S T A T E O F N E W Y O R K

6292

2009-2010 Regular Sessions

I N S E N A T E

November 13, 2009

Introduced by Sens. DILAN, FUSCHILLO, SCHNEIDERMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the vehicle and traffic law, the criminal procedure law and the penal law, in relation to operating a motor vehicle while under the influence of alcohol or drugs with a child as a passenger; and to amend the vehicle and traffic law, in relation to ignition interlock devices

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

Section 1. Short title. This act shall be known and may be cited as the "child passenger protection act".

S 2. Section 1192 of the vehicle and traffic law is amended by adding a new subdivision 4-b to read as follows:

4-B. DRIVING WITH A CHILD WHILE INTOXICATED OR ABILITY IMPAIRED. NO PERSON SHALL OPERATE A MOTOR VEHICLE WHILE IN AN INTOXICATED CONDITION OR WHILE SUCH PERSON'S ABILITY TO OPERATE SUCH A MOTOR VEHICLE IS IMPAIRED BY THE USE OF A DRUG OR THE COMBINED INFLUENCE OF DRUGS OR OF ALCOHOL AND ANY DRUG OR DRUGS, AS PROHIBITED BY SUBDIVISION TWO, TWO-A, THREE, FOUR OR FOUR-A OF THIS SECTION, WHILE A CHILD WHO IS FIFTEEN YEARS OF AGE OR LESS IS A PASSENGER IN SUCH MOTOR VEHICLE.

S 3. Paragraph (d) of subdivision 10 of section 1192 of the vehicle and traffic law, as added by chapter 732 of the laws of 2006, is amended to read as follows:

(d) In any case wherein the charge laid before the court alleges a violation of subdivision two-a OR FOUR-B of this section, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of the provisions of subdivision two, two-a [or], three, FOUR-A OR FOUR-B of this section, and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized EXCEPT THAT A PLEA OF GUILTY TO THE

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

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VIOLATION OF THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION IS AUTHORIZED WHEN THE CHARGE LAID BEFORE THE COURT ALLEGES A VIOLATION OF SUBDIVISION FOUR-B OF THIS SECTION AND THE ACCUSATORY INSTRUMENT ALLEGES THAT THE DEFENDANT WAS ONLY IMPAIRED BY DRUGS AND NOT BY ALCOHOL; provided, however, if the district attorney, upon reviewing the available evidence, determines that the charge of a violation of this section is not warranted, such district attorney may consent and the court may allow a disposition by plea of guilty to another charge in satisfaction of such charge, provided, however, in all such cases, the court shall set forth upon the record the basis for such disposition. Provided, further, however, that no such plea shall be accepted by the court unless such plea includes as a condition thereof the requirement that the defendant attend and complete the alcohol and drug rehabilitation program established pursuant to section eleven hundred ninety-six of this article, including any assessment and treatment required thereby; provided, however, that such requirement may be waived by the court upon application of the district attorney or the defendant demonstrating that the defendant, as a condition of the plea, has been required to enter into and complete an alcohol or drug treatment program prescribed pursuant to an alcohol or substance abuse screening or assessment conducted pursuant to section eleven hundred ninety-eight-a of this article or for other good cause shown. The provisions of this paragraph shall apply, notwithstanding any bars to participation in the alcohol and drug rehabilitation program set forth in section eleven hundred ninety-six of this article; provided, however, that nothing in this paragraph shall authorize the issuance of a conditional license unless otherwise authorized by law.

S 4. Subdivision 12 of section 1192 of the vehicle and traffic law, as amended by chapter 732 of the laws of 2006, is amended to read as follows:

12. Driving while intoxicated or while ability impaired by drugs--serious physical injury or death. In every case where a person is charged with a violation of subdivision two, two-a, three, four [or], four-a OR FOUR-B of this section, the law enforcement officer alleging such charge shall make a clear notation in the "Description of Violation" section of a simplified traffic information if, arising out of the same incident, someone other than the person charged was killed or suffered serious physical injury as defined in section 10.00 of the penal law; such notation shall be in the form of a "D" if someone other than the person charged was killed and such notation shall be in the form of a "S.P.I." if someone other than the person charged suffered serious physical injury; provided, however, that the failure to make such notation shall in no way affect a charge for a violation of subdivision two, two-a, three, four [or], four-a OR FOUR-B of this section.

S 5. Paragraph (c) of subdivision 1 of section 1193 of the vehicle and traffic law is amended by adding a new subparagraph (iii) to read as follows:

(III) A PERSON WHO OPERATES A VEHICLE IN VIOLATION OF SUBDIVISION FOUR-B OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE SHALL BE GUILTY OF A CLASS E FELONY, AND SHALL BE PUNISHED BY A FINE OF NOT LESS THAN ONE THOUSAND DOLLARS NOR MORE THAN FIVE THOUSAND DOLLARS AND CONDITIONAL DISCHARGE OR BY A PERIOD OF IMPRISONMENT OR PERIOD OF PROBATION AS PROVIDED IN THE PENAL LAW, OR BY BOTH SUCH FINE AND IMPRISONMENT OR BOTH SUCH FINE AND PROBATION. A COURT SENTENCING A PERSON TO A PERIOD OF PROBATION OR CONDITIONAL DISCHARGE PURSUANT TO THIS SUBPARAGRAPH SHALL ORDER THE INSTALLATION OF AN IGNITION INTERLOCK DEVICE APPROVED

PURSUANT TO SECTION ELEVEN HUNDRED NINETY-EIGHT OF THIS ARTICLE IN ANY MOTOR VEHICLE OWNED OR OPERATED BY THE PERSON SO SENTENCED. SUCH DEVICE SHALL BE ORDERED TO REMAIN INSTALLED FOR A MINIMUM PERIOD TO TERMINATE NO EARLIER THAN SIX MONTHS FROM THE DATE OF SENTENCING OR THE DATE OF THE ISSUANCE OF ANY POST CONVICTION CONDITIONAL LICENSE OR FULLY RESTORED LICENSE IF NO CONDITIONAL LICENSE WAS ISSUED, WHICHEVER IS LATER. ANY PERSON ORDERED TO INSTALL AN IGNITION INTERLOCK DEVICE PURSUANT TO THIS SUBPARAGRAPH SHALL BE SUBJECT TO THE PROVISIONS OF SUBDIVISIONS FOUR, FIVE, SEVEN, EIGHT AND NINE OF SECTION ELEVEN HUNDRED NINETY-EIGHT OF THIS ARTICLE. PROVIDED, HOWEVER, THAT IF SUCH PERSON IS CONVICTED OF A VIOLATION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE AND UNDERGOES AN ALCOHOL OR SUBSTANCE ABUSE AND DEPENDENCY ASSESSMENT PURSUANT TO SECTION ELEVEN HUNDRED NINETY-EIGHT-A OF THIS ARTICLE, THE COURT, EXCEPT AS OTHERWISE REQUIRED BY SUBDIVISION ONE-A OF THIS SECTION, MAY WAIVE, PRIOR TO IMPOSING SENTENCE, THE CONDITION OF INSTALLING AN IGNITION INTERLOCK DEVICE UPON MOTION OF THE DEFENDANT UPON REASONABLE NOTICE TO THE PEOPLE WITH AN OPPORTUNITY FOR THE PEOPLE TO BE HEARD, IF THE DEFENDANT ESTABLISHES: (A) THE DEFENDANT HAS NO HISTORY OF ALCOHOL OR SUBSTANCE ABUSE OR DEPENDENCE; AND (B) THAT THE INSTALLATION OF SUCH IGNITION INTERLOCK DEVICE WOULD NOT BE NECESSARY FOR THE PROTECTION OF PUBLIC SAFETY. ANY SUCH FINDING BY THE COURT MUST BE MADE ON THE RECORD. PROVIDED FURTHER, HOWEVER, THE COURT MAY NOT WAIVE SUCH CONDITION IN CONNECTION WITH ANY CONVICTION OF A VIOLATION OF SUBDIVISION FOUR-B OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, OR AUTHORIZE THE OPERATION OF A MOTOR VEHICLE BY ANY PERSON WHOSE LICENSE OR PRIVILEGE TO OPERATE A MOTOR VEHICLE HAS BEEN REVOKED PURSUANT TO THE PROVISIONS OF THIS SECTION.

S 6. Paragraphs (a), (c) and (d) of subdivision 1-a of section 1193 of the vehicle and traffic law, paragraph (a) as added by chapter 691 of the laws of 2002, paragraph (c) as amended by chapter 669 of the laws of 2007 and paragraph (d) as added by chapter 732 of the laws of 2006, are amended to read as follows:

(a) Except as provided for in paragraph (b) of this subdivision, a person who operates a vehicle in violation of subdivision two or three of section eleven hundred ninety-two of this article after having been convicted of a violation of subdivision two or three of such section within the preceding five years, OR WHO OPERATES A VEHICLE IN VIOLATION OF SUBDIVISION FOUR-B OF SUCH SECTION shall, in addition to any other penalties which may be imposed pursuant to subdivision one of this section, be sentenced to a term of imprisonment of five days or, as an alternative to such imprisonment, be required to perform thirty days of service for a public or not-for-profit corporation, association, institution or agency as set forth in paragraph (h) of subdivision two of section 65.10 of the penal law as a condition of sentencing for such violation. Notwithstanding the provisions of this paragraph, a sentence of a term of imprisonment of five days or more pursuant to the provisions of subdivision one of this section shall be deemed to be in compliance with this subdivision.

(c) A PERSON WHO OPERATES A VEHICLE IN VIOLATION OF SUBDIVISION FOUR-B OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE AFTER HAVING BEEN CONVICTED OF A VIOLATION OF SUCH SUBDIVISION FOUR-B WITHIN THE PRECEDING FIVE YEARS SHALL, IN ADDITION TO ANY OTHER PENALTIES WHICH MAY BE IMPOSED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, BE SENTENCED TO A TERM OF IMPRISONMENT OF SIX MONTHS. NOTWITHSTANDING THE PROVISIONS OF THIS PARAGRAPH, A SENTENCE OF A TERM OF IMPRISONMENT OF SIX MONTHS OR

MORE PURSUANT TO THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION SHALL BE DEEMED TO BE IN COMPLIANCE WITH THIS SUBDIVISION.

(D) A court sentencing a person pursuant to paragraph (a) [or], (b) OR (C) of this subdivision shall: (i) order the installation of an ignition interlock device approved pursuant to section eleven hundred ninety-eight of this article in any motor vehicle owned or operated by the person so sentenced. Such devices shall remain installed during any period of license revocation required to be imposed pursuant to paragraph (b) of subdivision two of this section, and, upon the termination of such revocation period, for an additional period as determined by the court; and (ii) order that such person receive an assessment of the degree of their alcohol or substance abuse and dependency pursuant to the provisions of section eleven hundred ninety-eight-a of this article. Where such assessment indicates the need for treatment, such court is authorized to impose treatment as a condition of such sentence except that such court shall impose treatment as a condition of a sentence of probation or conditional discharge pursuant to the provisions of subdivision three of section eleven hundred ninety-eight-a of this article. Any person ordered to install an ignition interlock device pursuant to this paragraph shall be subject to the provisions of subdivisions four, five, seven, eight and nine of section eleven hundred ninety-eight of this article.

[(d)] (E) Confidentiality of records. The provisions of subdivision six of section eleven hundred ninety-eight-a of this article shall apply to the records and content of all assessments and treatment conducted pursuant to this subdivision.

S 7. Subparagraphs 2 and 3 of paragraph (b) of subdivision 2 of section 1193 of the vehicle and traffic law, as amended by chapter 732 of the laws of 2006, are amended to read as follows:

(2) Driving while intoxicated or while ability impaired by drugs or while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs; aggravated driving while intoxicated; DRIVING WITH A CHILD WHILE INTOXICATED OR ABILITY IMPAIRED. Six months, where the holder is convicted of a violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article. One year where the holder is convicted of a violation of subdivision two-a OR FOUR-B of section eleven hundred ninety-two of this article.

(3) Driving while intoxicated or while ability impaired by drugs or while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs; aggravated driving while intoxicated; DRIVING WITH A CHILD WHILE INTOXICATED OR ABILITY IMPAIRED; prior offense. One year, where the holder is convicted of a violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article committed within ten years of a conviction for a violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article. Eighteen months, where the holder is convicted of a violation of subdivision two-a OR FOUR-B of section eleven hundred ninety-two of this article committed within ten years of a conviction for a violation of subdivision two, two-a, three, four, [or] four-a OR FOUR-B of section eleven hundred ninety-two of this article; or where the holder is convicted of a violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article committed within ten years of a conviction for a violation of subdivision two-a OR FOUR-B of section eleven hundred ninety-two of this article.

S 8. Subparagraph 3 of paragraph (c) of subdivision 2 of section 1193 of the vehicle and traffic law, as amended by section 7 of chapter 732 of the laws of 2006, is amended to read as follows:

(3) In no event shall a new license be issued where a person has been twice convicted of a violation of subdivision three, four [or], four-a OR FOUR-B of section eleven hundred ninety-two of this article or of driving while intoxicated or of driving while ability is impaired by the use of a drug or of driving while ability is impaired by the combined influence of drugs or of alcohol and any drug or drugs where physical injury, as defined in section 10.00 of the penal law, has resulted from such offense in each instance.

S 9. Paragraph (c) of subdivision 2 of section 1193 of the vehicle and traffic law, as amended by section 8 of chapter 732 of the laws of 2006, is amended to read as follows:

(c) Reissuance of licenses; restrictions. Where a license is revoked pursuant to paragraph (b) of this subdivision, no new license shall be issued after the expiration of the minimum period specified in such paragraph, except in the discretion of the commissioner; provided, however, that in no event shall a new license be issued where a person has been twice convicted of a violation of subdivision three, four [or], four-a OR FOUR-B of section eleven hundred ninety-two of this article or of driving while intoxicated or of driving while ability is impaired by the use of a drug or of driving while ability is impaired by the combined influence of drugs or of alcohol and any drug or drugs where physical injury, as defined in section 10.00 of the penal law, has resulted from such offense in each instance.

S 10. Subparagraph 1 of paragraph (e) of subdivision 2 of section 1193 of the vehicle and traffic law, as amended by chapter 732 of the laws of 2006, is amended to read as follows:

(1) Suspension pending prosecution; procedure. a. Without notice, pending any prosecution, the court shall suspend such license, where the holder has been charged with a violation of subdivision two, two-a, three, four [or], four-a OR FOUR-B of section eleven hundred ninety-two of this article and either (i) a violation of a felony under article one hundred twenty or one hundred twenty-five of the penal law arising out of the same incident, or (ii) has been convicted of any violation under section eleven hundred ninety-two of this article within the preceding five years.

b. The suspension under the preceding clause shall occur no later than twenty days after the holder's first appearance before the court on the charges or at the conclusion of all proceedings required for the arraignment. 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 that the holder operated a motor vehicle in violation of subdivision two, two-a, three, four [or], four-a OR FOUR-B of section eleven hundred ninety-two of this article and either (i) the person had been convicted of any violation under such section eleven hundred ninety-two of this article within the preceding five years; or (ii) that the holder committed a violation of a felony under article one hundred twenty or one hundred twenty-five of the penal law. At such time the holder shall be entitled to an opportunity to make a statement regarding the enumerated issues and to present evidence tending to rebut the court's findings. Where such suspension is imposed upon a pending charge of a violation of a felony under article one hundred twenty or one hundred twenty-five of the penal law and the holder has requested a hearing

pursuant to article one hundred eighty of the criminal procedure law, the court shall conduct such hearing. If upon completion of the hearing, the court fails to find that there is reasonable cause to believe that the holder committed a felony under article one hundred twenty or one hundred twenty-five of the penal law and the holder has not been previously convicted of any violation of section eleven hundred ninety-two of this article within the preceding five years the court shall promptly notify the commissioner and direct restoration of such license to the license holder unless such license is suspended or revoked pursuant to any other provision of this chapter.

S 11. Clause a of subparagraph 7 of paragraph (e) of subdivision 2 of section 1193 of the vehicle and traffic law, as amended by chapter 732 of the laws of 2006, is amended to read as follows:

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 [or], four-a OR FOUR-B 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 as shown by chemical analysis of blood, breath, urine or saliva, made pursuant to subdivision two or three of section eleven hundred ninety-four of this article.

S 12. Subdivisions 1, 2, 3 and 4 and paragraph (a) of subdivision 5 of section 1198 of the vehicle and traffic law, as amended by chapter 669 of the laws of 2007, are amended to read as follows:

1. Applicability. The provisions of this section shall apply throughout the state to each person required or otherwise ordered by a court as a condition of probation OR CONDITIONAL DISCHARGE to install and operate an ignition interlock device in any vehicle which he or she owns or operates.

2. Requirements. (a) In addition to any other penalties prescribed by law AND EXCEPT AS OTHERWISE REQUIRED BY SECTION ELEVEN HUNDRED NINETY-THREE OF THIS ARTICLE, the court may require that any person who has been convicted of a violation of subdivision two, two-a, or three of section eleven hundred ninety-two of this article, or any crime defined by this chapter or the penal law of which an alcohol-related violation of any provision of section eleven hundred ninety-two of this article is an essential element, and who has been sentenced to a period of probation OR CONDITIONAL DISCHARGE, install and maintain, as a condition of probation OR CONDITIONAL DISCHARGE, 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. FOR ANY INDIVIDUAL SUBJECT TO A SENTENCE OF PROBATION, INSTALLATION AND MAINTENANCE OF SUCH IGNITION INTERLOCK DEVICE SHALL BE A CONDITION OF PROBATION.

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

(c) Nothing contained in this section shall authorize a court to sentence any person to a period of probation OR CONDITIONAL DISCHARGE for the purpose of subjecting such person to the provisions of this

section, unless such person would have otherwise been so eligible for a sentence of probation OR CONDITIONAL DISCHARGE.

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

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

(c) The post-revocation conditional license described in this subdivision may be revoked by the commissioner for sufficient cause including but not limited to, failure to comply with the terms of the condition of probation OR CONDITIONAL DISCHARGE set forth by the court, conviction of any traffic offense other than one involving parking, stopping or standing or conviction of any alcohol or drug related offense, misdemeanor or

felony OR FAILURE TO INSTALL OR MAINTAIN A COURT ORDERED IGNITION INTERLOCK DEVICE.

(d) Nothing contained herein shall prohibit the court from requiring, as a condition of probation OR CONDITIONAL DISCHARGE, the installation of a functioning ignition interlock device in any vehicle owned or operated by a person sentenced for a violation of subdivision two, two-a, or three of section eleven hundred ninety-two of this chapter, 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 chapter is an essential element, if the court in its discretion, determines that such a condition is necessary to ensure the public safety. Imposition of an ignition interlock condition shall in no way limit the effect of any period of license suspension or revocation set forth by the commissioner or the court.

(e) Nothing contained herein shall prevent the court from applying any other conditions of probation OR CONDITIONAL DISCHARGE allowed by law, including treatment for alcohol or drug abuse, restitution and community service.

(f) The commissioner shall note on the operator's record of any person restricted pursuant to this section that, in addition to any other restrictions, conditions or limitations, such person may operate only a motor vehicle equipped with an ignition interlock device.

4. Proof of compliance and recording of condition. (a) [If the court imposed] FOLLOWING IMPOSITION BY THE COURT OF the use of an ignition interlock device as a condition of probation OR CONDITIONAL DISCHARGE it shall require the person to provide proof of compliance with this section to the court and the probation department where such person is under probation OR CONDITIONAL DISCHARGE supervision. If the person fails to provide for such proof of installation, absent a finding by the court of good cause for that failure which is entered in the record, the court may revoke, modify, or terminate the person's sentence of probation OR CONDITIONAL DISCHARGE as provided under law.

(b) When a court imposes the condition specified in subdivision one of this section, the court shall notify the commissioner in such manner as the commissioner may prescribe, and the commissioner shall note such condition on the operating record of the person subject to such conditions.

(a) The cost of installing and maintaining the ignition interlock device shall be borne by the person subject to such condition UNLESS THE COURT DETERMINES SUCH PERSON IS INDIGENT WHEREUPON SUCH COST MAY BE IMPOSED PURSUANT TO A PAYMENT PLAN OR WAIVED. IN THE EVENT OF SUCH WAIVER, THE COST OF THE DEVICE SHALL BE BORNE IN ACCORDANCE WITH REGULATIONS ISSUED UNDER PARAGRAPH (G) OF SUBDIVISION ONE OF SECTION ELEVEN HUNDRED NINETY-THREE OF THIS ARTICLE OR PURSUANT TO SUCH OTHER AGREEMENT AS MAY BE ENTERED INTO FOR PROVISION OF THE DEVICE. Such cost shall be considered a fine for the purposes of subdivision five of section 420.10 of the criminal procedure law. Such cost shall not replace, but shall instead be in addition to, any fines, surcharges, or other costs imposed pursuant to this chapter or other applicable laws.

S 13. Subdivision 9 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:

9. Circumvention of interlock device. (a) No person whose driving privilege is restricted pursuant to this article or the penal law shall request, solicit or allow any other person to blow into an ignition interlock device, or to start a motor vehicle equipped with the device,

for the purpose of providing the person so restricted with an operable motor vehicle.

(b) No person shall blow into an ignition interlock device or start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to a person whose driving privilege is so restricted.

(c) No person shall tamper with or circumvent an otherwise operable ignition interlock device.

(d) NO PERSON SUBJECT TO A COURT ORDERED IGNITION INTERLOCK DEVICE SHALL OPERATE A MOTOR VEHICLE WITHOUT SUCH DEVICE.

(E) In addition to any other provisions of law, any person convicted of a violation of paragraph (a), (b) [or], (c), OR (D) of this subdivision shall be guilty of a CLASS A misdemeanor.

S 14. Paragraph (a) of subdivision 2 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) In addition to any other penalties prescribed by law, the court may require that any person who has been convicted of a violation of subdivision two, two-a [or], three OR FOUR-B of section eleven hundred ninety-two of this article, or any crime defined by this chapter or the penal law of which an alcohol-related violation of any provision of section eleven hundred ninety-two of this article is an essential element, 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.

S 15. Paragraphs (a) and (d) of subdivision 3 of section 1198 of the vehicle and traffic law, as amended by chapter 669 of the laws of 2007, are 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 [or], three OR FOUR-B 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.

(d) Nothing contained herein shall prohibit the court from requiring, as a condition of probation, the installation of a functioning ignition

interlock device in any vehicle owned or operated by a person sentenced for a violation of subdivision two, two-a, [or] three OR FOUR-B of section eleven hundred ninety-two of this chapter, 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 chapter is an essential element, if the court in its discretion, determines that such a condition is necessary to ensure the public safety. Imposition of an ignition interlock condition shall in no way limit the effect of any period of license suspension or revocation set forth by the commissioner or the court.

S 16. Paragraphs (a) and (b) of subdivision 2 of section 1198-a of the vehicle and traffic law, as added by chapter 732 of the laws of 2006, subparagraph (ii) of paragraph (b) as amended by chapter 345 of the laws of 2007, are amended to read as follows:

(a) Mandatory screening; when authorized. Upon the arraignment of, or at the discretion of the court, prior to the sentencing of any person who (i) at arraignment is charged with or prior to sentencing convicted of a first violation of operating a motor vehicle in violation of subdivision one, two [or], three OR FOUR-B of section eleven hundred ninety-two of this article while such person has less than .15 of one per centum by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva made pursuant to the provisions of section eleven hundred ninety-four of this article, or in violation of subdivision four of such section eleven hundred ninety-two, or (ii) has refused to submit to a chemical test pursuant to section eleven hundred ninety-four of this article, the court shall order such person to submit to screening for alcohol or substance abuse and dependency using a standardized written screening instrument developed by the office of alcoholism and substance abuse services, to be administered by an alcohol or substance abuse professional.

(b) Mandatory assessment; when authorized. The court shall order a defendant to undergo a formal alcohol or substance abuse and dependency assessment by an alcohol or substance abuse professional or a licensed agency: (i) when the screening required by paragraph (a) of this subdivision indicates that a defendant is abusing or dependent upon alcohol or drugs; (ii) following the arraignment of any person charged with or, at the discretion of the court, prior to the sentencing of any person convicted of a violation of subdivision one, two, three, four [or], four-a OR FOUR-B of section eleven hundred ninety-two of this article after having been convicted of a violation of any subdivision of section eleven hundred ninety-two of this article or of vehicular assault in the second or first degree, as defined, respectively, in sections 120.03 and 120.04 of the penal law or of aggravated vehicular assault, as defined in section 120.04-a of the penal law or of vehicular manslaughter in the second or first degree, as defined, respectively, in sections 125.12 and 125.13 of the penal law or of aggravated vehicular homicide, as defined in section 125.14 of such law within the preceding five years or after having been convicted of a violation of any subdivision of such section or of vehicular assault in the second or first degree, as defined, respectively, in sections 120.03 and 120.04 of the penal law or of aggravated vehicular assault, as defined in section 120.04-a of the penal law or of vehicular manslaughter in the second or first degree, as defined, respectively, in sections 125.12 and 125.13 of the penal law or of aggravated vehicular homicide, as defined in section 125.14 of such law, two or more times within the preceding ten years; or (iii) following the arraignment of any person charged with or, at the discretion of

the court, prior to the sentencing of any person convicted of operating a motor vehicle in violation of subdivision two or three of section eleven hundred ninety-two of this article while such person has .15 of one per centum or more by weight of alcohol in the person's blood as shown by a chemical analysis of such person's blood, breath, urine or saliva made pursuant to the provisions of section eleven hundred ninety-four of this article or in violation of subdivision two-a of section eleven hundred ninety-two of this article.

S 17. Subparagraph (i) of paragraph (a) of subdivision 3 of section 511 of the vehicle and traffic law, as amended by chapter 732 of the laws of 2006, is amended to read as follows:

(i) commits the offense of aggravated unlicensed operation of a motor vehicle in the second degree as provided in subparagraph (ii), (iii) or (iv) of paragraph (a) of subdivision two of this section and is operating a motor vehicle while under the influence of alcohol or a drug in violation of subdivision one, two, two-a, three, four, four-a, FOUR-B or five of section eleven hundred ninety-two of this chapter; or

S 18. 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, three, four [or], four-a OR FOUR-B 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 this chapter. Such license or privilege shall not be issued to a person who within the five year period immediately preceding the date of application for such license or privilege has been convicted of a violation of subdivision one, two, two-a, three, four or four-a of section eleven hundred ninety-two of this chapter or a similar alcohol-related offense in another jurisdiction, or whose license or privilege has been revoked by the commissioner for refusal to submit to a chemical test pursuant to subdivision two of section eleven hundred ninety-four of this chapter, except that such a license or privilege may be issued to such a person if, after such conviction or revocation, such person successfully completed an alcohol and drug rehabilitation program established pursuant to article thirty-one of this chapter in conjunction with such conviction or revocation. Provided, however, that nothing herein shall be construed as prohibiting an operator from being issued a limited or conditional license or privilege pursuant to any alcohol rehabilitation program established pursuant to this chapter.

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

8. Notwithstanding any other provision of law to the contrary, a local criminal court may not, at arraignment or within thirty days of arraignment on a simplified traffic information charging a violation of subdivision two, two-a, three, four [or], four-a OR FOUR-B of section eleven hundred ninety-two of the vehicle and traffic law and upon which a notation has been made pursuant to subdivision twelve of section eleven hundred ninety-two of the vehicle and traffic law, accept a plea of guilty to a violation of any subdivision of section eleven hundred ninety-two of the vehicle and traffic law, nor to any other traffic infraction arising out of the same incident, nor to any other traffic infraction, violation or misdemeanor where the court is aware that such offense was charged pursuant to an accident involving death or serious physical injury, except upon written consent of the district attorney.

S 20. Paragraph (k-1) of subdivision 2 of section 65.10 of the penal law, as amended by chapter 669 of the laws of 2007, is amended to read as follows:

(k-1) Install and maintain a functioning ignition interlock device, as that term is defined in section one hundred nineteen-a of the vehicle and traffic law, in any vehicle owned or operated by the defendant if the court in its discretion determines that such a condition is necessary to ensure the public safety. The court may require such condition only where a person has been convicted of a violation of subdivision two, two-a [or], three OR FOUR-B of section eleven hundred ninety-two of the vehicle and traffic law, or any crime defined by the vehicle and traffic law or this chapter of which an alcohol-related violation of any provision of section eleven hundred ninety-two of the vehicle and traffic law is an essential element. The offender shall be required to install and operate the ignition interlock device only in accordance with section eleven hundred ninety-eight of the vehicle and traffic law.

S 21. Subdivision 1 of section 120.03 of the penal law, as amended by chapter 732 of the laws of 2006, is amended to read as follows:

(1) operates a motor vehicle in violation of subdivision two, three, four [or], four-a OR FOUR-B of section eleven hundred ninety-two of the vehicle and traffic law or operates a vessel or public vessel in violation of paragraph (b), (c), (d) or (e) of subdivision two of section forty-nine-a of the navigation law, and as a result of such intoxication or impairment by the use of a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, operates such motor vehicle, vessel or public vessel in a manner that causes such serious physical injury to such other person, or

S 22. Subdivision 1 of section 125.12 of the penal law, as amended by chapter 732 of the laws of 2006, is amended to read as follows:

(1) operates a motor vehicle in violation of subdivision two, three, four [or], four-a OR FOUR-B of section eleven hundred ninety-two of the vehicle and traffic law or operates a vessel or public vessel in violation of paragraph (b), (c), (d) or (e) of subdivision two of section forty-nine-a of the navigation law, and as a result of such intoxication or impairment by the use of a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, operates such motor vehicle, vessel or public vessel in a manner that causes the death of such other person, or

S 23. Paragraphs (a) and (b) of subdivision 1 of section 70.02 of the penal law, paragraph (a) as amended by chapter 320 of the laws of 2006

and paragraph (b) as separately amended by chapters 764 and 765 of the laws of 2005, are amended to read as follows:

(a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; AGGRAVATED VEHICULAR HOMICIDE AS DEFINED IN SUBDIVISION SEVEN OF SECTION 125.14; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, course of sexual conduct against a child in the first degree as defined in section 130.75; assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, incest in the first degree as defined in section 255.27, criminal possession of a weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a); aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, AGGRAVATED VEHICULAR ASSAULT AS DEFINED IN SUBDIVISION SIX OF SECTION 120.04-A, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, gang assault in the second degree as defined in section 120.06, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

S 24. Section 120.04 of the penal law, as amended by chapter 746 of the laws of 2006, is amended to read as follows:

S 120.04 Vehicular assault in the first degree.

A person is guilty of vehicular assault in the first degree when he or she commits the crime of vehicular assault in the second degree as defined in section 120.03 of this article, and either:

(1) commits such crime while operating a motor vehicle while such person has .18 of one per centum or more by weight of alcohol in such person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva made pursuant to the provisions of section eleven hundred ninety-four of the vehicle and traffic law;

(2) commits such crime while knowing or having reason to know that: (a) his or her license or his or her privilege of operating a motor vehicle in another state or his or her privilege of obtaining a license to operate a motor vehicle in another state is suspended or revoked and such suspension or revocation is based upon a conviction in such other state for an offense which would, if committed in this state, constitute a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law; or (b) his or her license or his or her privilege of operating a motor vehicle in the state or his or her privilege of obtaining a license issued by the commissioner of motor vehicles is suspended or revoked and such suspension or revocation is based upon either a refusal to submit to a chemical test pursuant to section eleven hundred ninety-four of the vehicle and traffic law or following a conviction for a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law;

(3) has previously been convicted of violating any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law within the preceding ten years, provided that, for the purposes of this subdivision, a conviction in any other state or jurisdiction for an offense which, if committed in this state, would constitute a violation of section eleven hundred ninety-two of the vehicle and traffic law, shall be treated as a violation of such law[.];

(4) causes serious physical injury to more than one other person; [or]

(5) has previously been convicted of violating any provision of this article or article one hundred twenty-five of this title involving the operation of a motor vehicle, or was convicted in any other state or jurisdiction of an offense involving the operation of a motor vehicle which, if committed in this state, would constitute a violation of this article or article one hundred twenty-five of this title[.]; OR

(6) COMMITS SUCH CRIME WHILE OPERATING A MOTOR VEHICLE WHILE A CHILD WHO IS FIFTEEN YEARS OF AGE OR LESS IS A PASSENGER IN SUCH MOTOR VEHICLE AND CAUSES SERIOUS PHYSICAL INJURY TO SUCH CHILD.

If it is established that the person operating such motor vehicle caused such serious physical injury or injuries while unlawfully intoxicated or impaired by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, then there shall be a rebuttable presumption that, as a result of such intoxication or impairment by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, such person operated the motor vehicle in a manner that caused such serious physical injury or injuries, as required by this section and section 120.03 of this article.

Vehicular assault in the first degree is a class D felony.

S 25. Subdivisions 4 and 5 of section 120.04-a of the penal law, as added by chapter 345 of the laws of 2007, are amended and a new subdivision 6 is added to read as follows:

(4) causes serious physical injury to more than one other person; [or]

(5) has previously been convicted of violating any provision of this article or article one hundred twenty-five of this title involving the operation of a motor vehicle, or was convicted in any other state or jurisdiction of an offense involving the operation of a motor vehicle

which, if committed in this state, would constitute a violation of this article or article one hundred twenty-five of this title[.]; OR

(6) CAUSES SERIOUS PHYSICAL INJURY TO A PERSON WHO IS FIFTEEN YEARS OLD OR LESS AND WHO IS A PASSENGER IN THE MOTOR VEHICLE OPERATED BY HIM OR HER.

S 26. Section 125.13 of the penal law, as amended by chapter 746 of the laws of 2006, is amended to read as follows:

S 125.13 Vehicular manslaughter in the first degree.

A person is guilty of vehicular manslaughter in the first degree when he or she commits the crime of vehicular manslaughter in the second degree as defined in section 125.12 of this article, and either:

(1) commits such crime while operating a motor vehicle while such person has .18 of one per centum or more by weight of alcohol in such person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva made pursuant to the provisions of section eleven hundred ninety-four of the vehicle and traffic law;

(2) commits such crime while knowing or having reason to know that: (a) his or her license or his or her privilege of operating a motor vehicle in another state or his or her privilege of obtaining a license to operate a motor vehicle in another state is suspended or revoked and such suspension or revocation is based upon a conviction in such other state for an offense which would, if committed in this state, constitute a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law; or (b) his or her license or his or her privilege of operating a motor vehicle in the state or his or her privilege of obtaining a license issued by the commissioner of motor vehicles is suspended or revoked and such suspension or revocation is based upon either a refusal to submit to a chemical test pursuant to section eleven hundred ninety-four of the vehicle and traffic law or following a conviction for a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law;

(3) has previously been convicted of violating any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law within the preceding ten years, provided that, for the purposes of this subdivision, a conviction in any other state or jurisdiction for an offense which, if committed in this state, would constitute a violation of section eleven hundred ninety-two of the vehicle and traffic law, shall be treated as a violation of such law[.];

(4) causes the death of more than one other person; [or]

(5) has previously been convicted of violating any provision of this article or article one hundred twenty of this title involving the operation of a motor vehicle, or was convicted in any other state or jurisdiction of an offense involving the operation of a motor vehicle which, if committed in this state, would constitute a violation of this article or article one hundred twenty of this title[.]; OR

(6) COMMITS SUCH CRIME WHILE OPERATING A MOTOR VEHICLE WHILE A CHILD WHO IS FIFTEEN YEARS OF AGE OR LESS IS A PASSENGER IN SUCH MOTOR VEHICLE AND CAUSES THE DEATH OF SUCH CHILD.

If it is established that the person operating such motor vehicle caused such death or deaths while unlawfully intoxicated or impaired by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, then there shall be a rebuttable presumption that, as a result of such intoxication or impairment by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, such person operated the motor vehicle in

a manner that caused such death or deaths, as required by this section and section 125.12 of this article.

Vehicular manslaughter in the first degree is a class C felony.

S 27. Subdivisions 5 and 6 of section 125.14 of the penal law, as added by chapter 345 of the laws of 2007, are amended and a new subdivision 7 is added to read as follows:

(5) causes the death of one person and the serious physical injury of at least one other person; [or]

(6) has previously been convicted of violating any provision of this article or article one hundred twenty of this title involving the operation of a motor vehicle, or was convicted in any other state or jurisdiction of an offense involving the operation of a motor vehicle which, if committed in this state, would constitute a violation of this article or article one hundred twenty of this title[.]; OR

(7) CAUSES THE DEATH OF A PERSON WHO IS FIFTEEN YEARS OLD OR LESS AND WHO IS A PASSENGER IN THE MOTOR VEHICLE OPERATED BY HIM OR HER.

S 28. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to offenses committed on or after such date; provided, however that the amendments to paragraph (c) of subdivision 2 of section 1193 of the vehicle and traffic law made by section nine of this act shall take effect on the same date as the reversion of such paragraph as provided in section 9 of chapter 533 of the laws of 1993, as amended; provided, further that the amendments to subparagraph 7 of paragraph (e) of subdivision 2 of section 1193 of the vehicle and traffic law made by section eleven of this act shall not affect the repeal of such subparagraph and shall be deemed repealed therewith; provided, further that the amendments to section 1198 of the vehicle and traffic law made by sections twelve, thirteen, fourteen and fifteen of this act shall not affect the repeal of such section and shall be deemed repealed therewith.