending iod

10 years with rest requireme restricted driving privileges rement for the entire time. the has event መ lapsed, that DMV these wil additional then impose s and a <u>See</u> 15 and requirements mandatory II NYCRR § 136. an additional [D .5(b)(3) are met 5 years and

VTL § 1193(2)(b)(12) in still more ways. For example, VTL §§ 1193(2)(b)(12)(d)/(e) provide for an 8-year, waivable "permanent" driver's license revocation where a person has 5 DWI-related convictions (and/or chemical test refusal findings) within 8 years. This statute provides a clear legislative determination that 5 DWI-related convictions (and/or chemical test refusal findings) should generally result in an 8-year driver's license revocation -- and should only result in such a lengthy license revocation if the convictions occur within a time frame of 8 years The new DMV regulations a § 1193(2)(b)(12) in still (2)(b)(12)(d)/(e) provide ţ illegal lу confli Ω ٧ ٢.

"permanent" revocation statute targeting repeat DWI offenders, would seem that DMV cannot lawfully enact administrative regulations that trump the statute and impose a greater-than-8 year license revocation on the person. Yet the new DMV regulations impose a permanent lifetime license revocation whe a person has 5 DWI-related convictions/incidents over the council of his or her entire lifetime. See 15 NYCRR § 136.5(b)(1). See 15 NYCRR Part 132. Thus, if DMV's new regulations are legal, then VTL §§ 1193(2)(b)(12)(d)/(e) are also "superfluous, result to be avoided in statutory construction." Litto, 33 A.D.3d at 626. d not result in an 8-year limanent" revocation statute the seem that DMV cannot leations. cson's licens DWI-related e revocation a greater-thanrevocation where driving under t "superfluous Litto, 33 reco cour S ß S O

merely least t license least or crime; a license least tr crimes. Notably, one Iotably, in order for a person to be subject to a 5-year se revocation pursuant to VTL § 1193(2)(b)(12)(a)(i), at one of the person's DWI-related convictions must be for and in order for a person to be subject to a 5-year se revocation pursuant to VTL § 1193(2)(b)(12)(a)(ii), at two of the person's DWI-related convictions must be for lave 4 DWI-related convictions within 8 years. Rather, two of the convictions must be for crimes. at

not count as DW 1193(2)(b)(12), regulations. § addit any of cion, cont ۲t rest, the new DMV regulations contain no the person's DWI-related convictions be for Tolerance law (i.e., VTL § 1192-a) DWI-related offenses for purposes of VTL but they do count for purposes of the See 15 NYCRR §§ 132.1(a) & 136.5(a)(1). the VTL e for a crime) findings requirement new ime

In sum, VTL § 1193(2)(b)(12) provides clear statutory regarding (a) when a driver's license can be "permanently" revoked, (b) what offenses can be counted for purposes of "permanent" revocation, and (c) for how long a "permanent" revocation can continue. The new DMV regulations appear to directly and irreconcilably conflict with this statute. 1 mit

### C 55:24 The with 5-year h VTL § IID portion 1198, PL § 6 of the new regulations 65.10(2)(k-1) and case law conflic S S

The 5-year and 136.5(b)(3) In this regard, mandated: IID portion of 15 NYCRR (conflicts with existing PL § 65.10(2)(k-1) makes NYCRR SS statutes clear that \*3.2(c)(4), to the test and case to the test and in the test and the t 136.4(b)(2) ase law. can be

[O]nly where a person has been convicted of a violation of [VTL § 1192(2), (2-a) or (3)], or any crime defined by the [VTL] or [the PL] of which an alcohol-related violation of any provision of [VTL § 1192] is an essential element. The offender shall be required to install and operate the [IID] only in accordance with [VTL § 1198].

(Emphases added).

Appellate Division, Second Department, improperly directed . . . that the department of the motor vehicle . . . Here, the department of the conference of the control of the conference of the c People v. Levy, 91 91 A.D.3d 793, 794 (20 20) nd Department, held that "County courty that the defendant install an [IID] on . Here, the defendant's conviction for le while under the influence of drugs fric Law § 1192(4) falls outside the

In (1995), addition, the Court Court 0 fi in People v. Appeals made Letterlough, clear that 98 N.Y. 2d 259, 26

A recent enactment authorizes courts to order a defendant, as a condition of probation, to install an "ignition interlock device" that attaches to the vehicle's steering mechanism and ignition (Vehicle and Traffic Law § 1198). . . Clearly, no such legislative initiative would have been necessary if this type of condition could have been imposed by the courts on a case-by-case basis under Penal Law § 65.10's existing catch-all provision.

where <u>Levy</u> makes there express clear that statutory an IID requirement authorization can only be therefor; and impose

<u>Lette</u> under under a generic, "catch-all" prana administrative agency thinks make S s clear that "catch-all" such provision simply becanks it is a good idea. נם requirement becaus canno Ō ot be imp e a Court odwr ςŤ 0 Ø

imposition of a 5-year IID requirement on individuals who could not lawfully be subjected to an IID pursuant to either PL § 65.10(2)(k-1) or VTL § 1198 (e.g., individuals who have only beconvicted of violating VTL § 1192(1) or VTL § 1192(4), or who have only been found guilty of refusing to submit to a chemical test in violation of VTL § 1194 or of underage drinking and driving in violation of VTL § 1192-a). make of . tters 5-ye worse, ar IID 15 NYCRR § 136.5(b)(3) mandates on individuals who c es the en

In addition, the Legislature has declared that the cost of an IID is a fine. See VTL § 1198(5)(a). It is axiomatic that DMV has no authority to impose —— as opposed to collect —— fine or fees. See Matter of Redfield v. Melton, 57 A.D.2d 491, 495 (3d Dep't 1977). Thus, it appears that the IID portion of the new DMV regulations also constitutes an illegal fine. is a fine. <u>See</u> VTL § 1198(5)(a). is a fine. <u>See</u> VTL § 1198(5)(a). s no authority to impose -- as oppose. <u>See Matter of Redfield v. Melter of 1977). Thus, it appoars it</u>

### 5 25 The confli 25-year look-back portion of Licts with numerous statutes the new regulations

was physical injury or the motorist is a commercial driver) the relevant look-back period for DWI-related offenses is never more than 10 years. See, e.g., VTL §§ 1193(1)(a), 1193(1)(c)(i), 1193(1)(d)(2), 1193(1)(d)(4)(i), 1193(1 The Legis. H a ture has epeatedly made O 10 ğ  $\Box$ that cial (unle SS the: re

For example, a prior DWI conviction can only be used to elevate the level of a new DWI charge from a misdemeanor to a felony if the prior conviction was within 10 years of the new offense. See, e.g., VTL §§ 1193(1)(c)(i) & 1193(1)(c)(ii). Thus, a person who is charged with DWI 10 years and 1 day afte being convicted of a previous DWI is treated as a first offend See, e.g., People v. Smith, 57 A.D.3d 1410 (4th Dep't 2008) (class D felony DWI reduced to class E felony DWI because one defendant's two predicate DWI convictions was 10 years and 3 doubt, and it thus could not be counted). , a prior DWI co days 0f B

elevate the charge if offense. 125.14(3). elevate Similar imilarly, a preather level of if the prior if the prior in See, e.g., α. prior DWI conviction can only be of a Vehicular Assault/Vehicular or conviction was within 10 years p., PL §§ 120.04(3), 120.04-a(3), used to
Manslaughter
of the curre
125.13(3) & н 'nt

traffic inf convictions DWAI charge c infraction tions within the is only a misdemeanor -- if the defendant h past 10 years. defendant has See VTL two S prior VTL § 1 § 1193(1)(a). opposed to

\$ P. f the vithin motorist has the previous chemical test  $\Omega$  D refusal is only treated as a repeat offer prior refusal or DWI-related conviction years. See VTL § 1194(2)(d)(1). offense

For purposes of issuing a post-revocation conditional license, "the commissioner shall not deny such issuance based solely upon the number of convictions for violations of any subdivision of [VTL § 1192] committed by such person within the ten years prior to application for such license." VTL § 1198(3)(a).

Records pertaining to a VTL § 1192-a finding are required be sealed after 3 years or when the motorist turns 21, whichever is longer. See CPL § 160.55(5)(c). See also VTL § 201(1)(k) ("Upon the expiration of the period for destruction of records pursuant to this paragraph, the entirety of the proceedings concerning the violation or alleged violation of [VTL § 1192-a . . from the initial stop and detention of the operator to the entering of a finding and imposition of sanctions . . . shall I deemed a nullity, and the operator shall be restored, in contemplation of law, to the status he occupied before the initial stop and prosecution"). required to, whichever 1192-a]

mos: evocation, DW: ost, 8 years. Finally, rofor purposes of "permanent" driver's license WI-related convictions are only relevant for, See VTL § 1193(2)(b)(12). Ф (+

Simply stated, the Legislature has repeatedly and unequivocally made clear, over a period of decades, that (unless there was physical injury or the motorist is a commercial driver) DWI-related convictions/incidents that are more than 10 years old are too remote in time to be relevant -- even in vehicular would homicide too remote in cases oo remote in time to be relevant -ide cases. In changing from a 10-y
cases lifetime) look-back period, tl
appear to conflict with well over 10-year to a 25-year a dozen DMV regulations statutes. (and lin

## 55: 9 The new doctrine regulations violate the separation of powers

that "[t]he the senate a State v. Ser regulations new red Governor's rnor's press Article "[t]he : who cle III, § 1 of the New York State Constitution provide the legislative power of this state shall be vested in the legislative power of this state shall be vested in the legislative power of Medical Soc'y of Serio, 100 N.Y.2d 854, 864 (2003). The new DMV ons are clearly legislative in nature. Indeed, the spress release that accompanied the announcement of lations expressly states that "[u]nder current law, the are convicted of multiple alcohol or drug related provides the

passengers and pedestrians.'" See id. In the release, DMV Commissioner Fiala is quoted as saying "![t]he Department of Motor Vehicles is proud to be working with Governor Cuomo in a concerted effort to address the problems caused by the most dangerous drivers with a history of repeat alcohol- or drug-related driving offenses.'" Id. (emphasis added). These addressing the issue of repeat DWI offenders. driving Governor "enough driving press release enough" to 'i fens permanently also state ly lose tes that their license

mandates, a license to (quoting Both the Court of the Cou It is axiomatic that an social policy. Rather, it ca enacted by the Legislature. ("'[e]ven under the broadest mandates, an administrative a Boreali v. Axelrod, 0£ Appeals held t e agency may not or societal evils of 71 N.Y.2d 1, 9 can only implement.

See Serio, 100 N
st and most open-en hat: open-ended of 9 agency cames ent social policy use its it perceives'") (1987)). In authority a <u>Boreali</u> ВB

authority. Howeve agency stretched t constitutionally v statute as a basis embodying its unconst ere, ought t 0 ally valid reach when it basis for drafting a cos own assessment of what be. a code enabling that the used the public

# 71 N.Y.2d at 9. More specifically:

authority to promulgate regulations on matters concerning the public health, the scope of the Council's authority under its enabling statute must be deemed limited by its role as an administrative, rather than a legislative, body. In this instance, the Council usurped the latter role and thereby exceeded its legislative mandate, when, following the Legislature's inshirt code to gover are open to t Legislature h authority to oundaries chority de to go an Public govern t n to the ture has acceptable s of its lawfully del when it promulgated overn tobacco smoking οf concerns sinesses a public. V h Council overstep lawfully delegated balance, s of and smoking nonsmokers, While the Counci overstepped വ in the comprehensive areas smokers, the that

and ection the rethat that that that below, accommodat: interests. regulations resulting that economic, the without which the ting regulatory scheme, Council's actions were In view of the political ic, rather than technical, (V) ch declared s invalid, s own any order y legislative conclusions actions were ultra v and judgment of the ced the Council's , should be affirmed rive guidance, ons about the competing ne political, w O conclude focus vires social proper court

### <u>Id.</u> at 6.

cas thousands of revoked for a longer-another thing for an legislative guidance, unique undoubtedly pers ው 1 regulat sistently has ever by-cas and <u>reali</u> ulati i would appear to compel the conclusion tions are illegal and ultra vires. Whily has a certain amount of discretion to se basis, whether a particular individual immediate threat to the motoring public individuals dangerous drivers" been thought possi ger-than-normal period of time, it an administrative agency to declarace, that entire groups -- ~~ possible and utter, mount of discretion to decrue, a particular individual poses to the motoring public and shows the triangle of time, it is quality to the motoring public and shows the motorial and e agency to declare, with r groups -- consisting of generically characterized ad punished far more severe conclusion While that quite with. severely should the on φ new no S) D) Ф ре

always been time frame, that a chang regard, the doctrine of legislative acquiescence "[w]here the practical construction of a statute the Legislature is charged with knowledge and its interfere indicates acquiescence." Engle v. Tala 237, 242 (1973). change in circumstances has change in policy was necessary (or regard, the doctrine of legislation [w]here the praction question have This տ Մ re always existed, (b) te permitted to get their and (c) there has been particularly true where,
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in legis! even welcome). legislative motorists place and/or malcome). In and its e back in a ence provides tute is well k d its failure Talarico, 33 (a) in determination the groups question h well-known that this known, Ν.Υ. to that had 2d

legislattice tacknowledgme...
While the executive branch of the executive branch of Legislature's lack of action, taviolates the separation of power ultra vires. See also People v. (1995) ("While innovative ideas recidivist drunk driving are no must act within the limits of the hy using their probat and the limits of the l legislative cannot be up simp<sub>1</sub> οf by using their probationary
legislative branch can do");
of such a penalty out of whol re prerogative,
upheld"). stated, itated, the Legislature's failure to enact any new iddressing the issue of repeat DWI offenders is a ledgment that the status quo should not be disturbed. Secutive branch of government may be frustrated by the lack of action, taking matters into its own hands separation of powers doctrine and is illegal and See also People v. Letterlough, 86 N.Y.2d 259, 269 See also People v. Letterlough, 86 N.Y.2d 259, 269 See also People v. Actions of the serious problem of penalty o are not condition, the to iπ whole authority be discouraged, powers to a however cloth usurps to and cannot well-intended, accomplish Œ court

Notably, the Appellate Division, First Distruck down New York City's "large soda ban" separation of powers doctrine as delineated in York Statewide Coalition of Hispanic Chambers York City Dep't of Health and Mental Hydiene, 2013 WL 3880139 (1st Den'+ 2013) Division, First Depar "large soda ban" base ne as delineated in Bo Hispanic Chambers of Department, " based upon in Boreali. Commerce A.D.3d recently the See New <-New New

### 55:27 The new regulations are being applied retroactively

prior to the regard, it is enacting an e249 (2000). punishment f at 249. See enactments regulations committed -it is the date that the is axiomatic which, by retroact for a crime after e also Peugh, 133 see "One the is is that and to post ee als te that the regulations were enacted. In this xiomatic that "[t]he States are prohibited fixiomatic that "[t]he States are prohibited fixiomatic that "[t]he States are prohibited fixiomatic that." Garner v. Jones, 529 U.S. 2001 of the Ex Post Facto Clause is the crime after its commission." Garner, 529 U.S. 2001 of the Ex Post Facto Clause is the commission." Garner, 529 U.S. 2001 of the Ex Post Facto Clause is the commission. more license DMV is disturbing aspects of the DMV is applying them to delicense revocations that the offenses that had commenced new the 529 ed from .S. 244, 2072, is to h this Wer U.S Ø ಶ್ವ Н

that retroactive changes to the rul inmates can violate the Ex Post Fac See also Peugh, 133 S.Ct. at 2085. the Supreme Court on June 10, 2013, post facto violation when a defenda Guidelines promulgated after he com the new version provides a higher alsentencing range than the version in offense." 133 S.Ct. at 2078. In scas follows: Ex Post Facto Clause. 529 U. at 2085. Peugh, which was le 10, 2013, held that "there in a defendant is sentenced ufter he committed his criminal or the committed of the committed his criminal or the criminal or the committed his criminal or the cri United States SO h. applicable place at the holding, the Supreme Guidelines "there criminal acts the was Court time Court □. under parole of U.S. at 250. s decided by e is an ex of made reasoned cle and ar

A retrospective i range applicable sufficient risk o constitute an ex increase in the le to a defendant of a higher sent ex post facto viol sentence t violation. Guidelir creates to n മ Ō

Our holding today is consistent with basic principles of fairness that animate the E:

Post Facto Clause. The Framers considered post facto laws to be "contrary to the fing principles of the social compact and to exprinciple of sound legislation." The Clausensures that individuals have fair warning applicable laws and guards against vindict legislative action. \* \* \* mate the Ex considered ex to the first warning of vindictive bas Clause every

[T]he Exprotect princip] rinciples x Post Facto Clause reliance interests. les of "fundamental justice." does Ιt not also mere merely reflect: ່ເນ

the amended Guidelines created a "significant a sentence for Peugh, and principal interests that Clause was designed to sjustice." sentencing the amended punishment by 'formula' use [government "[T]he X Fi used to Post range." t Facto C1.
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Id. at 2084-85, 2088 (citations omitted).

Critically, the <a href="Peugh">Peugh</a> Court -- citing <a href="Garner">Garner</a> -- stated that "our precedents make clear that the coverage of the <a href="Ex Post Facto">Ex Post Facto</a> Clause is not limited to legislative acts." <a href="Id">Id</a>. at 2085.

Numerous federal Circuit Courts of Appeals have also made clear that administrative regulations are subject to the <a href="Ex Post Facto">Ex Post Facto</a> Clause where they have "the force and effect of law." <a href="See, e.g.">See, e.g.</a>, <a href="Metheny v. Hammonds">Metheny v. Hammonds</a>, 216 F.3d 1307, 1310 (11th Cir. 2000); <a href="Shabazz v. Gabry">See, e.g.</a>, <a href="Metheny v. Hammonds">Metheny v. Gabry</a>, 123 F.3d 909, 915 n.12 (6th Cir. 1997); <a href="Hamm v. Hammonds">Hamm v. Hammonds</a>, 27 F.3d 947, 957 (1st Cir. 1995); <a href="Dehainaut v. Pena">Dehainaut v. Pena</a>, 32 F.3d 1066, 1073 (7th Cir. 1994); <a href="Filmming v. Oregon Bd. of Parole">Filmming v. Oregon Bd. of Parole</a>, 998 F.2d 721, 726 (9th Cir. 1993); <a href="U.S. ex rel.">U.S. ex rel.</a> Forman v. <a href="MicCall">MicCall</a>, 709 F.2d 852, 559 (3d Cir. 1983) ("We note at the outset that the fact that the guidelines are administrative regulations rather than statutes does not preclude their being 'laws' for ex post facto purposes, for it is a fundamental principle of the counts of the c post facto purposes, for administrative law that the force and effect of es not preclude their being 'laws' i' it is a fundamental principle of '[v]alidly promulgated regulations law'") (citation omitted). have to

Hosp., follows , to 488 gardless the new re U.S. 204, of whether whether the Ex Post Faregulations, in Bowen 4, 208-09 (1988), the Facto Supreme <. Georgetown Universe Court held Clause technically

Retroactivity is not favored in this, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result. By the same principle, a statutory grant of legislative rulemaking authority will not, as a general matter, be analyzed to encompass the power to understood to encompass the pow promulgate retroactive rules un power is conveyed by Congress i terms. Even where some substan justification for retroactive releasented, courts should be released authority absent an expression ve rulemaking reluctant to unless antial in construed to heir language me principle, expres statutory that press is find

(Emphases added) (citations omitted).

Commissioner, Dep't 1995); M A.D.2d 775, 77 A.D.2d 367, 36 N.Y.2d 863 (19 A.D. Comm pepartment -- have also recognized a administrative regulations, like new See, e.g., Matter of Monton 2d e.q., <u>l</u> 2d 129, er, Dep't of Consumer Affairs, 213 A.D.20); Matter of Rudin M.); Matter of Good Samaritan Hosp. v. Axe, 777 (2d Dep't 1989); Matter of Linsley, 369 (3d Dep't 1972), aff'd on opinion (1973). Matter regard, New York Court a presumption that new a presumption that new ew laws, apply prospectively.

Tax Appeals Tribunal, 291

Tax Appeals Mgmt. Co. v. Ø Rudin Mgmt. Co. v 213 A.D.2d 185, 185 217 A.D.2d 185, 185 Axelrod, 10 Gall below, <u>llman</u>, 33 185 (1st 38

Retroactively changing the rules applicable to the length of a driver's license revocation after a person has pled guilty to a VTL § 1192 offense (and/or after the person has applied for relicensure) is analogous to retroactively changing the rules applicable to how long the person will remain in prison for the offense. In both situations the person has a legitimate -- indeed Constitutional -- expectation at the time of sentencing/application that the rules then in effect will not change after the fact. Faith in our legal system would literally evaporate if sentences can validly be changed, long after a plea bargain is entered, at the whim of an administrative agency. Notably, the Peugh Court repeatedly made clear that one of the principal interests that the Ex Post Facto Clause was designed to serve is "fundamental justice." bargain is entered, at the whin Notably, the  $\underline{Peugh}$  Court repease principal interests that the E serve is "fundamental justice.

2013 held ML that: People v. 3467329, \* Luther, \*6 (East Misc. Rochester 3d Just Ct. 2013), ល the Court

specified violations and .....

specified violations and .....

this case, at the time of the violation the plea, the defendant was not on notice that a third violation of V & T § 1192(3) would or could lead to a suspension of driving privileges for two (2) years [sic five (5) years] beyond the mandatory six (6 month revocation. While DWI was illegal before and after the regulatory change, the punishment/consequences as to driving unishment/consequences as to driving has in the punishment of t notice that certain condupecified violations and his case, at the first case, at the first case. post facto cipals fundament act were [more in may or may or may or may or may or may or may of justing of jus laws is putting ertain conduct concept ime of the violation and putting a not constitute tainly violate a de de 'n ohibit fendant on [sic six (6) n ex basic ion the 0

guilty is the trial defendant's dant's motion to vacate the plea granted. The matter is restored calendar on all pending charges. O

(Citations omitted).

**(**2) 5:28 Although DMV can circumstances," in reality this regulations in "unusual theoretically deviate extenuating standard and from the cannot compelling e D met

15 NYCRR § 136.5(d) provides that:

approved based discretionary a and may be presented for review and which may form a valid basis to deviate from the general policy, as set forth above, in the exercise of discretionary authority granted under sections 510 and 1193 of the Vehicle this section, the Commissioner shall not be foreclosed from consideration of unusual, extenuating and compelling circumstances that may be presented for review and which may recorded. approva tο act Traffic on applications cionary a al shall the Law. d upon the exercise authority, the real be set forth in w Commissioner's Ιf an in accordance application reasons writing general of. such ր. Ծ with for and policy

(Emphase S added). See also <u>ال</u> 5 NYCRR (V) 132.3.

in al According to 15 NYCRR § 136.5(d), the new DMV regulation are merely a "general policy" that DMV is free to deviate fro its discretion upon a showing of "unusual, extenuating and compelling circumstances." It is the authors understanding, however, that the DMV employees at the Driver Improvement Bureau who review "compelling circumstances" claims are instructed to never grant them. As such, the employees who review such claims er grant them. reality have n n. As such, the employees no discretion whatsoever. They to deviate from simply regulations deny them üŢ

circumstances"; nor are there any guidelines to assist a DMV employee in rendering such a determination. Accordingly, even it is theoretically possible to meet this standard, there is no policy in effect to ensure that similarly situated individuals are treated similarly. Thus, even if "compelling circumstance" In this regard, it appears that DMV's so-called "gopolicy" is not a general policy at all. Rather, it is and-fast rule that (a) has no exceptions, and (b) has tand effect of law. Notably, the DMV regulations do not what would constitute "unusual, extenuating and compell thi is of law. Notably, th constitute "unusual, that DMV' Rather, it i , and (b) has compelling has the "gener ω define hardforce no

claims the cla ims are actually juddare reviewed judged ewed in an g their merits arbitrary and (which (which they capricious manne aren't

## 55:29 IID rules now apply to youthful offenders

such, vehicles fenders cles only applied v the rules did not such adjudications install Ċ Ċ offe ....vember 1, 2013, the requiremennstall ignition interlock devices (y applied where the defendant les did not apply the defendant of the apply to youthful offender adjudications are not "convictions"). See CPL § 720.10 requirement was "convicted." As offender nt that certain ("IIDs") in the

Effective November 1, 2013, VTI 1193(1)(c)(iii) provide that the III now apply to anyone "convicted of, offender for, a violation of [VTL § (Emphasis added). TIV IID requirements of VTL § 1, or adjudicated a youthful § 1192(2), (2-a) or (3)]." ťΩ 1193(1)(b)(ii) and 119

# 55:30 Duration of IID requirement

11931. requiremen discharge Prior to November 1, 2013, VTL § 1193(1)(b)(11) and vib 3 (193(1)(c)(iii) provided that the duration of a mandatory IID requirement was "during the term of such probation or conditional discharge imposed for such violation of [VTL § 1192] and in no event for a period of less than six months."

peopic requirement a 6-month II order given defendants months as which the eople who onth IID requirement -- were confronthe installer would not remove the on the ground that the sentence was as opposed to for precisely 6 mont dants who installed the IID prior to credit for "time language o thought -- and led to construction that they had received a many Judges who thought trement -- were confronted that the life that they have the life that they had received a life that they had received or precisely 6 months. ed the IID prior to sesserved." confronted with a situation ove the IID without a Court confusion in for a minimum of ns. In addition, sentencing were r that they had 6-month situation IID that many sodur in

were amenduration As amended, o H result, mandatory effective VTL C⁄D and VTL to ე ე provide follows: (/) 1193(1)(c)(iii) vide that the

[D]uring the conditional d violation of period specifi unless t install conditional discharge imposed for such violation of [VTL § 1192] and in no evaluation of less than [12] months; prohowever, that such period of interlock restriction shall terminate upon submit of proof that such person installed and maintained an [IID] for at least [6] maintained an [IID] for at least [6] maintained and [6] maintained and [6] maintained and [6] maintaine period as specified the and maintain authorized in such ord court ordered such person d maintain an [IID] for a authorized by this subpara of γd such probation subparagraph e period of period submiss o event for provided, and or longer mont ion and

interlock restriction earlier of the date of date that an [IID] was sentencing. rlock restriction shall commence from tier of the date of sentencing, or the that an [IID] was installed in advance the

## Ø :31 "Good cause" for not installing IID defined

operate -- a motor requirement. In th 1198(4)(a) defines follows: the defendant failed the defendant did not own issue ant failed to install an IID due to the fadid not own -- and claimed that he or she a motor vehicle during the duration of the installing a defines "good cause" for not installing a had arisen a a t O how t 0 re November 1, 2013, Vot installing an TTO handle situations fact that T'n not VTL ე დ which the **(∕**)

person is not the owner of a motor ve and that he or she will not operate vehicle during the period of authorical restriction except a authorized pursuant have the same meanin 128]. meaning e period of interlock t as may be otherwise nt to law. "Owner" shaing as provided in [V] not operate an od of interlock any motor g that the cor vehicle any motor such vehicle [VTL shall **(∕**)

### Ś ັບ 32 Violating V VTL ر⁄) 1192 while on a conditional license ը.

17 (2011), the Court of Appe has been revoked, but who ha failed to comply with its co the traffic infraction of dr license, not for the crime o revoked." In other words, s conditional license is not c on a conditional license is People 1), the V. Ki Rivera, urt of A Appeals held that "a driver whose license ho has received a conditional license and ts conditions, may be prosecuted only for of driving for a use not authorized by his ime of driving while his license is გ. since a person who possesses committing AUO, committing D's not AUO 1st. DWI valid while

overruled. In this regard, newly enacted VTL § 511 provides that a person commits the felony of AUO 1st person "operates a motor vehicle upon a public highwholding a conditional license issued pursuant to [VT1196(7)(a)] while under the influence of alcohol or violation of [VTL § 1192(1), (2), (2-a), (3), (4), (5)]." November 1, 2013, Rivera was legislatively this regard, newly enacted VTL § 511(3)(a)(iv) person commits the felony of AUO 1st when the s a motor vehicle upon a public highway while (4-a) Ø drug : -a) or in

# SUMMARY OF NEW DMV REGULATIONS

prepared by

Eric H. Sills, Esq.
Gerstenzang, O'Hern, Hickey, Sills & Gerstenzang
210 Great Oaks Boulevard
Albany, New York 12203
(518) 456-6456

## KEY DEFINITIONS:

1 Alcohol- or drug-related driving conviction or incident (hereinafter "DWI") --

Any of the following, not arising out of the same incident:

- (i) a conviction of a violation of VTL § 1192<sup>1</sup>;
- $\Xi$ a finding of a violation of VTL § 1192-a (i.e., the "Zero Tolerance" law)2,
- $\Xi$ a conviction of a Penal Law offense for which a violation of VTL § 1192 is essential element; or 召
- 3 а finding of a refusal to submit to a chemical test pursuant to VTL § 1194
- 2 driving record High point driving violation -any violation for which 5 or more points are assessed on a person's
- Serious driving offense (hereinafter "SDO") --

Any of the following, within the 25-year look back period:

- (i) a fatal accident;
- (ii) a driving-related Penal Law conviction;
- (iii) conviction of 2 or more high point driving violations; or
- (iv) 20 or more total points from any violations
- 4. 25-year look back period -- the time period 25 years prior to, and including, the date of the revocable
- Ņ **Revocable offense** -- the violation, incident or accident that results in the revocation of a person's driver's license and which is the basis of the application for relicensing.<sup>3</sup>

<sup>---</sup>Youthful offender adjudications don't count. Nor do AUO 1st convictions or VTL § 1194-a findings

N VTL § 1192-a findings won't be considered after the expiration of the retention period contained in VTL § 201(1)(k).

offense committed between the date of the revocable offense and the date of application as if the offense had been committed immediately prior to the date of the revocable offense. For purposes of this definition, "date of the revocable offense" means the date of the earliest revocable offense that resulted in a license revocation that has not been terminated by DMV. Upon reviewing an application for relicensing, DMV will review the applicant's entire driving record and evaluate any

# SUMMARY OF NEW DMV REGULATIONS

## KEY PROVISIONS:

- 1. Effective date of new regulations: September 25, 2012.
- 1st DWI-related offense: no change.
- ပ္ပ rules), but can't get full license back prior to the expiration of the minimum suspension/revocation period (i.e., successful DDP completion no longer terminates suspension/revocation for 2nd offenders).<sup>4</sup> 2nd offense within past 25 years:  $\Delta$  can still obtain conditional license (if eligible under the old
- 4 3rd or subsequent offense within past 25 years:  $\triangle$  ineligible for conditional license
- S revoked for non-DWI offense<sup>5</sup>:  $\Delta$  will serve out minimum statutory revocation period plus 2 more years, after which  $\Delta$  may be granted an A2 "problem driver" license (with no IID requirement) for 2 more years (i.e., minimum + 2 + 2). A has 3 or 4 DWIs - but no SDOs - within 25-year look back period, and is current
- 6 revoked for DWI offense:  $\Delta$  will serve out minimum statutory revocation period plus 5 more years, after which  $\Delta$  may be granted an A2 "problem driver" license (with IID requirement) for 5 more years (i.e., minimum + 5 + 5).  $\Delta$  has 3 or 4 DWIs — but no SDOs — within 25-year look back period, and is currently
- .~ revoked for any reason: lifetime license revocation  $\Delta$  has 3 or 4 DWIs and 1 or more SDOs within 25-year look back period, and is currently
- $\infty$ A has 5 or more DWIs ever and is currently revoked for any reason: lifetime license revocation.
- 9. suspended (e.g., for DWAI)\* -- as suspensions do not trigger either full record review or need to submit application for relicensing. See also Rules 10 & 11. **Rules 5-8 only apply if \Delta's license is revoked**: i.e., Rules 5-8 do not apply if  $\Delta$ 's license is suspended (e.g., for DWAI)<sup>6</sup> -- as suspensions do not trigger either full record review or need to
- 10 drive carefully! See Rule 11. Rule 7 or Rule 8 would apply if  $\Delta$ 's license was revoked, but  $\Delta$ 's license is currently valid:
- 11.  $\Delta$  convicted of a high-point driving violation: DMV will review  $\Delta$ 's lifetime driving record and apply Rules 7 and 8, if applicable.
- 12. A2 "problem driver" license: basically the same as a restricted use license. See VTL
- 13. If A2 "problem driver" license revoked for new DWI: lifetime license revocation
- DMV can deviate from this "general policy" if  $\Delta$  demonstrates "unusual, extenuating and compelling circumstances" -- GOOD LUCK!!! circumstances"

ø

chemical test have 4 this regard, 2nd offenders are now treated the same way that underage offenders and offenders who refused to submit to always been treated

Ų, g.,  $\Delta$  currently revoked for 3 speeds/misdemeanors within 18 months, leaving the scene of a PIAA, speed contest, etc

<sup>6</sup> some DWAIs result in revocation (e.g., 2nd offense in 5 years; 3rd offense in 10 years; underage offenders).

A2 "problem driver" license will be revoked if  $\Delta$  convicted of (a) following too closely, (b) speeding, (c) speed contest, (d) operating out of restriction, (e) reckless driving, or (f) any 2 other moving violations.

## THE NEW DMV REGS --

Effective September 25, 2012

# LIFETIME REVOCATION FOR "DANGEROUS REPERT ALCOHOL OR DRUG OFFENDERS" OR DRUG OFFENDERS"

a.k.a. "Persistently Dangerous Drivers"

## I # NOITAJOVAR AMITARIA

5 or more alcohol -or drug-related convictions or incidents

Lifetime Look Back

15 NYCRR § 136.5(b)(1)

Lifetime record review of record triggered by:

- Any license revocation; or
- Conviction of high point driving violation, i.e., 5 or more points
   Example Reckless Driving

Suspensions of driver's license do not trigger lifetime record review

# ALCOHOL— OR DRUG-RELATED 15 NYCRR § 136.5(a)(1) 15 NYCRR § 132.1(a)

- VTL § 1192 conviction (or similar out-of-state conviction)
- Zero Tolerance Law adjudication (VTL § 1192-a)
   If within retention period
   (VTL § 201(1)(k))
- Penal Law conviction for which VTL § 1192 violation is an essential element
   e.g., Vehicular Assault/Vehicular Manslaughter
- Chemical test refusal (VTL § 1194)

## **CURRENT EXCLUSIONS**

Youthful Offenders

• AUO 1st

Zero Tolerance Law refusals (VTL § 1194-a)

Boating While Intoxicated

• Snowmobiling While Intoxicated

### II # NOITADOVARION # II

25 Year Look Back

 3 or 4 alcohol- or drug-related driving convictions or incidents

**DNA** 

1 or more Serious Driving Offenses
 1 or more Serious Driving Offenses
 2 or more Serious Driving Offenses

12 NACKR § 136.5(b)(2)

## SEBIONS DE MEVBE SEBIONS DE MEVBE

15 NYCRR § 132.1(d)
15 NYCRR § 132.1(d)

- Fatal accident
- Driving-related Penal Law conviction
- 2 or more high point driving violations
- 20 or more points

## 12 NACKR § 132.1(e) 72 NACKR § 132.1(e) 72 NEPR 700K BPCK

"Period commencing upon the date that is 25 years before the date of the revocable offense and ending on and including the date offense of the revocable offense"

## "ADDITIONAL FIVE AND FIVE"

## 5-Year Waiting Period 15 NYCRR § 136.5(b)(3)

• 3 or 4 alcohol- or drug-related driving convictions

#### **DNA**

Currently revoked for alcohol- or drug-related driving conviction or incident

#### **GNA**

- No "SDO" within 25 years
- Must first serve minimum statutory revocation, and then 5 year "waiting period" commences

## "AND FIVE"

After 5-year waiting period, driver may be issued:

License with an A2 Problem Driver Restriction
 15 NYCRR § 3.2(c)(4)
 15 NYCRR § 136.5(b)(3)

Must drive on A2 license for 5 years

With IID the whole time

# **T2 NYCRR §135.9(b) RESTRICTIONS**

- To and from place of employment or education;
- During course of employment or education, when required;
- To or from medical treatment or examination for licensee or family member;
- To or from driver rehabilitation program (DDP), if required;
- To or from DMV in regard to DDP or a licensing issue; and
- To or from regular child care or child's school, if necessary, to maintain licensee's employment or education

## **OTHER CONDITIONS**

- Does not allow 3-hour block of discretionary driving
- Driver subject to Ignition Interlock Device requirement
- Cannot drive commercial vehicle, for hire vehicle, or motorcycle

## "OWT GNA OWT JANOITIGGA"

2-Year Waiting Period

- Has 3 or 4 alcohol- or drug-related driving convictions or incidents within 25 years;
- No SDO; and
- Revoked for non-alcohol- or drug-related conviction, e.g., 3-speed revocation, etc.

## **A2 RESTRICTION**

- Must first serve minimum statutory revocation and then
   Year waiting period
- May then apply for a license with A2 Problem Driver Restriction for 2 years
- If issued, must drive on A2 license for 2 years
- No IID required

#### HOW TO LOSE AN A2 LICENSE

Conviction of a "serious traffic violation," which is defined as:

- Speeding;
- Speed contest;
- Following Too Closely;
- Reckless Driving;
- Operation Out of Restrictions; or
- Any two other moving violations

Note: These are the same offenses that result in the loss of a probationary license – VTL § 510-b

OR

Failure to install and maintain an IID when required

## III # NOITADOVAR AMITARIA

If driver's A2 License is revoked for subsequent alcohol- or drug-related driving conviction, license is revoked for life
 15NYCRR § 136.5(b)(3)

"owt bne owt" and "evit bne evit" and two and two."

## **CONDITIONAL LICENSE**

Disqualification:

• Previous rule - 3 in 10 New rule - 3 in 25

Goes by date of offense, not date of conviction

Rule applies to pre-conviction conditional licenses as well

## EMPLOYER VEHICLES

Same rules apply as to Ignition Interlock Devices generally.

Can operate without IID if:

- Motorist is required to operate a motor vehicle owned by
   employer in the course and scope of employment; and
- Vehicle only operated in the course and scope of employment
- If motorist has ownership interest, exception does not apply

## EMPLOYER LETTER REQUIRED

Motorist must carry written proof in the vehicle that:

- Employer has knowledge of IID restriction;
- Employer has granted permission to operate the employer's vehicle without an IID for business purposes
- Such proof is on employer's letterhead and has an authorized signature
- Court approval is currently not required. Proposed legislation would require it.

### **NEM BULES FOR SECOND OFFENDERS**

Old Rule – Successful DDP completion generally terminates license revocation

New Rule - 2 within 25 now same as:

- slesul9A .
- Underage Offenders
- CDF

Defendant must remain on conditional license (if eligible) for entire revocation period

New rule does not affect eligibility for conditional license

# MOTORIST'S RIGHT TO HEARING SEL TRAY WAN OT TNAUSRU9

- Motorist may, subject to new Part 132, request a hearing before an Administrative Law Judge prior to proposed revocation taking effect
- Sole purpose of such hearing is:

"To determine whether there exists 'unusual, extenuating and compelling circumstances' to warrant a finding that the proposed revocation should not take effect."

- In making such determination, the ALJ will take into account motorist's entire driving record
- Absent such circumstances, ALI will issue Order confirming proposed revocation

## "PERMANENT" REVOCATIONS

## Fai til yoht ob woh

Statute requires 5-year and 8-year "permanent

(21)(q)(z)8611 § 11A

- S years 3 within 4, or 4 within 8
- 8 years 4 within 4, or 5 within 8
- Under new rules, these will result in 5 plus 5 plus
- s suld s suld 8 •
- Or lifetime

# **LIFETIME REVOCATION # IV**VTL § 1193(2)(c)

2 convictions of a violation of
 VTL § 1192(3), (4) or (4-a) involving "physical injury"
 as defined in Penal Law § 10.00

## **DEFENDANT ON PROBATION**

Waiting period commences when defendant eligible to re-apply even though probation condition precludes such application

## **MATCH OUT FOR**

All convictions that result in a license revocation that Ex. 3rd DWAl within 10 years – 18-month revocation

(6-1)(d)(2)8911 § JTV

- Conviction for no insurance 1-year revocation
- Chemical test refusal 1-year revocation
- 20-day Order does not mean defendant can drive without IID