

A newsletter by **Taheri & Todoro, P.C.**, devoted to Driving While Intoxicated law in New York State  
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## Definitions of “Motor Vehicle” and “Public Highway”

### Legal Definition of “Motor Vehicle”

Vehicle and Traffic law section 125 defines a “motor vehicle” as “[e]very vehicle operated or driven upon a public highway which is propelled by any power other than muscular power....” Section 159 of the Vehicle and Traffic Law defines a “vehicle” as “[e]very device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.”

Whether the device driven by the defendant in a DWI case is a “motor vehicle” is usually not an issue. A car, truck, van, or jeep is a motor vehicle; a bicycle is not. When issues have arisen regarding whether an inoperable or unmovable vehicle was a “motor vehicle” within the statutory definition, the courts have usually offered a broad definition to include such vehicles.

For example, in *People v. David W.*, 83 A.D.2d 690 (3d Dept. 1981), the defendant was found slumped over the wheel of a vehicle on the shoulder of the road with the motor running. He admitted at trial that he had started the vehicle and tried to move it. The trial court refused to allow the defense to call a witness to testify that the vehicle was, in fact, incapable of being moved. In upholding the trial court’s decision and affirming the conviction, the Third Department stated:

...we initially find without merit defendant’s contention that the trial court erred in refusing to allow him to present a witness to testify regarding the inoperability of his

automobile. It is well settled that an individual can be found guilty of operating a motor vehicle while under the influence of alcohol if he begins to ‘manipulate the machinery of the motor for the purpose of putting the automobile in motion’ even if he is unsuccessful in moving the vehicle (see *People v. Domagala*, 123 Misc 757, 758) and operation of the vehicle is established by proof that an individual was merely behind the wheel with the engine running and without proof that he was seen driving the car (*People v. Alamo*, 34 N.Y.2d 453, *People v. Marriott*, 37 A.D.2d 868). Under this standard, the testimony of the proposed witness as to the operability of the vehicle would not have been relevant to the question of the defendant’s guilt....

*David W.*, 83 A.D.2d at 690.

### Legal Definition of “Public Highway”

After several DWI convictions were reversed by appellate courts because of the limited definition of a “public highway,” the New York State Legislature enacted Vehicle and Traffic Law section 1192[7], which states:

Where applicable. The provisions of this section shall apply upon the public highways, private roads open to motor vehicle traffic and any other parking lot. For purposes of this section “parking lot” shall mean any area or areas of private property, including a driveway, near or contiguous to and provided in connection with premises and used as a means of access to and egress from a public highway to such premises and having a capacity for the parking of four or more motor vehicles. The provisions of this section shall not apply to any area or areas of private property comprising all or part of property on which is situated a one or two family residence.

The rare cases where whether the vehicle was operated on a public highway becomes an issue have usually revolved around whether a specific parking lot falls within the definition of “public highway.” For example, in *People v. Hampton*, 176 Misc.2d 405 (Suffolk Cty. 1997), the information alleged that the defendant operated his motor vehicle in the parking lot of a funeral home that was closed for business. This parking lot had the capacity to accommodate four or more vehicles. Because the private parking lot was closed and the defendant had the owner’s permission to be there, counsel contended that it was not a “public highway.” In denying counsel’s motion to dismiss, the court wrote:

[I]t seems that the sole point of contention is whether the parking lot of the funeral home is “provided in connection with premises having one or more stores or business establishments” (Vehicle and Traffic Law § 129-b)... Clearly, a funeral home is a business, and the Court is not persuaded that the fact that the Giove Funeral Home happened not to be open at the time of the alleged offense somehow temporarily rendered the lot something other than a “parking lot” as described in VTL 1192(7). *Hampton*, 176 Misc.2d at 407.

This newsletter does not offer specific legal advice. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. If you have any questions or would like a specific topic covered in the newsletter, please contact Michael S. Taheri, Esq., or Peter J. Todoro, Esq., at Taheri & Todoro, PC, 388 Evans Street, Williamsville, NY 14221, telephone no. (716) 633-0374, e-mail: [taheri@localnet.com](mailto:taheri@localnet.com).

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