

STATE OF NEW YORK

5457--A

2025-2026 Regular Sessions

IN SENATE

February 21, 2025

Introduced by Sens. COMRIE, ADDABBO, ASHBY, BORRELLO, CANZONERI-FITZPATRICK, FERNANDEZ, GRIFFO, HELMING, LIU, 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

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

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

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

§ 120-a. Intoxication. Intoxication is a greater degree of impairment which is reached when a driver has voluntarily consumed or ingested a substance or combination of substances to the extent that the driver is incapable, to a substantial extent, of employing the physical and mental

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

LBD00438-04-5

abilities which a driver is expected to possess in order to operate a vehicle as a reasonable and prudent driver.

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

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

(b) Field testing. Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this chapter shall, at the request of a police officer, submit to a breath test and/or oral/bodily fluid test to be administered by the police officer. If such test indicates that such operator has consumed alcohol or a drug or drugs, the police officer may request such operator to submit to a chemical test and/or an evaluation conducted by a drug recognition expert in the manner set forth in subdivision two of this section.

(c) Refusal to submit to a breath test and/or oral/bodily fluid test pursuant to paragraph (b) of this subdivision shall be a traffic infraction.

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

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

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

(3) for the purposes of this paragraph, "reasonable grounds" to believe that a person has been operating a motor vehicle after having

1 consumed alcohol in violation of section eleven hundred ninety-two-a of
2 this article shall be determined by viewing the totality of circum-
3 stances surrounding the incident which, when taken together, indicate
4 that the operator was driving in violation of such subdivision. Such
5 circumstances may include any visible or behavioral indication of alco-
6 hol consumption by the operator, the existence of an open container
7 containing or having contained an alcoholic beverage in or around the
8 vehicle driven by the operator, or any other evidence surrounding the
9 circumstances of the incident which indicates that the operator has been
10 operating a motor vehicle after having consumed alcohol at the time of
11 the incident; or

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

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

34 (b) Report of refusal. (1) If: (A) such person having been placed
35 under arrest; or (B) after a breath and/or oral/bodily fluid test indi-
36 cates the presence of alcohol and/or a drug or drugs in the person's
37 system; or (C) with regard to a person under the age of twenty-one,
38 there are reasonable grounds to believe that such person has been oper-
39 ating a motor vehicle after having consumed alcohol in violation of
40 section eleven hundred ninety-two-a of this article; and having there-
41 after been requested to submit to such chemical test and/or an evalu-
42 ation conducted by a certified drug recognition expert and having been
43 informed that the person's license or permit to drive and any non-resi-
44 dent operating privilege shall be immediately suspended and subsequently
45 revoked, or, for operators under the age of twenty-one for whom there
46 are reasonable grounds to believe that such operator has been operating
47 a motor vehicle after having consumed alcohol in violation of section
48 eleven hundred ninety-two-a of this article, shall be revoked for
49 refusal to submit to such chemical test or any portion thereof, and/or
50 an evaluation conducted by a certified drug recognition expert or any
51 portion thereof whether or not the person is found guilty of the charge
52 for which such person is arrested or detained, refuses to submit to such
53 chemical test or any portion thereof, ~~unless a court order has been~~
54 ~~granted pursuant to subdivision three of this section,~~ and/or an evalu-
55 ation conducted by a certified drug recognition expert or any portion
56 thereof the test shall not be given and a written report of such refusal

1 shall be immediately made by the police officer before whom such refusal
2 was made. Such report may be verified by having the report sworn to, or
3 by affixing to such report a form notice that false statements made
4 therein are punishable as a class A misdemeanor pursuant to section
5 210.45 of the penal law and such form notice together with the
6 subscription of the deponent shall constitute a verification of the
7 report.

8 (2) The report of the police officer shall set forth reasonable
9 grounds to believe such arrested person or such detained person under
10 the age of twenty-one had been driving in violation of any subdivision
11 of section eleven hundred ninety-two or eleven hundred ninety-two-a of
12 this article, that said person had refused to submit to such chemical
13 test, ~~[and that no chemical test was administered pursuant to the~~
14 ~~requirements of subdivision three of this section]~~ or an evaluation
15 conducted by a certified drug recognition expert or any portion thereof.

16 The report shall be presented to the court upon arraignment of an
17 arrested person, provided, however, in the case of a person under the
18 age of twenty-one, for whom a test was authorized pursuant to the
19 provisions of subparagraph two or three of paragraph (a) of this subdivi-
20 sion, and who has not been placed under arrest for a violation of any
21 of the provisions of section eleven hundred ninety-two of this article,
22 such report shall be forwarded to the commissioner within forty-eight
23 hours in a manner to be prescribed by the commissioner, and all subse-
24 quent proceedings with regard to refusal to submit to such chemical test
25 and/or an evaluation conducted by a certified drug recognition expert by
26 such person shall be as set forth in subdivision three of section eleven
27 hundred ninety-four-a of this article.

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

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

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

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

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

55 b. Any license which has been revoked pursuant to paragraph (c) of
56 this subdivision or pursuant to subdivision three of section eleven

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

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

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

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

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

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

(2) Civil penalties. Except as otherwise provided, any person whose license, permit to drive, or any non-resident operating privilege is revoked pursuant to the provisions of this section shall also be liable for a civil penalty in the amount of five hundred dollars except that if such revocation is a second or subsequent revocation pursuant to this section issued within a five year period, or such person has been convicted of a violation of any subdivision of section eleven hundred ninety-two of this article within the past five years not arising out of the same incident, the civil penalty shall be in the amount of seven hundred fifty dollars. Any person whose license is revoked pursuant to the provisions of this section based upon a finding of refusal to submit to a chemical test and/or an evaluation conducted by a certified drug recognition expert or any portion thereof while operating a commercial motor vehicle shall also be liable for a civil penalty of five hundred fifty dollars except that if such person has previously been found to have refused a chemical test and/or an evaluation conducted by a certified drug recognition expert or any portion thereof pursuant to this section while operating a commercial motor vehicle or has a prior conviction of any of the following offenses while operating a commercial motor vehicle: any violation of section eleven hundred ninety-two of this article; any violation of subdivision two of section six hundred of this chapter; or has a prior conviction of any felony involving the use of a commercial motor vehicle pursuant to paragraph (a) of subdivision one of section five hundred ten-a of this chapter, then the civil penalty shall be seven hundred fifty dollars. No new driver's license or permit shall be issued, or non-resident operating privilege restored to such person unless such penalty has been paid. All penalties collected by the department pursuant to the provisions of this section shall be the property of the state and shall be paid into the general fund of the state treasury.

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

(e) Regulations. The commissioner shall promulgate such rules and regulations as may be necessary to effectuate the provisions of subdivisions one and two of this section.

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

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

3. Compulsory chemical tests. (a) Court ordered chemical tests. Notwithstanding the provisions of subdivision two of this section, no person who operates a motor vehicle in this state may refuse to submit to a chemical test of one or more of the following: breath, blood, urine or ~~saliva~~ oral/bodily fluids, for the purpose of determining the alcoholic and/or drug content of the blood or oral/bodily fluids when a

1 court order for such chemical test has been issued in accordance with
2 the provisions of this subdivision.

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

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

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

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

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

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

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

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

54 (2) The applicant must provide identification by name and title and
55 must state the purpose of the communication. Upon being advised that an
56 application for a court order to compel submission to a chemical test is

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

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

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

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

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

(e) Administration of compulsory chemical test. An order issued pursuant to the provisions of this subdivision shall require that a chemical test to determine the alcoholic and/or drug content of the operator's blood and/or oral/bodily fluid must be administered. The provisions of paragraphs (a), (b) and (c) of subdivision four of this section shall be applicable to any chemical test administered pursuant to this section.

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

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

b. The suspension occurring under clause a of this subparagraph shall occur no later than at the conclusion of all proceedings required for the arraignment and the suspension occurring under clause a-1 of this subparagraph shall occur immediately after the holder's first appearance before the court on the charge which shall, whenever possible, be the next regularly scheduled session of the court after the arrest or at the conclusion of all proceedings required for the arraignment; provided, however, that if the results of any test administered pursuant to section eleven hundred ninety-four of this article are not available within such time period, the complainant police officer or other public servant shall transmit such results to the court at the time they become available, and the court shall, as soon as practicable following the receipt of such results and in compliance with the requirements of this subparagraph, suspend such license. In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of section 100.40 of the criminal procedure law and there exists reasonable cause to believe either that (a) the holder operated a motor vehicle while such holder had .08 of one percent or more by weight of alcohol or was impaired by the ingestion of a drug or drugs in ~~[his or her]~~ such holder's blood as was shown by chemical analysis of such person's blood, breath, urine or ~~[saliva]~~ oral/bodily fluid, or by an evaluation conducted by a certified drug recognition expert, or any portion thereof, made pursuant to the provisions of section eleven hundred ninety-four of this article or the driver makes a statement admitting to driving while intoxicated by alcohol or while impaired by a drug or drugs; or (b) the person was the holder of a class DJ or MJ learner's permit or a class DJ or MJ driver's license and operated a motor vehicle while such holder was in violation of subdivision one, two and/or three of section eleven hundred ninety-two of this article. At the time of such license suspension the holder shall be entitled

1 to an opportunity to make a statement regarding these two issues and to
2 present evidence tending to rebut the court's findings.
3 § 6. This act shall take effect on the first of November next succeed-
4 ing the date on which it shall have become a law.