

A newsletter by **Taheri & Todoro, P.C.**, devoted to Driving While Intoxicated law in New York State  
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## Civil Forfeiture of Automobiles in DWI Cases

In an effort to further combat DWI, several jurisdictions in New York State have begun pursuing civil forfeiture of the automobiles driven by individuals arrested for alcohol-related offenses. While such a program has not yet been instituted in the Western New York area, the New York State Court of Appeals has issued a ruling regarding the legality of these programs that will impact their future implementation.

In the case of *County of Nassau v. Canavan*, 1 NY3d 134 (2003), the defendant was arrested in Nassau County for Driving While Intoxicated, Driving While Intoxicated per se, Speeding, and Failure to Signal. Her 1995 Saturn, valued at \$6,500 was seized at the time of her arrest. In November of 2000, she pleaded guilty to Driving While Ability Impaired by Alcohol and Speeding. She demanded the return of her car the following month, and Nassau County commenced a civil forfeiture action under Nassau County Administrative Code § 8-7.0(g)(3), which states:

The County of Nassau may commence a civil action for forfeiture to the County of Nassau of the proceeds of a crime, substituted proceedings of a crime or instrumentality of a crime seized incident to an arrest for a misdemeanor crime or petty offense or upon a conviction for such misdemeanor crime or petty offense against any person having an interest in such property.

Nassau County Administrative Code § 8-7.0[g][1][d] defines an "instrumentality of a crime" as "any property, other than real property and any buildings, fixtures, appurtenances, and improvements thereon, whose use contributes directly and materially to the commission of any

offense."

The defendant appealed to the Nassau County Supreme Court on the grounds that the statute was vague and that forfeiture constituted excessive punishment. The Nassau County Supreme Court upheld the forfeiture, but, on further appeal, The Appellate Division for the Second Department found in *County of Nassau v. Canavan*, 303 AD2d 355 (2d Dept. 2003), that the statute was unconstitutionally vague because it did not provide any standards for determining which petty offenses would result in forfeiture. As a result, the Second Department reversed the judgment against the defendant.

In *County of Nassau v. Canavan*, 1 NY3d 134 (2003), the Court of Appeals affirmed the decision of the Second Department, but for different reasons. The Court of Appeals found that the statute's statement that a forfeiture action may be instituted in cases involving misdemeanor crimes or petty offenses was not unconstitutionally vague, but that several other flaws in the construction of the statute rendered it unconstitutional on other grounds.

Regarding the forfeiture of automobiles in alcohol-related driving offenses, the Court of Appeals specifically found that forfeiture was *not* an excessive penalty when it stated that "[g]iven the gravity of the crime of drunk driving, it is difficult to imagine that forfeiture of an automobile for such a crime could ever be excessive. Surely it is not so here," *Canavan*, 1 NY3d 134, 140. The problem with the Nassau County statute was that it allowed the county to pursue forfeiture for *any* petty offense. The Court of Appeals noted that "the

forfeiture of an automobile for a minor traffic infraction such as driving with a broken taillight or failing to signal would surely be 'grossly disproportional to the gravity of a defendant's offense' (*United States v. Bajakajian*, 524 U.S. at 334)," *Canavan*, 1 NY3d 134, 140. As a result, "the ordinance, as enacted, risks violation of the *Excessive Fines Clause*," *Canavan*, 1 NY3d 134, 141.

The Court of Appeals also addressed the need for a prompt hearing to determine the legality of retaining the automobile. No such hearing was provided for in the statute, and Nassau County had only been providing a hearing to those defendants who affirmatively asked for one. Given the risk of erroneous deprivation, especially in cases where an innocent third party was the actual owner of the vehicle, the Court of Appeals held:

due process requires that a prompt post-seizure retention hearing before a neutral magistrate be afforded, with adequate notice, to all defendants whose cars are seized and held for possible forfeiture. At such hearing, the County must establish that probable cause existed for the defendant's warrantless arrest, that it is likely to succeed on the merits in a forfeiture action, and that retention is necessary to preserve the vehicle from destruction or sale during the pendency of the proceeding.

*Canavan*, 1 NY3d 134, 144-145.

Thus, while finding that the Nassau County provision for civil forfeiture suffered from "a variety of procedural defects," *Canavan*, 1 NY3d 134, 145, the Court of Appeals also found that, when accomplished under a statute

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containing proper constitutional and procedural safeguards, forfeiture of the automobile is an acceptable penalty for alcohol-related driving offenses.