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

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I N S E N A T E

June 17, 2010

Introduced by Sens. DILAN, FUSCHILLO -- (at request of the Governor) -- 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, in relation to driving while intoxicated

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

Section 1. Section 114-a of the vehicle and traffic law, as added by chapter 163 of the laws of 1973, is amended to read as follows:

S 114-a. Drug. The term "drug" when used in this chapter, means and includes any substance listed in section thirty-three hundred six of the public health law AND, WHEN USED IN ARTICLE THIRTY-ONE OF THIS CHAPTER SHALL INCLUDE ANY SUBSTANCE WHICH MAY CAUSE A DRIVER TO BE IMPAIRED OR INTOXICATED.

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

S 119-B. IMPAIRED. IMPAIRMENT IS REACHED WHEN A DRIVER HAS VOLUNTARILY CONSUMED OR INGESTED A SUBSTANCE OR COMBINATION OF SUBSTANCES TO THE EXTENT THAT THE DRIVER HAS IMPAIRED, TO ANY EXTENT, THE PHYSICAL AND MENTAL ABILITIES WHICH A DRIVER IS EXPECTED TO POSSESS IN ORDER TO OPERATE A VEHICLE IN A REASONABLE AND PRUDENT MANNER.

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

S 120-A. INTOXICATION. INTOXICATION IS A GREATER DEGREE OF IMPAIRMENT WHICH IS REACHED WHEN A DRIVER HAS VOLUNTARILY CONSUMED OR INGESTED A SUBSTANCE OR COMBINATION OF SUBSTANCES TO THE EXTENT THAT THE DRIVER IS INCAPABLE OF EMPLOYING THE PHYSICAL AND MENTAL ABILITIES WHICH A DRIVER IS EXPECTED TO POSSESS IN ORDER TO OPERATE A VEHICLE IN A REASONABLE AND PRUDENT MANNER.

S 4. Paragraph (a) of subdivision 1 of section 509-cc of the vehicle and traffic law is amended by adding a new subparagraph (iv) to read as follows:

(IV) HAS BEEN CONVICTED OF ANY VIOLATION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS CHAPTER OR AN OFFENSE COMMITTED OUTSIDE THIS STATE WHICH WOULD CONSTITUTE A VIOLATION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS CHAPTER, AND THE OFFENSE WAS COMMITTED WHILE THE DRIVER WAS DRIVING A SCHOOL BUS; OR

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

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S 5. Subparagraph (ii) of paragraph (b) of subdivision 1 of section 509-cc of the vehicle and traffic law, as added by chapter 675 of the laws of 1985, is amended to read as follows:

(ii) has been convicted of any violation of section eleven hundred ninety-two of this chapter or an offense committed outside this state which would constitute a violation of section eleven hundred ninety-two of this chapter, and the offense was committed while the driver was driving a bus THAT IS NOT A SCHOOL BUS in the employ of a motor carrier or in the furtherance of a commercial enterprise in interstate, intrastate or foreign commerce;

S 6. Subdivision 2 of section 509-cc of the vehicle and traffic law is amended by adding a new paragraph (b-1) to read as follows:

(B-1) PERMANENTLY, IF THAT PERSON HAS BEEN CONVICTED OF ANY VIOLATION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS CHAPTER OR AN OFFENSE COMMITTED OUTSIDE THIS STATE WHICH WOULD CONSTITUTE A VIOLATION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS CHAPTER, AND THE OFFENSE WAS COMMITTED WHILE THE DRIVER WAS DRIVING A SCHOOL BUS.

S 7. Subparagraph (ii) of paragraph (c) of subdivision 2 of section 509-cc of the vehicle and traffic law, as added by chapter 675 of the laws of 1985, is amended to read as follows:

(ii) has been convicted of a violation of any subdivision of section eleven hundred ninety-two of this chapter or an offense committed outside of this state which would constitute a violation of section eleven hundred ninety-two of this chapter, and the offense was committed while the driver was driving a bus THAT IS NOT A SCHOOL BUS in the employ of a motor carrier or in the furtherance of a commercial enterprise in interstate, intrastate or foreign commerce;

S 8. Section 1192 of the vehicle and traffic law is amended by adding two new subdivisions 5-a and 6-a to read as follows:

5-A. SCHOOL BUSES; PER SE - LEVEL I. NOTWITHSTANDING THE PROVISIONS OF SECTION ELEVEN HUNDRED NINETY-FIVE OF THIS ARTICLE, NO PERSON SHALL OPERATE A SCHOOL BUS AS DEFINED IN SECTION ONE HUNDRED FORTY-TWO OF THIS CHAPTER WHILE SUCH PERSON HAS .02 OF ONE PER CENTUM OR MORE BUT NOT MORE THAN .06 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; PROVIDED, HOWEVER, NOTHING CONTAINED IN THIS SUBDIVISION SHALL PROHIBIT THE IMPOSITION OF A CHARGE OF A VIOLATION OF SUBDIVISION ONE OF THIS SECTION, OR OF SECTION ELEVEN HUNDRED NINETY-TWO-A OF THIS ARTICLE WHERE A PERSON UNDER THE AGE OF TWENTY-ONE OPERATES A COMMERCIAL MOTOR VEHICLE WHERE 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, INDICATES THAT SUCH OPERATOR HAS .02 OF ONE PER CENTUM OR MORE BUT LESS THAN .04 OF ONE PER CENTUM BY WEIGHT OF ALCOHOL IN SUCH OPERATOR'S BLOOD.

6-A. SCHOOL BUSES; PER SE - LEVEL II. NOTWITHSTANDING THE PROVISIONS OF SECTION ELEVEN HUNDRED NINETY-FIVE OF THIS ARTICLE, NO PERSON SHALL OPERATE A SCHOOL BUS AS DEFINED IN SECTION ONE HUNDRED FORTY-TWO OF THIS CHAPTER WHILE SUCH PERSON HAS MORE THAN .06 OF ONE PER CENTUM BUT LESS THAN .08 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; PROVIDED, HOWEVER, NOTHING CONTAINED IN THIS SUBDIVISION SHALL PROHIBIT THE IMPOSITION OF A CHARGE OF A VIOLATION OF SUBDIVISION ONE OF THIS SECTION.

S 9. Subparagraph (ii) of paragraph (b) and subparagraph (iii) of paragraph (c) of subdivision 1 of section 1193 of the vehicle and traffic law, as amended by chapter 496 of the laws of 2009, are amended to read as follows:

(ii) In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, the court shall also sentence such person convicted of OR ADJUDICATED A YOUTHFUL OFFENDER FOR a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article to a period of probation or conditional discharge, as a condition of which it shall order such person to install and maintain, in accordance with the provisions of section eleven hundred ninety-eight of this article, an ignition interlock device in any motor vehicle owned or operated by such person during the term of such probation or conditional discharge imposed for such violation of section eleven hundred ninety-two of this article and in no event for less than six months. 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 pursuant to the provisions of this section.

(iii) In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, the court shall also sentence such person convicted of OR ADJUDICATED A YOUTHFUL OFFENDER FOR a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article to a period of probation or conditional discharge, as a condition of which it shall order such person to install and maintain, in accordance with the provisions of section eleven hundred ninety-eight of this article, an ignition interlock device in any motor vehicle owned or operated by such person during the term of such probation or conditional discharge imposed for such violation of section eleven hundred ninety-two of this article and in no event for a period of less than six months. 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 pursuant to the provisions of this section.

S 10. Subparagraphs 1-a and 4-a of paragraph (d) of subdivision 1 of section 1193 of the vehicle and traffic law, as added by chapter 732 of the laws of 2006, are amended to read as follows:

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

(4-a) A violation of subdivision two, three, four, [or] four-a, OR SIX-A of section eleven hundred ninety-two of this article wherein the violator is operating a school bus as defined in section one hundred forty-two of this chapter [and such school bus is carrying at least one student passenger] shall be a class E felony punishable by a fine of not less than one thousand dollars nor more than five thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A violation of subdivision two-a of section eleven hundred ninety-two of this article wherein the violator is operating a school bus as defined in section one hundred forty-two of this chapter and such school bus is carrying at least one student passenger shall be a class D felony punishable by a fine of not less than two

thousand dollars nor more than ten thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

S 11. Paragraphs (a), (b) and (c) of subdivision 1-a of section 1193 of the vehicle and traffic law, paragraphs (a) and (b) as added by chapter 691 of the laws of 2002 and paragraph (c) as amended by chapter 669 of the laws of 2007, 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], TWO-A, three, FOUR OR FOUR-A of section eleven hundred ninety-two of this article after having been convicted of a violation of subdivision two [or], TWO-A, three, FOUR OR FOUR-A of such section within the preceding [five] TEN 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 [five] THIRTY days or, as an alternative to such imprisonment, be required to perform [thirty] SIXTY 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] THIRTY days or more pursuant to the provisions of subdivision one of this section shall be deemed to be in compliance with this subdivision.

(b) A person who operates a vehicle in violation of subdivision two [or], TWO-A, three, FOUR OR FOUR-A of section eleven hundred ninety-two of this article after having been convicted on two or more occasions of a violation of any of such subdivisions within the preceding [five] TEN 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 [ten] NINETY days [or, as an alternative to such imprisonment, be required to perform sixty 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 [ten] NINETY 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 court sentencing a person, WHO HAS BEEN CONVICTED OF OPERATING A VEHICLE IN VIOLATION OF SUBDIVISION TWO, TWO-A, THREE OR FOUR-A OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, pursuant to paragraph (a) or (b) 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.

S 12. Subdivisions 3 and 4 of section 1194 of the vehicle and traffic law, as added by chapter 47 of the laws of 1988, subparagraph 1 of paragraph (a) of subdivision 4 as amended by chapter 406 of the laws of 1988, are amended to read as follows:

3. Compulsory chemical tests. (a) [Court ordered chemical tests.] Notwithstanding the provisions of subdivision two of this section, no person who operates a motor vehicle in this state may refuse to submit to a chemical test of one or more of the following: breath, blood, urine or saliva, for the purpose of determining the alcoholic and/or drug content of the blood [when a court order for such chemical test has been issued in accordance with the provisions of this subdivision] WHEN THE CONDITIONS SET FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION HAVE BEEN MET.

(b) When authorized. [Upon refusal by any person to submit to a chemical test or any portion thereof as described above, the test shall not be given unless] WHEN a police officer or a district attorney, as defined in subdivision thirty-two of section 1.20 of the criminal procedure law, [requests and obtains a court order to compel a person to submit to a chemical test to determine the alcoholic or drug content of the person's blood upon a finding of] HAS reasonable cause to believe that[:

(1) such] A person was the operator of a motor vehicle and in the course of such operation a person other than the operator was killed or suffered serious physical injury as defined in section 10.00 of the penal law; and

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

[b.] a breath test administered by a police officer in accordance with paragraph (b) of subdivision one of this section indicates that alcohol has been consumed by such person; and

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

(4) such person has refused to submit to a chemical test or any portion thereof, requested in accordance with the provisions of paragraph (a) of subdivision two of this section or is unable to give consent to such a test] SUCH POLICE OFFICER OR DISTRICT ATTORNEY MAY DIRECT THAT SUCH PERSON SUBMIT TO A CHEMICAL TEST.

(c) Reasonable cause; definition. For the purpose of this subdivision "reasonable cause" shall be determined by viewing the totality of circumstances surrounding the incident which, when taken together, indicate that the operator was driving in violation of section eleven hundred ninety-two of this article. Such circumstances may include, but are not limited to: evidence that the operator was operating a motor vehicle in violation of any provision of this article or any other moving violation at the time of the incident; any visible indication of alcohol or drug consumption or impairment by the operator; the existence of an open container containing an alcoholic beverage in or around the vehicle driven by the operator; any other evidence surrounding the circumstances of the incident which indicates that the operator has been operating a motor vehicle while impaired by the consumption of alcohol or drugs or intoxicated at the time of the incident.

[(d) Court order; procedure. (1) An application for a court order to compel submission to a chemical test or any portion thereof, may be made to any supreme court justice, county court judge or district court judge

in the judicial district in which the incident occurred, or if the incident occurred in the city of New York before any supreme court justice or judge of the criminal court of the city of New York. Such application may be communicated by telephone, radio or other means of electronic communication, or in person.

(2) The applicant must provide identification by name and title and must state the purpose of the communication. Upon being advised that an application for a court order to compel submission to a chemical test is being made, the court shall place under oath the applicant and any other person providing information in support of the application as provided in subparagraph three of this paragraph. After being sworn the applicant must state that the person from whom the chemical test was requested was the operator of a motor vehicle and in the course of such operation a person, other than the operator, has been killed or seriously injured and, based upon the totality of circumstances, there is reasonable cause to believe that such person was operating a motor vehicle in violation of any subdivision of section eleven hundred ninety-two of this article and, after being placed under lawful arrest such person refused to submit to a chemical test or any portion thereof, in accordance with the provisions of this section or is unable to give consent to such a test or any portion thereof. The applicant must make specific allegations of fact to support such statement. Any other person properly identified, may present sworn allegations of fact in support of the applicant's statement.

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

(4) If the court is satisfied that the requirements for the issuance of a court order pursuant to the provisions of paragraph (b) of this subdivision have been met, it may grant the application and issue an order requiring the accused to submit to a chemical test to determine the alcoholic and/or drug content of his blood and ordering the withdrawal of a blood sample in accordance with the provisions of paragraph (a) of subdivision four of this section. When a judge or justice determines to issue an order to compel submission to a chemical test based on an oral application, the applicant therefor shall prepare the order in accordance with the instructions of the judge or justice. In all cases the order shall include the name of the issuing judge or justice, the name of the applicant, and the date and time it was issued. It must be signed by the judge or justice if issued in person, or by the applicant if issued orally.

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

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

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

4. Testing procedures. (a) Persons authorized to withdraw blood; immunity; testimony. (1) At the request of a police officer OR A DISTRICT ATTORNEY, AS DEFINED IN SUBDIVISION THIRTY-TWO OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, the following persons may withdraw blood for the purpose of determining the alcoholic or drug content therein: (i) a physician, a registered professional nurse or a registered physician's assistant; or (ii) under the supervision and at the direction of a physician: a medical laboratory technician or medical technologist as classified by civil service; a phlebotomist; an advanced emergency medical technician as certified by the department of health; or a medical laboratory technician or medical technologist employed by a clinical laboratory approved under title five of article five of the public health law. This limitation shall not apply to the taking of a urine, saliva or breath specimen.

(2) No person entitled to withdraw blood pursuant to subparagraph one of this paragraph or hospital employing such person, and no other employer of such person shall be sued or held liable for any act done or omitted in the course of withdrawing blood at the request of a police officer pursuant to this section.

(3) Any person who may have a cause of action arising from the withdrawal of blood as aforesaid, for which no personal liability exists under subparagraph two of this paragraph, may maintain such action against the state if any person entitled to withdraw blood pursuant to THIS paragraph [(a) hereof] acted at the request of a police officer employed by the state, or against the appropriate political subdivision of the state if such person acted at the request of a police officer employed by a political subdivision of the state. No action shall be maintained pursuant to this subparagraph unless notice of claim is duly filed or served in compliance with law.

(4) Notwithstanding the foregoing provisions of this paragraph an action may be maintained by the state or a political subdivision thereof against a person entitled to withdraw blood pursuant to subparagraph one of this paragraph or hospital employing such person for whose act or omission the state or the political subdivision has been held liable under this paragraph to recover damages, not exceeding the amount awarded to the claimant, that may have been sustained by the state or the political subdivision by reason of gross negligence or bad faith on the part of such person.

(5) The testimony of any person other than a physician, entitled to withdraw blood pursuant to subparagraph one of this paragraph, in respect to any such withdrawal of blood made by such person may be received in evidence with the same weight, force and effect as if such withdrawal of blood were made by a physician.

(6) The provisions of subparagraphs two, three and four of this paragraph shall also apply with regard to any person employed by a hospital as security personnel for any act done or omitted in the course of with-

drawing blood at the request of a police officer [pursuant to a court order] OR A DISTRICT ATTORNEY, AS DEFINED IN SUBDIVISION THIRTY-TWO OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, in accordance with subdivision three of this section.

(b) Right to additional test. The person tested shall be permitted to choose a physician to administer a chemical test in addition to the one administered at the direction of the police officer.

(c) Rules and regulations. The department of health shall issue and file rules and regulations approving satisfactory techniques or methods of conducting chemical analyses of a person's blood, urine, breath or saliva and to ascertain the qualifications and competence of individuals to conduct and supervise chemical analyses of a person's blood, urine, breath or saliva. If the analyses were made by an individual possessing a permit issued by the department of health, this shall be presumptive evidence that the examination was properly given. The provisions of this paragraph do not prohibit the introduction as evidence of an analysis made by an individual other than a person possessing a permit issued by the department of health.

S 13. Subdivision 3 of section 1195 of the vehicle and traffic law, as added by chapter 47 of the laws of 1988, is amended to read as follows:

3. Suppression. A defendant who has been compelled to submit to a chemical test pursuant to the provisions of subdivision three of section eleven hundred ninety-four of this article may move for the suppression of such evidence in accordance with article seven hundred ten of the criminal procedure law on the grounds that the [order was obtained and the] test WAS administered in violation of the provisions of such subdivision or any other applicable law.

S 14. Subdivisions 1, 2 and 9 of section 1198 of the vehicle and traffic law, as amended by chapter 496 of the laws of 2009, are amended to read as follows:

1. Applicability. The provisions of this section shall apply throughout the state to each person required, AS A RESULT OF A CONVICTION FOR OR ADJUDICATION AS A YOUTHFUL OFFENDER FOR A VIOLATION OF SUBDIVISION TWO, TWO-A OR THREE OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, 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, the court shall require that any person who has been convicted of OR ADJUDICATED A YOUTHFUL OFFENDER FOR 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, to install and maintain, as a condition of probation or conditional discharge, a functioning ignition interlock device in accordance with the provisions of this section and, as applicable, in accordance with the provisions of subdivisions one and one-a of section eleven hundred ninety-three of this article; 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 such individual subject to a sentence of probation OR CONDITIONAL DISCHARGE, installation and maintenance of such ignition interlock device shall be a condition of probation OR CONDITIONAL DISCHARGE.

(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.

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) NO PERSON SHALL INSTALL AN IGNITION INTERLOCK DEVICE IN ANY MANNER WHICH ALLOWS A PERSON WHOSE DRIVING PRIVILEGE IS RESTRICTED PURSUANT TO THIS ARTICLE OR THE PENAL LAW TO START THE VEHICLE IN WHICH THE DEVICE IS INSTALLED WITHOUT PROPERLY USING THE DEVICE.

(F) In addition to any other provisions of law, any person convicted of a violation of paragraph (a), (b), (c), [or] (d), OR (E) of this subdivision shall be guilty of a Class A misdemeanor FOR WHICH ANY SENTENCE AUTHORIZED BY ARTICLE SIXTY, SIXTY-FIVE OR SEVENTY OF THE PENAL LAW MAY BE IMPOSED.

S 15. Paragraph (c) of subdivision 7 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:

(c) A violation of paragraph (a) [or] OF THIS SUBDIVISION SHALL BE A CLASS A MISDEMEANOR FOR WHICH ANY SENTENCE AUTHORIZED BY ARTICLE SIXTY, SIXTY-FIVE OR SEVENTY OF THE PENAL LAW MAY BE IMPOSED AND A VIOLATION OF PARAGRAPH (b) of this subdivision shall be a misdemeanor.

S 16. This act shall take effect August 15, 2010; provided, however, that the amendments to subparagraph (ii) of paragraph (b) of subdivision 1 of section 1193 of the vehicle and traffic law made by section nine of this act and the amendments to subdivisions 1 and 2 of section 1198 of the vehicle and traffic law made by section fourteen of this act shall take effect on the same date and in the same manner as the amendments made to such subparagraph and subdivisions, respectively, by chapter 496 of the laws of 2009 take effect; provided, however, that sections one through eleven, fourteen and fifteen of this act shall apply to offenses committed on or after such effective date; provided, further, that the amendments to section 1198 of the vehicle and traffic law made by sections fourteen and fifteen of this act shall not affect the repeal of such section and shall be deemed repealed therewith.