

6293

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; to amend the vehicle and traffic law and the state finance law, in relation to the creation of the mandatory ignition interlock program for all persons convicted of driving while intoxicated; and to repeal section 1198 of the vehicle and traffic law relating thereto

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "child passenger protection act".
3 S 2. Section 1192 of the vehicle and traffic law is amended by adding
4 a new subdivision 4-b to read as follows:
5 4-B. DRIVING WITH A CHILD WHILE INTOXICATED OR ABILITY IMPAIRED. NO
6 PERSON SHALL OPERATE A MOTOR VEHICLE WHILE IN AN INTOXICATED CONDITION
7 OR WHILE SUCH PERSON'S ABILITY TO OPERATE SUCH A MOTOR VEHICLE IS
8 IMPAIRED BY THE USE OF A DRUG OR THE COMBINED INFLUENCE OF DRUGS OR OF
9 ALCOHOL AND ANY DRUG OR DRUGS, AS PROHIBITED BY SUBDIVISION TWO, TWO-A,
10 THREE, FOUR OR FOUR-A OF THIS SECTION, WHILE A CHILD WHO IS FIFTEEN
11 YEARS OF AGE OR LESS IS A PASSENGER IN SUCH MOTOR VEHICLE.
12 S 3. Paragraph (d) of subdivision 10 of section 1192 of the vehicle
13 and traffic law, as added by chapter 732 of the laws of 2006, is amended
14 to read as follows:
15 (d) In any case wherein the charge laid before the court alleges a
16 violation of subdivision two-a OR FOUR-B of this section, any plea of
17 guilty thereafter entered in satisfaction of such charge must include at
18 least a plea of guilty to the violation of the provisions of subdivision
19 two, two-a [or], three, FOUR-A OR FOUR-B of this section, and no other

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

LBD15092-01-9

1 disposition by plea of guilty to any other charge in satisfaction of
2 such charge shall be authorized EXCEPT THAT A PLEA OF GUILTY TO THE
3 VIOLATION OF THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION IS
4 AUTHORIZED WHEN THE CHARGE LAID BEFORE THE COURT ALLEGES A VIOLATION OF
5 SUBDIVISION FOUR-B OF THIS SECTION AND THE ACCUSATORY INSTRUMENT ALLEGES
6 THAT THE DEFENDANT WAS ONLY IMPAIRED BY DRUGS AND NOT BY ALCOHOL;
7 provided, however, if the district attorney, upon reviewing the avail-
8 able evidence, determines that the charge of a violation of this section
9 is not warranted, such district attorney may consent and the court may
10 allow a disposition by plea of guilty to another charge in satisfaction
11 of such charge, provided, however, in all such cases, the court shall
12 set forth upon the record the basis for such disposition. Provided,
13 further, however, that no such plea shall be accepted by the court
14 unless such plea includes as a condition thereof the requirement that
15 the defendant attend and complete the alcohol and drug rehabilitation
16 program established pursuant to section eleven hundred ninety-six of
17 this article, including any assessment and treatment required thereby;
18 provided, however, that such requirement may be waived by the court upon
19 application of the district attorney or the defendant demonstrating that
20 the defendant, as a condition of the plea, has been required to enter
21 into and complete an alcohol or drug treatment program prescribed pursu-
22 ant to an alcohol or substance abuse screening or assessment conducted
23 pursuant to section eleven hundred ninety-eight-a of this article or for
24 other good cause shown. The provisions of this paragraph shall apply,
25 notwithstanding any bars to participation in the alcohol and drug reha-
26 bilitation program set forth in section eleven hundred ninety-six of
27 this article; provided, however, that nothing in this paragraph shall
28 authorize the issuance of a conditional license unless otherwise author-
29 ized by law.

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

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

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

50 (III) A PERSON WHO OPERATES A VEHICLE IN VIOLATION OF SUBDIVISION
51 FOUR-B OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE SHALL BE
52 GUILTY OF A CLASS E FELONY, AND SHALL BE PUNISHED BY A FINE OF NOT LESS
53 THAN ONE THOUSAND DOLLARS NOR MORE THAN FIVE THOUSAND DOLLARS AND A
54 CONDITIONAL DISCHARGE, OR BY A PERIOD OF IMPRISONMENT OR PERIOD OF
55 PROBATION AS PROVIDED IN THE PENAL LAW, OR BY BOTH SUCH FINE AND IMPRI-
56 SONMENT OR BOTH SUCH FINE AND PROBATION. A COURT SENTENCING A PERSON TO

1 A PERIOD OF PROBATION OR CONDITIONAL DISCHARGE PURSUANT TO THIS SUBPARA-
2 GRAPH SHALL ORDER THE INSTALLATION OF AN IGNITION INTERLOCK DEVICE
3 APPROVED PURSUANT TO SECTION ELEVEN HUNDRED NINETY-EIGHT OF THIS ARTICLE
4 IN ANY MOTOR VEHICLE OWNED OR OPERATED BY THE PERSON SO SENTENCED. SUCH
5 DEVICE SHALL BE ORDERED TO REMAIN INSTALLED FOR A MINIMUM PERIOD TO
6 TERMINATE NO EARLIER THAN SIX MONTHS FROM THE DATE OF SENTENCING OR THE
7 DATE OF THE ISSUANCE OF ANY POST CONVICTION CONDITIONAL LICENSE OR FULLY
8 RESTORED LICENSE IF NO CONDITIONAL LICENSE WAS ISSUED, WHICHEVER IS
9 LATER. ANY PERSON ORDERED TO INSTALL AN IGNITION INTERLOCK DEVICE PURSU-
10 ANT TO THIS SUBPARAGRAPH SHALL BE SUBJECT TO THE PROVISIONS OF SUBDIVI-
11 SIONS FOUR, FIVE, SEVEN AND EIGHT OF SECTION ELEVEN HUNDRED NINETY-EIGHT
12 OF THIS ARTICLE. PROVIDED, HOWEVER, THAT IF SUCH PERSON IS CONVICTED OF
13 A VIOLATION OF SUBDIVISION ONE, TWO, THREE, FOUR OR FOUR-A OF SECTION
14 ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE AND UNDERGOES AN ALCOHOL OR
15 SUBSTANCE ABUSE AND DEPENDENCY ASSESSMENT PURSUANT TO SECTION ELEVEN
16 HUNDRED NINETY-EIGHT-A OF THIS ARTICLE, THE COURT, EXCEPT AS OTHERWISE
17 REQUIRED BY SUBDIVISION ONE-A OF THIS SECTION, MAY WAIVE, PRIOR TO
18 IMPOSING SENTENCE, THE CONDITION OF INSTALLING AN IGNITION INTERLOCK
19 DEVICE UPON MOTION OF THE DEFENDANT UPON REASONABLE NOTICE TO THE PEOPLE
20 WITH AN OPPORTUNITY FOR THE PEOPLE TO BE HEARD, IF THE DEFENDANT ESTAB-
21 LISHES: (A) THE DEFENDANT HAS NO HISTORY OF ALCOHOL OR SUBSTANCE ABUSE
22 OR DEPENDENCE; AND (B) THAT THE INSTALLATION OF SUCH IGNITION INTERLOCK
23 DEVICE WOULD NOT BE NECESSARY FOR THE PROTECTION OF PUBLIC SAFETY. ANY
24 SUCH FINDING BY THE COURT MUST BE MADE ON THE RECORD. PROVIDED FURTHER,
25 HOWEVER, THE COURT MAY NOT WAIVE SUCH CONDITION IN CONNECTION WITH ANY
26 CONVICTION OF A VIOLATION OF SUBDIVISION FOUR-B OF SECTION ELEVEN
27 HUNDRED NINETY-TWO OF THIS ARTICLE OR AUTHORIZE THE OPERATION OF A MOTOR
28 VEHICLE BY ANY PERSON WHOSE LICENSE OR PRIVILEGE TO OPERATE A MOTOR
29 VEHICLE HAS BEEN REVOKED PURSUANT TO THE PROVISIONS OF THIS SECTION.

30 S 6. Paragraphs (a), (c) and (d) of subdivision 1-a of section 1193 of
31 the vehicle and traffic law, paragraph (a) as added by chapter 691 of
32 the laws of 2002, paragraph (c) as amended by chapter 669 of the laws of
33 2007 and paragraph (d) as added by chapter 732 of the laws of 2006, are
34 amended to read as follows:

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

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

1 THIS PARAGRAPH, A SENTENCE OF A TERM OF IMPRISONMENT OF SIX MONTHS OR
2 MORE PURSUANT TO THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION SHALL
3 BE DEEMED TO BE IN COMPLIANCE WITH THIS SUBDIVISION.

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

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

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

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

39 (3) 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 WITH A CHILD WHILE INTOXICATED OR ABILITY IMPAIRED; prior offense. One
43 year, where the holder is convicted of a violation of subdivision two,
44 three, four or four-a of section eleven hundred ninety-two of this arti-
45 cle committed within ten years of a conviction for a violation of subdivi-
46 sion two, three, four or four-a of section eleven hundred ninety-two
47 of this article. Eighteen months, where the holder is convicted of a
48 violation of subdivision two-a OR FOUR-B of section eleven hundred nine-
49 ty-two of this article committed within ten years of a conviction for a
50 violation of subdivision two, two-a, three, four, [or] four-a OR FOUR-B
51 of section eleven hundred ninety-two of this article; or where the hold-
52 er is convicted of a violation of subdivision two, three, four or four-a
53 of section eleven hundred ninety-two of this article committed within
54 ten years of a conviction for a violation of subdivision two-a OR FOUR-B
55 of section eleven hundred ninety-two of this article.

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

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

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

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

27 S 10. Subparagraph 1 of paragraph (e) of subdivision 2 of section 1193
28 of the vehicle and traffic law, as amended by chapter 732 of the laws of
29 2006, is amended to read as follows:

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

39 b. The suspension under the preceding clause shall occur no later than
40 twenty days after the holder's first appearance before the court on the
41 charges or at the conclusion of all proceedings required for the
42 arraignment. In order for the court to impose such suspension it must
43 find that the accusatory instrument conforms to the requirements of
44 section 100.40 of the criminal procedure law and there exists reasonable
45 cause to believe that the holder operated a motor vehicle in violation
46 of subdivision two, two-a, three, four [or], four-a OR FOUR-B of section
47 eleven hundred ninety-two of this article and either (i) the person had
48 been convicted of any violation under such section eleven hundred nine-
49 ty-two of this article within the preceding five years; or (ii) that the
50 holder committed a violation of a felony under article one hundred twen-
51 ty or one hundred twenty-five of the penal law. At such time the holder
52 shall be entitled to an opportunity to make a statement regarding the
53 enumerated issues and to present evidence tending to rebut the court's
54 findings. Where such suspension is imposed upon a pending charge of a
55 violation of a felony under article one hundred twenty or one hundred
56 twenty-five of the penal law and the holder has requested a hearing

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

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

14 a. Except as provided in clause a-1 of this subparagraph, a court
15 shall suspend a driver's license, pending prosecution, of any person
16 charged with a violation of subdivision two, two-a, three [or], four-a
17 OR FOUR-B of section eleven hundred ninety-two of this article who, at
18 the time of arrest, is alleged to have had .08 of one percent or more by
19 weight of alcohol in such driver's blood as shown by chemical analysis
20 of blood, breath, urine or saliva, made pursuant to subdivision two or
21 three of section eleven hundred ninety-four of this article.

22 S 12. Section 1198 of the vehicle and traffic law is REPEALED and a
23 new section 1198 is added to read as follows:

24 S 1198. MANDATORY IGNITION INTERLOCK PROGRAM FOR DRIVING WHILE INTOXI-
25 CATED OFFENDERS. 1. THERE IS HEREBY ESTABLISHED A MANDATORY IGNITION
26 INTERLOCK PROGRAM FOR ALL DRIVING WHILE INTOXICATED OFFENDERS.

27 2. (A) IN ADDITION TO ANY OTHER PENALTIES PRESCRIBED BY LAW, THE COURT
28 SHALL REQUIRE THAT ANY PERSON WHO HAS BEEN CONVICTED OF A VIOLATION OF
29 SUBDIVISION TWO, TWO-A, THREE OR FOUR-B OF SECTION ELEVEN HUNDRED NINE-
30 TY-TWO OF THIS ARTICLE, OR ANY CRIME DEFINED BY THIS CHAPTER OR THE
31 PENAL LAW OF WHICH AN ALCOHOL-RELATED VIOLATION OF ANY PROVISION OF
32 SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE IS AN ESSENTIAL
33 ELEMENT SHALL INSTALL AND MAINTAIN, AS A CONDITION OF A SENTENCE OF A
34 CONDITIONAL DISCHARGE OR PROBATION, OR AS A MANDATORY ADDITIONAL CONDI-
35 TION OF ANY CONDITIONAL LICENSE ISSUED BY THE COMMISSIONER PURSUANT TO
36 SECTION ELEVEN HUNDRED NINETY-SIX OF THIS ARTICLE AND RESULTING FROM ANY
37 ALCOHOL RELATED DRIVING OFFENSE, A FUNCTIONING IGNITION INTERLOCK DEVICE
38 IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION AND MAY NOT OPERATE
39 ANY MOTOR VEHICLE THAT IS NOT EQUIPPED WITH AN IGNITION INTERLOCK DEVICE
40 PROVIDED, HOWEVER, THE COURT MAY NOT AUTHORIZE THE OPERATION OF A MOTOR
41 VEHICLE BY ANY PERSON WHOSE LICENSE OR PRIVILEGE TO OPERATE A MOTOR
42 VEHICLE HAS BEEN REVOKED EXCEPT AS PROVIDED IN THIS SECTION.

43 (B) THIS SECTION SHALL NOT APPLY TO THOSE CONVICTED OF THE OFFENSE OF
44 DRIVING WHILE ABILITY IMPAIRED BY ALCOHOL PURSUANT TO SUBDIVISION ONE OF
45 SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, IT SHALL BE IN THE
46 DISCRETION OF THE SENTENCING COURT WHETHER TO MANDATE AN IGNITION INTER-
47 LOCK AS A CONDITION OF A SENTENCE OF A CONDITIONAL DISCHARGE FOR THE
48 CONVICTION OF SUCH AN OFFENSE.

49 (C) NOTHING IN THIS CHAPTER SHALL BE CONSTRUED AS PROHIBITING A
50 SENTENCE OF INCARCERATION PURSUANT TO ARTICLE SEVENTY OF THE PENAL LAW
51 OR THE APPLICATION OF ANY OTHER FINES, PENALTIES, PROGRAMS, RESTITUTION,
52 CONDITIONS OF PROBATION OR CONDITIONAL DISCHARGE, COMMUNITY SERVICE OR
53 OTHER SANCTIONS.

54 (D) PERIODS OF MANDATORY IGNITION INTERLOCK USE BY THOSE CONVICTED OF
55 A VIOLATION OF SUBDIVISION TWO, TWO-A, THREE OR FOUR-B OF SECTION ELEVEN
56 HUNDRED NINETY-TWO OF THIS ARTICLE, OR ANY CRIME DEFINED BY THIS CHAPTER

1 OR THE PENAL LAW OF WHICH AN ALCOHOL-RELATED VIOLATION OF ANY PROVISION
2 OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE IS AN ESSENTIAL
3 ELEMENT:

4 (1) ANY PERSON CONVICTED OF A FIRST VIOLATION OF ANY OF THE STATUTORY
5 PROVISIONS IN THIS PARAGRAPH SHALL MAINTAIN AN IGNITION INTERLOCK
6 SYSTEM, AT THEIR OWN COST, AND IS PROHIBITED FROM OPERATING ANY MOTOR
7 VEHICLE THAT IS NOT EQUIPPED WITH AN IGNITION INTERLOCK DEVICE, FOR A
8 PERIOD OF NOT LESS THAN SIX MONTHS FROM THE DATE OF SENTENCING, OR THE
9 DATE OF THE ISSUANCE OF ANY POST-CONVICTION CONDITIONAL LICENSE OR FULLY
10 RESTORED LICENSE IF NO CONDITIONAL LICENSE WAS ISSUED, WHICHEVER IS
11 LONGER;

12 (2) ANY PERSON CONVICTED OF A VIOLATION OF ANY OF THE OFFENSES IN THIS
13 PARAGRAPH AND WHO IS THEREAFTER CONVICTED OF A SECOND OFFENSE SHALL BE
14 REQUIRED TO INSTALL AND MAINTAIN AN IGNITION INTERLOCK SYSTEM, AT THEIR
15 OWN COST, AND IS PROHIBITED FROM OPERATING ANY MOTOR VEHICLE THAT IS NOT
16 EQUIPPED WITH AN IGNITION INTERLOCK DEVICE, FOR A MINIMUM PERIOD OF
17 THREE YEARS FROM THE DATE OF SENTENCING, OR THE DATE OF THE ISSUANCE OF
18 ANY POST-CONVICTION CONDITIONAL LICENSE OR FULLY RESTORED LICENSE IF NO
19 CONDITIONAL LICENSE WAS ISSUED, WHICHEVER IS LONGER;

20 (3) ANY PERSON SENTENCED TO A PERIOD OF INCARCERATION OR WHO IS OTHER-
21 WISE NOT SUBJECT TO A CONDITIONAL DISCHARGE OR PERIOD OF PROBATION,
22 SHALL BE REQUIRED TO INSTALL AND MAINTAIN AN IGNITION INTERLOCK SYSTEM,
23 AT THEIR OWN COST AND IS PROHIBITED FROM OPERATING ANY MOTOR VEHICLE
24 THAT IS NOT EQUIPPED WITH AN IGNITION INTERLOCK DEVICE, FOR A MINIMUM
25 PERIOD OF THREE YEARS FROM THE DATE OF THEIR SENTENCE, RELEASE FROM
26 INCARCERATION, OR UPON APPROVAL OF A RE-APPLICATION TO THE DEPARTMENT
27 FOR A LICENSE OR DRIVING PRIVILEGE, WHICHEVER IS LONGER.

28 3. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE COMMISSIONER
29 MAY GRANT A POST-REVOCATION CONDITIONAL LICENSE, AS SET FORTH IN PARA-
30 GRAPH (C) OF THIS SUBDIVISION, TO A PERSON WHO HAS BEEN CONVICTED OF A
31 VIOLATION OF SUBDIVISION TWO, TWO-A, THREE, OR FOUR-B OF SECTION ELEVEN
32 HUNDRED NINETY-TWO OF THIS ARTICLE, PROVIDED THE PERSON HAS SATISFIED
33 ANY MANDATORY MINIMUM PERIOD OF LICENSE REVOCATION ESTABLISHED BY LAW
34 AND THE COMMISSIONER HAS BEEN NOTIFIED THAT SUCH PERSON MAY OPERATE ONLY
35 A MOTOR VEHICLE EQUIPPED WITH A FUNCTIONING IGNITION INTERLOCK DEVICE.
36 NO SUCH REQUEST SHALL BE MADE NOR SHALL SUCH A LICENSE BE GRANTED,
37 HOWEVER, IF SUCH PERSON HAS BEEN ARRESTED FOR A VIOLATION OF SECTION
38 FIVE HUNDRED ELEVEN OF THIS CHAPTER DURING THE LICENSE REVOCATION PERIOD
39 OR DEEMED BY A COURT TO HAVE VIOLATED ANY CONDITION OF PROBATION SET
40 FORTH BY THE COURT RELATING TO THE OPERATION OF A MOTOR VEHICLE OR THE
41 CONSUMPTION OF ALCOHOL.

42 (B) UPON THE TERMINATION OF THE PERIOD OF REQUIRED IGNITION INTERLOCK
43 USE SET BY THE COURT, THE PERSON MAY APPLY TO THE COMMISSIONER FOR
44 RESTORATION OF A LICENSE OR PRIVILEGE TO OPERATE A MOTOR VEHICLE WITHOUT
45 AN IGNITION INTERLOCK DEVICE IN ACCORDANCE WITH THIS CHAPTER.

46 (C) THE POST-REVOCATION CONDITIONAL LICENSE DESCRIBED IN THIS SUBDIVI-
47 SION MAY BE REVOKED BY THE COMMISSIONER FOR SUFFICIENT CAUSE INCLUDING
48 BUT NOT LIMITED TO, FAILURE TO COMPLY WITH THE TERMS OF THE CONDITION OF
49 PROBATION OR CONDITIONAL DISCHARGE SET FORTH BY THE COURT, FAILURE TO
50 INSTALL OR MAINTAIN A COURT-ORDERED IGNITION INTERLOCK DEVICE,
51 CONVICTION OF ANY TRAFFIC OFFENSE OTHER THAN ONE INVOLVING PARKING,
52 STOPPING OR STANDING OR CONVICTION OF ANY ALCOHOL OR DRUG RELATED
53 OFFENSE, MISDEMEANOR OR FELONY.

54 4. (A) IF THE COURT IMPOSED THE USE OF AN IGNITION INTERLOCK DEVICE AS
55 A CONDITION OF THE SENTENCE THE COURT SHALL REQUIRE THE PERSON TO
56 PROVIDE PROOF OF COMPLIANCE WITH THIS SECTION TO THE COURT AND THE

1 PROBATION DEPARTMENT WHERE SUCH PERSON IS EITHER UNDER PROBATION SUPER-
2 VISION OR UNDER COMPLIANCE MONITORING FOR THE PURPOSE OF THIS MANDATORY
3 IGNITION INTERLOCK PROGRAM. IF THE PERSON FAILS TO PROVIDE FOR SUCH
4 PROOF OF INSTALLATION, ABSENT A FINDING BY THE COURT OF GOOD CAUSE FOR
5 THAT FAILURE WHICH IS ENTERED IN THE RECORD, THE COURT MAY REVOKE, MODI-
6 FY, OR TERMINATE THE PERSON'S SENTENCE AS PROVIDED UNDER LAW.

7 (B) WHEN A COURT IMPOSES ANY OF THE INTERLOCK OR LICENSE CONDITIONS
8 SPECIFIED IN THIS CHAPTER, THE COURT SHALL NOTIFY THE COMMISSIONER IN
9 SUCH MANNER AS THE COMMISSIONER MAY PRESCRIBE, AND THE COMMISSIONER
10 SHALL NOTE SUCH CONDITION ON THE OPERATING RECORD OF ANY PERSON SO
11 RESTRICTED THAT, IN ADDITION TO ANY OTHER RESTRICTIONS, CONDITIONS OR
12 LIMITATIONS, SUCH PERSON MAY OPERATE ONLY A MOTOR VEHICLE EQUIPPED WITH
13 AN IGNITION INTERLOCK DEVICE.

14 5. (A) THE COST OF INSTALLING AND MAINTAINING THE IGNITION INTERLOCK
15 DEVICE SHALL BE BORNE BY THE PERSON SUBJECT TO SUCH CONDITION. SUCH COST
16 SHALL BE CONSIDERED A FINE FOR THE PURPOSES OF SUBDIVISION FIVE OF
17 SECTION 420.10 OF THE CRIMINAL PROCEDURE LAW. SUCH COST SHALL NOT
18 REPLACE, BUT SHALL INSTEAD BE IN ADDITION TO, ANY FINES, SURCHARGES, OR
19 OTHER COSTS IMPOSED PURSUANT TO THIS CHAPTER OR OTHER APPLICABLE LAWS.

20 (B) THE SUBJECT OF THE CONDITION SHALL BE RESPONSIBLE TO BRING ANY
21 VEHICLES DRIVEN BY THE SUBJECT TO THE INSTALLATION AND SERVICE PROVIDER
22 OF THE IGNITION INTERLOCK DEVICE FOR THE INSTALLATION, CALIBRATION, AND
23 MAINTENANCE OF SUCH DEVICE.

24 (C) THOSE CONVICTED OF ANY OF THE ABOVE OFFENSES WHO CAN NOT AFFORD TO
25 MAINTAIN AND OPERATE AN IGNITION INTERLOCK SYSTEM SHALL HAVE ONE
26 PROVIDED FOR THEM BY THE COUNTY PROBATION AND CORRECTIONAL ALTERNATIVES
27 DEPARTMENT OR A PARTICIPATING INTERLOCK DEVICE PROVIDER AND WILL BE
28 ENROLLED IN A PAYMENT PLAN, BASED ON THEIR INCOME, SO THAT SAID EXPENSES
29 MAY BE PAID BACK TO THE COUNTY OVER A PERIOD OF TIME. HOWEVER, IF THE
30 IGNITION INTERLOCK PROVIDER OFFERS THE SAME OR SIMILAR PAYMENT PLAN FOR
31 THE OPERATION AND MAINTENANCE OF THE DEVICE, THE COUNTY IS NOT OBLIGATED
32 TO OFFER SUCH A REPAYMENT PLAN.

33 6. THE COMMISSIONER OF HEALTH SHALL APPROVE IGNITION INTERLOCK DEVICES
34 AND SHALL PUBLISH A LIST OF APPROVED DEVICES. SUCH COMMISSIONER SHALL
35 PROMULGATE RULES AND REGULATIONS FOR IGNITION INTERLOCK DEVICES IN PART
36 59 OF TITLE 10 OF THE OFFICIAL COMPILATION OF CODES, RULES AND REGU-
37 LATIONS.

38 7. (A) ANY REQUIREMENT OF THIS SECTION OR OF THE PENAL LAW, THAT A
39 PERSON OPERATE A VEHICLE ONLY IF IT IS EQUIPPED WITH AN IGNITION INTER-
40 LOCK DEVICE, SHALL APPLY TO EVERY MOTOR VEHICLE OPERATED BY THAT PERSON
41 INCLUDING, BUT NOT LIMITED TO, VEHICLES THAT ARE LEASED, RENTED OR
42 LOANED.

43 (B) NO PERSON SHALL KNOWINGLY RENT, LEASE, OR LEND A MOTOR VEHICLE TO
44 A PERSON KNOWN TO HAVE HAD HIS OR HER DRIVING PRIVILEGE RESTRICTED TO
45 VEHICLES EQUIPPED WITH AN IGNITION INTERLOCK DEVICE UNLESS THE VEHICLE
46 IS SO EQUIPPED. ANY PERSON WHOSE DRIVING PRIVILEGE IS SO RESTRICTED
47 SHALL NOTIFY ANY OTHER PERSON WHO RENTS, LEASES, OR LOANS A MOTOR VEHIC-
48 CLE TO HIM OR HER OF SUCH DRIVING RESTRICTION.

49 (C) A VIOLATION OF PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE A MISDE-
50 MEANOR AND SHALL RESULT IN THE IMMEDIATE REVOCATION OF ANY LICENSE,
51 CONDITIONAL LICENSE OR OPERATING PRIVILEGE FOR A MINIMUM ONE YEAR PERIOD
52 UPON ARREST.

53 (D) A VIOLATION OF PARAGRAPH (B) OF THIS SUBDIVISION SHALL BE A MISDE-
54 MEANOR.

55 8. (A) NO PERSON WHOSE DRIVING PRIVILEGE IS RESTRICTED PURSUANT TO
56 THIS SECTION OR THE PENAL LAW SHALL REQUEST, SOLICIT OR ALLOW ANY OTHER

1 PERSON TO BLOW INTO AN IGNITION INTERLOCK DEVICE, OR TO START A MOTOR
2 VEHICLE EQUIPPED WITH THE DEVICE, FOR THE PURPOSE OF PROVIDING THE
3 PERSON SO RESTRICTED WITH AN OPERABLE MOTOR VEHICLE.

4 (B) NO PERSON SHALL BLOW INTO AN IGNITION INTERLOCK DEVICE OR START A
5 MOTOR VEHICLE EQUIPPED WITH THE DEVICE FOR THE PURPOSE OF PROVIDING AN
6 OPERABLE MOTOR VEHICLE TO A PERSON WHOSE DRIVING PRIVILEGE IS SO
7 RESTRICTED.

8 (C) NO PERSON SHALL TAMPER WITH OR CIRCUMVENT AN OTHERWISE OPERABLE
9 IGNITION INTERLOCK DEVICE.

10 (D) IN ADDITION TO ANY OTHER PROVISIONS OF LAW, ANY PERSON CONVICTED
11 OF A VIOLATION OF PARAGRAPH (A), (B) OR (C) OF THIS SUBDIVISION SHALL BE
12 GUILTY OF AN UNCLASSIFIED MISDEMEANOR AND SHALL BE PUNISHABLE BY A FINE
13 OF NOT LESS THAN ONE THOUSAND DOLLARS OR BY IMPRISONMENT IN A COUNTY
14 JAIL OR A PENITENTIARY FOR NOT MORE THAN ONE YEAR.

15 (E) IN ADDITION TO ANY OTHER PENALTIES, IF THE PERSON ARRESTED FOR A
16 VIOLATION OF PARAGRAPH (A) OR (C) OF THIS SUBDIVISION IS THE DRIVER
17 REQUIRED TO OPERATE ONLY A MOTOR VEHICLE EQUIPPED WITH AN IGNITION
18 INTERLOCK DEVICE, THE DRIVER'S ARREST SHALL RESULT IN THE IMMEDIATE
19 REVOCATION OF ANY LICENSE, CONDITIONAL LICENSE OR DRIVING PRIVILEGE FOR
20 A MINIMUM PERIOD OF ONE YEAR, SUBJECT TO THE PROVISIONS OF SUBDIVISION
21 NINE OF THIS SECTION.

22 9. ANY LICENSE, CONDITIONAL LICENSE OR PRIVILEGES DESCRIBED IN THIS
23 CHAPTER MAY BE REVOKED OR SUSPENDED BY THE COMMISSIONER WHEN A PERSON
24 REQUIRED UNDER ANY LAW TO OPERATE ONLY A MOTOR VEHICLE WITH AN IGNITION
25 INTERLOCK DEVICE IS SUBJECT TO AN ARREST UPON REASONABLE CAUSE FOR OPER-
26 ATING A MOTOR VEHICLE WITHOUT AN IGNITION INTERLOCK DEVICE, OR SOLICIT-
27 ING, REQUESTING OR ALLOWING ANY OTHER PERSON TO BLOW INTO AN IGNITION
28 INTERLOCK DEVICE, OR TAMPERING OR CIRCUMVENTING SUCH DEVICE.

29 S 13. Paragraphs (a) and (b) of subdivision 2 of section 1198-a of the
30 vehicle and traffic law, as added by chapter 732 of the laws of 2006,
31 subparagraph (ii) of paragraph (b) as amended by chapter 345 of the laws
32 of 2007, are amended to read as follows:

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

49 (b) Mandatory assessment; when authorized. The court shall order a
50 defendant to undergo a formal alcohol or substance abuse and dependency
51 assessment by an alcohol or substance abuse professional or a licensed
52 agency: (i) when the screening required by paragraph (a) of this subdivi-
53 sion indicates that a defendant is abusing or dependent upon alcohol
54 or drugs; (ii) following the arraignment of any person charged with or,
55 at the discretion of the court, prior to the sentencing of any person
56 convicted of a violation of subdivision one, two, three, four [or],

1 four-a OR FOUR-B of section eleven hundred ninety-two of this article
2 after having been convicted of a violation of any subdivision of section
3 eleven hundred ninety-two of this article or of vehicular assault in the
4 second or first degree, as defined, respectively, in sections 120.03 and
5 120.04 of the penal law or of aggravated vehicular assault, as defined
6 in section 120.04-a of the penal law or of vehicular manslaughter in the
7 second or first degree, as defined, respectively, in sections 125.12 and
8 125.13 of the penal law or of aggravated vehicular homicide, as defined
9 in section 125.14 of such law within the preceding five years or after
10 having been convicted of a violation of any subdivision of such section
11 or of vehicular assault in the second or first degree, as defined,
12 respectively, in sections 120.03 and 120.04 of the penal law or of
13 aggravated vehicular assault, as defined in section 120.04-a of the
14 penal law or of vehicular manslaughter in the second or first degree, as
15 defined, respectively, in sections 125.12 and 125.13 of the penal law or
16 of aggravated vehicular homicide, as defined in section 125.14 of such
17 law, two or more times within the preceding ten years; or (iii) follow-
18 ing the arraignment of any person charged with or, at the discretion of
19 the court, prior to the sentencing of any person convicted of operating
20 a motor vehicle in violation of subdivision two or three of section
21 eleven hundred ninety-two of this article while such person has .15 of
22 one per centum or more by weight of alcohol in the person's blood as
23 shown by a chemical analysis of such person's blood, breath, urine or
24 saliva made pursuant to the provisions of section eleven hundred nine-
25 ty-four of this article or in violation of subdivision two-a of section
26 eleven hundred ninety-two of this article.

27 S 14. Subparagraph (i) of paragraph (a) of subdivision 3 of section
28 511 of the vehicle and traffic law, as amended by chapter 732 of the
29 laws of 2006, is amended to read as follows:

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

36 S 15. Subdivision 2 of section 530 of the vehicle and traffic law, as
37 separately amended by chapters 571 and 732 of the laws of 2006, is
38 amended to read as follows:

39 (2) Such license or privilege shall not be issued to a person who,
40 within the four year period immediately preceding the date of applica-
41 tion, has been convicted within or without the state of homicide or
42 assault arising out of the operation of a motor vehicle, of criminally
43 negligent homicide or criminal negligence in the operation of a motor
44 vehicle resulting in death, or has been convicted within the state of a
45 violation of subdivision two of section six hundred of this chapter or
46 of reckless driving. Such license or privilege shall not be issued to a
47 person whose license or privilege, at the time of application, is
48 revoked pursuant to the provisions of subparagraph (x) or (xi) of para-
49 graph a of subdivision two of section five hundred ten of this [chapter]
50 TITLE. Such license or privilege shall not be issued to a person whose
51 license or privilege is suspended or revoked because of a conviction of
52 a violation of subdivision one, two, two-a, three, four [or], four-a OR
53 FOUR-B of section eleven hundred ninety-two of this chapter or a similar
54 offense in another jurisdiction, or whose license or privilege is
55 revoked by the commissioner for refusal to submit to a chemical test
56 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, three, four or four-a of section eleven
5 hundred ninety-two of this chapter or a similar alcohol-related offense
6 in another jurisdiction, or whose license or privilege has been revoked
7 by the commissioner for refusal to submit to a chemical test pursuant to
8 subdivision two of section eleven hundred ninety-four of this chapter,
9 except that such a license or privilege may be issued to such a person
10 if, after such conviction or revocation, such person successfully
11 completed an alcohol and drug rehabilitation program established pursu-
12 ant to article thirty-one of this chapter in conjunction with such
13 conviction or revocation. Provided, however, that nothing herein shall
14 be construed as prohibiting an operator from being issued a limited or
15 conditional license or privilege pursuant to any alcohol rehabilitation
16 program established pursuant to this chapter.

17 S 16. The state finance law is amended by adding a new section 99-r to
18 read as follows:

19 S 99-R. MANDATORY IGNITION INTERLOCK FUND. 1. THERE IS HEREBY ESTAB-
20 LISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE NEW YORK
21 STATE DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES A SPECIAL FUND
22 TO BE KNOWN AS THE "MANDATORY IGNITION INTERLOCK FUND".

23 2. SUCH FUND SHALL CONSIST OF ALL REVENUES RECEIVED BY THE COURTS FROM
24 A COURT FEE OF FIFTY DOLLARS IMPOSED ON ANYONE CONVICTED OF A VIOLATION
25 OF ANY OF THE SUBDIVISIONS OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE
26 VEHICLE AND TRAFFIC LAW.

27 3. MONEYS OF THE FUND SHALL BE EXPENDED BY THE NEW YORK STATE DIVISION
28 OF PROBATION AND CORRECTIONAL ALTERNATIVES ON AN AS-NEED BASIS FOR THE
29 CONTINUED OPERATION AND MAINTENANCE OF THE MANDATORY IGNITION INTERLOCK
30 PROGRAM ESTABLISHED IN SECTION ELEVEN HUNDRED NINETY-EIGHT OF THE VEHI-
31 CLE AND TRAFFIC LAW, TO INCLUDE THE COST OF:

32 (A) ADDITIONAL PROBATION AND COMPLIANCE OFFICERS TO MANAGE THE PROGRAM
33 AT A COUNTY OR REGIONAL LEVEL IN THE DISCRETION OF THE DIVISION OF
34 PROBATION AND CORRECTIONAL ALTERNATIVES;

35 (B) DEFRAYING THE COST TO THOSE DETERMINED BY THE COURT TO BE INCAPA-
36 BLE OF BEARING THE INITIAL OR ENTIRE EXPENSE OF INSTALLING AND MAINTAIN-
37 ING AN IGNITION INTERLOCK DEVICE PURSUANT TO THIS SECTION. NOTHING IN
38 THIS PROVISION SHALL PREVENT A PERSON MANDATED TO INSTALL AND MAINTAIN
39 AN IGNITION INTERLOCK PURSUANT TO THIS SECTION FROM BEING ENROLLED IN A
40 PAYMENT PLAN, BASED ON THEIR INCOME, SO THAT SAID EXPENSES MAY BE PAID
41 BACK TO THE COUNTY OVER A PERIOD OF TIME. HOWEVER, IF THE IGNITION
42 INTERLOCK PROVIDER OFFERS THE SAME OR SIMILAR PAYMENT PLAN FOR THE OPER-
43 ATION AND MAINTENANCE OF THE DEVICE, THE COUNTY IS NOT OBLIGATED TO
44 OFFER SUCH A REPAYMENT PLAN;

45 (C) ADDITIONAL OR ENHANCED EQUIPMENT FOR THE MONITORING OF PROBATION-
46 ERS; AND

47 (D) ANY OTHER COSTS ASSOCIATED WITH THE INCREASED DUTIES OR EXPENSES
48 ASSOCIATED WITH OPERATING AND MANAGING THE PROGRAM TO INCLUDE BUT NOT BE
49 LIMITED TO HEALTHCARE, RETIREMENT OR OTHER BENEFIT COSTS DUE TO
50 INCREASED STAFF.

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

54 8. Notwithstanding any other provision of law to the contrary, a local
55 criminal court may not, at arraignment or within thirty days of arraign-
56 ment on a simplified traffic information charging a violation of subdi-

1 vision two, two-a, three, four [or], four-a OR FOUR-B of section eleven
2 hundred ninety-two of the vehicle and traffic law and upon which a nota-
3 tion has been made pursuant to subdivision twelve of section eleven
4 hundred ninety-two of the vehicle and traffic law, accept a plea of
5 guilty to a violation of any subdivision of section eleven hundred nine-
6 ty-two of the vehicle and traffic law, nor to any other traffic infrac-
7 tion arising out of the same incident, nor to any other traffic infrac-
8 tion, violation or misdemeanor where the court is aware that such
9 offense was charged pursuant to an accident involving death or serious
10 physical injury, except upon written consent of the district attorney.

11 S 18. Paragraph (k-1) of subdivision 2 of section 65.10 of the penal
12 law, as amended by chapter 669 of the laws of 2007, is amended to read
13 as follows:

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

27 S 19. Subdivision 1 of section 120.03 of the penal law, as amended by
28 chapter 732 of the laws of 2006, is amended to read as follows:

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

38 S 20. Subdivision 1 of section 125.12 of the penal law, as amended by
39 chapter 732 of the laws of 2006, is amended to read as follows:

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

49 S 21. Paragraphs (a) and (b) of subdivision 1 of section 70.02 of the
50 penal law, paragraph (a) as amended by chapter 320 of the laws of 2006
51 and paragraph (b) as separately amended by chapters 764 and 765 of the
52 laws of 2005, are amended to read as follows:

53 (a) Class B violent felony offenses: an attempt to commit the class
54 A-I felonies of murder in the second degree as defined in section
55 125.25, kidnapping in the first degree as defined in section 135.25, and
56 arson in the first degree as defined in section 150.20; AGGRAVATED

1 VEHICULAR HOMICIDE AS DEFINED IN SUBDIVISION SEVEN OF SECTION 125.14;
2 manslaughter in the first degree as defined in section 125.20, aggra-
3 vated manslaughter in the first degree as defined in section 125.22,
4 rape in the first degree as defined in section 130.35, criminal sexual
5 act in the first degree as defined in section 130.50, aggravated sexual
6 abuse in the first degree as defined in section 130.70, course of sexual
7 conduct against a child in the first degree as defined in section
8 130.75; assault in the first degree as defined in section 120.10,
9 kidnapping in the second degree as defined in section 135.20, burglary
10 in the first degree as defined in section 140.30, arson in the second
11 degree as defined in section 150.15, robbery in the first degree as
12 defined in section 160.15, incest in the first degree as defined in
13 section 255.27, criminal possession of a weapon in the first degree as
14 defined in section 265.04, criminal use of a firearm in the first degree
15 as defined in section 265.09, criminal sale of a firearm in the first
16 degree as defined in section 265.13, aggravated assault upon a police
17 officer or a peace officer as defined in section 120.11, gang assault in
18 the first degree as defined in section 120.07, intimidating a victim or
19 witness in the first degree as defined in section 215.17, hindering
20 prosecution of terrorism in the first degree as defined in section
21 490.35, criminal possession of a chemical weapon or biological weapon in
22 the second degree as defined in section 490.40, and criminal use of a
23 chemical weapon or biological weapon in the third degree as defined in
24 section 490.47.

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

45 S 22. Section 120.04 of the penal law, as amended by chapter 746 of
46 the laws of 2006, is amended to read as follows:

47 S 120.04 Vehicular assault in the first degree.

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

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

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

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

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

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

30 (6) COMMITS SUCH CRIME WHILE OPERATING A MOTOR VEHICLE WHILE SUCH
31 PERSON HAS BEEN ENTRUSTED WITH THE CARE, EITHER BY EFFECT OF LAW OR
32 OTHERWISE, OF A CHILD AGED FIFTEEN YEARS OR LESS WHO IS IN SUCH MOTOR
33 VEHICLE AND CAUSES SERIOUS PHYSICAL INJURY TO SUCH CHILD.

34 If it is established that the person operating such motor vehicle
35 caused such serious physical injury or injuries while unlawfully intoxi-
36 cated or impaired by the use of alcohol or a drug, or by the combined
37 influence of drugs or of alcohol and any drug or drugs, then there shall
38 be a rebuttable presumption that, as a result of such intoxication or
39 impairment by the use of alcohol or a drug, or by the combined influence
40 of drugs or of alcohol and any drug or drugs, such person operated the
41 motor vehicle in a manner that caused such serious physical injury or
42 injuries, as required by this section and section 120.03 of this arti-
43 cle.

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

45 S 23. Subdivisions 4 and 5 of section 120.04-a of the penal law, as
46 added by chapter 345 of the laws of 2007, are amended and a new subdivi-
47 sion 6 is added to read as follows:

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

49 (5) has previously been convicted of violating any provision of this
50 article or article one hundred twenty-five of this title involving the
51 operation of a motor vehicle, or was convicted in any other state or
52 jurisdiction of an offense involving the operation of a motor vehicle
53 which, if committed in this state, would constitute a violation of this
54 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 24. 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 SUCH PERSON HAS BEEN ENTRUSTED WITH THE CARE, EITHER BY EFFECT OF LAW OR OTHERWISE, OF A CHILD AGED FIFTEEN YEARS OR LESS WHO IS 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.

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

2 S 25. Subdivisions 5 and 6 of section 125.14 of the penal law, as
3 added by chapter 345 of the laws of 2007, are amended and a new subdivi-
4 sion 7 is added to read as follows:

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

7 (6) has previously been convicted of violating any provision of this
8 article or article one hundred twenty of this title involving the opera-
9 tion of a motor vehicle, or was convicted in any other state or juris-
10 diction of an offense involving the operation of a motor vehicle which,
11 if committed in this state, would constitute a violation of this article
12 or article one hundred twenty of this title[.]; OR

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

15 S 26. 1. The New York state division of probation and correctional
16 alternatives is hereby authorized and directed to create, amend and/or
17 repeal any and all rules or regulations necessary for the implementation
18 of this act on or before its effective date for the purpose of:

19 (a) creation of the ignition interlock fund and the management, opera-
20 tion and investment thereof;

21 (b) creation of a grant process as prescribed by subdivision 3 of
22 section 99-r of the state finance law, as added by section sixteen of
23 this act; and

24 (c) creation of any other rules or regulations for the efficient oper-
25 ation of this act.

26 2. The New York state division of probation and correctional alterna-
27 tives is hereby directed to audit each county's mandatory ignition
28 interlock program at least once every two years. The division of
29 probation and correctional alternatives shall compile and submit to the
30 governor, legislature, attorney general and comptroller a yearly report
31 detailing the progress and effectiveness of each county's program.

32 S 27. This act shall take effect on the ninetieth day after it shall
33 have become a law and shall apply to offenses committed on or after such
34 date; provided, however that the amendments to paragraph (c) of subdivi-
35 sion 2 of section 1193 of the vehicle and traffic law made by section
36 eight of this act shall not affect the expiration and reversion of such
37 paragraph as provided in section 9 of chapter 533 of the laws of 1993,
38 as amended when upon such date the provisions of section nine of this
39 act shall take effect; and provided, further that the amendments to
40 subparagraph 7 of paragraph (e) of subdivision 2 of section 1193 of the
41 vehicle and traffic law made by section eleven of this act shall not
42 affect the repeal of such subparagraph and shall be deemed repealed
43 therewith.