

2285

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. WEISENBERG, ROBERTS, STEVENSON, GUNTHER, McDO-
NOUGH, RAIA, TITUS, SWEENEY, SALADINO, McKEVITT, PERRY, JAFFEE,
COLTON, SCHIMEL, HOOPER -- Multi-Sponsored by -- M. of A. BRENNAN,
CERETTO, CURRAN, FINCH, MALLIOTAKIS, McLAUGHLIN, ROSENTHAL, 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

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

LBD01426-02-3

1 of subdivision two, two-a [or], three OR PARAGRAPH (B) OF SUBDIVISION
2 FOUR-A of section eleven hundred ninety-two of this article to a period
3 of probation or conditional discharge, as a condition of which it shall
4 order such person NOT TO OPERATE A MOTOR VEHICLE WITHOUT AN IGNITION
5 INTERLOCK DEVICE, NOT TO OPERATE A MOTOR VEHICLE WITH A BLOOD ALCOHOL
6 CONCENTRATION ABOVE THE SETPOINT OF THE IGNITION INTERLOCK DEVICE AND to
7 install and maintain, in accordance with the provisions of section elev-
8 en hundred ninety-eight of this article, an ignition interlock device in
9 any motor vehicle TITLED, REGISTERED OR OTHERWISE owned or operated by
10 such person OR, IF SUCH PERSON DOES NOT OWN A MOTOR VEHICLE, IN THE
11 VEHICLE OPERATED BY SUCH PERSON AT THE TIME OF THE VIOLATION OF SECTION
12 ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, OR IN AT LEAST ONE VEHICLE
13 REGISTERED TO SUCH PERSON'S HOUSEHOLD during the term of such probation
14 or conditional discharge imposed for such violation of section eleven
15 hundred ninety-two of this article and in no event for less than six
16 months. THE PERIOD OF INTERLOCK RESTRICTION SHALL COMMENCE FROM THE DATE
17 OF SENTENCING OR, IN THE CASE OF A PLEA DISPOSITION, MAY COMMENCE FROM
18 THE DATE OF INSTALLATION OF AN IGNITION INTERLOCK DEVICE AT A DATE IN
19 ADVANCE OF SENTENCING. THE IGNITION INTERLOCK DEVICE SHALL BE INSTALLED
20 FOR NO LESS THAN SIX MONTHS, REGARDLESS OF THE COMMENCEMENT DATE. IN THE
21 EVENT THAT THE COURT MAKES A DETERMINATION OF GOOD CAUSE FOR NOT
22 INSTALLING AN IGNITION INTERLOCK DEVICE PURSUANT TO SUBDIVISION FOUR OF
23 SECTION ELEVEN HUNDRED NINETY-EIGHT OF THIS ARTICLE ON THE BASIS THAT
24 SUCH PERSON DOES NOT OWN AND WILL NOT OPERATE A MOTOR VEHICLE, THE
25 IGNITION INTERLOCK RESTRICTION SHALL REMAIN IN EFFECT FOR THE FULL PERI-
26 OD OF SUCH PERSON'S CONDITIONAL DISCHARGE OR PROBATION PURSUANT TO ARTI-
27 CLE SIXTY-FIVE OF THE PENAL LAW AND THE COURT SHALL SENTENCE SUCH PERSON
28 TO WEAR A TRANSDERMAL ALCOHOL MONITORING DEVICE FOR A PERIOD OF NOT LESS
29 THAN SIX MONTHS. UNDER NO CIRCUMSTANCES SHALL A CONDITIONAL LICENSE BE
30 ISSUED, OR A LICENSE OR PRIVILEGE TO OPERATE A MOTOR VEHICLE BE GRANTED
31 OR RESTORED UNTIL SUCH PERSON CAN DEMONSTRATE COMPLIANCE WITH EITHER THE
32 IGNITION INTERLOCK OR TRANSDERMAL ALCOHOL MONITORING PROVISIONS OF THIS
33 SECTION PURSUANT TO SUBDIVISION NINE OF SECTION FIVE HUNDRED TEN OF THIS
34 CHAPTER. FOR THE PURPOSES OF OBTAINING A CONDITIONAL LICENSE WHILE UNDER
35 THE PERIOD OF RESTRICTION, SUCH COMPLIANCE CAN BE DEMONSTRATED BY
36 PROVIDING PROOF AT THE TIME OF APPLICATION FOR A CONDITIONAL LICENSE OF
37 THE INSTALLATION OF AN IGNITION INTERLOCK DEVICE TO BE MONITORED PURSU-
38 ANT TO SECTION ELEVEN HUNDRED NINETY-EIGHT OF THIS ARTICLE FOR A PERIOD
39 OF NO LESS THAN THE FIRST SIX MONTHS AFTER THE CONDITIONAL LICENSE IS
40 GRANTED. THE PROOF WILL BE PROVIDED TO THE DEPARTMENT IN A FORM
41 PRESCRIBED BY THE COMMISSIONER. [Provided, however, the] THE court may
42 not authorize the operation of a motor vehicle by any person whose
43 license or privilege to operate a motor vehicle has been revoked pursu-
44 ant to the provisions of this section.

45 (c) Felony offenses. (i) A person who operates a vehicle (A) in
46 violation of subdivision two, two-a, three, four or four-a of section
47 eleven hundred ninety-two of this article after having been convicted of
48 a violation of subdivision two, two-a, three, four or four-a of such
49 section or of vehicular assault in the second or first degree, as
50 defined, respectively, in sections 120.03 and 120.04 and aggravated
51 vehicular assault as defined in section 120.04-a of the penal law or of
52 vehicular manslaughter in the second or first degree, as defined,
53 respectively, in sections 125.12 and 125.13 and aggravated vehicular
54 homicide as defined in section 125.14 of such law, within the preceding
55 ten years, or (B) in violation of paragraph (b) of subdivision two-a of
56 section eleven hundred ninety-two of this article shall be guilty of a

1 class E felony, and shall be punished by a fine of not less than one
2 thousand dollars nor more than five thousand dollars or by a period of
3 imprisonment as provided in the penal law, or by both such fine and
4 imprisonment.

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

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

COMPLIANCE CAN BE DEMONSTRATED BY PROVIDING PROOF AT THE TIME OF APPLICATION FOR A CONDITIONAL LICENSE PROOF OF THE INSTALLATION OF AN IGNITION INTERLOCK DEVICE TO BE MONITORED PURSUANT TO SECTION ELEVEN 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

1 of this section and, as applicable, in accordance with the provisions of
2 subdivisions one and one-a of section eleven hundred ninety-three of
3 this article; provided, however, the court may not authorize the opera-
4 tion of a motor vehicle by any person whose license or privilege to
5 operate a motor vehicle has been revoked except as provided herein. For
6 any such individual subject to a sentence of probation, installation and
7 maintenance of such ignition interlock device shall be a condition of
8 probation.

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

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

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

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

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

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

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

OUT AN IGNITION INTERLOCK DEVICE WHEN REQUIRED TO DO SO, or failure to install or maintain a court ordered ignition interlock device.

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

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

(f) The commissioner shall note on the operator's record of any person restricted pursuant to this section 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 AFFI-

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

22 (b) When a court imposes the condition specified in subdivision one of
23 this section, the court shall notify the commissioner in such manner as
24 the commissioner may prescribe, and the commissioner shall note such
25 condition on the operating record of the person subject to such condi-
26 tions.

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

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

45 8. Employer vehicle. Notwithstanding the provisions of subdivision one
46 and paragraph (d) of subdivision nine of this section, if a person is
47 required to operate a motor vehicle owned by said person's employer in
48 the course and scope of his or her employment, the person may operate
49 that vehicle without installation of an approved ignition interlock
50 device only in the course and scope of such employment and only if the
51 employer has been notified that the person's driving privilege has been
52 restricted under the provisions of this article or the penal law and the
53 person whose privilege has been so restricted has provided the court and
54 probation department with written documentation indicating the employer
55 has knowledge of the restriction imposed and has granted permission for
56 the person to operate the employer's vehicle without the device only for

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

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

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

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

52 S 60.36 Authorized dispositions; driving while intoxicated offenses.

53 Where a court is imposing a sentence for a violation of subdivision
54 two, two-a, [or] three, OR PARAGRAPH (B) OF SUBDIVISION FOUR-A of
55 section eleven hundred ninety-two of the vehicle and traffic law OR FOR
56 A VIOLATION OF SECTION 120.03, 120.04, 120.04-A, 125.12, 125.13 OR

1 125.14 OF THIS CHAPTER, OR A FELONY AS DEFINED IN PARAGRAPH (C) OF
2 SUBDIVISION ONE OF SECTION ELEVEN HUNDRED NINETY-THREE OF THE VEHICLE
3 AND TRAFFIC LAW, pursuant to sections 65.00 or 65.05 of this title and,
4 as a condition of such sentence, orders the installation and maintenance
5 of an ignition interlock device, the court may impose any other penalty
6 authorized pursuant to section eleven hundred ninety-three of the vehi-
7 cle and traffic law.

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

10 S 60.21 Authorized dispositions; driving while intoxicated or aggravated
11 driving while intoxicated.

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

40 S 8. Subparagraph 10 of paragraph b of subdivision 2 of section 1193
41 of the vehicle and traffic law, as added by chapter 173 of the laws of
42 1990, is amended to read as follows:

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

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

54 8-A. PROOF OF COMPLIANCE. A LICENSE OR REGISTRATION MAY BE RESTORED
55 BY DIRECTION OF THE COMMISSIONER BUT NOT OTHERWISE. WHERE THE SUSPEN-
56 SION, REVOCATION OR RESTRICTION IS THE RESULT OF A CRIMINAL CONVICTION,

1 NO LICENSE SHALL BE RESTORED AND NO RESTRICTION SHALL BE REMOVED UNTIL
2 PROOF OF COMPLIANCE WITH EACH OF THE CONDITIONS OF THE OPERATOR'S
3 SENTENCE HAS BEEN PROVIDED TO THE DEPARTMENT IN A FORM PRESCRIBED BY THE
4 COMMISSIONER.

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

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

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

33 4-a. Driving while ability impaired by the combined influence of drugs
34 or of alcohol and any drug or drugs. (A) No person shall operate a motor
35 vehicle while the person's ability to operate such motor vehicle is
36 impaired by the combined influence of drugs [or].

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

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

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

1 S 13. Paragraph (d) of subdivision 2 of section 1193 of the vehicle
2 and traffic law, as added by chapter 47 of the laws of 1988 and subpara-
3 graph 1 as amended by section 34 of part LL of chapter 56 of the laws of
4 2010, is amended to read as follows:

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

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

28 S 14. Paragraphs (b) and (d) of subdivision 1 of section 160.10 of the
29 criminal procedure law, paragraph (b) as amended by chapter 762 of the
30 laws of 1971, paragraph (d) as amended by chapter 232 of the laws of
31 2010, are amended and a new paragraph (e) is added to read as follows:

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

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

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

38 S 15. Paragraphs (e) and (f) of subdivision 7 of section 1196 of the
39 vehicle and traffic law, paragraph (e) as added by chapter 47 of the
40 laws of 1988 and paragraph (f) as added by chapter 420 of the laws of
41 1989, are amended and a new paragraph (i) is added to read as follows:

42 (e) The conditional license or privileges described in this subdivi-
43 sion may be revoked by the commissioner, for sufficient cause including,
44 but not limited to, failure to register in the program, failure to
45 attend or satisfactorily participate in the sessions, conviction of any
46 traffic infraction other than one involving parking, stopping or stand-
47 ing or conviction of any alcohol or drug-related traffic offense, misde-
48 meanor or felony. THE CONDITIONAL LICENSE OR PRIVILEGES DESCRIBED IN
49 THIS SUBDIVISION SHALL BE REVOKED BY THE COMMISSIONER WHEN THERE HAS
50 BEEN A FINDING BY A COURT, FILED WITH THE DEPARTMENT IN A FORM
51 PRESCRIBED BY THE COMMISSIONER, THAT THE ACCUSATORY INSTRUMENT CONFORMS
52 TO THE REQUIREMENTS OF SECTION 100.40 OF THE CRIMINAL PROCEDURE LAW AND
53 THERE EXISTS REASONABLE CAUSE TO BELIEVE THAT THE OPERATOR HAS COMMITTED
54 A VIOLATION OF SECTION FIVE HUNDRED ELEVEN OF THIS CHAPTER DURING A
55 LICENSE SUSPENSION OR REVOCATION PERIOD, HAS COMMITTED A VIOLATION OF
56 SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, HAS OPERATED A MOTOR

1 VEHICLE WITHOUT AN IGNITION INTERLOCK DEVICE WHEN ONE WAS REQUIRED
2 PURSUANT TO SECTION ELEVEN HUNDRED NINETY-EIGHT OF THIS ARTICLE, OR HAS
3 VIOLATED ANY CONDITION OF PROBATION OR CONDITIONAL DISCHARGE SET FORTH
4 BY THE COURT RELATING TO THE OPERATION OF A MOTOR VEHICLE OR THE
5 CONSUMPTION OF ALCOHOL. THE COURT'S FINDING MUST CONFORM TO THE PROCE-
6 DURES SET FORTH IN PARAGRAPH (C) OF SUBDIVISION THREE OF SECTION ELEVEN
7 HUNDRED NINETY-EIGHT OF THIS ARTICLE DENYING A REQUEST FOR A CONDITIONAL
8 LICENSE. A REVOCATION OF THE CONDITIONAL LICENSE PURSUANT TO THIS
9 SECTION SHALL REINSTATE THE UNDERLYING ALCOHOL-RELATED SUSPENSION OR
10 REVOCATION FROM WHICH THE CONDITIONAL LICENSE WAS DERIVED. In addition,
11 the commissioner shall have the right, after a hearing, to revoke the
12 conditional license or privilege upon receiving notification or evidence
13 that the offender is not attempting in good faith to accept rehabili-
14 tation. In the event of such revocation, the fee described in subdivi-
15 sion six of this section shall not be refunded.

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

42 (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE COMMISSIONER MAY
43 GRANT A POST-REVOCATION CONDITIONAL LICENSE TO A PERSON WHO IS OTHERWISE
44 INELIGIBLE TO RECEIVE A CONDITIONAL LICENSE WHEN THAT PERSON HAS BEEN
45 CONVICTED OF A VIOLATION OF SUBDIVISION TWO, TWO-A, THREE OR PARAGRAPH
46 (B) OF SUBDIVISION FOUR-A OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS
47 ARTICLE AND WHO HAS BEEN SENTENCED TO A PERIOD OF PROBATION, PROVIDED
48 THAT PROBATION CONSENTS TO THE ISSUANCE OF A POST-REVOCATION CONDITIONAL
49 LICENSE AND THE PERSON HAS SATISFIED THE MINIMUM PERIOD OF LICENSE REVO-
50 CATION ESTABLISHED BY LAW AND THE COMMISSIONER HAS BEEN NOTIFIED THAT
51 SUCH PERSON MAY OPERATE ONLY A MOTOR VEHICLE EQUIPPED WITH A FUNCTIONING
52 IGNITION INTERLOCK DEVICE. NO SUCH REQUEST SHALL BE MADE NOR SHALL SUCH
53 A LICENSE BE GRANTED, HOWEVER, IF SUCH PERSON HAS BEEN DEEMED BY A COURT
54 TO HAVE VIOLATED ANY CONDITION OF PROBATION OR CONDITIONAL DISCHARGE SET
55 FORTH BY THE COURT RELATING TO THE OPERATION OF A MOTOR VEHICLE OR THE
56 CONSUMPTION OF ALCOHOL OR IF SUCH PERSON HAS BEEN CHARGED WITH A

1 VIOLATION OF SECTION FIVE HUNDRED ELEVEN OF THIS CHAPTER DURING A
2 LICENSE SUSPENSION OR REVOCATION PERIOD, FOR A VIOLATION OF SECTION
3 ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, HAS OPERATED A MOTOR VEHICLE
4 WITHOUT AN IGNITION INTERLOCK DEVICE WHEN ONE WAS REQUIRED PURSUANT TO
5 SECTION ELEVEN HUNDRED NINETY-EIGHT OF THIS ARTICLE AND A COURT, PURSU-
6 ANT TO PARAGRAPH (E) OF THIS SUBDIVISION HAS ISSUED A FINDING, FILED
7 WITH THE DEPARTMENT IN A FORM PRESCRIBED BY THE COMMISSIONER, THAT THE
8 ACCUSATORY INSTRUMENT CONFORMS TO THE REQUIREMENTS OF SECTION 100.40 OF
9 THE CRIMINAL PROCEDURE LAW AND THERE EXISTS REASONABLE CAUSE TO BELIEVE
10 THAT THE OPERATOR HAS COMMITTED THE VIOLATION OR VIOLATIONS CHARGED.

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

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

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

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

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

36 (B) A FAILED TEST INCLUDING A FAILED START-UP RE-TEST, A MISSED
37 START-UP RE-TEST, A FAILED ROLLING RE-TEST, A MISSED ROLLING RE-TEST,
38 THE DEVICE ENTERING LOCKOUT MODE, AND ANY TEST OR RE-TEST WHERE THE
39 OPERATOR REGISTERS .05 OF ONE PER CENTUM OR MORE BY WEIGHT OF ALCOHOL IN
40 SUCH PERSON'S BLOOD SHALL CONSTITUTE A VIOLATION OF THE CONDITIONS OF A
41 PERSON'S SENTENCE IN ACCORDANCE WITH THE OPCA REGULATIONS UNDER 9 NYCRR
42 358 AND ALSO MAY CONSTITUTE A SEPARATE OFFENSE. SUCH VIOLATIONS WILL BE
43 ADJUDICATED BY THE SENTENCING COURT IN ITS DISCRETION.

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

54 (e) NO PERSON SHALL KNOWINGLY RENT, LEASE, OR LEND A MOTOR VEHICLE TO
55 A PERSON KNOWN TO HAVE HAD HIS OR HER DRIVING PRIVILEGE RESTRICTED TO
56 VEHICLES EQUIPPED WITH AN IGNITION INTERLOCK DEVICE UNLESS THE VEHICLE

1 IS SO EQUIPPED. ANY PERSON WHOSE DRIVING PRIVILEGE IS SO RESTRICTED
2 SHALL NOTIFY ANY OTHER PERSON WHO RENTS, LEASES, OR LOANS A MOTOR VEHI-
3 CLE TO HIM OR HER OF SUCH DRIVING RESTRICTION.

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

7 S 17. Subparagraph (i) of paragraph (a) of subdivision 3 of section
8 511 of the vehicle and traffic law, as amended by chapter 732 of the
9 laws of 2006, is amended to read as follows:

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

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