

9124

2009-2010 Regular Sessions

I N A S S E M B L Y

September 4, 2009

Introduced by M. of A. PAULIN -- read once and referred to the Committee
on Transportation

AN ACT to amend the vehicle and traffic law and the criminal procedure
law, in relation to driving while intoxicated while in a position of
care

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 1192 of the vehicle and traffic law is amended by
2 adding a new subdivision 2-b to read as follows:
3 2-B. DRIVING WHILE INTOXICATED WHILE IN A POSITION OF CARE. NO PERSON
4 SHALL OPERATE A MOTOR VEHICLE IN VIOLATION OF SUBDIVISIONS TWO, TWO-A,
5 THREE, FOUR, FIVE OR SIX OF THIS SECTION WHILE SUCH PERSON HAS BEEN
6 ENTRUSTED WITH THE CARE, EITHER BY EFFECT OF LAW OR OTHERWISE, FOR ANY
7 MINOR IN THE VEHICLE AT THE TIME OF THE VIOLATION.
8 S 2. Paragraph (d) of subdivision 10 of section 1192 of the vehicle
9 and traffic law, as added by chapter 732 of the laws of 2006, is amended
10 to read as follows:
11 (d) In any case wherein the charge laid before the court alleges a
12 violation of subdivision two-a OR TWO-B of this section, any plea of
13 guilty thereafter entered in satisfaction of such charge must include at
14 least a plea of guilty to the violation of the provisions of subdivision
15 two, two-a, TWO-B or three of this section, and no other disposition by
16 plea of guilty to any other charge in satisfaction of such charge shall
17 be authorized; provided, however, if the district attorney, upon review-
18 ing the available evidence, determines that the charge of a violation of
19 this section is not warranted, such district attorney may consent and
20 the court may allow a disposition by plea of guilty to another charge in
21 satisfaction of such charge, provided, however, in all such cases, the
22 court shall set forth upon the record the basis for such disposition.
23 Provided, further, however, that no such plea shall be accepted by the
24 court unless such plea includes as a condition thereof the requirement

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

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1 that the defendant attend and complete the alcohol and drug rehabili-
2 tation program established pursuant to section eleven hundred ninety-six
3 of this article, including any assessment and treatment required there-
4 by; provided, however, that such requirement may be waived by the court
5 upon application of the district attorney or the defendant demonstrating
6 that the defendant, as a condition of the plea, has been required to
7 enter into and complete an alcohol or drug treatment program prescribed
8 pursuant to an alcohol or substance abuse screening or assessment
9 conducted pursuant to section eleven hundred ninety-eight-a of this
10 article or for other good cause shown. The provisions of this paragraph
11 shall apply, notwithstanding any bars to participation in the alcohol
12 and drug rehabilitation program set forth in section eleven hundred
13 ninety-six of this article; provided, however, that nothing in this
14 paragraph shall authorize the issuance of a conditional license unless
15 otherwise authorized by law.

16 S 3. Subdivision 12 of section 1192 of the vehicle and traffic law, as
17 amended by chapter 732 of the laws of 2006, is amended to read as
18 follows:

19 12. Driving while intoxicated or while ability impaired by drugs--ser-
20 ious physical injury or death. In every case where a person is charged
21 with a violation of subdivision two, two-a, TWO-B, three, four or four-a
22 of this section, the law enforcement officer alleging such charge shall
23 make a clear notation in the "Description of Violation" section of a
24 simplified traffic information if, arising out of the same incident,
25 someone other than the person charged was killed or suffered serious
26 physical injury as defined in section 10.00 of the penal law; such nota-
27 tion shall be in the form of a "D" if someone other than the person
28 charged was killed and such notation shall be in the form of a "S.P.I."
29 if someone other than the person charged suffered serious physical inju-
30 ry; provided, however, that the failure to make such notation shall in
31 no way affect a charge for a violation of subdivision two, two-a, TWO-B,
32 three, four or four-a of this section.

33 S 4. Paragraphs (b), (c) and (d) of subdivision 1 of section 1193 of
34 the vehicle and traffic law, paragraph (b) as amended by chapter 669 of
35 the laws of 2007, paragraphs (c) and (d) as amended by chapter 732 of
36 the laws of 2006, and subparagraphs (i) and (ii) of paragraph (c) as
37 amended by chapter 345 of the laws of 2007, are amended to read as
38 follows:

39 (b) Driving while intoxicated or while ability impaired by drugs or
40 while ability impaired by the combined influence of drugs or of alcohol
41 and any drug or drugs; aggravated driving while intoxicated; DRIVING
42 WHILE INTOXICATED IN A POSITION OF CARE; misdemeanor offenses. A
43 violation of subdivision two, three, four or four-a of section eleven
44 hundred ninety-two of this article shall be a misdemeanor and shall be
45 punishable by a fine of not less than five hundred dollars nor more than
46 one thousand dollars, or by imprisonment in a penitentiary or county
47 jail for not more than one year, or by both such fine and imprisonment.
48 A violation of subdivision two-a OR TWO-B of section eleven hundred
49 ninety-two of this article shall be a misdemeanor and shall be punisha-
50 ble by a fine of not less than one thousand dollars nor more than two
51 thousand five hundred dollars or by imprisonment in a penitentiary or
52 county jail for not more than one year, or by both such fine and impri-
53 sonment. In addition to the imposition of any fine or period of impri-
54 sonment set forth in this paragraph, the court shall require that any
55 person who has been convicted of a violation of subdivision two-a OR
56 TWO-B of section eleven hundred ninety-two of this article and who is

1 sentenced to a period of probation, to install and maintain, as a condi-
2 tion of such probation and in accordance with section eleven hundred
3 ninety-eight of this article, a functioning ignition interlock device in
4 any vehicle owned or operated by the person during the term of such
5 probation; provided, however, the court may not authorize the operation
6 of a motor vehicle by any person whose license or privilege to operate a
7 motor vehicle has been revoked pursuant to the provisions of this
8 section.

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

23 (ii) A person who operates a vehicle in violation of subdivision two,
24 two-a, TWO-B, three, four or four-a of section eleven hundred ninety-two
25 of this article after having been convicted of a violation of subdivi-
26 sion two, two-a, TWO-B, three, four or four-a of such section or of
27 vehicular assault in the second or first degree, as defined, respective-
28 ly, in sections 120.03 and 120.04 and aggravated vehicular assault as
29 defined in section 120.04-a of the penal law or of vehicular manslaught-
30 er in the second or first degree, as defined, respectively, in sections
31 125.12 and 125.13 and aggravated vehicular homicide as defined in
32 section 125.14 of such law, twice within the preceding ten years, shall
33 be guilty of a class D felony, and shall be punished by a fine of not
34 less than two thousand dollars nor more than ten thousand dollars or by
35 a period of imprisonment as provided in the penal law, or by both such
36 fine and imprisonment.

37 (d) Alcohol or drug related offenses; special vehicles. (1) Except as
38 provided in subparagraph four of this paragraph, a violation of subdivi-
39 sion one, two, three, four or four-a of section eleven hundred ninety-
40 two of this article wherein the violator is operating a taxicab as
41 defined in section one hundred forty-eight-a of this chapter, or livery
42 as defined in section one hundred twenty-one-e of this chapter, and such
43 taxicab or livery is carrying a passenger for compensation, or a truck
44 with a GVWR of more than eighteen thousand pounds but not more than
45 twenty-six thousand pounds and which is not a commercial motor vehicle
46 shall be a misdemeanor punishable by a fine of not less than five
47 hundred dollars nor more than fifteen hundred dollars or by a period of
48 imprisonment as provided in the penal law, or by both such fine and
49 imprisonment. A violation of subdivision two-a OR TWO-B of section elev-
50 en hundred ninety-two of this article wherein the violator is operating
51 a taxicab as defined in section one hundred forty-eight-a of this chap-
52 ter, or livery as defined in section one hundred twenty-one-e of this
53 chapter, and such taxicab or livery is carrying a passenger for compen-
54 sation, or a truck with a GVWR of more than eighteen thousand pounds but
55 not more than twenty-six thousand pounds and which is not a commercial
56 motor vehicle shall be a class E felony punishable by a fine of not less

1 than one thousand dollars nor more than five thousand dollars or by a
2 period of imprisonment as provided in the penal law, or by both such
3 fine and imprisonment.

4 (1-a) A violation of subdivision one of section eleven hundred nine-
5 ty-two of this article wherein the violator is operating a school bus as
6 defined in section one hundred forty-two of this chapter and such school
7 bus is carrying at least one student passenger shall be a misdemeanor
8 punishable by a fine of not less than five hundred dollars nor more than
9 fifteen hundred dollars or by a period of imprisonment as provided in
10 the penal law, or by both such fine and imprisonment.

11 (2) A violation of subdivision five of section eleven hundred ninety-
12 two of this article shall be a traffic infraction punishable as provided
13 in paragraph (a) of this subdivision. Except as provided in subparagraph
14 three or five of this paragraph, a violation of subdivision one, two,
15 three, four, four-a or six of section eleven hundred ninety-two of this
16 article wherein the violator is operating a commercial motor vehicle, or
17 any motor vehicle registered or registerable under schedule F of subdi-
18 vision seven of section four hundred one of this chapter shall be a
19 misdemeanor. A violation of subdivision one, two, three, four or four-a
20 of section eleven hundred ninety-two of this article shall be punishable
21 by a fine of not less than five hundred dollars nor more than fifteen
22 hundred dollars or by a period of imprisonment as provided in the penal
23 law, or by both such fine and imprisonment. A violation of subdivision
24 six of section eleven hundred ninety-two of this article shall be
25 punishable by a fine of not less than five hundred dollars nor more than
26 fifteen hundred dollars or by a period of imprisonment not to exceed one
27 hundred eighty days, or by both such fine and imprisonment. A person who
28 operates any such vehicle in violation of such subdivision six after
29 having been convicted of a violation of subdivision one, two, two-a,
30 TWO-B, three, four, four-a or six of section eleven hundred ninety-two
31 of this article within the preceding five years shall be punishable by a
32 fine of not less than five hundred dollars nor more than fifteen hundred
33 dollars or by a period of imprisonment as provided in the penal law, or
34 by both such fine and imprisonment. A violation of subdivision two-a OR
35 TWO-B of section eleven hundred ninety-two of this article wherein the
36 violator is operating a commercial motor vehicle, or any motor vehicle
37 registered or registerable under schedule F of subdivision seven of
38 section four hundred one of this chapter shall be a class E felony
39 punishable by a fine of not less than one thousand dollars nor more than
40 five thousand dollars or by a period of imprisonment as provided in the
41 penal law, or by both such fine and imprisonment.

42 (3) A violation of subdivision one of section eleven hundred ninety-
43 two of this article wherein the violator is operating a motor vehicle
44 with a gross vehicle weight rating of more than eighteen thousand pounds
45 which contains flammable gas, radioactive materials or explosives shall
46 be a misdemeanor punishable by a fine of not less than five hundred
47 dollars nor more than fifteen hundred dollars or by a period of impri-
48 sonment as provided in the penal law, or by both such fine and imprison-
49 ment.

50 (4) (i) A person who operates a vehicle in violation of subdivision
51 one, two, two-a, TWO-B, three, four or four-a of section eleven hundred
52 ninety-two of this article and which is punishable as provided in
53 subparagraph one, one-a, two or three of this paragraph after having
54 been convicted of a violation of any such subdivision of section eleven
55 hundred ninety-two of this article and penalized under subparagraph one,
56 one-a, two or three of this paragraph within the preceding ten years,

1 shall be guilty of a class E felony, which shall be punishable by a fine
2 of not less than one thousand dollars nor more than five thousand
3 dollars, or by a period of imprisonment as provided in the penal law, or
4 by both such fine and imprisonment. A person who operates a vehicle in
5 violation of subdivision six of section eleven hundred ninety-two of
6 this article after having been convicted of two or more violations of
7 subdivisions one, two, two-a, TWO-B, three, four, four-a or six of
8 section eleven hundred ninety-two of this article within the preceding
9 five years, any one of which was a misdemeanor, shall be guilty of a
10 class E felony, which shall be punishable by a fine of not less than one
11 thousand dollars nor more than five thousand dollars, or by a period of
12 imprisonment as provided in the penal law, or by both such fine and
13 imprisonment. In addition, any person sentenced pursuant to this subpar-
14 agraph shall be subject to the disqualification provided in subparagraph
15 three of paragraph (e) of subdivision two of this section.

16 (ii) A person who operates a vehicle in violation of subdivision one,
17 two, two-a, TWO-B, three, four or four-a of section eleven hundred nine-
18 ty-two of this article and which is punishable as provided in subpara-
19 graph one, one-a, two or three of this paragraph after having been
20 convicted of a violation of any such subdivision of section eleven
21 hundred ninety-two of this article and penalized under subparagraph one,
22 one-a, two or three of this paragraph twice within the preceding ten
23 years, shall be guilty of a class D felony, which shall be punishable by
24 a fine of not less than two thousand dollars nor more than ten thousand
25 dollars, or by a period of imprisonment as provided in the penal law, or
26 by both such fine and imprisonment. A person who operates a vehicle in
27 violation of subdivision six of section eleven hundred ninety-two of
28 this article after having been convicted of three or more violations of
29 subdivisions one, two, two-a, TWO-B, three, four, four-a or six of
30 section eleven hundred ninety-two of this article within the preceding
31 five years, any one of which was a misdemeanor, shall be guilty of a
32 class D felony, which shall be punishable by a fine of not less than two
33 thousand dollars nor more than ten thousand dollars, or by a period of
34 imprisonment as provided in the penal law, or by both such fine and
35 imprisonment. In addition, any person sentenced pursuant to this subpar-
36 agraph shall be subject to the disqualification provided in subparagraph
37 three of paragraph (e) of subdivision two of this section.

38 (4-a) A violation of subdivision two, three, four or four-a of section
39 eleven hundred ninety-two of this article wherein the violator is oper-
40 ating a school bus as defined in section one hundred forty-two of this
41 chapter and such school bus is carrying at least one student passenger
42 shall be a class E felony punishable by a fine of not less than one
43 thousand dollars nor more than five thousand dollars, or by a period of
44 imprisonment as provided in the penal law, or by both such fine and
45 imprisonment. A violation of subdivision two-a of section eleven hundred
46 ninety-two of this article wherein the violator is operating a school
47 bus as defined in section one hundred forty-two of this chapter and such
48 school bus is carrying at least one student passenger shall be a class D
49 felony punishable by a fine of not less than two thousand dollars nor
50 more than ten thousand dollars, or by a period of imprisonment as
51 provided in the penal law, or by both such fine and imprisonment.

52 (5) A violation of subdivision two, three, four or four-a of section
53 eleven hundred ninety-two of this article wherein the violator is oper-
54 ating a motor vehicle with a gross vehicle weight rating of more than
55 eighteen thousand pounds which contains flammable gas, radioactive mate-
56 rials or explosives, shall be a class E felony punishable by a fine of

1 not less than one thousand dollars and such other penalties as provided
2 for in the penal law; provided, however, that a conviction for such
3 violation shall not be considered a predicate felony pursuant to section
4 70.06 of such law, or a previous felony conviction pursuant to section
5 70.10 of such law. A violation of subdivision two-a OR TWO-B of section
6 eleven hundred ninety-two of this article wherein the violator is oper-
7 ating a motor vehicle with a gross vehicle weight rating of more than
8 eighteen thousand pounds which contains flammable gas, radioactive mate-
9 rials or explosives, shall be a class D felony punishable by a fine of
10 not less than two thousand nor more than ten thousand dollars and such
11 other penalties as provided for in the penal law; provided, however,
12 that a conviction for such violation shall not be considered a predicate
13 felony pursuant to section 70.06 of such law, or a previous felony
14 conviction pursuant to section 70.10 of such law.

15 (6) The sentences required to be imposed by subparagraph one, one-a,
16 two, three, four, four-a or five of this paragraph shall be imposed
17 notwithstanding any contrary provision of this chapter or the penal law.

18 (7) Nothing contained in this paragraph shall prohibit the imposition
19 of a charge of any other felony set forth in this or any other provision
20 of law for any acts arising out of the same incident.

21 S 5. Subparagraphs 2 and 3 of paragraph (b) of subdivision 2 of
22 section 1193 of the vehicle and traffic law, as amended by chapter 732
23 of the laws of 2006, are amended to read as follows:

24 (2) Driving while intoxicated or while ability impaired by drugs or
25 while ability impaired by the combined influence of drugs or of alcohol
26 and any drug or drugs; aggravated driving while intoxicated; DRIVING
27 WHILE INTOXICATED WHILE IN A POSITION OF CARE. Six months, where the
28 holder is convicted of a violation of subdivision two, three, four or
29 four-a of section eleven hundred ninety-two of this article. One year
30 where the holder is convicted of a violation of subdivision two-a OR
31 TWO-B of section eleven hundred ninety-two of this article.

32 (3) Driving while intoxicated or while ability impaired by drugs or
33 while ability impaired by the combined influence of drugs or of alcohol
34 and any drug or drugs; aggravated driving while intoxicated; DRIVING
35 WHILE INTOXICATED WHILE IN A POSITION OF CARE; prior offense. One year,
36 where the holder is convicted of a violation of subdivision two, three,
37 four or four-a of section eleven hundred ninety-two of this article
38 committed within ten years of a conviction for a violation of subdivi-
39 sion two, three, four or four-a of section eleven hundred ninety-two of
40 this article. Eighteen months, where the holder is convicted of a
41 violation of subdivision two-a OR TWO-B of section eleven hundred nine-
42 ty-two of this article committed within ten years of a conviction for a
43 violation of subdivision two, two-a, TWO-B, three, four or four-a of
44 section eleven hundred ninety-two of this article; or where the holder
45 is convicted of a violation of subdivision two, three, four or four-a of
46 section eleven hundred ninety-two of this article committed within ten
47 years of a conviction for a violation of subdivision two-a OR TWO-B of
48 section eleven hundred ninety-two of this article.

49 S 6. Subparagraph 1 of paragraph (e) of subdivision 2 of section 1193
50 of the vehicle and traffic law, as amended by chapter 732 of the laws of
51 2006, is amended to read as follows:

52 (1) Suspension pending prosecution; procedure. a. Without notice,
53 pending any prosecution, the court shall suspend such license, where the
54 holder has been charged with a violation of subdivision two, two-a,
55 TWO-B, three, four or four-a of section eleven hundred ninety-two of
56 this article and either (i) a violation of a felony under article one

1 hundred twenty or one hundred twenty-five of the penal law arising out
2 of the same incident, or (ii) has been convicted of any violation under
3 section eleven hundred ninety-two of this article within the preceding
4 five years.

5 b. The suspension under the preceding clause shall occur no later than
6 twenty days after the holder's first appearance before the court on the
7 charges or at the conclusion of all proceedings required for the
8 arraignment. In order for the court to impose such suspension it must
9 find that the accusatory instrument conforms to the requirements of
10 section 100.40 of the criminal procedure law and there exists reasonable
11 cause to believe that the holder operated a motor vehicle in violation
12 of subdivision two, two-a, TWO-B, three, four or four-a of section elev-
13 en hundred ninety-two of this article and either (i) the person had been
14 convicted of any violation under such section eleven hundred ninety-two
15 of this article within the preceding five years; or (ii) that the holder
16 committed a violation of a felony under article one hundred twenty or
17 one hundred twenty-five of the penal law. At such time the holder shall
18 be entitled to an opportunity to make a statement regarding the enumer-
19 ated issues and to present evidence tending to rebut the court's find-
20 ings. Where such suspension is imposed upon a pending charge of a
21 violation of a felony under article one hundred twenty or one hundred
22 twenty-five of the penal law and the holder has requested a hearing
23 pursuant to article one hundred eighty of the criminal procedure law,
24 the court shall conduct such hearing. If upon completion of the hearing,
25 the court fails to find that there is reasonable cause to believe that
26 the holder committed a felony under article one hundred twenty or one
27 hundred twenty-five of the penal law and the holder has not been previ-
28 ously convicted of any violation of section eleven hundred ninety-two of
29 this article within the preceding five years the court shall promptly
30 notify the commissioner and direct restoration of such license to the
31 license holder unless such license is suspended or revoked pursuant to
32 any other provision of this chapter.

33 S 7. Clause a of subparagraph 7 of paragraph (e) of subdivision 2 of
34 section 1193 of the vehicle and traffic law, as amended by chapter 732
35 of the laws of 2006, is amended to read as follows:

36 a. Except as provided in clause a-1 of this subparagraph, a court
37 shall suspend a driver's license, pending prosecution, of any person
38 charged with a violation of subdivision two, two-a, TWO-B, three or
39 four-a of section eleven hundred ninety-two of this article who, at the
40 time of arrest, is alleged to have had .08 of one percent or more by
41 weight of alcohol in such driver's blood as shown by chemical analysis
42 of blood, breath, urine or saliva, made pursuant to subdivision two or
43 three of section eleven hundred ninety-four of this article.

44 S 8. Clause a-1 of subparagraph 7 of paragraph (e) of subdivision 2 of
45 section 1193 of the vehicle and traffic law, as amended by chapter 732
46 of the laws of 2006, is amended to read as follows:

47 a-1. A court shall suspend a class DJ or MJ learner's permit or a
48 class DJ or MJ driver's license, pending prosecution, of any person who
49 has been charged with a violation of subdivision one, two, two-a, TWO-B
50 and/or three of section eleven hundred ninety-two of this article.

51 S 9. Paragraph (a) of subdivision 2 of section 1198 of the vehicle and
52 traffic law, as amended by chapter 669 of the laws of 2007, is amended
53 to read as follows:

54 (a) In addition to any other penalties prescribed by law, the court
55 may require that any person who has been convicted of a violation of
56 subdivision two, two-a, TWO-B or three of section eleven hundred nine-

ty-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, and who has been sentenced to a period of probation, install and maintain, as a condition of probation, a functioning ignition interlock device in accordance with the provisions of this section; 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] IN THIS SECTION.

S 10. Paragraph (a) of subdivision 3 of section 1198 of the vehicle and traffic law, as amended by chapter 669 of the laws of 2007, is amended to read as follows:

(a) Notwithstanding any other provision of law, 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, TWO-B or three of section eleven hundred ninety-two of this article and who has been sentenced to a period of probation, 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 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 set by the court, the person may apply to the commissioner for restoration of a license or privilege to operate a motor vehicle in accordance with this chapter.

S 11. Subdivision 2 of section 530 of the vehicle and traffic law, as separately amended by chapters 571 and 732 of the laws of 2006, is amended to read as follows:

(2) Such license or privilege shall not be issued to a person who, within the four year period immediately preceding the date of application, has been convicted within or without the state of homicide or assault arising out of the operation of a motor vehicle, of criminally negligent homicide or criminal negligence in the operation of a motor vehicle resulting in death, or has been convicted within the state of a violation of subdivision two of section six hundred of this chapter or of reckless driving. Such license or privilege shall not be issued to a person whose license or privilege, at the time of application, is revoked pursuant to the provisions of subparagraph (x) or (xi) of paragraph a of subdivision two of section five hundred ten of this chapter. Such license or privilege shall not be issued to a person whose license or privilege is suspended or revoked because of a conviction of a violation of subdivision one, two, two-a, TWO-B, three, four or four-a of section eleven hundred ninety-two of this chapter or a similar offense in another jurisdiction, or whose license or privilege is revoked by the commissioner for refusal to submit to a chemical test pursuant to subdivision two of section eleven hundred ninety-four of

1 this chapter. Such license or privilege shall not be issued to a person
2 who within the five year period immediately preceding the date of appli-
3 cation for such license or privilege has been convicted of a violation
4 of subdivision one, two, two-a, TWO-B, three, four or four-a of section
5 eleven hundred ninety-two of this chapter or a similar alcohol-related
6 offense in another jurisdiction, or whose license or privilege has been
7 revoked by the commissioner for refusal to submit to a chemical test
8 pursuant to subdivision two of section eleven hundred ninety-four of
9 this chapter, except that such a license or privilege may be issued to
10 such a person if, after such conviction or revocation, such person
11 successfully completed an alcohol and drug rehabilitation program estab-
12 lished pursuant to article thirty-one of this chapter in conjunction
13 with such conviction or revocation. Provided, however, that nothing
14 herein shall be construed as prohibiting an operator from being issued a
15 limited or conditional license or privilege pursuant to any alcohol
16 rehabilitation program established pursuant to this chapter.

17 S 12. Subdivision 8 of section 170.10 of the criminal procedure law,
18 as amended by chapter 732 of the laws of 2006, is amended to read as
19 follows:

20 8. Notwithstanding any other provision of law to the contrary, a local
21 criminal court may not, at arraignment or within thirty days of arraign-
22 ment on a simplified traffic information charging a violation of subdivi-
23 sion two, two-a, TWO-B, three, four or four-a of section eleven
24 hundred ninety-two of the vehicle and traffic law and upon which a nota-
25 tion has been made pursuant to subdivision twelve of section eleven
26 hundred ninety-two of the vehicle and traffic law, accept a plea of
27 guilty to a violation of any subdivision of section eleven hundred nine-
28 ty-two of the vehicle and traffic law, nor to any other traffic infrac-
29 tion arising out of the same incident, nor to any other traffic infrac-
30 tion, violation or misdemeanor where the court is aware that such
31 offense was charged pursuant to an accident involving death or serious
32 physical injury, except upon written consent of the district attorney.

33 S 13. Subparagraph (iii) of paragraph (b) of subdivision 2 of section
34 1198-a of the vehicle and traffic law, as added by chapter 732 of the
35 laws of 2006, is amended to read as follows:

36 (iii) following the arraignment of any person charged with or, at the
37 discretion of the court, prior to the sentencing of any person convicted
38 of operating a motor vehicle in violation of subdivision two or three of
39 section eleven hundred ninety-two of this article while such person has
40 .15 of one per centum or more by weight of alcohol in the person's blood
41 as shown by a chemical analysis of such person's blood, breath, urine or
42 saliva made pursuant to the provisions of section eleven hundred nine-
43 ty-four of this article or in violation of subdivision two-a OR TWO-B of
44 section eleven hundred ninety-two of this article.

45 S 14. This act shall take effect immediately, provided, however, that
46 the amendments to clauses a and a-1 of subparagraph 7 of paragraph (e)
47 of subdivision 2 of section 1193 of the vehicle and traffic law made by
48 sections seven and eight of this act shall not affect the repeal of such
49 subparagraph and shall be deemed to repeal therewith; provided, further,
50 that the amendments to paragraph (a) of subdivision 2 and paragraph (a)
51 of subdivision 3 of section 1198 of the vehicle and traffic law made by
52 sections nine and ten of this act shall not affect the repeal of such
53 section and shall be deemed to repeal therewith.