

#### **4.23. Evidence of Alcohol or Drugs in Blood**

**(1) Upon the trial of any action or proceeding arising out of actions alleged to have been committed by any person arrested for a violation of any subdivision of section eleven hundred ninety-two of [the Vehicle and Traffic Law], the court shall admit evidence of the amount of alcohol or drugs in the defendant's blood as shown by a test administered pursuant to the provisions of section eleven hundred ninety-four of [the Vehicle and Traffic Law].**

**(2) In any prosecution where two or more offenses against the same defendant are properly joined in one indictment or charged in two accusatory instruments properly consolidated for trial purposes and where one such offense charges a violation of any subdivision of section eleven hundred ninety-two of the vehicle and traffic law [Operating a Motor Vehicle While Under the Influence of Alcohol or Drugs], chemical test evidence properly admissible as evidence of intoxication under subdivision one of section eleven hundred ninety-five of such law [Chemical Test Evidence] shall also, if relevant, be received in evidence with regard to the remaining charges in the indictments.**

**(3) This rule does not preclude the admission in any proceeding of evidence of the amount of alcohol or drugs in a person's blood, if legally obtained and relevant, notwithstanding the absence of any charge under the Vehicle and Traffic Law.**

#### **Note**

**Subdivision (1)** restates Vehicle and Traffic Law § 1195 (1) except that the words “the Vehicle and Traffic Law” in brackets are substituted for “of this article.” By its terms, it applies to any “action or proceeding,” civil or criminal (*People v Ladd*, 89 NY2d 893, 896 [1996]).

**Subdivision (2)** restates Criminal Procedure Law § 60.75, except for the bracketed material. It applies to a criminal action, but as *Ladd* explains does not preempt application of the rule in subdivision (1):

“CPL 60.75 provides that when Vehicle and Traffic Law charges and Penal Law charges are tried together the evidence obtained pursuant to section 1194 of the Vehicle and Traffic Law is admissible as to both charges. The statute was enacted to remove any doubts arising from our holding in *People v Moselle* (57 NY2d 97 [1982]), that when charges from the two chapters were joined the test results were not admissible with respect to the Penal Law charges. Section 60.75 does not limit the use of blood test results to prosecutions under the Vehicle and Traffic Law or to prosecutions linking Vehicle and Traffic Law and Penal Law offenses. Indeed, section 1195 (1) of the Vehicle and Traffic Law provides that blood test results are admissible at the trial of ‘any action or proceeding’ arising out of a factual basis for a driving while intoxicated arrest. The evidence, if legally obtained and relevant, should be admissible in Penal Law prosecutions, notwithstanding the absence of any charge under the Vehicle and Traffic Law” (*Ladd*, 89 NY2d at 896).

**Subdivision (3)** is derived from the rule on “relevant evidence” (Guide to NY Evid rule 4.01 [2]) and *Ladd* (89 NY2d at 896).