

# BASIC DWI FOR COURT CLERKS

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# Overview

- VTL §1192 Offenses
- Forms
- DWI Arraignments
- License Suspensions
- Screening & Assessment
- DWI Convictions
- Ignition Interlock Devices (IIDs)
- Clerk Duties at Conviction

# VTL §1192 OFFENSES

# Offenses You May See in Your Court

VTL §1192(1)

- Driving While Ability Impaired (traffic infraction)

VTL §1192(2)

- Driving While Intoxicated; per se – BAC of .08% or more (misdemeanor)

VTL §1192(2-a)(a)

- Aggravated Driving While Intoxicated – BAC of .18% (misdemeanor)

VTL §1192(2-a)(b)

- LEANDRA'S LAW; Violation of VTL §1192(2), (3), (4), or (4-a) while a child 15 years or less is a passenger (felony)

VTL §1192(3)

- Driving While Intoxicated (misdemeanor)

# Offenses You May See in Your Court, cont.

VTL §1192(4)

- Driving While Ability Impaired by Drugs (misdemeanor)

VTL §1192(4-a)

- Driving While Ability Impaired by the Combined Influence of Drugs or of Alcohol and any Drug or Drugs (misdemeanor)

VTL §1192(5)

- Commercial motor vehicle, BAC between .04% and .06% (traffic infraction)

VTL §1192(6)

- Commercial motor vehicle, BAC more than .06% but less than .08% (misdemeanor)

# FORMS & PAPERWORK

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# Paperwork the Court Can Expect to Receive from Arresting Agency

- Accusatory Instrument, usually a Uniform Traffic Ticket
- Supporting Deposition / Bill of Particulars
  - Chemical Test Results
  - Blood Alcohol Content (BAC) Paperwork
- Chemical Test Refusal Paperwork (Report of Refusal)
- Arrest Report
- Additional information that may be provided to the court includes accident reports, oral admissions, and additional supporting depositions

# Forms You May Need

- Order of Suspension Pending Prosecution (MV-1193)
- Chemical Test Refusal Paperwork:
  - Notice of Temporary Suspension and Notice of Hearing (AA-137)
  - DMV Refusal Hearing Calendar
- Pre-Sentence IID Paperwork:
  - Pre-Sentence Order Directing Installation of IID Form (UCS-956)
  - DMV Pre-Sentencing IID Form (AA-497)
- Sentencing Paperwork:
  - Order of Suspension or Revocation (MV-1192)



# Forms You May Need, cont.

- Sentencing Paperwork Related to IIDs:
  - Orders and Conditions of Probation or Conditional Discharge Related to IID (UCS-965B)
  - Monitor Notification of IID Condition (OPCA-510-IIN)
  - Motor Vehicle Ownership Affidavit
  - IID Financial Disclosure Report Form (DPCA500-IID-FDR)

# DWI ARRAIGNMENTS

# Clerk's Responsibilities in Preparing the File for a DWI Arraignment

Enter case into your Case Management System

Prepare copies of documents for the district attorney, defendant, public defender/defense attorney

Retrieve defendant's driver's abstract (if not provided by arresting agency)

Retrieve defendant's criminal history or "RAP" sheet from eJustice (if not provided by arresting agency)

# LICENSE SUSPENSIONS

# Suspension Pending Prosecution

- In DWI cases, a defendant's license or privilege to drive may be suspended pending prosecution.
- Factors that may trigger a Suspension Pending Prosecution:
  - Excessive BAC (.08% BAC or higher)
  - Prior DWAI or DWI Conviction(s) within the past 5 years
  - Felony Aggravated Vehicular Assault/Manslaughter Charges arising out of the same incident (Penal Law 120 or 125)
  - Junior Operator (Class DJ/MJ) License or Learner's Permit
- Generally, these are "prompt" suspensions, not immediate, meaning that the defendant is entitled to a hearing prior to suspension.

# Suspension Pending Prosecution: Hardship Privilege – What The Court Does

- A Hardship Privilege allows a defendant to drive to/from work, school, or medical appointments when the defendant has been suspended pending prosecution.
- A hardship privilege is in the sole discretion of the judge to grant.
- **If the Judge grants a Hardship Privilege**, use the top half of Form MV-1193 to report Hardship Privilege. (This form can also be imported into most Case Management Systems.)



New York State Department of Motor Vehicles

### ORDER OF SUSPENSION PENDING PROSECUTION HARDSHIP PRIVILEGE

*Please Print*

#### PART 1 — HARDSHIP PRIVILEGE

Client ID Number				
Motorist Name	Date of Birth	Yr. Lic. Expires	Lic. Class	Restrictions

#### YOUR EMPLOYER AND/OR SCHOOL YOU ATTEND

Name	Address (No. and Street, City or Town, State and ZIP Code)
Name	Address (No. and Street, City or Town, State and ZIP Code)
Name	Address (No. and Street, City or Town, State and ZIP Code)

Under the authority of Section 1193 of the Vehicle and Traffic Law, your license is suspended immediately. This order will allow you to drive any non-commercial vehicle to or from work, to or from medical treatment (for yourself or a member of your immediate household), or if you are a student enrolled in a school, college or university, you may drive to and from school if such travel is necessary for the completion of your degree or certificate. **You must have both parts of this order with you when you drive.**

**REASON FOR GRANTING HARDSHIP PRIVILEGE** (this privilege is not valid unless this part is completed by the Court):

**This hardship privilege is not valid: for driving a vehicle that requires a commercial driver license (A, B, or C); if you are convicted; if you do not have a valid driver license; if your license is revoked or suspended after this order is issued; or if your license is expired more than two years.**

Date \_\_\_\_\_ (Judge's Signature) \_\_\_\_\_

MV-1193 (10/10)



New York State Department of Motor Vehicles

### ORDER OF SUSPENSION PENDING PROSECUTION

*Please Print*

#### PART 2

Client ID Number				
Motorist Name	Date of Birth	<input type="checkbox"/> Male <input type="checkbox"/> Female		
Address (Number & Street)	Apt. No.	TSLE&D Ticket Number (or Docket Number)	Violation Date	
City	State	Zip Code	Police NCIC/ORI Number	

Under the authority of Section 1193 of the Vehicle and Traffic Law, your license is suspended immediately, pending prosecution for a charge of violating Section:

- 1192(1)    1192(2)    1192(2-a)    1192(3)    1192(4)    1192(4-a)   of the New York State Vehicle and Traffic Law.

Check **one** of the **three** boxes below:

This part is used only if the Judge grants a Hardship Privilege.

This part suspends the defendant's license.



New York State Department of Motor Vehicles

**ORDER OF SUSPENSION PENDING PROSECUTION**

**PART 2**

*Please Print*

Client ID Number			
Motorist Name		Date of Birth	<input type="checkbox"/> Male <input type="checkbox"/> Female
Address (Number & Street)	Apt. No.	TSLE&D Ticket Number (or Docket Number)	Violation Date
City	State	Zip Code	Police NCIC/ORI Number

Under the authority of Section 1193 of the Vehicle and Traffic Law, your license is suspended immediately, pending prosecution for a charge of violating Section:  1192(1)  1192(2)  1192(2-a)  1192(3)  1192(4)  1192(4-a) of the New York State Vehicle and Traffic Law.

Check **one** of the **three** boxes below:

- You have been convicted of violating a subdivision of Section 1192 of the V&T Law within the past five years, **or** you are charged with a felony under Article 120 or 125 of the New York State Penal Law. **(You are not eligible for a hardship privilege or pre-conviction conditional license under these circumstances.)**
- You are alleged to have had .08 of one percent or more by weight of alcohol in your blood, as shown by chemical analysis of blood, breath, urine or saliva according to Section 1194 of the V&T Law. **(You may be eligible for a pre-conviction conditional license after 30 days. The Department of Motor Vehicles will notify you of your eligibility.)**
- You have a DJ/MJ license/permit and are charged with violating subdivisions 1, 2, 2a or 3 of Section 1192 of the Vehicle and Traffic Law. **(You may be eligible for a pre-conviction conditional license after 30 days. The Department of Motor Vehicles will notify you of your eligibility.)**

Court	Court Code	Effective Date of Suspension
Judge's Name	Justice Code	
<b>COMPLIANCE</b> — Has motorist turned in photo license and any permits to the court?		
<input type="checkbox"/> Yes - photo license attached <input type="checkbox"/> No <input type="checkbox"/> Yes - permit(s) attached		

Motorist Signature →	Signature of Judge or Clerk of Court →
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**Note to Court Clerk:** Send the "DMV" copy of this MV-1193 with a copy of the ticket attached to your designated data entry site.

DMV OFFICE USE ONLY			
LICENSE: <input type="checkbox"/> Suspended	EFFECTIVE DATE: / /	HARDSHIP PRIVILEGE: <input type="checkbox"/> Yes <input type="checkbox"/> No	COMPLIANCE: <input type="checkbox"/> Yes <input type="checkbox"/> No

Prior DWI or Pending Felony

Excessive BAC

Junior Operator



# Suspension Pending Prosecution: Clerk's Responsibilities

- Make sure defendant is provided with the "white" copy of MV-1193 "Order of Suspension Pending Prosecution" form.
- Transmit MV-1193 form electronically to the DMV via your Case Management System (other copies remain in court file).
- Defendant is required to turn in license at this time – only New York license.
  - Mail the New York license to DMV.
  - Never take an out-of-state license!

# Temporary Suspension: Chemical Test Refusals

- This applies to defendants charged with any violation of VTL §1192 who have refused to submit to a chemical test.
- The defendant's license or permit to drive shall be immediately suspended by the Court without notice, pending the determination of a hearing with DMV ("Refusal Hearing").
- In order to suspend the defendant's license, the Court must have a **Report of Refusal (AA-134)**, completed by the arresting officer.
- Note: If the Court has not received a Report of Refusal, the Court should not contact the arresting officer to request the Report.

# Temporary Suspension: Chemical Test Refusals

## What The Court Does

- **The Court schedules a DMV Refusal Hearing for the next available date.**
  - This is found on the DMV Refusal Hearing Calendar, which is on the Resource Center website.
- **The Court completes the AA-137 “Notice of Temporary Suspension and Notice of Hearing” Form.**
  - Copies are given to the defendant and given or sent to the arresting officer/agency.
- **The Court takes the defendant’s New York license.**
  - As of 4/2017, the Court **DESTROYS** the New York license upon receipt. This is the **only** time a court will destroy a license.
  - **EXCEPTION:** If the defendant is from another state, **do not** take or destroy the out-of-state license!



Department of Motor Vehicles

NOTICE OF TEMPORARY SUSPENSION AND NOTICE OF HEARING (Section 1194 of the Vehicle and Traffic Law)

DISTRIBUTION

ORIGINAL: Mail to NYS DMV Safety & Business Hearings, 6 Empire State Plaza, Albany, NY 12228 or Fax to: (518) 473-8505 along with a COPY OF form AA-134 POLICE CHEMICAL TEST REFUSAL REPORT WITHIN 48 HOURS OF THE ARRAIGNMENT

COPY TO: MOTORIST, POLICE OFFICER AND COURT (KEEP COPY) Please Notify Police of Assigned Hearing Date

Form with fields for Motorist's Last Name, First Name, M.I., Date of Birth, Street Address, City, State, Zip Code, Telephone Number, NYS Driver License/ID Number, Date of Alleged Refusal, Arresting Officer Last Name, Arresting Officer First Name, Tax Registry/Badge Number, Arresting Officer's Police Agency, Telephone Number, Command/Precinct No., Arraignment Date, Location of Alleged Refusal, Court Name & Address, City/Town, Zip Code, Docket No., Ticket Number, County.

ATTENTION: MOTORIST

Your driver license (or driving privilege) has been temporarily suspended by the court for your alleged refusal to submit to a chemical test [Section 1194(2) of the Vehicle and Traffic Law]. The suspension is effective on the arraignment date shown above and will end in 15 days or on the date of your hearing (whichever comes first). However your driver license or (driving privilege) may be revoked by the DMV on the date of the hearing. Therefore, please prepare to have an alternate means of transportation. (Bring this notice with you to the hearing)

You are required to appear in person for this hearing and may bring an attorney or other representative with you. You should be prepared to present all evidence and witnesses at the hearing. If you do not appear at the hearing, your absence will be considered your agreement to waive the hearing. This will result in an immediate revocation of your driver license or (driving privilege).

This chemical test refusal hearing is independent of the criminal court case charging you with DWI/DUI-drugs. Do not assume that a criminal plea or dismissal in court will affect this hearing.

If you need special accommodations (such as a hearing site accessible for people with disabilities or if you are hearing impaired)

# Temporary Suspension: Chemical Test Refusals

## Clerk's Responsibilities

Within 48 Hours of Arraignment, the Court must send to DMV:

- **Copy** of AA-134 "Report of Refusal to Submit to Chemical Test" Form (completed by arresting officer and provided to court)
- **Original** AA-137 "Notice of Temporary Suspension and Notice of Hearing" Form

# License Suspensions: Out-of-State Motorists

- The Court has the authority to suspend the privilege to drive in New York only.
- NEVER physically take a foreign license!



# Clerk's Responsibilities at DWI Arraignment

Make sure all charges are entered into your Case Management System.

Make sure copies of all documents are given to the defendant.

Prepare the Suspension Pending Prosecution (if applicable) and transmit to DMV (electronically or by mailing to TSLED).

Provide a copy of the Suspension Pending Prosecution to the Defendant (if applicable).

Note: The defendant's license is always mailed to TSLED even if you file electronically.

# Clerk's Responsibilities at DWI Refusal Arraignment

Make sure all charges are entered into your Case Management System.

Make sure copies of all documents are given to the defendant.

Receive refusal paperwork from the arresting agency.

Schedule the DMV Refusal Hearing and complete the Form AA-137.

Give a copy of Form AA-137 to the defendant and a copy to the arresting officer.

**Within 48 hours**, send Form AA-137 and Report of Refusal to DMV.

Note: If no Report of Refusal was received, the court should **not** contact the arresting officer for the Report.



# SCREENING & ASSESSMENT

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# Mandatory Screening & Assessment

## What The Court Does

In many DWI cases, the Court must order a Mandatory Screening and/or Assessment.

### When does the Judge order this?

- Upon arraignment; or at the discretion of the Court, prior to sentencing

### What happens?

- The screening and/or assessment is conducted by an “alcohol and substance abuse professional”
- OASAS maintains the list of authorized providers

# Screening & Assessment Results

Documents generated during Screening/Assessment are CONFIDENTIAL:

- Court files are generally open to the public, with certain exceptions – this is one of them!

# DWI CONVICTIONS

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Defendant is  
convicted or pleads  
guilty...

*...now what??*



# License Suspension/Revocation Upon Conviction

## What The Court Does

- Convictions under §1192 will result in the defendant's license being suspended or revoked.
- The defendant **must** surrender his/her New York State license to the Court.
  - Note: Never take an out-of-state license!
- Use the MV-1192 "Order of Suspension or Revocation" Form at sentencing.
- The suspension/revocation takes effect **immediately**.
  - If the Court issues a 20-Day Stay, the effective date of the suspension/revocation will be the date of sentencing plus 20 days.



New York State Department of Motor Vehicles

### ORDER OF SUSPENSION OR REVOCATION

- Always give Part 2 to the motorist.
- Give Part 1 to the motorist ONLY if you are granting continuation of driving privileges.

#### PART 1 - CONTINUATION OF DRIVING PRIVILEGES

Motorist Name (Last, First, MI)	Date of Birth	Year License Expires	License Class	Restrictions
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According to Section 1193 of the Vehicle and Traffic Law, your driver license will be  suspended  revoked on \_\_\_\_\_  
(sentence date plus 20 days)

This order will allow you to drive, with the same limitations as your driver license, until your suspension/ revocation starts. **You must have both parts of this order with you when you drive.** If you do not have both parts of this order with you, you may be charged with a violation of the Vehicle and Traffic Law. When the suspension/revocation starts, you do not have the right to drive unless you receive a conditional license. This order must be turned in before a conditional license can be issued to you.



MV-1192 (4/11)

\_\_\_\_\_  
(Signature of Judge or Clerk of Court)



New York State Department of Motor Vehicles

### ORDER OF SUSPENSION OR REVOCATION

#### PART 2

Motorist Name (Last, First, MI)	Date of Birth	<input type="checkbox"/> Male <input type="checkbox"/> Female
Number and Street Address	Apt. #	Ticket Number (if unavailable, enter Docket Number)
City	State	Zip Code
		Driver License #

#### COURT/VIOLATION (Certificate of Conviction must be attached)

Judge Name	Violation Date	Conviction Date	<input type="checkbox"/> Check if Youthful Offender
Court Code	Vehicle Class (definitions are listed on the back of this form)		
	<input type="checkbox"/> Commercial Motor Vehicle (CMV)	<input type="checkbox"/> Special Vehicle	<input type="checkbox"/> All Others

#### SUSPENSION/REVOCATION

According to Section 1193-2 of the Vehicle and Traffic Law, your driver license/privilege is:

- Suspended for 90 days (conviction of 1192-1 first offense only if not operating a CMV or Special Vehicle).
- Revoked for at least \_\_\_\_\_

Duration (Enter ONLY one of the options listed on the back of this form)

Sentence date \_\_\_\_/\_\_\_\_/\_\_\_\_. This order will be effective on \_\_\_\_\_ because of your conviction of a  
(sentence date or sentence date plus 20 days)

violation of Subdivision \_\_\_\_\_ of Section 1192 of the Vehicle and Traffic Law.

#### PROBATION/CONDITIONAL DISCHARGE

A person convicted of a violation of VTL 1192(2-a)(a) or (b) **committed on or after 12/18/09** must be sentenced to a conditional discharge or probation, and the installation and use of the interlock device.

This part is used if the Judge issues a 20-Day Stay.

This part suspends or revokes the defendant's license.

# IGNITION INTERLOCK DEVICES

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# Ignition Interlock Devices (IIDs): An Introduction



- An Ignition Interlock Device is a device slightly larger than a cell phone, wired to a vehicle's ignition.
- It requires the vehicle's driver to provide a breath sample before the vehicle's engine will start.
- If the device detects alcohol, the vehicle will not start.

# Ignition Interlock Devices (IIDs): Who Must Install One?

- The IID restriction requirement is mandatory for defendants convicted of:
  - VTL §1192(2) – DWI with .08% BAC or higher
  - VTL §1192(2-a) – Aggravated DWI
  - VTL §1192(3) – Common Law DWI

# Ignition Interlock Devices (IIDs): What The Court Does

- The Court completes an “Order and Conditions of Probation or Conditional Discharge Related to Ignition Interlock” Form (UCS-965B).
  - This order contains all conditions ordered by the Court at sentencing, including the IID.
- Who gets this form?
  - The Court keeps the original form.
  - Defendant receives a copy at sentencing.
  - Probation/the IID Monitor receives a copy.
- The Court must notify the Monitor within 5 days of sentencing using the Monitor Notification of Ignition Interlock Condition Form (OPCA-510-IIN).

Present: Hon. \_\_\_\_\_

The People of the State of New York  
vs.

**Orders and Conditions of Probation or Conditional  
Discharge Related to Ignition Interlock Device (IID)**

Docket / Indictment / SCI Number: \_\_\_\_\_

AKA(s): \_\_\_\_\_

CJTN: \_\_\_\_\_

Address: \_\_\_\_\_

NYSID: \_\_\_\_\_

Phone: \_\_\_\_\_

Motorist ID: \_\_\_\_\_

Sex:  Male  Female      DOB: \_\_\_\_\_

YO:  Yes  No

Defendant having been  convicted of Vehicle and Traffic Law § \_\_\_\_\_ OR  adjudicated a Youthful Offender  
and sentenced to:

- A Conditional Discharge for a period of:  one year [misdemeanor] OR  three years [felony]
- Probation for a period of: [misdemeanor]  two  three year(s) or \_\_\_\_\_ term to expire on: \_\_\_\_\_  
[felony]  three  four  five year(s) or \_\_\_\_\_ term to expire on: \_\_\_\_\_
- A period of incarceration of \_\_\_\_\_ days  months  years and a sentence of probation or conditional discharge, as ordered  
above, which shall be served consecutively to the period of incarceration.

Upon review of the Financial Disclosure Report, the Court has determined, and it is hereby **ORDERED** that:

- The defendant is able to afford the fees/charges associated with the installation and maintenance of an Ignition Interlock Device(s) (IID), and shall enter into a written agreement with the selected IID Vendor for **FULL PAYMENT**.
- The defendant shall make **PARTIAL PAYMENT** of all fees associated with the installation, maintenance and any other subsequent fees of the approved ignition interlock device(s) and shall enter into a written agreement with the selected IID Vendor and such written agreement shall be provided to the IID monitoring authority as follows:

Installation fees:	<input type="radio"/> 25% or <input type="radio"/> 50% or <input type="radio"/> 75% or <input type="radio"/> _____ % of total amount; or Set amount of \$ _____ in monthly installments of \$ _____ until paid in full; or Set amount of \$ _____ to be paid in full by _____ Other: _____
Monthly fees:	<input type="radio"/> 25% or <input type="radio"/> 50% or <input type="radio"/> 75% or <input type="radio"/> _____ % of total amount; or Set amount of \$ _____ in monthly installments of \$ _____ until paid in full; or Set amount of \$ _____ to be paid in full by _____ Other: _____
Subsequent fees:	<input type="radio"/> 25% or <input type="radio"/> 50% or <input type="radio"/> 75% or <input type="radio"/> _____ % of total amount; or Set amount of \$ _____ in monthly installments of \$ _____ until paid in full; or Set amount of \$ _____ to be paid in full by _____ Other: _____

- The defendant is NOT able to afford the fees/charges associated with the installation and maintenance of an IID, and all such fees/charges are **WAIVED**.

The Ignition Interlock Device(s) shall be installed for a minimum of  twelve months or  \_\_\_\_\_ months  years.

**MONITOR NOTIFICATION OF IGNITION INTERLOCK ORDER**

(Please forward to applicable probation department and/or monitoring authority within 5 business days of sentence)  
(Strike that in bold which is inapplicable, and complete information in shaded areas.)

\_\_\_\_\_ Court of the State Of New York  
Part \_\_\_\_\_ County \_\_\_\_\_  
\_\_\_\_\_  
Index/Docket No./Year  
\_\_\_\_\_  
CJTN

TO: \_\_\_\_\_ **(County Probation Department)(designated monitoring authority)**

Defendant, \_\_\_\_\_, DOB: \_\_\_\_\_ NYSDL#: \_\_\_\_\_

residing at \_\_\_\_\_ Cellular #: \_\_\_\_\_

having been convicted of Driving While Intoxicated – related crime(s) as a **(Misdemeanor) (Felony)** has this day been ORDERED sentenced to:

(Initial as applicable)	{ A Conditional Discharge for a period of <b>(one) (three)</b> years to expire on _____ . Within 10 business days of the commencement of sentence, Ignition Interlocks are to be installed in each motor vehicle owned or operated by the defendant for a period of _____ months.
	{ Probation for a period of <b>(three) (five)</b> years to expire on _____ . Within 10 business days of the commencement of sentence, Ignition Interlocks are to be installed in each motor vehicle owned or operated by the defendant for a period of _____ months.
	{ A period of incarceration of _____ <b>(days) (months) (years)</b> in the custody of the <b>(NYS Department of Corrections and Community Supervision) (local jail authority)</b> and the probation or conditional discharge, as ordered above, which shall be served consecutively to the period of incarceration.

The court has determined, and it is, therefore, **ORDERED** that:

{ The defendant <b>is able</b> to afford the immediate fees/charges associated with the installation and maintenance of an Ignition Interlock Device(s), and shall enter into a written agreement to that effect with the selected Ignition Interlock Device Vendor.
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# CLERK RESPONSIBILITIES AT CONVICTION

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# Clerk's Responsibilities Once Defendant is Convicted

- Make sure you know what charges the defendant has been convicted of!
- Enter the disposition into your Case Management System
- Prepare the Order of Suspension or Revocation Form (MV-1192)
- Prepare the Order and Conditions of Probation or Conditional Discharge
- Prepare the IID order and Monitor Notification (if needed)
  - *Keep an eye out for paperwork after sentencing that is sent to the Court from the Monitor about defendant's installation of the IID or other issues related to the supervision of the defendant!*

# Clerk's Responsibilities Once Defendant is Convicted, cont.

- Transmit the disposition to the Department of Motor Vehicles
- Transmit the Criminal Disposition Report
- Adjourn the case for payment of fine/surcharge (if necessary)
- Keep the file open until the fines are paid



And as ALWAYS...

*If you have questions,  
Call the Resource Center!*

1-800-232-0630