

9544

I N A S S E M B L Y

March 12, 2012

Introduced by M. of A. WEISENBERG, ROBERTS, STEVENSON, GUNTHER, McDO-
NOUGH, RAIK, TITUS, SWEENEY, SALADINO, McKEVITT, PERRY -- Multi-Spon-
sored by -- M. of A. BRENNAN, CERETTO, THIELE -- read once and
referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, the executive law, the
penal law and the criminal procedure law, in relation to driving while
intoxicated and ignition interlock devices

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

1 Section 1. Paragraphs (b) and (c) of subdivision 1 of section 1193 of
2 the vehicle and traffic law, as amended by chapter 496 of the laws of
3 2009, are amended to read as follows:
4 (b) Driving while intoxicated or while ability impaired by drugs or
5 while ability impaired by the combined influence of drugs or of alcohol
6 and any drug or drugs; aggravated driving while intoxicated; misdemeanor
7 offenses. (i) A violation of subdivision two, three, four or four-a of
8 section eleven hundred ninety-two of this article shall be a misdemeanor
9 and shall be punishable by a fine of not less than five hundred dollars
10 nor more than one thousand dollars, or by imprisonment in a penitentiary
11 or county jail for not more than one year, or by both such fine and
12 imprisonment. A violation of paragraph (a) of subdivision two-a of
13 section eleven hundred ninety-two of this article shall be a misdemeanor
14 and shall be punishable by a fine of not less than one thousand dollars
15 nor more than two thousand five hundred dollars or by imprisonment in a
16 penitentiary or county jail for not more than one year, or by both such
17 fine and imprisonment.
18 (ii) In addition to the imposition of any fine or period of imprison-
19 ment set forth in this paragraph, the court shall also sentence such
20 person convicted [of] OR ADJUDICATED A YOUTHFUL OFFENDER FOR a violation
21 of subdivision two, two-a [or], three OR PARAGRAPH (B) OF SUBDIVISION
22 FOUR-A of section eleven hundred ninety-two of this article to a period
23 of probation or conditional discharge, as a condition of which it shall
24 order such person NOT TO OPERATE A MOTOR VEHICLE WITHOUT AN IGNITION
25 INTERLOCK DEVICE, NOT TO OPERATE A MOTOR VEHICLE WITH A BLOOD ALCOHOL

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

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1 CONCENTRATION ABOVE THE SETPOINT OF THE IGNITION INTERLOCK DEVICE AND to
2 install and maintain, in accordance with the provisions of section elev-
3 en hundred ninety-eight of this article, an ignition interlock device in
4 any motor vehicle TITLED, REGISTERED OR OTHERWISE owned or operated by
5 such person OR, IF SUCH PERSON DOES NOT OWN A MOTOR VEHICLE, IN THE
6 VEHICLE OPERATED BY SUCH PERSON AT THE TIME OF THE VIOLATION OF SECTION
7 ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, OR IN AT LEAST ONE VEHICLE
8 REGISTERED TO SUCH PERSON'S HOUSEHOLD during the term of such probation
9 or conditional discharge imposed for such violation of section eleven
10 hundred ninety-two of this article and in no event for less than six
11 months. THE PERIOD OF INTERLOCK RESTRICTION SHALL COMMENCE FROM THE DATE
12 OF SENTENCING OR, IN THE CASE OF A PLEA DISPOSITION, MAY COMMENCE FROM
13 THE DATE OF INSTALLATION OF AN IGNITION INTERLOCK DEVICE AT A DATE IN
14 ADVANCE OF SENTENCING. THE IGNITION INTERLOCK DEVICE SHALL BE INSTALLED
15 FOR NO LESS THAN SIX MONTHS, REGARDLESS OF THE COMMENCEMENT DATE. IN THE
16 EVENT THAT THE COURT MAKES A DETERMINATION OF GOOD CAUSE FOR NOT
17 INSTALLING AN IGNITION INTERLOCK DEVICE PURSUANT TO SUBDIVISION FOUR OF
18 SECTION ELEVEN HUNDRED NINETY-EIGHT OF THIS ARTICLE ON THE BASIS THAT
19 SUCH PERSON DOES NOT OWN AND WILL NOT OPERATE A MOTOR VEHICLE, THE
20 IGNITION INTERLOCK RESTRICTION SHALL REMAIN IN EFFECT FOR THE FULL PERI-
21 OD OF SUCH PERSON'S CONDITIONAL DISCHARGE OR PROBATION PURSUANT TO ARTI-
22 CLE SIXTY-FIVE OF THE PENAL LAW AND THE COURT SHALL SENTENCE SUCH PERSON
23 TO WEAR A TRANSDERMAL ALCOHOL MONITORING DEVICE FOR A PERIOD OF NOT LESS
24 THAN SIX MONTHS. UNDER NO CIRCUMSTANCES SHALL A CONDITIONAL LICENSE BE
25 ISSUED, OR A LICENSE OR PRIVILEGE TO OPERATE A MOTOR VEHICLE BE GRANTED
26 OR RESTORED UNTIL SUCH PERSON CAN DEMONSTRATE COMPLIANCE WITH EITHER THE
27 IGNITION INTERLOCK OR TRANSDERMAL ALCOHOL MONITORING PROVISIONS OF THIS
28 SECTION PURSUANT TO SUBDIVISION NINE OF SECTION FIVE HUNDRED TEN OF THIS
29 CHAPTER. FOR THE PURPOSES OF OBTAINING A CONDITIONAL LICENSE WHILE UNDER
30 THE PERIOD OF RESTRICTION, SUCH COMPLIANCE CAN BE DEMONSTRATED BY
31 PROVIDING PROOF AT THE TIME OF APPLICATION FOR A CONDITIONAL LICENSE OF
32 THE INSTALLATION OF AN IGNITION INTERLOCK DEVICE TO BE MONITORED PURSU-
33 ANT TO SECTION ELEVEN HUNDRED NINETY-EIGHT OF THIS ARTICLE FOR A PERIOD
34 OF NO LESS THAN THE FIRST SIX MONTHS AFTER THE CONDITIONAL LICENSE IS
35 GRANTED. THE PROOF WILL BE PROVIDED TO THE DEPARTMENT IN A FORM
36 PRESCRIBED BY THE COMMISSIONER. [Provided, however, the] THE court may
37 not authorize the operation of a motor vehicle by any person whose
38 license or privilege to operate a motor vehicle has been revoked pursu-
39 ant to the provisions of this section.

40 (c) Felony offenses. (i) A person who operates a vehicle (A) in
41 violation of subdivision two, two-a, three, four or four-a of section
42 eleven hundred ninety-two of this article after having been convicted of
43 a violation of subdivision two, two-a, three, four or four-a of such
44 section or of vehicular assault in the second or first degree, as
45 defined, respectively, in sections 120.03 and 120.04 and aggravated
46 vehicular assault as defined in section 120.04-a of the penal law or of
47 vehicular manslaughter in the second or first degree, as defined,
48 respectively, in sections 125.12 and 125.13 and aggravated vehicular
49 homicide as defined in section 125.14 of such law, within the preceding
50 ten years, or (B) in violation of paragraph (b) of subdivision two-a of
51 section eleven hundred ninety-two of this article shall be guilty of a
52 class E felony, and shall be punished by a fine of not less than one
53 thousand dollars nor more than five thousand dollars or by a period of
54 imprisonment as provided in the penal law, or by both such fine and
55 imprisonment.

1 (ii) A person who operates a vehicle in violation of subdivision two,
2 two-a, three, four or four-a of section eleven hundred ninety-two of
3 this article after having been convicted of a violation of subdivision
4 two, two-a, three, four or four-a of such section or of vehicular
5 assault in the second or first degree, as defined, respectively, in
6 sections 120.03 and 120.04 and aggravated vehicular assault as defined
7 in section 120.04-a of the penal law or of vehicular manslaughter in the
8 second or first degree, as defined, respectively, in sections 125.12 and
9 125.13 and aggravated vehicular homicide as defined in section 125.14 of
10 such law, twice within the preceding ten years, shall be guilty of a
11 class D felony, and shall be punished by a fine of not less than two
12 thousand dollars nor more than ten thousand dollars or by a period of
13 imprisonment as provided in the penal law, or by both such fine and
14 imprisonment.

15 (iii) In addition to the imposition of any fine or period of imprison-
16 ment set forth in this paragraph, the court shall also sentence such
17 person convicted [of] OR ADJUDICATED A YOUTHFUL OFFENDER FOR a violation
18 of subdivision two, two-a [or], three OR PARAGRAPH (B) OF SUBDIVISION
19 FOUR-A of section eleven hundred ninety-two of this article to a period
20 of probation or conditional discharge, as a condition of which it shall
21 order such person NOT TO OPERATE A MOTOR VEHICLE WITHOUT AN IGNITION
22 INTERLOCK DEVICE, NOT TO OPERATE A MOTOR VEHICLE WITH A BLOOD ALCOHOL
23 CONCENTRATION ABOVE THE SETPOINT OF THE IGNITION INTERLOCK DEVICE, AND
24 to install and maintain, in accordance with the provisions of section
25 eleven hundred ninety-eight of this article, an ignition interlock
26 device in any motor vehicle TITLED, REGISTERED OR OTHERWISE owned or
27 operated by such person OR, IF SUCH PERSON DOES NOT OWN A MOTOR VEHICLE,
28 IN THE VEHICLE OPERATED BY SUCH PERSON AT THE TIME OF THE VIOLATION OF
29 SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, OR IN AT LEAST ONE
30 VEHICLE REGISTERED TO SUCH PERSON'S HOUSEHOLD during the term of such
31 probation or conditional discharge imposed for such violation of section
32 eleven hundred ninety-two of this article and in no event for a period
33 of less than six months. THE PERIOD OF INTERLOCK RESTRICTION SHALL
34 COMMENCE FROM THE DATE OF SENTENCING OR IN THE CASE OF A PLEA DISPOSI-
35 TION, MAY COMMENCE FROM THE DATE OF INSTALLATION OF AN IGNITION INTER-
36 LOCK DEVICE AT A DATE IN ADVANCE OF SENTENCING. THE IGNITION INTERLOCK
37 DEVICE SHALL BE INSTALLED FOR NO LESS THAN SIX MONTHS, REGARDLESS OF THE
38 COMMENCEMENT DATE. IN THE EVENT THAT THE COURT MAKES A DETERMINATION OF
39 GOOD CAUSE FOR NOT INSTALLING AN IGNITION INTERLOCK DEVICE PURSUANT TO
40 SUBDIVISION FOUR OF SECTION ELEVEN HUNDRED NINETY-EIGHT OF THIS ARTICLE
41 ON THE BASIS THAT SUCH PERSON DOES NOT OWN AND WILL NOT OPERATE A MOTOR
42 VEHICLE, THE IGNITION INTERLOCK RESTRICTION SHALL REMAIN IN EFFECT FOR
43 THE FULL PERIOD OF SUCH PERSON'S CONDITIONAL DISCHARGE OR PROBATION
44 PURSUANT TO ARTICLE SIXTY-FIVE OF THE PENAL LAW AND THE COURT SHALL
45 SENTENCE SUCH PERSON TO WEAR A TRANSDERMAL ALCOHOL MONITORING DEVICE FOR
46 A PERIOD OF NOT LESS THAN SIX MONTHS. UNDER NO CIRCUMSTANCES SHALL A
47 CONDITIONAL LICENSE BE ISSUED, OR A LICENSE OR PRIVILEGE TO OPERATE A
48 MOTOR VEHICLE BE GRANTED OR RESTORED UNTIL SUCH PERSON CAN DEMONSTRATE
49 COMPLIANCE WITH EITHER THE IGNITION INTERLOCK OR TRANSDERMAL ALCOHOL
50 MONITORING PROVISIONS OF THIS SECTION PURSUANT TO SUBDIVISION NINE OF
51 SECTION FIVE HUNDRED TEN OF THIS CHAPTER. FOR THE PURPOSES OF OBTAINING
52 A CONDITIONAL LICENSE WHILE UNDER THE PERIOD OF RESTRICTION, SUCH
53 COMPLIANCE CAN BE DEMONSTRATED BY PROVIDING PROOF AT THE TIME OF APPLI-
54 CATION FOR A CONDITIONAL LICENSE PROOF OF THE INSTALLATION OF AN
55 IGNITION INTERLOCK DEVICE TO BE MONITORED PURSUANT TO SECTION ELEVEN
56 HUNDRED NINETY-EIGHT OF THIS ARTICLE FOR A PERIOD OF NO LESS THAN THE

FIRST SIX MONTHS FROM THE DATE OF ISSUANCE OF THE CONDITIONAL LICENSE. THE PROOF WILL BE PROVIDED TO THE DEPARTMENT IN A FORM PRESCRIBED BY THE COMMISSIONER. [Provided, however, the] 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 2. Paragraph (g) of subdivision 1 of section 1193 of the vehicle and traffic law, as amended by section 57 of part A of chapter 56 of the laws of 2010, is amended to read as follows:

(g) The office of probation and correctional alternatives shall recommend to the commissioner of the division of criminal justice services regulations governing the monitoring of compliance by persons ordered NOT TO OPERATE A MOTOR VEHICLE WITHOUT AN IGNITION INTERLOCK DEVICE, NOT TO OPERATE A MOTOR VEHICLE WITH A BLOOD ALCOHOL CONCENTRATION ABOVE THE SETPOINT OF THE IGNITION INTERLOCK DEVICE AND to install and maintain ignition interlock devices IN ANY MOTOR VEHICLE TITLED, REGISTERED OR OTHERWISE OWNED OR OPERATED BY SUCH PERSON, OR IF SUCH PERSON DOES NOT OWN A MOTOR VEHICLE, IN THE VEHICLE OPERATED BY SUCH PERSON AT THE TIME OF THE VIOLATION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, OR IN AT LEAST ONE VEHICLE REGISTERED TO SUCH PERSON'S HOUSEHOLD, OR IN THE ALTERNATIVE TO WEAR A TRANSDERMAL ALCOHOL MONITORING DEVICE, to provide standards for monitoring by departments of probation, and options for monitoring of compliance by such persons, that counties may adopt as an alternative to monitoring by a department of probation.

S 3. Subdivisions 1, 2, 3, 4 and paragraph (a) of subdivision 5 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 or otherwise ordered by a court as a condition of probation or conditional discharge NOT TO OPERATE A MOTOR VEHICLE WITHOUT AN IGNITION INTERLOCK DEVICE, NOT TO OPERATE A MOTOR VEHICLE WITH A BLOOD ALCOHOL CONCENTRATION ABOVE THE SETPOINT OF THE IGNITION INTERLOCK DEVICE AND to install and [operate] MAINTAIN an ignition interlock device in any vehicle FOR which he or she HAS TITLE, REGISTRATION, OR OTHERWISE owns or operates, OR IF SUCH PERSON DOES NOT OWN A MOTOR VEHICLE, IN THE VEHICLE OPERATED BY SUCH PERSON AT THE TIME OF THE VIOLATION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, OR IN AT LEAST ONE VEHICLE REGISTERED TO SUCH PERSON'S HOUSEHOLD, OR IN THE ALTERNATIVE ORDERED TO WEAR A TRANSDERMAL ALCOHOL MONITORING DEVICE.

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 OR PARAGRAPH (B) OF SUBDIVISION FOUR-A 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] SHALL NOT OPERATE A MOTOR VEHICLE WITHOUT AN IGNITION INTERLOCK DEVICE, OR WITH A BLOOD ALCOHOL CONCENTRATION ABOVE THE SETPOINT OF THE IGNITION INTERLOCK DEVICE AND SHALL install and maintain, as a condition of probation or conditional discharge, a functioning ignition interlock device OR SHALL IN THE ALTERNATIVE WEAR A TRANSDERMAL ALCOHOL MONITORING 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

1 operate a motor vehicle has been revoked except as provided herein. For
2 any such individual subject to a sentence of probation, installation and
3 maintenance of such ignition interlock device shall be a condition of
4 probation.

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

12 [(c) Nothing contained in this section shall authorize a court to
13 sentence any person to a period of probation or conditional discharge
14 for the purpose of subjecting such person to the provisions of this
15 section, unless such person would have otherwise been so eligible for a
16 sentence of probation or conditional discharge.]

17 3. Conditions. (a) Notwithstanding any other provision of law, the
18 commissioner may grant a [post-revocation] conditional license[, as set
19 forth in paragraph (b) of this subdivision, to a person who has been
20 convicted of a violation of subdivision two, two-a or three of section
21 eleven hundred ninety-two of this article and who has been sentenced to
22 a period of probation or conditional discharge, provided the person has
23 satisfied the minimum period of license revocation established by law
24 and the commissioner has been notified that such person may operate only
25 a motor vehicle equipped with a functioning ignition interlock device]
26 IN ACCORDANCE WITH THE PROVISIONS OF SECTION ELEVEN HUNDRED NINETY-SIX
27 OF THIS ARTICLE.

28 (B) No such request shall be made nor shall such a license be granted,
29 however, if such person has been found by a court to have [committed a]
30 BEEN CHARGED WITH A violation of section five hundred eleven of this
31 chapter during the license revocation period, OR A VIOLATION OF SECTION
32 ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, OR FOR OPERATION OF A MOTOR
33 VEHICLE WITHOUT AN IGNITION INTERLOCK DEVICE WHEN REQUIRED TO HAVE ONE
34 PURSUANT TO THIS SECTION, or deemed by a court to have violated any
35 condition of probation or conditional discharge set forth by the court
36 relating to the operation of a motor vehicle or the consumption of alco-
37 hol. [In exercising discretion relating to the issuance of a post-revo-
38 cation conditional license pursuant to this subdivision, the commission-
39 er shall not deny such issuance based solely upon the number of
40 convictions for violations of any subdivision of section eleven hundred
41 ninety-two of this article committed by such person within the ten years
42 prior to application for such license.] IN ORDER FOR THE REQUEST FOR A
43 CONDITIONAL LICENSE TO BE DENIED ON THE BASIS OF HAVING BEEN CHARGED
44 WITH THE ENUMERATED VIOLATIONS, THE COURT MUST FIND PRIOR TO THE CONCLU-
45 SION OF THE PROCEEDINGS FOR ARRAIGNMENT THAT THE ACCUSATORY INSTRUMENT
46 CONFORMS TO THE REQUIREMENTS OF SECTION 100.40 OF THE CRIMINAL PROCEDURE
47 LAW AND THERE EXISTS REASONABLE CAUSE TO BELIEVE THAT SUCH PERSON
48 VIOLATED THE PROVISIONS OF SECTION FIVE HUNDRED ELEVEN OF THIS CHAPTER
49 OR OPERATED A MOTOR VEHICLE IN VIOLATION OF SUBDIVISION ONE, TWO, TWO-A,
50 THREE, FOUR OR FOUR-A OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTI-
51 CLE OR OPERATED A MOTOR VEHICLE WITHOUT AN IGNITION INTERLOCK DEVICE
52 WHEN REQUIRED TO HAVE ONE PURSUANT TO THIS SECTION. THE COURT SHALL MAKE
53 A FINDING AND SET IT FORTH UPON THE RECORD, OR OTHERWISE SET IT FORTH IN
54 WRITING. THE FINDING SHALL BE FILED WITH THE DEPARTMENT IN A FORM
55 PRESCRIBED BY THE COMMISSIONER. AT SUCH TIME THE LICENSEE SHALL BE ENTI-
56 TLED TO AN OPPORTUNITY TO MAKE A STATEMENT REGARDING THE CHARGES AND

1 ISSUES AND TO PRESENT EVIDENCE TENDING TO REBUT THE COURT'S FINDINGS.
2 THE LICENSEE MAY PRESENT MATERIAL AND RELEVANT EVIDENCE, HOWEVER, HE OR
3 SHE MAY NOT CAUSE THE LAW ENFORCEMENT OFFICERS INVOLVED IN THE UNDERLY-
4 ING ARREST OR ARRESTS TO BE CALLED TO TESTIFY UNLESS THE LICENSEE FIRST
5 DEMONSTRATES TO THE SATISFACTION OF THE COURT A GOOD FAITH BASIS TO
6 BELIEVE SUCH OFFICERS WILL PROVIDE TESTIMONY INCONSISTENT WITH THE
7 FACTUAL PORTION OF THE ACCUSATORY INSTRUMENT WHICH FORMED THE BASIS OF
8 THE COURT'S FINDING OF COMPLIANCE WITH SECTION 100.40 OF THE CRIMINAL
9 PROCEDURE LAW AND THERE EXISTS REASONABLE CAUSE TO BELIEVE THAT THE
10 HOLDER VIOLATED THE SECTIONS CHARGED. IN NO EVENT SHALL THE ARRAIGNMENT
11 BE ADJOURNED OR OTHERWISE DELAYED MORE THAN THREE BUSINESS DAYS SOLELY
12 FOR THE PURPOSE OF ALLOWING THE LICENSEE TO REBUT THE COURT'S FINDING.
13 Upon the termination of the period of probation or conditional discharge
14 set by the court, the person may apply to the commissioner for restora-
15 tion of a license or privilege to operate a motor vehicle in accordance
16 with this chapter.

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

41 (c) The [post-revocation] conditional license described in [this
42 subdivision] SECTION ELEVEN HUNDRED NINETY-SIX OF THIS ARTICLE, may be
43 revoked by the commissioner for sufficient cause including but not
44 limited to, failure to comply with the terms of the condition of
45 probation or conditional discharge set forth by the court, conviction of
46 any traffic offense other than one involving parking, stopping or stand-
47 ing [or conviction of] AND SHALL BE REVOKED BY THE COMMISSIONER WHERE
48 SUCH PERSON IS FOUND BY THE COURT TO HAVE BEEN CHARGED WITH any alcohol
49 or drug related offense, misdemeanor or felony, ANY VIOLATION OF SECTION
50 ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, ANY VIOLATION OF SECTION FIVE
51 HUNDRED ELEVEN OF THIS ARTICLE, OR WITH OPERATING A MOTOR VEHICLE WITH-
52 OUT AN IGNITION INTERLOCK DEVICE WHEN REQUIRED TO DO SO, or failure to
53 install or maintain a court ordered ignition interlock device.

54 (d) [Nothing contained herein shall prohibit the court from requiring,
55 as a condition of probation or conditional discharge, the installation
56 of a functioning ignition interlock device in any vehicle owned or oper-

ated 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 UPON SENTENCING OR DATE OF PLEA DISPOSITION IN ADVANCE OF SENTENCING 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) 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 OR OTHER MONITOR where such person is under probation, SUPERVISION, or conditional discharge [supervision] MONITORING. A CLAIM BY SUCH PERSON THAT HE OR SHE HAS GOOD CAUSE FOR NOT INSTALLING AN IGNITION INTERLOCK DEVICE SHALL BE MADE TO THE COURT AT OR BEFORE SENTENCING, IN WRITING IN THE FORM OF A SWORN AFFIDAVIT SIGNED BY SUCH PERSON ASSERTING UNDER OATH THAT SUCH PERSON IS NOT THE REGISTERED OR TITLED OWNER OF ANY MOTOR VEHICLE AND WILL NOT OPERATE ANY MOTOR VEHICLE DURING THE PERIOD OF RESTRICTION, OR THAT SUCH PERSON DOES NOT HAVE ACCESS TO THE VEHICLE OPERATED BY SUCH PERSON AT THE TIME OF THE VIOLATION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, OR THAT THE REGISTERED OWNER OF THAT VEHICLE OR ANY VEHICLE REGISTERED TO SUCH PERSON'S HOUSEHOLD WILL NOT GIVE CONSENT FOR THE INSTALLATION OF AN IGNITION INTERLOCK DEVICE ON HIS OR HER VEHICLE. IN ADDITION, THE AFFIDAVIT MUST ALSO INCLUDE A STATEMENT REGARDING WHETHER SUCH PERSON OWNED ANY MOTOR VEHICLE ON THE DATE OF THE UNDERLYING VIOLATION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE AND WHETHER OWNERSHIP OF ANY OF THOSE VEHICLES HAS BEEN TRANSFERRED TO ANOTHER PARTY BY SALE, GIFT OR ANY OTHER MEANS SINCE THE DATE OF SAID VIOLATION. THE AFFIDAVIT MUST INCLUDE A STATEMENT FROM SUCH PERSON THAT HE OR SHE HAS NOT AND WILL NOT TRANSFER OWNERSHIP OF ANY VEHICLE TO EVADE INSTALLATION OF AN IGNITION INTERLOCK DEVICE. THE AFFIDAVIT MUST ALSO INCLUDE THE ADDRESS OF SUCH PERSON'S EMPLOYMENT (IF ANY) AND HOW SUCH PERSON INTENDS TO TRAVEL TO THAT LOCATION DURING THE PERIOD OF RESTRICTION. THE PERSON MAY ALSO INCLUDE ANY OTHER FACTS AND CIRCUMSTANCES SUCH PERSON BELIEVES TO BE RELEVANT TO THE CLAIM OF GOOD CAUSE. THE COURT MUST MAKE A FINDING WHETHER GOOD CAUSE EXISTS ON THE RECORD AND, IF GOOD CAUSE IS FOUND, ISSUE SUCH FINDING IN WRITING TO BE FILED BY SUCH PERSON WITH PROBATION OR THE IGNITION INTERLOCK MONITOR, AS APPROPRIATE. IN THE EVENT THE COURT DENIES SUCH PERSON'S CLAIM OF GOOD CAUSE ON THE BASIS OF THE AFFIDAVIT FILED WITH THE COURT, SUCH PERSON MUST BE GIVEN AN OPPORTUNITY TO BE HEARD. SUCH PERSON MAY ALSO WAIVE THE OPPORTUNITY TO BE HEARD. WHERE THE COURT FINDS GOOD CAUSE FOR SUCH PERSON NOT TO INSTALL AN IGNITION INTERLOCK DEVICE, THE PERIOD OF INTERLOCK RESTRICTION ON SUCH PERSON'S OPERATING RECORD SHALL REMAIN IN EFFECT FOR THE FULL PERIOD OF SUCH

1 PERSON'S CONDITIONAL DISCHARGE OR PROBATION PURSUANT TO ARTICLE
2 SIXTY-FIVE OF THE PENAL LAW AND THE COURT SHALL SENTENCE SUCH PERSON TO
3 WEAR A TRANSDERMAL ALCOHOL MONITORING DEVICE FOR A PERIOD OF NOT LESS
4 THAN SIX MONTHS. IN THE EVENT THE COURT ALSO SENTENCES SUCH PERSON TO
5 ABSTAIN OR RESTRICT HIS OR HER CONSUMPTION OF ALCOHOL DURING THE TRANS-
6 DERMAL ALCOHOL MONITORING PERIOD, THE DETECTION OF ALCOHOL BY THE TRANS-
7 DERMAL DEVICE SHALL BE REPORTED BY PROBATION OR THE MONITOR TO THE
8 COURT. WHERE NO SUCH RESTRICTION IS IMPOSED BY THE COURT, THE TRANSDER-
9 MAL DATA WILL BE REPORTED TO THE DEPARTMENT IN A FORM PRESCRIBED BY THE
10 COMMISSIONER FOR CONSIDERATION DURING RELICENSING. If [the] A person IS
11 ORDERED TO INSTALL AND MAINTAIN AN IGNITION INTERLOCK DEVICE AND SUCH
12 PERSON fails to provide [for such] proof of installation TO PROBATION OR
13 THE MONITOR, AS APPROPRIATE, absent a finding by the court of good cause
14 for that failure which is entered in the record, the court may revoke,
15 modify, or terminate the person's sentence of probation or conditional
16 discharge as provided under law.

17 (b) When a court imposes the condition specified in subdivision one of
18 this section, the court shall notify the commissioner in such manner as
19 the commissioner may prescribe, and the commissioner shall note such
20 condition on the operating record of the person subject to such condi-
21 tions.

22 (a) The cost of installing and maintaining the ignition interlock
23 device OR TRANSDERMAL ALCOHOL MONITORING DEVICE shall be borne by the
24 person subject to such condition unless the court determines such person
25 is financially unable to afford such cost whereupon such cost [may]
26 SHALL be imposed pursuant to a payment plan or, IF NO PAYMENT PLAN CAN
27 BE ESTABLISHED, THE COURT MUST STATE THE REASONS WHY A PAYMENT PLAN IS
28 NOT FEASIBLE ON THE RECORD AND MAY ORDER THE COST TO BE waived. In the
29 event of such waiver, the cost of the device shall be borne in accord-
30 ance with regulations issued under paragraph (g) of subdivision one of
31 section eleven hundred ninety-three of this article or pursuant to such
32 other agreement as may be entered into for provision of the device. Such
33 cost shall be considered a fine for the purposes of subdivision five of
34 section 420.10 of the criminal procedure law. Such cost shall not
35 replace, but shall instead be in addition to, any fines, surcharges, or
36 other costs imposed pursuant to this chapter or other applicable laws.

37 S 4. Subdivision 8 of section 1198 of the vehicle and traffic law, as
38 amended by chapter 496 of the laws of 2009, is amended to read as
39 follows:

40 8. Employer vehicle. Notwithstanding the provisions of subdivision one
41 and paragraph (d) of subdivision nine of this section, if a person is
42 required to operate a motor vehicle owned by said person's employer in
43 the course and scope of his or her employment, the person may operate
44 that vehicle without installation of an approved ignition interlock
45 device only in the course and scope of such employment and only if the
46 employer has been notified that the person's driving privilege has been
47 restricted under the provisions of this article or the penal law and the
48 person whose privilege has been so restricted has provided the court and
49 probation department with written documentation indicating the employer
50 has knowledge of the restriction imposed and has granted permission for
51 the person to operate the employer's vehicle without the device only for
52 business purposes. The person shall notify the court and the probation
53 department, OR THE INTERLOCK MONITOR, AS APPROPRIATE, of his or her
54 intention to so operate the employer's vehicle. THE COURT MAY GRANT OR
55 DENY SUCH PERSON'S REQUEST TO OPERATE A MOTOR VEHICLE, OWNED BY SAID
56 PERSON'S EMPLOYER, IN THE COURSE AND SCOPE OF HIS OR HER EMPLOYMENT

1 WITHOUT INSTALLATION OF AN APPROVED IGNITION INTERLOCK DEVICE. WHERE THE
2 COURT GRANTS THE REQUEST, IT MUST BE GRANTED IN WRITING IN A FORM
3 PRESCRIBED BY THE COMMISSIONER TO BE FILED WITH PROBATION OR THE MONI-
4 TOR, AS APPROPRIATE, AND TO BE CARRIED BY SUCH PERSON WHENEVER SAID
5 PERSON IS OPERATING THE EMPLOYER'S VEHICLE IN ACCORDANCE WITH THIS
6 SECTION AND SUCH PERSON MUST PRODUCE SAID DOCUMENT TO A LAW ENFORCEMENT
7 OFFICER UPON REQUEST. ADDITIONALLY, THE COMMISSIONER SHALL NOTE ON THE
8 OPERATOR'S RECORD OF ANY PERSON AUTHORIZED TO OPERATE AN EMPLOYER VEHI-
9 CLE PURSUANT TO THIS SUBDIVISION THAT SUCH PERSON IS ONLY AUTHORIZED TO
10 OPERATE WITHOUT AN IGNITION INTERLOCK DEVICE WHILE DRIVING AN EMPLOYER
11 VEHICLE WITHIN THE COURSE AND SCOPE OF HIS OR HER EMPLOYMENT. A motor
12 vehicle owned by a business entity which business entity is all or part-
13 ly owned or controlled by a person otherwise subject to the provisions
14 of this article or the penal law is not a motor vehicle owned by the
15 employer for purposes of the exemption provided in this subdivision. The
16 provisions of this subdivision shall apply only to the operation of such
17 vehicle in the scope of such employment.

18 S 5. Subdivision 15-a of section 259-c of the executive law, as
19 amended by section 38-b of subpart A of part C of chapter 62 of the laws
20 of 2011, is amended to read as follows:

21 15-a. Notwithstanding any other provision of law, where a person is
22 serving a sentence for a violation of section 120.03, 120.04, 120.04-a,
23 125.12, 125.13 or 125.14 of the penal law, or a felony as defined in
24 paragraph (c) of subdivision one of section eleven hundred ninety-three
25 of the vehicle and traffic law, if such person is released on parole or
26 conditional release the board shall require as a mandatory condition of
27 such release, that such person install and maintain, in accordance with
28 the provisions of section eleven hundred ninety-eight of the vehicle and
29 traffic law, an ignition interlock device in any motor vehicle TITLED,
30 REGISTERED OR OTHERWISE owned or operated by such person during the term
31 of such parole or conditional release for such crime. THIS MANDATORY
32 INSTALLATION OF AN IGNITION INTERLOCK DEVICE AS A CONDITION OF RELEASE
33 SHALL RUN CONCURRENTLY WITH ANY REQUIRED INSTALLATION OF AN IGNITION
34 INTERLOCK DEVICE ORDERED BY THE COURT AS A CONDITION OF A CONSECUTIVE
35 PERIOD OF CONDITIONAL DISCHARGE OR PROBATION PURSUANT TO SECTION 60.21
36 OF THE PENAL LAW. MONITORING DURING THE PERIOD OF PAROLE SHALL BE
37 PROVIDED BY THE DIVISION OF PAROLE. IF THERE IS AN ADDITIONAL PERIOD OF
38 PROBATION EXTENDING BEYOND THE PERIOD OF PAROLE, MONITORING OF ANY
39 REMAINING PERIOD OF IGNITION INTERLOCK RESTRICTION SHALL BE TRANSFERRED
40 FROM THE DIVISION OF PAROLE TO PROBATION AT THE CONCLUSION OF PAROLE.
41 Provided further, however, the board may not otherwise authorize the
42 operation of a motor vehicle by any person whose license or privilege to
43 operate a motor vehicle has been revoked pursuant to the provisions of
44 the vehicle and traffic law.

45 S 6. Section 60.36 of the penal law, as added by chapter 496 of the
46 laws of 2009, is amended to read as follows:

47 S 60.36 Authorized dispositions; driving while intoxicated offenses.

48 Where a court is imposing a sentence for a violation of subdivision
49 two, two-a, [or] three, OR PARAGRAPH (B) OF SUBDIVISION FOUR-A of
50 section eleven hundred ninety-two of the vehicle and traffic law OR FOR
51 A VIOLATION OF SECTION 120.03, 120.04, 120.04-A, 125.12, 125.13 OR
52 125.14 OF THIS CHAPTER, OR A FELONY AS DEFINED IN PARAGRAPH (C) OF
53 SUBDIVISION ONE OF SECTION ELEVEN HUNDRED NINETY-THREE OF THE VEHICLE
54 AND TRAFFIC LAW, pursuant to sections 65.00 or 65.05 of this title and,
55 as a condition of such sentence, orders the installation and maintenance
56 of an ignition interlock device, the court may impose any other penalty

1 authorized pursuant to section eleven hundred ninety-three of the vehi-
2 cle and traffic law.

3 S 7. Section 60.21 of the penal law, as added by chapter 496 of the
4 laws of 2009, is amended to read as follows:

5 S 60.21 Authorized dispositions; driving while intoxicated or aggravated
6 driving while intoxicated.

7 Notwithstanding paragraph (d) of subdivision two of section 60.01 of
8 this article, when a person is to be sentenced upon a conviction for a
9 violation of subdivision two, two-a [or], three OR PARAGRAPH (B) OF
10 SUBDIVISION FOUR-A of section eleven hundred ninety-two of the vehicle
11 and traffic law, OR FOR A VIOLATION OF SECTION 120.03, 120.04, 120.04-A,
12 125.12, 125.13 OR 125.14 OF THIS CHAPTER, OR A FELONY AS DEFINED IN
13 PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION ELEVEN HUNDRED NINETY-THREE
14 OF THE VEHICLE AND TRAFFIC LAW, OR ANY FELONY FOR WHICH A VIOLATION OF
15 SUBDIVISION TWO, TWO-A, THREE, PARAGRAPH (B) OF SUBDIVISION FOUR-A OF
16 SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW IS AN
17 ESSENTIAL ELEMENT the court may sentence such person to a period of
18 imprisonment authorized by article seventy of this title and shall
19 sentence such person to a period of probation or conditional discharge
20 in accordance with the provisions of section 65.00 of this title and
21 shall order the installation and maintenance of a functioning ignition
22 interlock device. Such period of probation or conditional discharge
23 shall run consecutively to any period of imprisonment and shall commence
24 immediately upon such person's release from imprisonment NOTWITHSTAND-
25 ING, SUCH PERSON ALSO HAVING BEEN CONVICTED OF FELONY CHARGES THAT DO
26 NOT CONTAIN A VIOLATION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE
27 VEHICLE AND TRAFFIC LAW AS AN ESSENTIAL ELEMENT. WHERE A PERSON IS
28 SENTENCED TO THE MAXIMUM TERM OF INCARCERATION WITH A CONSECUTIVE PERIOD
29 OF CONDITIONAL DISCHARGE OR PROBATION, AND THE COURT FINDS SUCH PERSON
30 TO HAVE VIOLATED THE CONDITIONS OF DISCHARGE OR PROBATION, THE COURT IN
31 ITS DISCRETION MAY SENTENCE THE DEFENDANT TO AN ADDITIONAL PERIOD OF
32 INCARCERATION NOT TO EXCEED NINETY DAYS FOR EACH VIOLATION. NOTHING
33 CONTAINED IN THIS SECTION SHALL PROHIBIT A COURT FROM IMPOSING ANY OTHER
34 SENTENCE OR MODIFICATION PERMITTED BY LAW.

35 S 8. Subparagraph 10 of paragraph b of subdivision 2 of section 1193
36 of the vehicle and traffic law, as added by chapter 173 of the laws of
37 1990, is amended to read as follows:

38 (10) Action required by commissioner. Where a court fails to impose,
39 or incorrectly imposes, a suspension or revocation required by this
40 subdivision, OR AN INTERLOCK RESTRICTION REQUIRED BY SECTION ELEVEN
41 HUNDRED NINETY-EIGHT OF THIS ARTICLE, the commissioner shall, upon
42 receipt of a certificate of conviction filed pursuant to section five
43 hundred fourteen of this chapter OR UPON NOTICE OF AN IGNITION INTERLOCK
44 REQUIREMENT BEFORE THE SENTENCE DATE AS PART OF A PLEA DISPOSITION,
45 impose such mandated suspension [or], revocation[,] OR RESTRICTION which
46 shall supersede any such order which the court may have imposed.

47 S 9. Section 510 of the vehicle and traffic law is amended by adding a
48 new subdivision 8-a to read as follows:

49 8-A. PROOF OF COMPLIANCE. A LICENSE OR REGISTRATION MAY BE RESTORED
50 BY DIRECTION OF THE COMMISSIONER BUT NOT OTHERWISE. WHERE THE SUSPEN-
51 SION, REVOCATION OR RESTRICTION IS THE RESULT OF A CRIMINAL CONVICTION,
52 NO LICENSE SHALL BE RESTORED AND NO RESTRICTION SHALL BE REMOVED UNTIL
53 PROOF OF COMPLIANCE WITH EACH OF THE CONDITIONS OF THE OPERATOR'S
54 SENTENCE HAS BEEN PROVIDED TO THE DEPARTMENT IN A FORM PRESCRIBED BY THE
55 COMMISSIONER.

1 S 10. Paragraph (h) of subdivision 2 of section 503 of the vehicle and
2 traffic law, as amended by section 1 of part PP of chapter 59 of the
3 laws of 2009, is amended to read as follows:

4 (h) An applicant whose driver's license has been RESTRICTED PURSUANT
5 TO (I) PARAGRAPHS (B) AND (C) OF SUBDIVISION ONE OF SECTION ELEVEN
6 HUNDRED NINETY-THREE OF THIS CHAPTER AND (II) SECTION ELEVEN HUNDRED
7 NINETY-EIGHT OF THIS CHAPTER OR revoked pursuant to (i) section five
8 hundred ten of this title, (ii) section eleven hundred ninety-three of
9 this chapter, [and] (iii) section eleven hundred ninety-four of this
10 chapter OR, (IV) A FINDING OF DRIVING AFTER HAVING CONSUMED ALCOHOL
11 PURSUANT TO THE PROVISIONS OF SECTION ELEVEN HUNDRED NINETY-TWO-A OF
12 THIS CHAPTER, shall, upon application for issuance of a driver's license
13 OR REMOVAL OF THE RESTRICTION, pay to the commissioner a fee of one
14 hundred dollars. [When the basis for the revocation is a finding of
15 driving after having consumed alcohol pursuant to the provisions of
16 section eleven hundred ninety-two-a of this chapter, the fee to be paid
17 to the commissioner shall be one hundred dollars.] Such fee is not
18 refundable and shall not be returned to the applicant regardless of the
19 action the commissioner may take on such person's application for rein-
20 statement of such driving license. Such fee shall be in addition to any
21 other fees presently levied [but shall not apply to an applicant whose
22 driver's license was revoked for failure to pass a reexamination or to
23 an applicant who has been issued a conditional or restricted use license
24 under the provisions of article twenty-one-A or thirty-one of this chap-
25 ter].

26 S 11. Subdivision 4-a of section 1192 of the vehicle and traffic law,
27 as added by chapter 732 of the laws of 2006, is amended to read as
28 follows:

29 4-a. Driving while ability impaired by the combined influence of drugs
30 or of alcohol and any drug or drugs. (A) No person shall operate a motor
31 vehicle while the person's ability to operate such motor vehicle is
32 impaired by the combined influence of drugs [or].

33 (B) NO PERSON SHALL OPERATE A MOTOR VEHICLE WHILE THE PERSON'S ABILITY
34 TO OPERATE SUCH MOTOR VEHICLE IS IMPAIRED BY THE COMBINED INFLUENCE of
35 alcohol and any drug or drugs.

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

39 (k-1) Install and maintain a functioning ignition interlock device, as
40 that term is defined in section one hundred nineteen-a of the vehicle
41 and traffic law, in any vehicle owned or operated by the defendant [if
42 the court in its discretion determines that such a condition is neces-
43 sary to ensure the public safety. The court may require such condition
44 only where a person has been convicted of a violation of subdivision
45 two, two-a or three of section eleven hundred ninety-two of the vehicle
46 and traffic law, or any crime defined by the vehicle and traffic law or
47 this chapter of which an alcohol-related violation of any provision of
48 section eleven hundred ninety-two of the vehicle and traffic law is an
49 essential element]. The offender shall be required to install and oper-
50 ate the ignition interlock device [only] in accordance with section
51 eleven hundred ninety-eight of the vehicle and traffic law.

52 S 13. Paragraph (d) of subdivision 2 of section 1193 of the vehicle
53 and traffic law, as added by chapter 47 of the laws of 1988 and subpara-
54 graph 1 as amended by section 34 of part LL of chapter 56 of the laws of
55 2010, is amended to read as follows:

1 (d) Suspension or revocation; sentencing. [(1)] Notwithstanding
2 anything to the contrary contained in a certificate of relief from disa-
3 bilities or a certificate of good conduct issued pursuant to article
4 twenty-three of the correction law, where a suspension or revocation,
5 other than a revocation required to be issued by the commissioner, is
6 mandatory pursuant to paragraph (a) or (b) of this subdivision, the
7 magistrate, justice or judge shall issue an order suspending or revoking
8 such license upon sentencing, and the license holder shall surrender
9 such license to the court. [Except as hereinafter provided, such suspen-
10 sion or revocation shall take effect immediately.

11 (2) Except where the license holder has been charged with a violation
12 of article one hundred twenty or one hundred twenty-five of the penal
13 law arising out of the same incident or convicted of such violation or a
14 violation of any subdivision of section eleven hundred ninety-two of
15 this article within the preceding five years, the judge, justice or
16 magistrate may issue an order making said license suspension or revoca-
17 tion take effect twenty days after the date of sentencing. The license
18 holder shall be given a copy of said order permitting the continuation
19 of driving privileges for twenty days after sentencing, if granted by
20 the court. The court shall forward to the commissioner the certificates
21 required in sections five hundred thirteen and five hundred fourteen of
22 this chapter, along with a copy of any order issued pursuant to this
23 paragraph and the license, within ninety-six hours of sentencing.]

24 S 14. Paragraphs (b) and (d) of subdivision 1 of section 160.10 of the
25 criminal procedure law, paragraph (b) as amended by chapter 762 of the
26 laws of 1971, paragraph (d) as amended by chapter 232 of the laws of
27 2010, are amended and a new paragraph (e) is added to read as follows:

28 (b) A misdemeanor defined in the penal law OR THE VEHICLE AND TRAFFIC
29 LAW; or

30 (d) Loitering for the purpose of engaging in a prostitution offense as
31 defined in subdivision two of section 240.37 of the penal law[.]; OR

32 (E) AN OFFENSE WHICH WOULD CONSTITUTE A MISDEMEANOR IF SUCH PERSON HAD
33 A PREVIOUS JUDGMENT OR CONVICTION FOR THE SAME OFFENSE.

34 S 15. Paragraphs (e) and (f) of subdivision 7 of section 1196 of the
35 vehicle and traffic law, paragraph (e) as added by chapter 47 of the
36 laws of 1988 and paragraph (f) as added by chapter 420 of the laws of
37 1989, are amended and a new paragraph (i) is added to read as follows:

38 (e) The conditional license or privileges described in this subdivi-
39 sion may be revoked by the commissioner, for sufficient cause including,
40 but not limited to, failure to register in the program, failure to
41 attend or satisfactorily participate in the sessions, conviction of any
42 traffic infraction other than one involving parking, stopping or stand-
43 ing or conviction of any alcohol or drug-related traffic offense, misde-
44 meanor or felony. THE CONDITIONAL LICENSE OR PRIVILEGES DESCRIBED IN
45 THIS SUBDIVISION SHALL BE REVOKED BY THE COMMISSIONER WHEN THERE HAS
46 BEEN A FINDING BY A COURT, FILED WITH THE DEPARTMENT IN A FORM
47 PRESCRIBED BY THE COMMISSIONER, THAT THE ACCUSATORY INSTRUMENT CONFORMS
48 TO THE REQUIREMENTS OF SECTION 100.40 OF THE CRIMINAL PROCEDURE LAW AND
49 THERE EXISTS REASONABLE CAUSE TO BELIEVE THAT THE OPERATOR HAS COMMITTED
50 A VIOLATION OF SECTION FIVE HUNDRED ELEVEN OF THIS CHAPTER DURING A
51 LICENSE SUSPENSION OR REVOCATION PERIOD, HAS COMMITTED A VIOLATION OF
52 SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, HAS OPERATED A MOTOR
53 VEHICLE WITHOUT AN IGNITION INTERLOCK DEVICE WHEN ONE WAS REQUIRED
54 PURSUANT TO SECTION ELEVEN HUNDRED NINETY-EIGHT OF THIS ARTICLE, OR HAS
55 VIOLATED ANY CONDITION OF PROBATION OR CONDITIONAL DISCHARGE SET FORTH
56 BY THE COURT RELATING TO THE OPERATION OF A MOTOR VEHICLE OR THE

1 CONSUMPTION OF ALCOHOL. THE COURT'S FINDING MUST CONFORM TO THE PROCE-
2 DURES SET FORTH IN PARAGRAPH (C) OF SUBDIVISION THREE OF SECTION ELEVEN
3 HUNDRED NINETY-EIGHT OF THIS ARTICLE DENYING A REQUEST FOR A CONDITIONAL
4 LICENSE. A REVOCATION OF THE CONDITIONAL LICENSE PURSUANT TO THIS
5 SECTION SHALL REINSTATE THE UNDERLYING ALCOHOL-RELATED SUSPENSION OR
6 REVOCATION FROM WHICH THE CONDITIONAL LICENSE WAS DERIVED. In addition,
7 the commissioner shall have the right, after a hearing, to revoke the
8 conditional license or privilege upon receiving notification or evidence
9 that the offender is not attempting in good faith to accept rehabili-
10 tation. In the event of such revocation, the fee described in subdivi-
11 sion six of this section shall not be refunded.

12 (f) It shall be a traffic infraction for the holder of a conditional
13 license or privilege to operate a motor vehicle upon a public highway
14 for any use other than those authorized pursuant to paragraph (a) of
15 this subdivision, UNLESS THE OPERATION RESULTS IN A CHARGE FOR A
16 VIOLATION OF SECTION FIVE HUNDRED ELEVEN OF THIS CHAPTER DURING A
17 LICENSE SUSPENSION OR REVOCATION PERIOD, FOR A VIOLATION OF SECTION
18 ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, OR FOR OPERATION OF A MOTOR
19 VEHICLE WITHOUT AN IGNITION INTERLOCK DEVICE WHEN ONE IS REQUIRED PURSU-
20 ANT TO SECTION ELEVEN HUNDRED NINETY-EIGHT OF THIS ARTICLE AND A COURT,
21 PURSUANT TO PARAGRAPH (E) OF THIS SUBDIVISION HAS ISSUED A FINDING,
22 FILED WITH THE DEPARTMENT IN A FORM PRESCRIBED BY THE COMMISSIONER, THAT
23 THE ACCUSATORY INSTRUMENT CONFORMS TO THE REQUIREMENTS OF SECTION 100.40
24 OF THE CRIMINAL PROCEDURE LAW AND THERE EXISTS REASONABLE CAUSE TO
25 BELIEVE THAT THE OPERATOR HAS COMMITTED THE VIOLATION OR VIOLATIONS
26 CHARGED. WHEN SUCH CHARGES ARE FILED AND SUCH A FINDING BY THE COURT IS
27 MADE, THE CONDITIONAL LICENSE SHALL BE IMMEDIATELY REVOKED. When a
28 [person] HOLDER OF A CONDITIONAL LICENSE OR PRIVILEGE is convicted of
29 [this] THE offense OF OPERATING A MOTOR VEHICLE UPON A PUBLIC HIGHWAY
30 FOR ANY USE OTHER THAN THOSE AUTHORIZED PURSUANT TO PARAGRAPH (A) OF
31 THIS SUBDIVISION, the sentence of the court must be a fine of not less
32 than two hundred dollars nor more than five hundred dollars or a term of
33 imprisonment of not more than fifteen days or both such fine and impri-
34 sonment. Additionally, the conditional license or privileges described
35 in this subdivision shall be revoked by the commissioner upon receiving
36 notification from the court that the holder thereof has been convicted
37 of this offense.

38 (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE COMMISSIONER MAY
39 GRANT A POST-REVOCATION CONDITIONAL LICENSE TO A PERSON WHO IS OTHERWISE
40 INELIGIBLE TO RECEIVE A CONDITIONAL LICENSE WHEN THAT PERSON HAS BEEN
41 CONVICTED OF A VIOLATION OF SUBDIVISION TWO, TWO-A, THREE OR PARAGRAPH
42 (B) OF SUBDIVISION FOUR-A OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS
43 ARTICLE AND WHO HAS BEEN SENTENCED TO A PERIOD OF PROBATION, PROVIDED
44 THAT PROBATION CONSENTS TO THE ISSUANCE OF A POST-REVOCATION CONDITIONAL
45 LICENSE AND THE PERSON HAS SATISFIED THE MINIMUM PERIOD OF LICENSE REVO-
46 CATION ESTABLISHED BY LAW AND THE COMMISSIONER HAS BEEN NOTIFIED THAT
47 SUCH PERSON MAY OPERATE ONLY A MOTOR VEHICLE EQUIPPED WITH A FUNCTIONING
48 IGNITION INTERLOCK DEVICE. NO SUCH REQUEST SHALL BE MADE NOR SHALL SUCH
49 A LICENSE BE GRANTED, HOWEVER, IF SUCH PERSON HAS BEEN DEEMED BY A COURT
50 TO HAVE VIOLATED ANY CONDITION OF PROBATION OR CONDITIONAL DISCHARGE SET
51 FORTH BY THE COURT RELATING TO THE OPERATION OF A MOTOR VEHICLE OR THE
52 CONSUMPTION OF ALCOHOL OR IF SUCH PERSON HAS BEEN CHARGED WITH A
53 VIOLATION OF SECTION FIVE HUNDRED ELEVEN OF THIS CHAPTER DURING A
54 LICENSE SUSPENSION OR REVOCATION PERIOD, FOR A VIOLATION OF SECTION
55 ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, HAS OPERATED A MOTOR VEHICLE
56 WITHOUT AN IGNITION INTERLOCK DEVICE WHEN ONE WAS REQUIRED PURSUANT TO

SECTION ELEVEN HUNDRED NINETY-EIGHT OF THIS ARTICLE AND A COURT, PURSUANT TO PARAGRAPH (E) OF THIS SUBDIVISION HAS ISSUED A FINDING, FILED WITH THE DEPARTMENT IN A FORM PRESCRIBED BY THE COMMISSIONER, 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 OPERATOR HAS COMMITTED THE VIOLATION OR VIOLATIONS CHARGED.

S 16. Subdivision 7 and paragraph (e) of subdivision 9 of section 1198 of the vehicle and traffic law, subdivision 7 as amended by chapter 669 of the laws of 2007 and paragraph (e) of subdivision 9 as amended by chapter 496 of the laws of 2009, are amended to read as follows:

7. [Use of other vehicles. (a) Any requirement of this article or the penal law that a person operate a vehicle only if it is equipped with an ignition interlock device shall apply to every motor vehicle operated by that person including, but not limited to, vehicles that are leased, rented or loaned.

(b) No person shall knowingly rent, lease, or lend a motor vehicle to a person known to have had his or her driving privilege restricted to vehicles equipped with an ignition interlock device unless the vehicle is so equipped. Any person whose driving privilege is so restricted shall notify any other person who rents, leases, or loans a motor vehicle to him or her of such driving restriction.

(c) A violation of paragraph (a) or (b) of this subdivision shall be a misdemeanor.]

VIOLATIONS. (A) ANY FAILED TASK INCLUDING FAILING TO INSTALL A DEVICE, FAILURE TO APPEAR FOR A SERVICE VISIT OR FAILURE TO COMPLY WITH SERVICE INSTRUCTIONS, CIRCUMVENTIONS OR TAMPERINGS, IN ACCORDANCE WITH THE OFFICE OF PROBATION AND CORRECTIONAL ALTERNATIVES (OPCA) REGULATIONS UNDER 9 NYCRR 358 SHALL CONSTITUTE A VIOLATION OF THE CONDITIONS OF A PERSON'S SENTENCE AND MAY ALSO CONSTITUTE A SEPARATE CRIME. SUCH VIOLATIONS WILL BE ADJUDICATED BY THE SENTENCING COURT IN ITS DISCRETION.

(B) A FAILED TEST INCLUDING A FAILED START-UP RE-TEST, A MISSED START-UP RE-TEST, A FAILED ROLLING RE-TEST, A MISSED ROLLING RE-TEST, THE DEVICE ENTERING LOCKOUT MODE, AND ANY TEST OR RE-TEST WHERE THE OPERATOR REGISTERS .05 OF ONE PER CENTUM OR MORE BY WEIGHT OF ALCOHOL IN SUCH PERSON'S BLOOD SHALL CONSTITUTE A VIOLATION OF THE CONDITIONS OF A PERSON'S SENTENCE IN ACCORDANCE WITH THE OPCA REGULATIONS UNDER 9 NYCRR 358 AND ALSO MAY CONSTITUTE A SEPARATE CRIME. SUCH VIOLATIONS WILL BE ADJUDICATED BY THE SENTENCING COURT IN ITS DISCRETION.

(C) A FAILED TRANSDERMAL ALCOHOL MONITORING REPORT SHALL CONSTITUTE A VIOLATION OF THE OFFENDER'S SENTENCE WHERE THE COURT HAS ORDERED THE OFFENDER TO ABSTAIN FROM THE CONSUMPTION OF ALCOHOL OR RESTRICT THE CONSUMPTION OF ALCOHOL TO LEVELS BELOW A CERTAIN BLOOD ALCOHOL LEVEL DESIGNATED BY THE COURT. ABSTINENCE REQUIRED BY A TREATMENT PROVIDER AS A RESULT OF COURT-ORDERED TREATMENT SHALL BE CONSTRUED FOR THE PURPOSES OF THIS SECTION AS COURT-ORDERED ABSTINENCE. AT THE CONCLUSION OF THE COURT-ORDERED TRANSDERMAL ALCOHOL MONITORING PERIOD, THE TRANSDERMAL ALCOHOL REPORT OR A SUMMARY OF ITS CONTENTS SHALL BE FORWARDED TO THE DEPARTMENT BY THE MONITOR IN A FORM PRESCRIBED BY THE COMMISSIONER.

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

1 (F) In addition to any other provisions of law, any person convicted
2 of a violation of paragraph (a), (b), (c), [or] (d), OR (E) of this
3 subdivision shall be guilty of a Class A misdemeanor.

4 S 17. Subparagraph (i) of paragraph (a) of subdivision 3 of section
5 511 of the vehicle and traffic law, as amended by chapter 732 of the
6 laws of 2006, is amended to read as follows:

7 (i) commits the offense of aggravated unlicensed operation of a motor
8 vehicle in the second degree as provided in subparagraph (ii), (iii) or
9 (iv) of paragraph (a) of subdivision two of this section OR HAS A CONDI-
10 TIONAL LICENSE PURSUANT TO PARAGRAPH (A) OF SUBDIVISION SEVEN OF SECTION
11 ELEVEN HUNDRED NINETY-SIX OF THIS CHAPTER and is operating a motor vehi-
12 cle while under the influence of alcohol or a drug in violation of
13 subdivision one, two, two-a, three, four, four-a or five of section
14 eleven hundred ninety-two of this chapter; or

15 S 18. This act shall take effect on the ninetieth day after it shall
16 have become a law; provided, however, that the amendments to subdivi-
17 sions 1, 2, 3 and 4 and paragraph (a) of subdivision 5 of section 1198
18 of the vehicle and traffic law made by section three of this act, the
19 amendments to subdivision 8 of section 1198 of the vehicle and traffic
20 law made by section four of this act and the amendments to subdivision 7
21 and paragraph (e) of subdivision 9 of section 1198 of the vehicle and
22 traffic law made by section sixteen of this act shall not affect the
23 repeal of such section and shall be deemed repealed therewith.