DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK

PRESIDENT
DEREK P. CHAMPAGNE
FRANKLIN COUNTY

May 16, 2011

Senator Charles J. Fuschillo, Jr.
New York State Senate
609 Legislative Office Building
Albany, New York 12247

Assemblyman Harvey Weisenberg
New York State Assembly
731 Legislative Office Building
Albany, New York 12248

RE: STRONG SUPPORT FOR A.6890/S.4177 (OPERATING A MOTOR VEHICLE WITH A CONDITIONAL LICENSE WHILE INTOXICATED, A CLASS E FELONY)

Dear Senator Fuschillo and Assemblyman Weisenberg:

I write on behalf of the District Attorneys Association of the State of New York to express our strong support for the above-referenced bill. This important legislation would assist us in the prosecution of drunk drivers who continue to drive drunk or impaired. The bill amends section 511(3) of the Vehicle and Traffic Law (VTL) to hold drunk drivers accountable when the driver is given the benefit of a conditional license and then drives again while impaired or intoxicated. Currently VTL §511(3)(a) states that a driver who operates a motor vehicle while impaired or intoxicated with a license/privilege that is suspended/revoked due to a prior alcohol related event is guilty of a class "E" felony, unless the driver has a conditional license.

Prosecutors have argued that the issuance of a conditional license pursuant to VTL §1196 does not eliminate the underlying alcohol related suspension. Instead it is an extraordinary benefit given to a driver that allows the driver to continue functioning in his/her daily life. A conditional "license" simply permits a driver who is otherwise suspended for an alcohol related incident to drive to specifically designated locations such as work or school. Essentially it provides exceptions to the suspension.

This interpretation was supported by the last sentence of VTL §1196(7) (a) which states "Such conditional license shall remain in effect ***during the term of the suspension or revocation*** of the participant's license or privilege unless earlier revoked by the commissioner." (emphasis added) Likewise, VTL §1196(5) also states "...upon successful completion of a course in such (DDP) program as certified by its administrator, a participant may apply to the commissioner ***...for the termination of the suspension or revocation order..."*** (emphasis added) The statute goes further and states that it is in the discretion of the commissioner whether or not to "terminate such order and return the participant's license or reinstate the privilege of operating a motor vehicle in this state."

At the same time however, VTL §1196(7)(f) states: "It shall be a traffic infraction for the holder of a conditional license or privilege to operate a motor vehicle upon a public highway for any use other than those authorized pursuant to paragraph (a) of this subdivision." A violation of this section is a mere traffic infraction. Again prosecutors have argued that this provision did not intend to include operating a motor vehicle while impaired or intoxicated.

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In the enclosed 2004 letter Department of Motor Vehicles Executive Deputy Commissioner, Renato Donato acknowledged the confusion and supported the position that an impaired driver who was operating outside the conditions of a conditional license while impaired or intoxicated could be charged under VTL §511(3).

However since the issuance of that letter the Court of Appeals has just concluded in its May 3, 2011 decision in People v. Rivera that the current statute will not support the charge of VTL §511(3). In so holding, the Court noted that "Admittedly, there is a large disparity between the punishments available under Vehicle and Traffic law §1196(7)(f) for a driver who fails to meet the conditions on a conditional license and those available under Vehicle and traffic Law §511 for one who only has a revoked or suspended license. But that is exactly the problem that the Legislature addressed when it enacted section 1196(7)(f). **If its way of dealing with the problem was not adequate, it should be asked to take up the issue again."**

As the prosecutors argued in the Rivera case, "this reading of the statute disserves our State's strong public policy to combat drunk driving with serious penalties." Further there is a substantial unequal protection claim when applying this statute to a newly impaired or drunk driver. This injustice can be best demonstrated by comparison:

Two drivers are arrested on the same day for driving with a blood alcohol concentration of .12. Both drivers receive a suspension pending the prosecution of their cases. Driver A receives the benefit of a conditional license. Driver B does not. One month later both drivers are stopped again for Driving While Ability Impaired by Alcohol (DWAI) and both register a BAC of .07. Pursuant to the Court of Appeals holding in Rivera, the following unjust and illogical charges will apply:

Driver A (Conditional)	Driver B (No conditional)
1. DWAI (Traffic Infraction)	1. DWAI (Traffic Infraction)
2. Operating Outside the Condition VTL §1196(7)(f) (**Traffic Infraction**)	2. VTL §511(3)(a) **(E FELONY)**

We believe that A6890/S4177 is the timely and urgent remedy alluded to by the Court of Appeals. We urge you to do all that you can to obtain passage of this critical legislation which will provide New Yorkers better protection from recidivist drunk drivers who continue to abuse the privilege to drive; especially when they have been given a second chance.

Sincerely,

Derek P. Champagne
D.A. Franklin County and
President of DAASNY

Cc:
Senator Dean G. Skelos, Senate Majority Leader
Speaker Sheldon Silver
Senator Stephen M. Saland, Chair Senate Codes
Assemblyman Joseph R. Lentol, Chair Assembly Codes
Assemblyman David F. Gantt, Chair Assembly Transportation
Assembly Transportation Committee Members