

Region Counties Vary Greatly in Convicting Drunk Drivers with Child on Board

More than 18 months into New York State's imposition of tougher sanctions on people who drive drunk with a child in their vehicle, many Capital Region counties are showing mixed results in securing convictions under the new felony charge for such activity. An analysis of New York State Division of Criminal Justice Services statistics suggests that Schenectady County is the most aggressive regionally in securing convictions under the felony aggravated driving while intoxicated with a child ("Aggravated DWI/Child

") charge created by Leandra's Law while Saratoga County and other rural counties were far less bullish in pursuing such convictions. In disposed cases where Aggravated DWI/Child appeared at the post-arrest stage of a case through last June of this year, 83 percent of them in Schenectady County resulted in a conviction on that that charge, according to an analysis of statistics

published by the Albany

Times Union's

Capital Confidential blog.

That rate for Albany County was 76 percent and 70 percent for Rensselaer County. Meanwhile, Saratoga's rate was 31 percent. Rates fell even lower in the region's rural counties, reaching zero in Greene and Washington Counties, even though they had seven and three disposed Aggravated DWI/child cases, respectively (See the below chart

).

NYS Aggregated DWI/Child Cases

TOTAL DISPOSITIONS

Agg DWI Child Felony

Conviction rate of Agg DWI Child Felony

NYS

685

288

42%

Albany

25

19

76%

Columbia

7

3

43%

Greene

7

0

0%

Rensselaer

10

7

70%

Saratoga

13

4

31%

Schenectady

6

5

83%

Warren

5

1

20%

Washington

3

0

0%

Disposition data from Albany Times Union

Capital Confidential Source: Felony Processing File (AS OF 05/23/2011). Includes cases where the Aggravated DWI With a Child first appears at a post-arrest stage of the case. The Aggravated DWI With a Child not necessarily the most serious charge in the case. Includes convictions to felonies, misdemeanors and non-criminal offenses such as violations and infractions. Regional designation based on location of the disposition court.

Since Leandra's Law, formally known as the Child Passenger Protection Act, went into effect on Dec. 18, 2009, it has been a Class E felony to drive while drunk or drug impaired with a child under 16 years old in the vehicle. A second phase of this law that went into effect on Aug. 15, 2010 requires the installation of an interlock ignition (IID) device in any vehicle owned or used by someone convicted of misdemeanor or felony DWI. Cars with IIDs will not start until a driver blows into the device and a blood alcohol content in his or her breathe registers below 0.25 percent. Aggravated DWI/Child carries stiff penalties. Even a first-time Aggravated DWI/Child offender can be punished with up to four years in state prison. However, as these statistics show, prosecutors' rate of securing convictions under this charge varies greatly among Capital Region counties. In some cases, drivers can plead to lower, misdemeanor charges, as a recent Times Union

article

highlighted. Also, in some cases where more serious crimes than Aggravated DWI are charged, the charge pleaded to or convicted of may be a higher-level crime, and that higher-level charge could be posted as the conviction rather than the Aggravated DWI. This practice might explain the discrepancies in the statistics, especially in Saratoga County. Whether or not children are involved, several factors can influence drivers' ability to avoid felony convictions relating to DWI charges. They include:

A driver's blood alcohol content;

A driver's prior record;

The driver's age;

The circumstances surrounding the charge (e.g. an accident/police check point/traffic violation).

With Leandra's Law establishing harsher drunk driving penalties, it is crucial for drivers facing

any type of DWI charge

o contact a criminal defense attorney

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