

**WEISS & ASSOCIATES, P.C.**  
419 Park Avenue South, 2<sup>nd</sup> Floor  
New York, New York 10016



### **Break the Law and Lose Your Car?**

by: Matthew J. Weiss

New York City, Nassau County and Suffolk County have vehicle forfeiture laws. These laws allow the municipality to seize a motorist's car if it is used as part of a criminal offense. Typically, this law is used for driving while intoxicated or driving while impaired. However, it can also be invoked for such offenses as reckless driving, driving while under the influence of drugs and driving with a suspended license. The standard is generally whether the vehicle was used as a means of committing a crime or employed to aid in a crime.

In New York City and Nassau County, the law is routinely used even for a first offense. The Suffolk law is discretionary on the first offense but requires the police to impound the vehicle for second offenses.

If you are not convicted of the charge, then you have grounds for getting your car back. If you enter into a plea bargain, then you will generally have to make a deal with the municipality. Of course, if you are not the owner of the vehicle, then often the municipality will release the vehicle to the owner with upon submitting proof of ownership. However, if the owner knew or should have known that it was reasonably likely that the vehicle was going to be used to commit a crime, the municipality may be able to obtain forfeiture of the vehicle any way.

So what do you do if your car is seized? The first thing you must do is file a demand for it. This puts the municipality on notice that you will be seeking its return. Then, a case number is assigned. You can then negotiate with the assigned representative in an attempt to get it back. If the negotiations do not lead to a resolution, then the municipality has to sue and prove its case (a relatively easy proposition). Of course, you probably will want to retain an attorney to assist with this matter if your negotiations are not fruitful (if not sooner).

Even if the vehicle is not seized, the municipality may go to court to seek the return of the vehicle. We had one client whose criminal case was resolved favorably and then months later received court papers seeking the vehicle. There is a time limit, however, within which the municipality must act to obtain forfeiture. For instance, in Nassau County, the forfeiture action must be commenced within 120 days of the arrest date.

As an aside, no car will be returned unless and until the District Attorney has issued a release. Generally, the District Attorney will issue this document after the criminal case is resolved. Similarly, if you receive a notice that your car is subject to possible forfeiture, it is a violation of some forfeiture laws to sell or transfer ownership. A violation of such a provision carries substantial monetary penalties.



Finally, the New York City law has been upheld as constitutional. However, the former forfeiture law in Nassau County was declared unconstitutional and has since been replaced with a new law. Therefore, keep in mind, that there may be valid constitutional grounds upon which to attack the forfeiture.

Matthew Weiss, Esq. is the senior member of Weiss & Associates, P.C., located at 419 Park avenue South, Second Floor, New York, N.Y. 212-683-7373. His firm defends 1000s of motorists from criminal matters and traffic tickets issued throughout New York State. You can also go to the firm's website at [www.nytrafficticket.com](http://www.nytrafficticket.com)