

STATE OF NEW YORK

5671

2019-2020 Regular Sessions

IN SENATE

May 10, 2019

Introduced by Sen. MARTINEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, the penal law and the criminal procedure law, in relation to the ignition interlock program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (c) of subdivision 1 of section 1193 of the vehicle and traffic law, as amended by chapter 169 of the laws of 2013, and
2 subparagraph (ii-a) as added by chapter 191 of the laws of 2014, is
3 amended to read as follows:

4 (c) Felony offenses. (i) A person who operates a vehicle (A) in
5 violation of subdivision two, two-a, three, four or four-a of section
6 eleven hundred ninety-two of this article after having been convicted of
7 a violation of subdivision two, two-a, three, four or four-a of such
8 section or of vehicular assault in the second or first degree, as
9 defined, respectively, in sections 120.03 and 120.04 and aggravated
10 vehicular assault as defined in section 120.04-a of the penal law or of
11 vehicular manslaughter in the second or first degree, as defined,
12 respectively, in sections 125.12 and 125.13 and aggravated vehicular
13 homicide as defined in section 125.14 of such law, within the preceding
14 ten years, or (B) in violation of paragraph (b) of subdivision two-a of
15 section eleven hundred ninety-two of this article shall be guilty of a
16 class E felony, and shall be punished by a fine of not less than one
17 thousand dollars nor more than five thousand dollars or by a period of
18 imprisonment as provided in the penal law, or by both such fine and
19 imprisonment.

20
21 (ii) A person who operates a vehicle in violation of subdivision two,
22 two-a, three, four or four-a of section eleven hundred ninety-two of
23 this article after having been convicted of a violation of subdivision
24 two, two-a, three, four or four-a of such section or of vehicular
25 assault in the second or first degree, as defined, respectively, in
26 sections 120.03 and 120.04 and aggravated vehicular assault as defined
27 in section 120.04-a of the penal law or of vehicular manslaughter in the
28 second or first degree, as defined, respectively, in sections 125.12 and

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD11389-01-9

1 125.13 and aggravated vehicular homicide as defined in section 125.14 of
2 such law, twice within the preceding ten years, shall be guilty of a
3 class D felony, and shall be punished by a fine of not less than two
4 thousand dollars nor more than ten thousand dollars or by a period of
5 imprisonment as provided in the penal law, or by both such fine and
6 imprisonment.

7 (ii-a) A person who operates a vehicle in violation of subdivision
8 two, two-a, three, four or four-a of section eleven hundred ninety-two
9 of this article after having been convicted of a violation of subdivi-
10 sion two, two-a, three, four or four-a of such section or of vehicular
11 assault in the second or first degree, as defined, respectively, in
12 sections 120.03 and 120.04 and aggravated vehicular assault as defined
13 in section 120.04-a of the penal law or of vehicular manslaughter in the
14 second or first degree, as defined, respectively, in sections 125.12 and
15 125.13 and aggravated vehicular homicide as defined in section 125.14 of
16 such law, three or more times within the preceding fifteen years, shall
17 be guilty of a class D felony, and shall be punished by a fine of not
18 less than two thousand dollars nor more than ten thousand dollars or by
19 a period of imprisonment as provided in the penal law, or by both such
20 fine and imprisonment.

21 ~~[(iii) In addition to the imposition of any fine or period of impri-~~
22 ~~sonment set forth in this paragraph, the court shall also sentence such~~
23 ~~person convicted of, or adjudicated a youthful offender for, a violation~~
24 ~~of subdivision two, two-a or three of section eleven hundred ninety two~~
25 ~~of this article to a period of probation or conditional discharge, as a~~
26 ~~condition of which it shall order such person to install and maintain,~~
27 ~~in accordance with the provisions of section eleven hundred ninety eight~~
28 ~~of this article, an ignition interlock device in any motor vehicle owned~~
29 ~~or operated by such person during the term of such probation or condi-~~
30 ~~tional discharge imposed for such violation of section eleven hundred~~
31 ~~ninety two of this article and in no event for a period of less than~~
32 ~~twelve months; provided, however, that such period of interlock~~
33 ~~restriction shall terminate upon submission of proof that such person~~
34 ~~installed and maintained an ignition interlock device for at least six~~
35 ~~months, unless the court ordered such person to install and maintain a~~
36 ~~ignition interlock device for a longer period as authorized by this~~
37 ~~subparagraph and specified in such order. The period of interlock~~
38 ~~restriction shall commence from the earlier of the date of sentencing,~~
39 ~~or the date that an ignition interlock device was installed in advance~~
40 ~~of sentencing. Provided, however, the court may not authorize the opera-~~
41 ~~tion of a motor vehicle by any person whose license or privilege to~~
42 ~~operate a motor vehicle has been revoked pursuant to the provisions of~~
43 ~~this section.]~~

44 § 2. Paragraph (g) of subdivision 1 of section 1193 of the vehicle and
45 traffic law, as amended by section 57 of part A of chapter 56 of the
46 laws of 2010, is amended to read as follows:

47 (g) Condition of probation and conditional discharge; ignition inter-
48 lock device requirements; alternative sentence. (1) For the purposes of
49 this subdivision, "ignition interlock monitor" shall mean a person
50 designated by the county where a conviction for a violation of section
51 eleven hundred ninety-two of this article shall have occurred who moni-
52 tors compliance with the provisions of section eleven hundred ninety-
53 eight of this article and the concurrent regulations related thereto, by
54 participants in the ignition interlock program.

55 (2) In addition to the imposition of any fine or period of imprison-
56 ment as set forth in this subdivision and to any license sanction

1 imposed pursuant to subdivision two of this section, the court shall
2 sentence such person convicted of, or adjudicated a youthful offender
3 for, a violation of subdivision two, two-a, three or four-a of section
4 eleven hundred ninety-two of this article to a period of probation or
5 conditional discharge, the conditions of which shall include the follow-
6 ing:

7 (i) an express prohibition on the operation of any motor vehicle with-
8 out a functioning ignition interlock device for a period of twelve
9 months or longer, as set forth in this paragraph or in paragraph (c) of
10 subdivision one-a of this section; and

11 (ii) such person shall install and maintain in accordance with the
12 provisions of section eleven hundred ninety-eight of this article, an
13 ignition interlock device in the motor vehicle most frequently operated
14 by such person for a period of twelve months or longer as set forth in
15 subparagraph three of this paragraph, including the one hundred eighty
16 days after a license has been restored. A declaration from the ignition
17 interlock monitor on a form provided by the commissioner, certifying
18 that such person has operated such motor vehicle free of any violations
19 as set forth in paragraph (i) of this subdivision for a period of one
20 hundred twenty consecutive days after the restoration of the operator's
21 license, shall be deemed to have satisfied the conditions of probation
22 or conditional discharge relating to the ignition interlock requirements
23 set forth in this paragraph. The period of interlock restriction shall
24 commence on the date that such ignition interlock device shall have been
25 installed.

26 (3) Notwithstanding the provisions of subparagraph two of this para-
27 graph and subdivision two of this section relating to license sanctions,
28 a court may impose an alternative sentence upon such person convicted
29 of, or adjudicated a youthful offender for, a violation of subdivision
30 two, two-a, three or four-a of section eleven hundred ninety-two of this
31 article, a period of probation or conditional discharge, the conditions
32 of which shall include the following:

33 (i) a prohibition from operating any vehicle without a functioning
34 ignition interlock device for a period of twelve months or longer as set
35 forth in subparagraph four of this paragraph; and

36 (ii) an order that such person install and maintain, in accordance
37 with the provisions of section eleven hundred ninety-eight of this arti-
38 cle, an ignition interlock device in the motor vehicle most regularly
39 operated by such person for a period of twelve months. A declaration
40 from the ignition interlock monitor on a form provided by the commis-
41 sioner, certifying that such person has operated the motor vehicle free
42 of any violations as set forth in paragraph (i) of this subdivision for
43 a period of one hundred eighty consecutive days shall be deemed to have
44 satisfied the conditions of probation or conditional discharge relating
45 to the ignition interlock requirements as set forth in this paragraph.
46 The period of interlock restriction shall commence on the date that such
47 ignition interlock device shall have been installed. The alternative
48 sentence set forth herein shall not be imposed on any offender subject
49 to the additional penalties set forth in subdivision one-a of this
50 section or who shall have also been convicted of a violation of any
51 provision of article one hundred twenty or one hundred twenty five of
52 the penal law involving the operation of a vehicle.

53 (4) When a sentence is imposed pursuant to subparagraph two or three
54 of this paragraph, in no event shall the commissioner restore the
55 license of any such person until the commissioner receives certification
56 by the ignition interlock monitor that such person shall have operated

1 the motor vehicle free of any violations set forth in paragraph (i) of
2 this subdivision for a period of one hundred twenty days for a sentence
3 imposed pursuant to subparagraph two of this paragraph and for a period
4 of one hundred eighty consecutive days for a sentence imposed pursuant
5 to subparagraph three of this paragraph. A violation of any of the
6 provisions of paragraph (i) of this subdivision shall cause the respec-
7 tive period of operation to reset from the date of any such violation.

8 (h) Driving while ability impaired by alcohol; ignition interlock
9 device requirement. Notwithstanding any other provision of law to the
10 contrary, when a person shall be charged with a violation of subdivision
11 two, two-a, three, or four-a of section eleven hundred ninety-two of
12 this article and a plea of guilty shall have been entered in satisfac-
13 tion of such charge to a violation of subdivision one of section eleven
14 hundred ninety-two of this article, the conditions of such plea shall
15 include an express prohibition on the operation of any motor vehicle
16 without a functioning ignition interlock device for a period of six
17 months, and such person shall install and maintain an ignition interlock
18 device for a period of not less than six months on the motor vehicle
19 operated most frequently by such person. A declaration from the ignition
20 interlock monitor on a form provided by the commissioner, certifying
21 that such person has operated the motor vehicle free of any violations
22 as set forth in paragraph (i) of this subdivision for a period of ninety
23 consecutive days after the date of installation, shall be deemed to have
24 satisfied the conditions of such plea relating to the ignition interlock
25 requirements set forth in this paragraph. The period of interlock
26 restriction shall be deemed to commence from the date such ignition
27 interlock device shall have been installed. If such person is found to
28 have violated the terms of the use of such ignition interlock device as
29 set forth in paragraph (i) of this subdivision, such ninety day period
30 shall reset from the date of any such violation.

31 (i) Violations of ignition interlock requirements. For purposes of
32 paragraphs (g) and (h) of this subdivision, the following shall be
33 deemed a violation of the ignition interlock device requirements:

34 (1) any violation of the provisions of subdivision nine of section
35 eleven hundred ninety-eight of this chapter; or

36 (2) a certified violation on a form provided by the commissioner that
37 such person has:

38 (i) attempted to start his or her vehicle with a blood alcohol concen-
39 tration level of .04 or more, unless a subsequent test performed within
40 ten minutes thereafter registers a blood alcohol concentration level
41 lower than .04 and the digital image provided confirms that the same
42 person provided both samples;

43 (ii) failed to take any random test, unless a review of the digital
44 image confirms that such vehicle was not occupied by the driver at the
45 time of the missed test;

46 (iii) failed to pass any random re-test with a blood alcohol concen-
47 tration level of .025 or lower, unless a subsequent test performed with-
48 in ten minutes registers a blood alcohol concentration level lower than
49 .025, and the digital image confirms that the same person provided both
50 samples; or

51 (iv) failed to appear at the ignition interlock device vendor when
52 required for maintenance, repair, calibration, monitoring, inspection,
53 or replacement of such device. A certificate of violation shall be
54 accompanied by a contemporaneous digital image verifying the identity of
55 the violator.

1 (j) Ignition interlock device requirements; terms of imprisonment.
2 When a sentence imposed pursuant to this subdivision includes a term of
3 imprisonment, the satisfaction of such term of imprisonment shall not
4 reduce or otherwise limit the requirements set forth in paragraph (g) of
5 this subdivision.

6 (k) Demonstration of regular and consistent use. During the period of
7 authorized use of a motor vehicle with an ignition interlock device
8 pursuant to the provisions of this subdivision, the person so authorized
9 shall demonstrate regular and consistent use of the ignition interlock
10 device, evidenced by no fewer than thirty blood alcohol concentration
11 level tests of less than .02 per each thirty-day period of such use.

12 (l) The office of probation and correctional alternatives shall recom-
13 mend to the commissioner of the division of criminal justice services
14 regulations governing the monitoring of compliance by persons ordered to
15 install and maintain ignition interlock devices to provide standards for
16 monitoring by departments of probation, and options for monitoring of
17 compliance by such persons, that counties may adopt as an alternative to
18 monitoring by a department of probation.

19 § 3. Paragraph (c) of subdivision 1-a of section 1193 of the vehicle
20 and traffic law, as amended by chapter 669 of the laws of 2007, is
21 amended to read as follows:

22 (c) A court sentencing a person pursuant to paragraph (a) or (b) of
23 this subdivision shall: (i) order, as a condition of such sentence, the
24 installation of an ignition interlock device approved pursuant to
25 section eleven hundred ninety-eight of this article in [~~any~~] the motor
26 vehicle [~~owned or~~] most frequently operated by the person so sentenced.
27 Such devices shall remain installed during any period of license revoca-
28 tion required to be imposed pursuant to paragraph (b) of subdivision two
29 of this section, and, upon the termination of such revocation period,
30 for an additional period as determined by the court, but in no event
31 less than twelve months; and (ii) order that such person receive an
32 assessment of the degree of their alcohol or substance abuse and depend-
33 ency pursuant to the provisions of section eleven hundred ninety-eight-a
34 of this article. Where such assessment indicates the need for treat-
35 ment, such court is authorized to impose treatment as a condition of
36 such sentence except that such court shall impose treatment as a condi-
37 tion of a sentence of probation or conditional discharge pursuant to the
38 provisions of subdivision three of section eleven hundred ninety-eight-a
39 of this article. Any person ordered to install an ignition interlock
40 device pursuant to this paragraph shall be subject to paragraph (j) of
41 subdivision one of this section and the provisions of subdivisions four,
42 five, seven, eight and nine of section eleven hundred ninety-eight of
43 this article.

44 § 4. Subdivisions 1, 2, 3, 4 and 5 of section 1198 of the vehicle and
45 traffic law, subdivisions 1, 2, 3, 4 and paragraph (a) of subdivision 5
46 as amended by chapter 496 of the laws of 2009, paragraph (a) of subdivi-
47 sion 4 as amended by chapter 169 of the laws of 2013, and subdivision 5
48 as amended by chapter 669 of the laws of 2007, are amended to read as
49 follows:

50 1. Applicability. The provisions of this section shall apply through-
51 out the state to each person required or otherwise ordered by a court as
52 a condition of sentence, plea, probation or conditional discharge, which
53 shall prohibit the operation of a motor vehicle without a functioning
54 ignition interlock device and requires such person to install and [~~oper-~~
55 ~~ate~~] maintain an ignition interlock device in [~~any~~] the vehicle [~~which~~
56 ~~he or she owns or operates~~] most frequently operated by such person.

2. Requirements. (a) In addition to any other penalties prescribed by law, the court shall require that any person who has been convicted ~~[of]~~ or adjudicated a youthful offender for a violation of subdivision two, two-a ~~[or]~~, three or four-a of section eleven hundred ninety-two of this article, or any crime defined by this chapter or the penal law of which an alcohol-related violation of any provision of section eleven hundred ninety-two of this article is an essential element, ~~[to]~~ shall not operate a motor vehicle without an ignition interlock device and shall install and maintain, as a condition of plea, sentence, probation or conditional discharge, a functioning ignition interlock device in accordance with the provisions of this section and, as applicable, in accordance with the provisions of subdivisions one and one-a of section eleven hundred ninety-three of this article; provided, however, the court may not authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked except as provided herein. For any such individual subject to a sentence of probation, installation and maintenance of such ignition interlock device shall be a condition of probation.

(b) Nothing contained in this section shall prohibit a court, upon application by a probation department, from modifying the conditions of probation of any person convicted of any violation set forth in paragraph (a) of this subdivision prior to the effective date of this section, to require the installation and maintenance of a functioning ignition interlock device, and such person shall thereafter be subject to the provisions of this section.

~~[(c) Nothing contained in this section shall authorize a court to sentence any person to a period of probation or conditional discharge for the purpose of subjecting such person to the provisions of this section, unless such person would have otherwise been so eligible for a sentence of probation or conditional discharge.]~~

3. Conditions. (a) ~~[Notwithstanding any other provision of law]~~ Except as provided for sentences imposed pursuant to paragraph (g) of subdivision one of section eleven hundred ninety-three of this chapter, the commissioner may grant a post-revocation conditional license, as set forth in paragraph (b) of this subdivision, to a person who has been convicted of a violation of subdivision two, two-a ~~[or]~~, three or four-a of section eleven hundred ninety-two of this article and who has been sentenced to a period of probation or conditional discharge, provided the person has satisfied the minimum period of license revocation established by law and the commissioner has been notified that such person may operate only a motor vehicle equipped with a functioning ignition interlock device. No such request shall be made nor shall such a license be granted, however, if such person has been found by a court to have committed a violation of section five hundred eleven of this chapter during the license revocation period or deemed by a court to have violated any condition of probation or conditional discharge set forth by the court relating to the operation of a motor vehicle or the consumption of alcohol. In exercising discretion relating to the issuance of a post-revocation conditional license pursuant to this subdivision, the commissioner shall not deny such issuance based solely upon the number of convictions for violations of any subdivision of section eleven hundred ninety-two of this article committed by such person within the ten years prior to application for such license. Upon the termination of the period of probation or conditional discharge set by the court, the person may apply to the commissioner for restoration of a

1 license or privilege to operate a motor vehicle in accordance with this
2 chapter.

3 (b) Notwithstanding any inconsistent provision of this chapter, a
4 post-revocation conditional license granted pursuant to paragraph (a) of
5 this subdivision shall be valid only for use by the holder thereof, (1)
6 ~~[enroute]~~ en route to and from the holder's place of employment, (2) if
7 the holder's employment requires the operation of a motor vehicle then
8 during the hours thereof, (3) ~~[enroute]~~ en route to and from a class or
9 course at an accredited school, college or university or at a state
10 approved institution of vocational or technical training, (4) to and
11 from court ordered probation activities, (5) to and from a motor vehicle
12 office for the transaction of business relating to such license, (6) for
13 a three hour consecutive daytime period, chosen by the department, on a
14 day during which the participant is not engaged in usual employment or
15 vocation, (7) ~~[enroute]~~ en route to and from a medical examination or
16 treatment as part of a necessary medical treatment for such participant
17 or member of the participant's household, as evidenced by a written
18 statement to that effect from a licensed medical practitioner, (8)
19 ~~[enroute]~~ en route to and from a class or an activity which is an
20 authorized part of the alcohol and drug rehabilitation program and at
21 which participant's attendance is required, and (9) ~~[enroute]~~ en route
22 to and from a place, including a school, at which a child or children of
23 the participant are cared for on a regular basis and which is necessary
24 for the participant to maintain such participant's employment or enroll-
25 ment at an accredited school, college or university or at a state
26 approved institution of vocational or technical training.

27 (c) The post-revocation conditional license described in this subdivi-
28 sion may be revoked by the commissioner for sufficient cause including
29 but not limited to, failure to comply with the terms of the condition of
30 probation or conditional discharge set forth by the court, conviction of
31 any traffic offense other than one involving parking, stopping or stand-
32 ing ~~[or]~~, conviction of any alcohol or drug related offense, misdemeanor
33 or felony, any violation of section five hundred eleven of this chapter
34 or section eleven hundred ninety-two of this article with respect to
35 operating a motor vehicle without an ignition interlock device when
36 required to do so, or failure to install or maintain a court ordered
37 ignition interlock device.

38 (d) Nothing contained herein shall prohibit the court from requiring,
39 as a condition of probation or conditional discharge, the installation
40 of a functioning ignition interlock device in any vehicle owned or oper-
41 ated by a person sentenced for a violation of subdivision two, two-a,
42 ~~[or]~~ three or four-a of section eleven hundred ninety-two of this ~~[chap-~~
43 ~~ter]~~ article, or any crime defined by this chapter or the penal law of
44 which an alcohol-related violation of any provision of section eleven
45 hundred ninety-two of this ~~[chapter]~~ article is an essential element, if
46 the court in its discretion, determines that such a condition is neces-
47 sary to ensure the public safety. Imposition of an ignition interlock
48 condition shall in no way limit the effect of any period of license
49 suspension or revocation set forth by the commissioner or the court.

50 (e) Nothing contained herein shall prevent the court from applying any
51 other conditions of probation or conditional discharge allowed by law,
52 including treatment for alcohol or drug abuse, restitution and community
53 service.

54 (f) The commissioner shall note on the operator's record of any person
55 restricted pursuant to this section that, in addition to any other

1 restrictions, conditions or limitations, such person may operate only a
2 motor vehicle equipped with an ignition interlock device.

3 4. Proof of compliance and recording of condition. (a) Following
4 imposition by the court of the use of an ignition interlock device as a
5 condition plea, sentence, of probation or conditional discharge it shall
6 require the person to provide proof of compliance with this section to
7 the court and the probation department or other monitor where such
8 person is under probation or conditional discharge supervision. A claim
9 by such person that he or she has good cause for not installing an
10 ignition interlock device shall be made to the court at or before
11 sentencing, in writing in the form of a sworn affidavit signed by such
12 person asserting under oath that he or she is not the registered or
13 titled owner of any motor vehicle and will not operate any motor vehicle
14 during the period of restriction, or that such person does not have
15 access to the vehicle operated by such person at the time of the
16 violation of section eleven hundred ninety-two of this article, or that
17 the registered owner of that vehicle or any vehicle registered to such
18 person's household will not give consent for the installation of an
19 interlock device on his or her vehicle. The affidavit shall include a
20 statement regarding whether such person owned any motor vehicle on the
21 date of the underlying violation of section eleven hundred ninety-two of
22 this article and whether ownership of any of those vehicles has been
23 transferred to another party by sale, gift or any other means since the
24 date of said violation. The affidavit shall also include a statement
25 from such person that he or she has not and will not transfer ownership
26 of any vehicle to evade installation of an ignition interlock device,
27 the address of such person's employment, if applicable, and how such
28 person intends to travel to that location during the period of
29 restriction. The person also may include any other facts and circum-
30 stances he or she believes to be relevant to the claim of good cause.
31 The court shall make a finding whether good cause exists on the record
32 and, if good cause shall be found, issue such finding in writing to be
33 filed by such person with the probation department or the ignition
34 interlock monitor, as appropriate. In the event the court denies such
35 person's claim of good cause on the basis of the affidavit filed with
36 the court, such persons shall be given an opportunity to be heard. Such
37 person shall also be permitted to waive the opportunity to be heard, if
38 he or she chooses to do so. If [the] a person shall be ordered to
39 install and maintain an ignition interlock device, and such person fails
40 to provide for such proof of installation, absent a finding by the court
41 of good cause for that failure which is entered in the record, the court
42 may revoke, modify, or terminate the person's sentence of probation or
43 conditional discharge as provided under law. [Good cause may include a
44 finding that the person is not the owner of a motor vehicle if such
45 person asserts under oath that such person is not the owner of any motor
46 vehicle and that he or she will not operate any motor vehicle during the
47 period of interlock restriction except as may be otherwise authorized
48 pursuant to law.] "Owner" shall have the same meaning as provided in
49 section one hundred twenty-eight of this chapter.

50 (b) When a court imposes the condition specified in subdivision one of
51 this section, the court shall notify the commissioner in such manner as
52 the commissioner may prescribe, and the commissioner shall note such
53 condition on the operating record of the person subject to such condi-
54 tions.

55 5. Cost, installation and maintenance. (a) The cost of installing and
56 maintaining the ignition interlock device shall be borne by the person

1 subject to such condition unless the court determines such person is
2 financially unable to afford such cost whereupon such cost may be
3 imposed pursuant to a payment plan or waived. In the event of such
4 waiver, the cost of the device shall be borne in accordance with regu-
5 lations issued under paragraph (g) of subdivision one of section eleven
6 hundred ninety-three of this article or pursuant to such other agreement
7 as may be entered into for provision of the device. Such cost shall be
8 considered a fine for the purposes of subdivision five of section 420.10
9 of the criminal procedure law. Such cost shall not replace, but shall
10 instead be in addition to, any fines, surcharges, or other costs imposed
11 pursuant to this chapter or other applicable laws.

12 (b) The installation and service provider of the device shall be
13 responsible for the installation, calibration, and maintenance of such
14 device.

15 (c) Failure to install such device, failure to appear for a service
16 visit or failure to comply with service instructions or circumvention of
17 or tampering with the device, in violation of regulations promulgated by
18 the division of criminal justice services, shall constitute a violation
19 of the conditions of a person's sentence, probation or conditional
20 discharge.

21 § 5. Paragraph (k-1) of subdivision 2 of section 65.10 of the penal
22 law, as amended by chapter 669 of the laws of 2007, is amended to read
23 as follows:

24 (k-1) Install and maintain a functioning ignition interlock device, as
25 that term is defined in section one hundred nineteen-a of the vehicle
26 and traffic law, in any vehicle owned or operated by the defendant [~~if~~
27 ~~the court in its discretion determines that such a condition is neces-~~
28 ~~sary to ensure the public safety. The court may require such condition~~
29 ~~only where a person has been convicted of a violation of subdivision~~
30 ~~two, two-a or three of section eleven hundred ninety-two of the vehicle~~
31 ~~and traffic law, or any crime defined by the vehicle and traffic law or~~
32 ~~this chapter of which an alcohol-related violation of any provision of~~
33 ~~section eleven hundred ninety-two of the vehicle and traffic law is an~~
34 ~~essential element~~]. The offender shall be required to install and oper-
35 ate the ignition interlock device only in accordance with the provisions
36 of paragraphs (g), (h), (i) and (j) of subdivision one of section eleven
37 hundred ninety-three and section eleven hundred ninety-eight of the
38 vehicle and traffic law.

39 § 6. Paragraphs (c) and (d) of subdivision 1 of section 160.10 of the
40 criminal procedure law, paragraph (c) as amended by chapter 762 of the
41 laws of 1971, and paragraph (d) as amended by chapter 232 of the laws of
42 2010, are amended to read as follows:

43 (c) A misdemeanor defined outside the penal law which would constitute
44 a felony if such person had a previous judgment of conviction for a
45 crime; [~~or~~]

46 (d) Loitering for the purpose of engaging in a prostitution offense as
47 defined in subdivision two of section 240.37 of the penal law; or

48 (e) Circumvention of an ignition interlock device as defined in subdi-
49 vision nine of section eleven hundred ninety-eight of the vehicle and
50 traffic law.

51 § 7. This act shall take effect on the first of November next succeed-
52 ing the date on which it shall have become a law, provided, however,
53 that the amendments to section 1198 of the vehicle and traffic law made
54 by section four of this act shall not affect the repeal of such section
55 and shall be deemed repealed therewith.