

Felony DWI Court in the Kings County Supreme Court

Opening October 12, 2010
as a separate track within
The Brooklyn Treatment Court

ELIGIBILITY

- Defendant is 21 years old or older
- Complaint/Indictment charges an E or D Felony DWI based on one or two prior misdemeanor DWI convictions within 10 years:
 - Current Charge(s): VTL §§ 1192.2; 1192.2-a(a); 1192.3; 1192.4; 1192.4-a
 - Punishable Under VTL § 1193(1)(c)(i) or (ii)
- The presence of other charges on the complaint/indictment will not act as a bar to the defendant's eligibility, except as provided below.

Disqualifying Factors

Cases involving a child 15 years old or younger in the car

Cases involving serious physical injury or death

Prior case involved serious physical injury or death

Conviction within the past 10 years for a Violent Felony or an A Felony

Pending Violent Felony or A Felony

CASE IDENTIFICATION

All potentially eligible cases will be identified at Criminal Court Arraignment and stamped DWI COURT ELIGIBLE by Clerks unless the file has been marked INELIGIBLE for DWI COURT by the District Attorney's Office (if a child 15 years old or younger was in the car or the case involves serious physical injury or death).

Cases stamped DWI COURT ELIGIBLE will be adjourned to Part APD (the Brooklyn Treatment Court) for the next business day.

Arraignment Judges will not order VTL § 1198 assessments or screenings for any cases adjourned to DWI COURT.

EVALUATION

Prior to evaluation by Clinical Staff:

- ADA will screen cases to determine who is eligible to be evaluated. Cases involving property damage will be approved on a case-by-case determination.
- The defendant will consult with counsel to decide whether to participate in the evaluation.

An evaluation will be conducted by a Treatment Court Clinical Case Manager to determine whether the defendant is an appropriate candidate for alcohol or substance abuse or dependence treatment and, if so, recommend a treatment plan. The evaluation will include a drug test, breathalyzer, and interview with the defendant. Along with the standard New York State Uniform Treatment Application Bio-Psycho-Social Assessment, the Clinical Staff will conduct the MAST (Michigan Alcohol Screening Test), a tool specifically designed to identify alcohol abuse or dependence.

TREATMENT MANDATE

The treatment mandate will be 12 to 18 months. During this period, participants will be required to complete all phases of treatment, comply with all periods of license suspension or revocation, remain drug and alcohol free, be law abiding, perform community service or attend a session of the Victim Impact Panel, and follow all requirements of the Court.

PLEA

The defendant will be required to enter a plea to a Felony and an Unclassified Misdemeanor (either VTL 1192.2 [BAC \geq .08], 1192.2-a[a] [BAC \geq .18], 1192.3 [refusal], or 1192.4 [drugs]).

As in Treatment Court, after the plea is entered, sentence will be deferred to allow participation in court supervised alcohol or substance abuse treatment, which will include enrollment in a community based alcohol or substance abuse treatment program (detox, rehab, residential, or outpatient based upon the needs of each defendant taking into account the clinical recommendation, facts of the case, and the defendant's criminal record).

SUSPENSION OF DRIVER'S LICENSE

By operation of law, the driver's licenses of the majority of those participating in DWI Court will be suspended/revoked. The remaining participants will not be permitted to drive as a condition of their participation in DWI Court. Any arrest related to a violation of this condition can result in a participant's termination from DWI Court and the imposition of sentence.

On an individual basis, when permitted by law, after a period of compliance and upon a showing of special need and circumstances, the Court may grant permission for a participant to apply to DMV for a conditional license.

In all cases, a participant needs the approval of the Court **AND** permission from DMV in order to drive.

TREATMENT AND MONITORING

Participants will be mandated to follow the policies and procedures employed for Treatment Court participants, including: attending community treatment, reporting to case managers, and submitting to drug and alcohol testing. Protocols for phase advancements, along with the imposition of sanctions and rewards, will be set forth in a participant handbook. Regular court appearances will be required.

DWI Court participants will also be required to wear a SCRAM alcohol monitoring bracelet for up to 6 months. This bracelet will be worn for 90 consecutive days upon the participant's initial enrollment in DWI Court (after any in-patient portion of treatment is completed). At the discretion of the Judge, the participant may be required to wear the bracelet for up to 90 additional days of the mandate based upon the recommendation of the treatment staff and after consultation with the ADA and defense attorney. The participant will be required to assume all costs relating to the SCRAM bracelet. Upon credible evidence of an inability to pay the costs of SCRAM, the Court will endeavor to arrange a sliding scale payment.

The participant will be required to report once a week to have the information stored in the bracelet analyzed. Upon evidence of tampering with the bracelet, the participant will be directed to report immediately to the Judge.

During the monitoring period, a participant may be placed on Interim Probation Supervision and required to use and install the ignition interlock device. In that event, the period of probation and interlock will be credited towards that required upon sentence at the successful completion of the mandate.

UPON FAILURE TO COMPLETE THE COURT MANDATE

Upon a participant's failure to complete the Court mandate, the agreed upon jail/prison sentence will be imposed along with a fine, revocation of license, and a period of probation (to follow release from incarceration) with mandatory use of an ignition interlock device in any car driven by the defendant and installation of said device in any car owned or operated by the defendant. The jail sentence may be enhanced in the event of a new arrest.

The jail alternative will be 1 year with a waiver of early release, a \$1000 fine, one year license revocation (18 months if participant is currently being charged with or has a prior conviction for VTL § 1192.2-a[a] [BAC ≥ .18] within 10 years), and five years of probation commencing upon release from jail with mandatory use of an ignition interlock device in any car driven by defendant and installation of said device in any car owned or operated by the defendant for the period of license revocation plus up to an additional 6 months at the discretion of the Court.

Enhanced penalties will be imposed if prior misdemeanor DWI conviction(s) within 5 years (Pursuant to VTL § 1193.1-a[a] for E felony DWIs, VTL § 1193.1-a[b] for D felony DWIs).

UPON SUCCESSFUL COMPLETION OF THE MANDATE

For participants who successfully complete the mandate, the felony plea will be vacated, the felony counts dismissed, and the defendant will remain convicted only of the unclassified misdemeanor.

On a case by case basis (taking into consideration the facts of the prior DWIs, the facts of the present case [including BAC], and accomplishments in treatment) some participants may receive greater benefits from their successful completion.

The sentence will be:

1. three years probation (with possibility of early termination),
2. imposition of the minimum fine of \$500 (\$1000 for present BAC ≥ .18),
3. license revocation for 6 months (one year for BAC ≥ .18), and
4. mandatory use of an ignition interlock device in any car driven by defendant and installation of said device in any car owned or operated by the defendant for the period of revocation plus up to three additional months at the discretion of the Court.