

STATE OF NEW YORK

5457

2025-2026 Regular Sessions

IN SENATE

February 21, 2025

Introduced by Sens. COMRIE, ADDABBO, ASHBY, BORRELLO, CANZONERI-FITZPATRICK, FERNANDEZ, HELMING, MARTINEZ, MARTINS, MATTERA, MAYER, MURRAY, OBERACKER, PALUMBO, RAMOS, RHOADS, ROLISON, TEDISCO, WEBER, WEIK -- 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, in relation to procedures relating to driving while ability impaired by drugs

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

1 Section 1. Section 114-a of the vehicle and traffic law, as amended by
2 chapter 92 of the laws of 2021, is amended to read as follows:

3 § 114-a. Drug. The term "drug" when used in this chapter, means and
4 includes any substance listed in section thirty-three hundred six of the
5 public health law and cannabis and concentrated cannabis as defined in
6 section 222.00 of the penal law and any substance or combination of
7 substances that impair, to any extent, physical or mental abilities.

8 § 2. Section 119-b of the vehicle and traffic law is renumbered 119-c
9 and a new section 119-b is added to read as follows:

10 § 119-b. Impaired. Impairment is reached when a driver has voluntarily
11 consumed or ingested a substance or combination of substances to the
12 extent that the driver has impaired, to any extent, the physical and
13 mental abilities which a driver is expected to possess in order to oper-
14 ate a vehicle as a reasonable and prudent driver.

15 § 3. The vehicle and traffic law is amended by adding a new section
16 120-a to read as follows:

17 § 120-a. Intoxication. Intoxication is a greater degree of impairment
18 which is reached when a driver has voluntarily consumed or ingested a
19 substance or combination of substances to the extent that the driver is
20 incapable, to a substantial extent, of employing the physical and mental
21 abilities which a driver is expected to possess in order to operate a
22 vehicle as a reasonable and prudent driver.

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

LBD00438-01-5

1 § 4. Subdivisions 1, 2 and 3 of section 1194 of the vehicle and traf-
2 fic law, as added by chapter 47 of the laws of 1988, paragraph (a) of
3 subdivision 2 as amended by chapter 196 of the laws of 1996, paragraphs
4 (b) and (c) of subdivision 2 as amended by chapter 489 of the laws of
5 2017, clause (A) of subparagraph 1, subparagraphs 2 and 3 of paragraph
6 (b), subparagraphs 1, 2 and 3 of paragraph (c) of subdivision 2 as
7 amended by chapter 27 of the laws of 2018, subparagraphs 1 and 2 of
8 paragraph (d) of subdivision 2 as amended by chapter 732 of the laws of
9 2006, and item (iii) of clause c of subparagraph 1 of paragraph (d) of
10 subdivision 2 as amended by section 37 of part LL of chapter 56 of the
11 laws of 2010, are amended to read as follows:

12 1. Arrest and field testing. (a) Arrest. Notwithstanding the
13 provisions of section 140.10 of the criminal procedure law, a police
14 officer may, without a warrant, arrest a person, in case of a violation
15 of subdivision one of section eleven hundred ninety-two of this article,
16 if such violation is coupled with an accident or collision in which such
17 person is involved, which in fact has been committed, though not in the
18 police officer's presence, when the officer has reasonable cause to
19 believe that the violation was committed by such person.

20 (b) Field testing. Every person operating a motor vehicle which has
21 been involved in an accident or which is operated in violation of any of
22 the provisions of this chapter shall, at the request of a police offi-
23 cer, submit to a breath test and/or oral/bodily fluid test to be admin-
24 istered by the police officer. If such test indicates that such operator
25 has consumed alcohol or a drug or drugs, the police officer may request
26 such operator to submit to a chemical test and/or an evaluation
27 conducted by a drug recognition expert in the manner set forth in subdi-
28 vision two of this section.

29 (c) Refusal to submit to a breath test and/or oral/bodily fluid test
30 pursuant to paragraph (b) of this subdivision shall be a traffic infrac-
31 tion.

32 2. Chemical tests and drug recognition evaluations. (a) When author-
33 ized. Any person who operates a motor vehicle in this state shall be
34 deemed to have given consent to an evaluation conducted by a certified
35 drug recognition expert, and/or a chemical test of one or more of the
36 following: breath, blood, urine, or [~~saliva~~] oral/bodily fluid, for the
37 purpose of determining the alcoholic and/or drug content [~~of the blood~~]
38 provided that such test is administered by or at the direction of a
39 police officer with respect to a chemical test of breath, urine or
40 [~~saliva~~] oral/bodily fluid or, with respect to a chemical test of blood,
41 at the direction of a police officer:

42 (1) having reasonable grounds to believe such person to have been
43 operating in violation of any subdivision of section eleven hundred
44 ninety-two of this article and within two hours after such person has
45 been placed under arrest for any such violation; or having reasonable
46 grounds to believe such person to have been operating in violation of
47 section eleven hundred ninety-two-a of this article and within two hours
48 after the stop of such person for any such violation,

49 (2) within two hours after a breath test, as provided in paragraph (b)
50 of subdivision one of this section, indicates that alcohol has been
51 consumed by such person and in accordance with the rules and regulations
52 established by the police force of which the officer is a member;

53 (3) for the purposes of this paragraph, "reasonable grounds" to
54 believe that a person has been operating a motor vehicle after having
55 consumed alcohol in violation of section eleven hundred ninety-two-a of
56 this article shall be determined by viewing the totality of circum-

stances surrounding the incident which, when taken together, indicate that the operator was driving in violation of such subdivision. Such circumstances may include any visible or behavioral indication of alcohol consumption by the operator, the existence of an open container containing or having contained an alcoholic beverage in or around the vehicle driven by the operator, or any other evidence surrounding the circumstances of the incident which indicates that the operator has been operating a motor vehicle after having consumed alcohol at the time of the incident; or

(4) notwithstanding any other provision of law to the contrary, no person under the age of twenty-one shall be arrested for an alleged violation of section eleven hundred ninety-two-a of this article. However, a person under the age of twenty-one for whom a chemical test and/or an evaluation conducted by a certified drug recognition expert is authorized pursuant to this paragraph may be temporarily detained by the police solely for the purpose of requesting or administering such chemical test and/or an evaluation conducted by a certified drug recognition expert whenever arrest without a warrant for a petty offense would be authorized in accordance with the provisions of section 140.10 of the criminal procedure law or paragraph (a) of subdivision one of this section.

(a-1) For the purposes of this section the driver shall not be deemed to consent to answer custodial questions as part of an evaluation conducted by a certified drug recognition expert pursuant to paragraph (a) of this subdivision and declining to answer such questions shall not constitute a refusal to submit to the evaluation when the driver submits to the other portions of such evaluation and no report of refusal shall be made pursuant to paragraph (b) of this subdivision and the driver's license shall not be revoked pursuant to paragraphs (c) and (d) of this subdivision solely on the basis of the driver declining to answer such custodial questions.

(b) Report of refusal. (1) If: (A) such person having been placed under arrest; or (B) after a breath and/or oral/bodily fluid test indicates the presence of alcohol and/or a drug or drugs in the person's system; or (C) with regard to a person under the age of twenty-one, there are reasonable grounds to believe that such person has been operating a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article; and having thereafter been requested to submit to such chemical test and/or an evaluation conducted by a certified drug recognition expert and having been informed that the person's license or permit to drive and any non-resident operating privilege shall be immediately suspended and subsequently revoked, or, for operators under the age of twenty-one for whom there are reasonable grounds to believe that such operator has been operating a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article, shall be revoked for refusal to submit to such chemical test or any portion thereof, and/or an evaluation conducted by a certified drug recognition expert or any portion thereof whether or not the person is found guilty of the charge for which such person is arrested or detained, refuses to submit to such chemical test or any portion thereof, [~~unless a court order has been granted pursuant to subdivision three of this section,~~] and/or an evaluation conducted by a certified drug recognition expert or any portion thereof the test shall not be given and a written report of such refusal shall be immediately made by the police officer before whom such refusal was made. Such report may be verified by having the report sworn to, or

1 by affixing to such report a form notice that false statements made
2 therein are punishable as a class A misdemeanor pursuant to section
3 210.45 of the penal law and such form notice together with the
4 subscription of the deponent shall constitute a verification of the
5 report.

6 (2) The report of the police officer shall set forth reasonable
7 grounds to believe such arrested person or such detained person under
8 the age of twenty-one had been driving in violation of any subdivision
9 of section eleven hundred ninety-two or eleven hundred ninety-two-a of
10 this article, that said person had refused to submit to such chemical
11 test, [~~and that no chemical test was administered pursuant to the~~
12 ~~requirements of subdivision three of this section~~] or an evaluation
13 conducted by a certified drug recognition expert or any portion thereof.
14 The report shall be presented to the court upon arraignment of an
15 arrested person, provided, however, in the case of a person under the
16 age of twenty-one, for whom a test was authorized pursuant to the
17 provisions of subparagraph two or three of paragraph (a) of this subdivi-
18 sion, and who has not been placed under arrest for a violation of any
19 of the provisions of section eleven hundred ninety-two of this article,
20 such report shall be forwarded to the commissioner within forty-eight
21 hours in a manner to be prescribed by the commissioner, and all subse-
22 quent proceedings with regard to refusal to submit to such chemical test
23 and/or an evaluation conducted by a certified drug recognition expert by
24 such person shall be as set forth in subdivision three of section eleven
25 hundred ninety-four-a of this article.

26 (3) For persons placed under arrest for a violation of any subdivision
27 of section eleven hundred ninety-two of this article, the license or
28 permit to drive and any non-resident operating privilege shall, upon the
29 basis of such written report, be temporarily suspended by the court
30 without notice pending the determination of a hearing as provided in
31 paragraph (c) of this subdivision. Copies of such report must be trans-
32 mitted by the court to the commissioner and such transmittal may not be
33 waived even with the consent of all the parties. Such report shall be
34 forwarded to the commissioner within forty-eight hours of such arraign-
35 ment.

36 (4) The court or the police officer, in the case of a person under the
37 age of twenty-one alleged to be driving after having consumed alcohol,
38 shall provide such person with a scheduled hearing date, a waiver form,
39 and such other information as may be required by the commissioner. If a
40 hearing, as provided for in paragraph (c) of this subdivision, or subdivi-
41 sion three of section eleven hundred ninety-four-a of this article, is
42 waived by such person, the commissioner shall immediately revoke the
43 license, permit, or non-resident operating privilege, as of the date of
44 receipt of such waiver in accordance with the provisions of paragraph
45 (d) of this subdivision.

46 (c) Hearings. Any person whose license or permit to drive or any non-
47 resident driving privilege has been suspended pursuant to paragraph (b)
48 of this subdivision is entitled to a hearing in accordance with a hear-
49 ing schedule to be promulgated by the commissioner. If the department
50 fails to provide for such hearing fifteen days after the date of the
51 arraignment of the arrested person, the license, permit to drive or
52 non-resident operating privilege of such person shall be reinstated
53 pending a hearing pursuant to this section. The hearing shall be limited
54 to the following issues: (1) did the police officer have reasonable
55 grounds to believe that such person had been driving in violation of any
56 subdivision of section eleven hundred ninety-two of this article; (2)

1 did the police officer make a lawful arrest of such person; (3) was such
2 person given sufficient warning, in clear or unequivocal language, prior
3 to such refusal that such refusal to submit to such chemical test or any
4 portion thereof and/or an evaluation conducted by a certified drug
5 recognition expert or any portion thereof, would result in the immediate
6 suspension and subsequent revocation of such person's license or operat-
7 ing privilege whether or not such person is found guilty of the charge
8 for which the arrest was made; and (4) did such person refuse to submit
9 to such chemical test or any portion thereof and/or an evaluation
10 conducted by a certified drug recognition expert or any portion thereof.
11 A refusal to answer custodial questions shall not be considered a
12 refusal for the purposes of this section pursuant to paragraph (a-1) of
13 this subdivision. If, after such hearing, the hearing officer, acting on
14 behalf of the commissioner, finds on any one of said issues in the nega-
15 tive, the hearing officer shall immediately terminate any suspension
16 arising from such refusal. If, after such hearing, the hearing officer,
17 acting on behalf of the commissioner finds all of the issues in the
18 affirmative, such officer shall immediately revoke the license or permit
19 to drive or any non-resident operating privilege in accordance with the
20 provisions of paragraph (d) of this subdivision. A person who has had a
21 license or permit to drive or non-resident operating privilege suspended
22 or revoked pursuant to this subdivision may appeal the findings of the
23 hearing officer in accordance with the provisions of article three-A of
24 this chapter. Any person may waive the right to a hearing under this
25 section. Failure by such person to appear for the scheduled hearing
26 shall constitute a waiver of such hearing, provided, however, that such
27 person may petition the commissioner for a new hearing which shall be
28 held as soon as practicable.

29 (d) Sanctions. (1) Revocations. a. Any license which has been revoked
30 pursuant to paragraph (c) of this subdivision shall not be restored for
31 at least one year after such revocation, nor thereafter, except in the
32 discretion of the commissioner. However, no such license shall be
33 restored for at least eighteen months after such revocation, nor there-
34 after except in the discretion of the commissioner, in any case where
35 the person has had a prior revocation resulting from refusal to submit
36 to a chemical test and/or an evaluation conducted by a certified drug
37 recognition expert or any portion thereof, or has been convicted of or
38 found to be in violation of any subdivision of section eleven hundred
39 ninety-two or section eleven hundred ninety-two-a of this article not
40 arising out of the same incident, within the five years immediately
41 preceding the date of such revocation; provided, however, a prior find-
42 ing that a person under the age of twenty-one has refused to submit to a
43 chemical test and/or an evaluation conducted by a certified drug recog-
44 inition expert or any portion thereof pursuant to subdivision three of
45 section eleven hundred ninety-four-a of this article shall have the same
46 effect as a prior finding of a refusal pursuant to this subdivision
47 solely for the purpose of determining the length of any license suspen-
48 sion or revocation required to be imposed under any provision of this
49 article, provided that the subsequent offense or refusal is committed or
50 occurred prior to the expiration of the retention period for such prior
51 refusal as set forth in paragraph (k) of subdivision one of section two
52 hundred one of this chapter.

53 b. Any license which has been revoked pursuant to paragraph (c) of
54 this subdivision or pursuant to subdivision three of section eleven
55 hundred ninety-four-a of this article, where the holder was under the
56 age of twenty-one years at the time of such refusal, shall not be

1 restored for at least one year, nor thereafter, except in the discretion
2 of the commissioner. Where such person under the age of twenty-one years
3 has a prior finding, conviction or youthful offender adjudication
4 resulting from a violation of section eleven hundred ninety-two or
5 section eleven hundred ninety-two-a of this article, not arising from
6 the same incident, such license shall not be restored for at least one
7 year or until such person reaches the age of twenty-one years, whichever
8 is the greater period of time, nor thereafter, except in the discretion
9 of the commissioner.

10 c. Any commercial driver's license which has been revoked pursuant to
11 paragraph (c) of this subdivision based upon a finding of refusal to
12 submit to a chemical test and/or an evaluation conducted by a certified
13 drug recognition expert or any portion thereof, where such finding
14 occurs within or outside of this state, shall not be restored for at
15 least eighteen months after such revocation, nor thereafter, except in
16 the discretion of the commissioner, but shall not be restored for at
17 least three years after such revocation, nor thereafter, except in the
18 discretion of the commissioner, if the holder of such license was oper-
19 ating a commercial motor vehicle transporting hazardous materials at the
20 time of such refusal. However, such person shall be permanently disqual-
21 ified from operating a commercial motor vehicle in any case where the
22 holder has a prior finding of refusal to submit to a chemical test
23 and/or an evaluation thereof conducted by a certified drug recognition
24 expert or any portion thereof pursuant to this section or has a prior
25 conviction of any of the following offenses: any violation of section
26 eleven hundred ninety-two of this article; any violation of subdivision
27 one or two of section six hundred of this chapter; or has a prior
28 conviction of any felony involving the use of a motor vehicle pursuant
29 to paragraph (a) of subdivision one of section five hundred ten-a of
30 this chapter. Provided that the commissioner may waive such permanent
31 revocation after a period of ten years has expired from such revocation
32 provided:

33 (i) that during such ten year period such person has not been found to
34 have refused a chemical test or an evaluation conducted by a certified
35 drug recognition expert or any portion thereof pursuant to this section
36 and has not been convicted of any one of the following offenses: any
37 violation of section eleven hundred ninety-two of this article; refusal
38 to submit to a chemical test or an evaluation conducted by a certified
39 drug recognition expert or any portion thereof pursuant to this section;
40 any violation of subdivision one or two of section six hundred of this
41 chapter; or has a prior conviction of any felony involving the use of a
42 motor vehicle pursuant to paragraph (a) of subdivision one of section
43 five hundred ten-a of this chapter;

44 (ii) that such person provides acceptable documentation to the commis-
45 sioner that such person is not in need of alcohol or drug treatment or
46 has satisfactorily completed a prescribed course of such treatment; and

47 (iii) after such documentation is accepted, that such person is grant-
48 ed a certificate of relief from disabilities or a certificate of good
49 conduct pursuant to article twenty-three of the correction law by the
50 court in which such person was last penalized.

51 d. Upon a third finding of refusal and/or conviction of any of the
52 offenses which require a permanent commercial driver's license revoca-
53 tion, such permanent revocation may not be waived by the commissioner
54 under any circumstances.

55 (2) Civil penalties. Except as otherwise provided, any person whose
56 license, permit to drive, or any non-resident operating privilege is

1 revoked pursuant to the provisions of this section shall also be liable
2 for a civil penalty in the amount of five hundred dollars except that if
3 such revocation is a second or subsequent revocation pursuant to this
4 section issued within a five year period, or such person has been
5 convicted of a violation of any subdivision of section eleven hundred
6 ninety-two of this article within the past five years not arising out of
7 the same incident, the civil penalty shall be in the amount of seven
8 hundred fifty dollars. Any person whose license is revoked pursuant to
9 the provisions of this section based upon a finding of refusal to submit
10 to a chemical test and/or an evaluation conducted by a certified drug
11 recognition expert or any portion thereof while operating a commercial
12 motor vehicle shall also be liable for a civil penalty of five hundred
13 fifty dollars except that if such person has previously been found to
14 have refused a chemical test and/or an evaluation conducted by a certi-
15 fied drug recognition expert or any portion thereof pursuant to this
16 section while operating a commercial motor vehicle or has a prior
17 conviction of any of the following offenses while operating a commercial
18 motor vehicle: any violation of section eleven hundred ninety-two of
19 this article; any violation of subdivision two of section six hundred of
20 this chapter; or has a prior conviction of any felony involving the use
21 of a commercial motor vehicle pursuant to paragraph (a) of subdivision
22 one of section five hundred ten-a of this chapter, then the civil penal-
23 ty shall be seven hundred fifty dollars. No new driver's license or
24 permit shall be issued, or non-resident operating privilege restored to
25 such person unless such penalty has been paid. All penalties collected
26 by the department pursuant to the provisions of this section shall be
27 the property of the state and shall be paid into the general fund of the
28 state treasury.

29 (3) Effect of rehabilitation program. No period of revocation arising
30 out of this section may be set aside by the commissioner for the reason
31 that such person was a participant in the alcohol and drug rehabili-
32 tation program set forth in section eleven hundred ninety-six of this
33 article.

34 (e) Regulations. The commissioner shall promulgate such rules and
35 regulations as may be necessary to effectuate the provisions of subdivi-
36 sions one and two of this section.

37 (f) Evidence. Evidence of a refusal to submit to such chemical test or
38 any portion thereof or an evaluation conducted by a drug recognition
39 expert or any portion thereof shall be admissible in any trial, proceed-
40 ing or hearing based upon a violation of the provisions of section elev-
41 en hundred ninety-two of this article but only upon a showing that the
42 person was given sufficient warning, in clear and unequivocal language,
43 of the effect of such refusal and that the person persisted in the
44 refusal. Evidence of a refusal shall be admissible pursuant to this
45 section regardless of the time of the refusal.

46 (g) Results. Upon the request of the person who was tested, the
47 results of such test shall be made available to such person.

48 3. Compulsory chemical tests. (a) Court ordered chemical tests.
49 Notwithstanding the provisions of subdivision two of this section, no
50 person who operates a motor vehicle in this state may refuse to submit
51 to a chemical test of one or more of the following: breath, blood, urine
52 or [~~saliva~~] oral/bodily fluids, for the purpose of determining the alco-
53 holic and/or drug content of the blood or oral/bodily fluids when a
54 court order for such chemical test has been issued in accordance with
55 the provisions of this subdivision.

1 (b) When authorized. Upon refusal by any person to submit to a chemi-
2 cal test or any portion thereof as described above, the test shall not
3 be given unless a police officer or a district attorney, as defined in
4 subdivision thirty-two of section 1.20 of the criminal procedure law,
5 requests and obtains a court order to compel a person to submit to a
6 chemical test to determine the alcoholic [~~or~~] and/or drug content of the
7 person's blood or oral/bodily fluids upon a finding of reasonable cause
8 to believe that:

9 (1) such person was the operator of a motor vehicle and in the course
10 of such operation [~~a person other than the operator was killed or~~
11 ~~suffered serious physical injury as defined in section 10.00 of the~~
12 ~~penal law~~] the motor vehicle was involved in a crash; or personal injury
13 has been caused to another person, due to an incident involving the
14 motor vehicle operated by such person or such person has a previous
15 conviction for a violation of any subdivision of section eleven hundred
16 ninety-two of this article; and

17 (2) a. either such person operated the vehicle in violation of any
18 subdivision of section eleven hundred ninety-two of this article, or

19 b. a breath test and/or oral/bodily fluid test administered by a
20 police officer in accordance with paragraph (b) of subdivision one of
21 this section indicates that alcohol and/or a drug or drugs has been
22 consumed by such person; and

23 (3) such person has been placed under lawful arrest; and

24 (4) such person has refused to submit to a chemical test or any
25 portion thereof and/or an evaluation conducted by a certified drug
26 recognition expert, or any portion thereof, requested in accordance with
27 the provisions of paragraph (a) of subdivision two of this section or is
28 unable to give consent to such a test.

29 (c) Reasonable cause; definition. For the purpose of this subdivision
30 "reasonable cause" shall be determined by viewing the totality of
31 circumstances surrounding the incident which, when taken together, indi-
32 cate that the operator was driving in violation of section eleven
33 hundred ninety-two of this article. Such circumstances may include, but
34 are not limited to: evidence that the operator was operating a motor
35 vehicle in violation of any provision of this article or any other
36 moving violation at the time of the incident; any visible indication of
37 alcohol or drug consumption or impairment by the operator; the existence
38 of an open container containing an alcoholic beverage and/or a drug or
39 drugs in or around the vehicle driven by the operator; the odor of
40 cannabis or burnt cannabis; any other evidence surrounding the circum-
41 stances of the incident which indicates that the operator has been oper-
42 ating a motor vehicle while impaired by the consumption of alcohol or
43 drugs or intoxicated at the time of the incident.

44 (d) Court order; procedure. (1) An application for a court order to
45 compel submission to a chemical test or any portion thereof, may be made
46 to any supreme court justice, county court judge or district court judge
47 in the judicial district in which the incident occurred, or if the inci-
48 dent occurred in the city of New York before any supreme court justice
49 or judge of the criminal court of the city of New York. Such application
50 may be communicated by telephone, radio or other means of electronic
51 communication, or in person.

52 (2) The applicant must provide identification by name and title and
53 must state the purpose of the communication. Upon being advised that an
54 application for a court order to compel submission to a chemical test is
55 being made, the court shall place under oath the applicant and any other
56 person providing information in support of the application as provided

1 in subparagraph three of this paragraph. After being sworn the applicant
2 must state that the person from whom the chemical test was requested was
3 the operator of a motor vehicle and in the course of such operation [~~a~~
4 ~~person, other than the operator, has been killed or seriously injured~~]
5 the motor vehicle was involved in a crash; or personal injury has been
6 caused to another person, due to an incident involving the motor vehicle
7 operated by such person and/or such person has a previous arrest for a
8 violation of any subdivision of section eleven hundred ninety-two of
9 this article; and, based upon the totality of circumstances, there is
10 reasonable cause to believe that such person was operating a motor vehi-
11 cle in violation of any subdivision of section eleven hundred ninety-two
12 of this article and, after being placed under lawful arrest such person
13 refused to submit to a chemical test or any portion thereof, in accord-
14 ance with the provisions of this section or is unable to give consent to
15 such a test or any portion thereof. The applicant must make specific
16 allegations of fact to support such statement. Any other person properly
17 identified, may present sworn allegations of fact in support of the
18 applicant's statement.

19 (3) Upon being advised that an oral application for a court order to
20 compel a person to submit to a chemical test is being made, a judge or
21 justice shall place under oath the applicant and any other person
22 providing information in support of the application. Such oath or oaths
23 and all of the remaining communication must be recorded, either by means
24 of a voice recording device or verbatim stenographic or verbatim long-
25 hand notes. If a voice recording device is used or a stenographic record
26 made, the judge must have the record transcribed, certify to the accura-
27 cy of the transcription and file the original record and transcription
28 with the court within seventy-two hours of the issuance of the court
29 order. If the longhand notes are taken, the judge shall subscribe a copy
30 and file it with the court within twenty-four hours of the issuance of
31 the order.

32 (4) If the court is satisfied that the requirements for the issuance
33 of a court order pursuant to the provisions of paragraph (b) of this
34 subdivision have been met, it may grant the application and issue an
35 order requiring the accused to submit to a chemical test to determine
36 the alcoholic and/or drug content of [~~his~~] such accused's blood [~~and~~]
37 and/or oral/bodily fluids and ordering the withdrawal of a blood and/or
38 oral/bodily fluid sample in accordance with the provisions of paragraph
39 (a) of subdivision four of this section. When a judge or justice deter-
40 mines to issue an order to compel submission to a chemical test based on
41 an oral application, the applicant therefor shall prepare the order in
42 accordance with the instructions of the judge or justice. In all cases
43 the order shall include the name of the issuing judge or justice, the
44 name of the applicant, and the date and time it was issued. It must be
45 signed by the judge or justice if issued in person, or by the applicant
46 if issued orally.

47 (5) Any false statement by an applicant or any other person in support
48 of an application for a court order shall subject such person to the
49 offenses for perjury set forth in article two hundred ten of the penal
50 law.

51 (6) The chief administrator of the courts shall establish a schedule
52 to provide that a sufficient number of judges or justices will be avail-
53 able in each judicial district to hear oral applications for court
54 orders as permitted by this section.

55 (e) Administration of compulsory chemical test. An order issued pursu-
56 ant to the provisions of this subdivision shall require that a chemical

1 test to determine the alcoholic and/or drug content of the operator's
2 blood and/or oral/bodily fluid must be administered. The provisions of
3 paragraphs (a), (b) and (c) of subdivision four of this section shall be
4 applicable to any chemical test administered pursuant to this section.

5 § 5. The subparagraph heading and clauses a and b of subparagraph 7 of
6 paragraph (e) of subdivision 2 of section 1193 of the vehicle and traf-
7 fic law, the subparagraph heading as added by chapter 312 of the laws of
8 1994, clause a as amended by chapter 732 of the laws of 2006, and clause
9 b as separately amended by chapters 3 and 571 of the laws of 2002, are
10 amended to read as follows:

11 Suspension pending prosecution; excessive blood alcohol content or
12 impairment by a drug or drugs. a. Except as provided in clause a-1 of
13 this subparagraph, a court shall suspend a driver's license, pending
14 prosecution, of any person charged with a violation of subdivision two,
15 two-a, three, four or four-a of section eleven hundred ninety-two of
16 this article who, at the time of arrest, is alleged to have had .08 of
17 one percent or more by weight of alcohol in such driver's blood or is
18 alleged to have been impaired by the ingestion of a drug or drugs as
19 shown by chemical analysis of blood, breath, urine or [~~saliva~~]
20 oral/bodily fluid, or by an evaluation conducted by a certified drug
21 recognition expert, or any portion thereof, made pursuant to subdivision
22 two or three of section eleven hundred ninety-four of this article, or
23 the driver makes a statement admitting to driving while intoxicated by
24 alcohol or while impaired by a drug or drugs.

25 b. The suspension occurring under clause a of this subparagraph shall
26 occur no later than at the conclusion of all proceedings required for
27 the arraignment and the suspension occurring under clause a-1 of this
28 subparagraph shall occur immediately after the holder's first appearance
29 before the court on the charge which shall, whenever possible, be the
30 next regularly scheduled session of the court after the arrest or at the
31 conclusion of all proceedings required for the arraignment; provided,
32 however, that if the results of any test administered pursuant to
33 section eleven hundred ninety-four of this article are not available
34 within such time period, the complainant police officer or other public
35 servant shall transmit such results to the court at the time they become
36 available, and the court shall, as soon as practicable following the
37 receipt of such results and in compliance with the requirements of this
38 subparagraph, suspend such license. In order for the court to impose
39 such suspension it must find that the accusatory instrument conforms to
40 the requirements of section 100.40 of the criminal procedure law and
41 there exists reasonable cause to believe either that (a) the holder
42 operated a motor vehicle while such holder had .08 of one percent or
43 more by weight of alcohol or was impaired by the ingestion of a drug or
44 drugs in [~~his or her~~] such holder's blood as was shown by chemical anal-
45 ysis of such person's blood, breath, urine or [~~saliva~~] oral/bodily
46 fluid, or by an evaluation conducted by a certified drug recognition
47 expert, or any portion thereof, made pursuant to the provisions of
48 section eleven hundred ninety-four of this article or the driver makes a
49 statement admitting to driving while intoxicated by alcohol or while
50 impaired by a drug or drugs; or (b) the person was the holder of a class
51 DJ or MJ learner's permit or a class DJ or MJ driver's license and oper-
52 ated a motor vehicle while such holder was in violation of subdivision
53 one, two and/or three of section eleven hundred ninety-two of this arti-
54 cle. At the time of such license suspension the holder shall be entitled
55 to an opportunity to make a statement regarding these two issues and to
56 present evidence tending to rebut the court's findings.

1 § 6. Section 1192 of the vehicle and traffic law is amended by adding
2 two new subdivisions 13 and 14 to read as follows:

3 13. It shall be an affirmative defense to a charge under subdivision
4 four or four-a of this section that the operator suffered an allergic
5 reaction or medical emergency rather than being impaired by a substance
6 or combination of substances. Provided, however, that no defense shall
7 be available if any such consumed or ingested substance is contained in
8 section thirty-three hundred six of the public health law. Further
9 provided, however, the judge reviewing the case may take into account
10 the medical history of the defendant and whether or not they had an
11 unknown adverse reaction to a properly prescribed prescription drug.

12 14. The commissioner and the commissioner of criminal justice services
13 shall collect data on the number of traffic stops, arrests and
14 convictions for driving under the influence of drugs under this section.
15 Such commissioners shall compile and publish an annual report on the
16 number of traffic stops, arrests and convictions by race, sex, age and
17 national origin and provide such annual report to the governor, the
18 speaker of the assembly and the temporary president of the senate.

19 § 7. This act shall take effect on the first of November next succeed-
20 ing the date on which it shall have become a law and be deemed repealed
21 five years after such effective date.