

STATE OF NEW YORK

9867

IN ASSEMBLY

February 15, 2018

Introduced by M. of A. WOERNER -- read once and referred to the Committee on Transportation

AN ACT to amend the navigation law, the vehicle and traffic law, the criminal procedure law and the penal law, in relation to operation of a vessel while under the influence of alcohol or drugs; and to repeal certain provisions of the navigation law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Sections 49-a and 49-b of the navigation law are REPEALED
2 and a new article 4-B is added to read as follows:

ARTICLE 4-B

ALCOHOL AND DRUG-RELATED OFFENSES AND PROCEDURES APPLICABLE TO OPERATION OF A VESSEL

6 Section 79-d. Operation of a vessel while under the influence of alcohol
7 or drugs.

8 79-e. Operation of a vessel after having consumed alcohol; under
9 the age of twenty-one; per se.

10 79-f. Sanctions.

11 79-g. Arrest and testing.

12 79-h. Operation of a vessel after having consumed alcohol; under
13 twenty-one; procedure.

14 79-i. Chemical test evidence.

15 79-j. Alcohol and drug rehabilitation program within the depart-
16 ment of motor vehicles.

17 79-k. Special options program for operation of a vessel while
18 intoxicated.

19 79-l. Installation and operation of ignition interlock devices.

20 79-m. Special procedures and disposition involving alcohol and
21 substance abuse assessment and treatment.

22 79-n. Driver and boater responsibility assessment.

23 § 79-d. Operation of a vessel while under the influence of alcohol or
24 drugs. 1. Definitions. As used in this article, unless the context
25 clearly indicates otherwise:

26 (a) The term "vessel" shall be every description of watercraft or
27 other artificial contrivance propelled in whole or in part by mechanical
28 power and, which is used or capable of being used as a means of trans-
29 portation over water, and which is underway and not at anchor or made

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

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1 fast to the shore or ground. The term "vessel" shall include a "public
2 vessel" as defined in this section unless otherwise specified.

3 (b) The term "public vessel" shall mean and include every vessel which
4 is propelled in whole or in part by mechanical power and is used or
5 operated for commercial purposes on the navigable waters of the state;
6 that is either carrying passengers, carrying freight, towing, or for any
7 other use, for which a compensation is received, either directly or
8 where provided as an accommodation, advantage, facility or privilege at
9 any place of public accommodation, resort or amusement.

10 (c) The term "waters of the state" means all of the waterways or
11 bodies of water located within the state or that part of any body of
12 water which is adjacent to the state over which the state has territo-
13 rial jurisdiction, on which a vessel or public vessel may be used or
14 operated, including Nassau and Suffolk counties.

15 (d) The term "drug" means any substance listed in section thirty-three
16 hundred six of the public health law.

17 (e) The term "commissioner" means the commissioner of parks, recre-
18 ation and historic preservation.

19 2. Operation of a vessel while ability impaired. No person shall oper-
20 ate a vessel upon the waters of this state while the person's ability to
21 operate such vessel is impaired by the consumption of alcohol.

22 3. Operation of a vessel while intoxicated; per se. No person shall
23 operate a vessel upon the waters of this state while such person has .08
24 of one per centum or more by weight of alcohol in the person's blood as
25 shown by chemical analysis of such person's blood, breath, urine or
26 saliva, made pursuant to the provisions of section seventy-nine-g of
27 this article.

28 4. Aggravated operation of a vessel while intoxicated. (a) Per se. No
29 person shall operate a vessel upon the waters of this state while such
30 person has .18 of one per centum or more by weight of alcohol in such
31 person's blood as shown by chemical analysis of such person's blood,
32 breath, urine or saliva made pursuant to the provisions of section
33 seventy-nine-g of this article.

34 (b) With a child. No person shall operate a vessel in violation of
35 subdivision three, five, six or seven of this section while a child who
36 is fifteen years of age or less is a passenger in such vessel.

37 5. Operation of a vessel while intoxicated. No person shall operate a
38 vessel while in an intoxicated condition.

39 6. Operation of a vessel while ability impaired by drugs. No person
40 shall operate a vessel while the person's ability to operate such a
41 vessel is impaired by the use of a drug as defined in this section.

42 7. Operation of a vessel while ability impaired by the combined influ-
43 ence of drugs or of alcohol and any drug or drugs. No person shall oper-
44 ate a vessel while the person's ability to operate such vessel is
45 impaired by the combined influence of drugs or of alcohol and any drug
46 or drugs.

47 8. Public vessels: per se - level I. Notwithstanding the provisions of
48 section seventy-nine-i of this article, no person shall operate a public
49 vessel while such person has .04 of one per centum or more but not more
50 than .06 of one per centum by weight of alcohol in the person's blood as
51 shown by chemical analysis of such person's blood, breath, urine or
52 saliva, made pursuant to the provisions of section seventy-nine-g of
53 this article; provided, however, nothing contained in this subdivision
54 shall prohibit the imposition of a charge of a violation of subdivision
55 two of this section, or of section seventy-nine-e of this article where
56 a person under the age of twenty-one operates a public vessel where a

1 chemical analysis of such person's blood, breath, urine, or saliva, made
2 pursuant to the provisions of section seventy-nine-g of this article,
3 indicates that such operator has .02 of one per centum or more but less
4 than .04 of one per centum by weight of alcohol in such operator's
5 blood.

6 9. Public vessels; per se - level II. Notwithstanding the provisions
7 of section seventy-nine-i of this article, no person shall operate a
8 public vessel while such person has more than .06 of one per centum but
9 less than .08 of one per centum by weight of alcohol in the person's
10 blood as shown by chemical analysis of such person's blood, breath,
11 urine or saliva, made pursuant to the provisions of section seventy-
12 nine-g of this article; provided, however, nothing contained in this
13 subdivision shall prohibit the imposition of a charge of a violation of
14 subdivision two of this section.

15 10. Effect of prior out-of-state conviction. A prior out-of-state
16 conviction for operating a vessel while under the influence of alcohol
17 or drugs shall be deemed to be a prior conviction of a violation of this
18 section for purposes of determining penalties imposed under this section
19 or for purposes of any administrative action required to be taken pursu-
20 ant to subdivision three of section seventy-nine-f of this article;
21 provided, however, that such conduct, had it occurred in this state,
22 would have constituted a misdemeanor or felony violation of any of the
23 provisions of this section. Provided, however, that if such conduct, had
24 it occurred in this state, would have constituted a violation of any
25 provisions of this section which are not misdemeanor or felony offenses,
26 then such conduct shall be deemed to be a prior conviction of a
27 violation of subdivision two of this section for purposes of determining
28 penalties imposed under this section or for purposes of any administra-
29 tive action required to be taken pursuant to subdivision three of
30 section seventy-nine-f of this article.

31 11. Effect of prior finding of having consumed alcohol. A prior find-
32 ing that a person under the age of twenty-one has operated a vessel
33 after having consumed alcohol pursuant to section seventy-nine-g of this
34 article shall have the same effect as a prior conviction of a violation
35 of subdivision two of this section solely for the purpose of determining
36 the length of any suspension or revocation of the operator's privilege
37 to operate a vessel required to be imposed under any provision of this
38 article, provided that the subsequent offense is committed prior to the
39 expiration of the retention period for such prior offense or offenses
40 set forth in paragraph (k) of subdivision one of section two hundred one
41 of the vehicle and traffic law.

42 12. Conviction of a different charge. An operator may be convicted of
43 a violation of subdivision two, three or five of this section, notwith-
44 standing that the charge laid before the court alleged a violation of
45 subdivision three or five of this section, and regardless of whether or
46 not such conviction is based on a plea of guilty.

47 13. Plea bargain limitations. (a) (i) In any case wherein the charge
48 laid before the court alleges a violation of subdivision three, five,
49 six or seven of this section, any plea of guilty thereafter entered in
50 satisfaction of such charge must include at least a plea of guilty to
51 the violation of the provisions of any of the subdivisions of this
52 section, other than subdivision eight or nine, and no other disposition
53 by plea of guilty to any other charge in satisfaction of such charge
54 shall be authorized; provided, however, if the district attorney, upon
55 reviewing the available evidence, determines that the charge of a
56 violation of this section is not warranted, such district attorney may

1 consent, and the court may allow a disposition by plea of guilty to
2 another charge in satisfaction of such charge; provided, however, in all
3 such cases, the court shall set forth upon the record the basis for such
4 disposition.

5 (ii) In any case wherein the charge laid before the court alleges a
6 violation of subdivision three, five, six or seven of this section, no
7 plea of guilty to subdivision two of this section shall be accepted by
8 the court unless such plea includes as a condition thereof the require-
9 ment that the defendant attend and complete the alcohol and drug reha-
10 bilitation program established pursuant to section seventy-nine-j of
11 this article, including any assessment and treatment required thereby;
12 provided, however, that such requirement may be waived by the court upon
13 application of the district attorney or the defendant demonstrating that
14 the defendant, as a condition of the plea, has been required to enter
15 into and complete an alcohol or drug treatment program prescribed pursu-
16 ant to an alcohol or substance abuse screening or assessment conducted
17 pursuant to section seventy-nine-m of this article or for other good
18 cause shown. The provisions of this subparagraph shall apply, notwith-
19 standing any bars to participation in the alcohol and drug rehabili-
20 tation program set forth in section seventy-nine-j of this article;
21 provided, however, that nothing in this paragraph shall authorize the
22 issuance of a conditional privilege to operate a vessel unless otherwise
23 authorized by law.

24 (iii) In any case wherein the charge laid before the court alleges a
25 violation of subdivision two of this section and the operator was under
26 the age of twenty-one at the time of such violation, any plea of guilty
27 thereafter entered in satisfaction of such charge must include at least
28 a plea of guilty to the violation of such subdivision; provided, howev-
29 er, such charge may instead be satisfied as provided in paragraph (c) of
30 this subdivision, and, provided further that, if the district attorney,
31 upon reviewing the available evidence, determines that the charge of a
32 violation of subdivision two of this section is not warranted, such
33 district attorney may consent, and the court may allow a disposition by
34 plea of guilty to another charge in satisfaction of such charge;
35 provided, however, in all such cases, the court shall set forth upon the
36 record the basis for such disposition.

37 (b) In any case wherein the charge laid before the court alleges a
38 violation of subdivision two or eight of this section while operating a
39 public vessel, any plea of guilty thereafter entered in satisfaction of
40 such charge must include at least a plea of guilty to the violation of
41 the provisions of any of the subdivisions of this section and no other
42 disposition by plea of guilty to any other charge in satisfaction of
43 such charge shall be authorized; provided, however, if the district
44 attorney upon reviewing the available evidence determines that the
45 charge of a violation of this section is not warranted, he or she may
46 consent, and the court may allow, a disposition by plea of guilty to
47 another charge in satisfaction of such charge.

48 (c) Except as provided in paragraph (b) of this subdivision, in any
49 case wherein the charge laid before the court alleges a violation of
50 subdivision two of this section by a person who was under the age of
51 twenty-one at the time of commission of the offense, the court, with the
52 consent of both parties, may allow the satisfaction of such charge by
53 the defendant's agreement to be subject to action by the commissioner
54 pursuant to section seventy-nine-h of this article. In any such case,
55 the defendant shall waive the right to a hearing under section seventy-
56 nine-h of this article and such waiver shall have the same force and

1 effect as a finding of a violation of section seventy-nine-e of this
2 article entered after a hearing conducted pursuant to such section
3 seventy-nine-h. The defendant shall execute such waiver in open court,
4 and, if represented by counsel, in the presence of his or her attorney,
5 on a form to be provided by the commissioner, which shall be forwarded
6 by the court to the commissioner within ninety-six hours. To be valid,
7 such form shall, at a minimum, contain clear and conspicuous language
8 advising the defendant that a duly executed waiver: (i) has the same
9 force and effect as a guilty finding following a hearing pursuant to
10 section seventy-nine-h of this article; (ii) shall subject the defendant
11 to the imposition of sanctions pursuant to such section seventy-nine-h;
12 and (iii) may subject the defendant to increased sanctions upon a subse-
13 quent violation of this section or section seventy-nine-e of this arti-
14 cle. Upon receipt of a duly executed waiver pursuant to this paragraph,
15 the commissioner shall take such administrative action and impose such
16 sanctions as may be required by section seventy-nine-h of this article.

17 (d) In any case wherein the charge laid before the court alleges a
18 violation of subdivision four of this section, any plea of guilty there-
19 after entered in satisfaction of such charge must include at least a
20 plea of guilty to the violation of the provisions of subdivision three,
21 four or five of this section, and no other disposition by plea of guilty
22 to any other charge in satisfaction of such charge shall be authorized;
23 provided, however, if the district attorney, upon reviewing the avail-
24 able evidence, determines that the charge of a violation of this section
25 is not warranted, such district attorney may consent and the court may
26 allow a disposition by plea of guilty to another charge in satisfaction
27 of such charge, provided, however, in all such cases, the court shall
28 set forth upon the record the basis for such disposition. Provided,
29 further, however, that no such plea shall be accepted by the court
30 unless such plea includes as a condition thereof the requirement that
31 the defendant attend and complete the alcohol and drug rehabilitation
32 program established pursuant to section seventy-nine-j of this article,
33 including any assessment and treatment required thereby; provided,
34 however, that such requirement may be waived by the court upon applica-
35 tion of the district attorney or the defendant demonstrating that the
36 defendant, as a condition of the plea, has been required to enter into
37 and complete an alcohol or drug treatment program prescribed pursuant to
38 an alcohol or substance abuse screening or assessment conducted pursuant
39 to section seventy-nine-m of this article or for other good cause shown.
40 The provisions of this paragraph shall apply, notwithstanding any bars
41 to participation in the alcohol and drug rehabilitation program set
42 forth in section seventy-nine-j of this article; provided, however, that
43 nothing in this paragraph shall authorize the issuance of a conditional
44 privilege to operate a vessel unless otherwise authorized by law.

45 14. Charges against operator of a public vessel. No person other than
46 an operator of a public vessel may be charged with or convicted of a
47 violation of subdivision eight or nine of this section.

48 15. Operation of a vessel while intoxicated or while ability impaired
49 by drugs--serious physical injury or death or child in the vessel. (a)
50 In every case where a person is charged with a violation of subdivision
51 three, four, five, six or seven of this section, the law enforcement
52 officer alleging such charge shall make a clear notation in the
53 "Description of Violation" section of a simplified traffic information
54 (i) if, arising out of the same incident, someone other than the person
55 charged was killed or suffered serious physical injury as defined in
56 section 10.00 of the penal law; such notation shall be in the form of a

1 "D" if someone other than the person charged was killed and such nota-
2 tion shall be in the form of a "S.P.I." if someone other than the person
3 charged suffered serious physical injury; and (ii) if a child aged
4 fifteen years or less was present in the vessel of the person charged
5 with a violation of subdivision three, four, five, six or seven of this
6 section; such notation shall be in the form of "C.I.V.". Provided,
7 however, that the failure to make such notations shall in no way affect
8 a charge for a violation of subdivision three, four, five, six or seven
9 of this section.

10 (b) Where a law enforcement officer alleges a violation of paragraph
11 (b) of subdivision four of this section and the operator of the vessel
12 is a parent, guardian, or custodian of, or other person legally respon-
13 sible for, a child aged fifteen years or less who is a passenger in such
14 vessel, then the officer shall report or cause a report to be made, if
15 applicable, in accordance with title six of article six of the social
16 services law.

17 § 79-e. Operation of a vessel after having consumed alcohol; under the
18 age of twenty-one; per se. No person under the age of twenty-one shall
19 operate a vessel after having consumed alcohol as described in this
20 section. For purposes of this section, a person under the age of twen-
21 ty-one is deemed to have consumed alcohol only if such person has .02 of
22 one per centum or more but not more than .07 of one per centum by weight
23 of alcohol in the person's blood, as shown by chemical analysis of such
24 person's blood, breath, urine or saliva, made pursuant to the provisions
25 of section seventy-nine-g of this article. Any person who operates a
26 vessel in violation of this section, and who is not charged with a
27 violation of any subdivision of section seventy-nine-d of this article
28 arising out of the same incident shall be referred to the office of
29 parks, recreation and historic preservation for action in accordance
30 with the provisions of section seventy-nine-h of this article. Except as
31 otherwise provided in subdivision eight of section seventy-nine-d of
32 this article, this section shall not apply to a person who operates a
33 public vessel. Notwithstanding any provision of law to the contrary, a
34 finding that a person under the age of twenty-one operated a vessel
35 after having consumed alcohol in violation of this section is not a
36 judgment of conviction for a crime or any other offense.

37 § 79-f. Sanctions. 1. Criminal penalties. (a) Operation of a vessel
38 while ability impaired. A violation of subdivision two of section seven-
39 ty-nine-d of this article shall be a violation and shall be punishable
40 by a fine of not less than three hundred dollars nor more than five
41 hundred dollars or by imprisonment in a penitentiary or county jail for
42 not more than fifteen days, or by both such fine and imprisonment. A
43 person who operates a vessel in violation of such subdivision after
44 having been convicted of a violation of any subdivision of section
45 seventy-nine-d of this article within the preceding five years shall be
46 punished by a fine of not less than five hundred dollars nor more than
47 seven hundred fifty dollars, or by imprisonment of not more than thirty
48 days in a penitentiary or county jail or by both such fine and imprison-
49 ment. A person who operates a vessel in violation of such subdivision
50 after having been convicted two or more times of a violation of any
51 subdivision of section seventy-nine-d of this article within the preced-
52 ing ten years shall be guilty of a misdemeanor, and shall be punished by
53 a fine of not less than seven hundred fifty dollars nor more than one
54 thousand five hundred dollars, or by imprisonment of not more than one
55 hundred eighty days in a penitentiary or county jail or by both such
56 fine and imprisonment.

(b) Operation of a vessel while intoxicated or while ability impaired by drugs or while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs; aggravated operation while intoxicated; misdemeanor offenses. (i) A violation of subdivision three, five, six or seven of section seventy-nine-d of this article shall be a misdemeanor and shall be punishable by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in a penitentiary or county jail for not more than one year, or by both such fine and imprisonment. A violation of paragraph (a) of subdivision four of section seventy-nine-d of this article shall be a misdemeanor and shall be punishable by a fine of not less than one thousand dollars nor more than two thousand five hundred dollars or by imprisonment in a penitentiary or county jail for not more than one year, or by both such fine and imprisonment.

(ii) In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, the court shall also sentence such person convicted of, or adjudicated a youthful offender for, a violation of subdivision three, four or five of section seventy-nine-d of this article to a term of probation or conditional discharge, as a condition of which it shall order such person to install and maintain, in accordance with the provisions of section eleven hundred ninety-eight of the vehicle and traffic law, an ignition interlock device in any vessel owned or operated by such person during the term of such probation or conditional discharge imposed for such violation of section seventy-nine-d of this article and in no event for a period of less than twelve months; provided, however, that such period of interlock restriction shall terminate upon submission of proof that such person installed and maintained an ignition interlock device for at least six months, unless the court ordered such person to install and maintain an ignition interlock device for a longer period as authorized by this subparagraph and specified in such order. The period of interlock restriction shall commence from the earlier of the date of sentencing, or the date that an ignition interlock device was installed in advance of sentencing. Provided, however, the court may not authorize the operation of a vessel by any person whose privilege to operate a vessel has been revoked pursuant to the provisions of this section.

(c) Felony offenses. (i) A person who operates a vessel (A) in violation of subdivision three, four, five, six or seven of section seventy-nine-d of this article after having been convicted of a violation of such subdivisions or of vehicular assault in the second or first degree, as defined, in sections 120.03 and 120.04 and aggravated vehicular assault as defined in section 120.04-a of the penal law or of vehicular manslaughter in the second or first degree, as defined, in sections 125.12 and 125.13 and aggravated vehicular homicide as defined in section 125.14 of such law, within the preceding ten years, or (B) in violation of paragraph (b) of subdivision four of section seventy-nine-d of this article shall be guilty of a class E felony, and shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(ii) A person who operates a vessel in violation of subdivision three, four, five, six or seven of section seventy-nine-d of this article after having been convicted of a violation of such subdivisions or of vehicular assault in the second or first degree, as defined in sections 120.03 and 120.04 and aggravated vehicular assault as defined in section 120.04-a of the penal law or of vehicular manslaughter in the second or

1 first degree, as defined in sections 125.12 and 125.13 and aggravated
2 vehicular homicide as defined in section 125.14 of such law, twice with-
3 in the preceding ten years, shall be guilty of a class D felony, and
4 shall be punished by a fine of not less than two thousand dollars nor
5 more than ten thousand dollars or by a period of imprisonment as
6 provided in the penal law, or by both such fine and imprisonment.

7 (iii) A person who operates a vessel in violation of subdivision
8 three, four, five, six or seven of section seventy-nine-d of this arti-
9 cle after having been convicted of a violation of such subdivisions or
10 of vehicular assault in the second or first degree, as defined in
11 sections 120.03 and 120.04 and aggravated vehicular assault as defined
12 in section 120.04-a of the penal law or of vehicular manslaughter in the
13 second or first degree, as defined in sections 125.12 and 125.13 and
14 aggravated vehicular homicide as defined in section 125.14 of such law,
15 three or more times within the preceding fifteen years, shall be guilty
16 of a class D felony, and shall be punished by a fine of not less than
17 two thousand dollars nor more than ten thousand dollars or by a period
18 of imprisonment as provided in the penal law, or by both such fine and
19 imprisonment.

20 (iv) In addition to the imposition of any fine or period of imprison-
21 ment set forth in this paragraph, the court shall also sentence such
22 person convicted of, or adjudicated a youthful offender for, a violation
23 of subdivision three, four or five of section seventy-nine-d of this
24 article to a period of probation or conditional discharge, as a condi-
25 tion of which it shall order such person to install and maintain, in
26 accordance with the provisions of section eleven hundred ninety-eight of
27 the vehicle and traffic law, an ignition interlock device in any vessel
28 owned or operated by such person during the term of such probation or
29 conditional discharge imposed for such violation of section seventy-
30 nine-d of this article and in no event for a period of less than twelve
31 months; provided, however, that such period of interlock restriction
32 shall terminate upon submission of proof that such person installed and
33 maintained an ignition interlock device for at least six months, unless
34 the court ordered such person to install and maintain an ignition inter-
35 lock device for a longer period as authorized by this subparagraph and
36 specified in such order. The period of interlock restriction shall
37 commence from the earlier of the date of sentencing, or the date that an
38 ignition interlock device was installed in advance of sentencing.
39 Provided, however, the court may not authorize the operation of a vessel
40 by any person whose privilege to operate a vessel has been revoked
41 pursuant to the provisions of this section.

42 (d) Alcohol or drug-related offenses; special vessels. (i) A violation
43 of subdivision eight of section seventy-nine-d of this article shall be
44 a violation punishable as provided in paragraph (a) of this subdivision.
45 Except as provided in subparagraph (ii) or (vi) of this paragraph, a
46 violation of subdivision two, three, five, six, seven or nine of section
47 seventy-nine-d of this article wherein the violator is operating a
48 public vessel shall be a misdemeanor. A violation of subdivision two,
49 three, five, six or seven of section seventy-nine-d of this article
50 shall be punishable by a fine of not less than five hundred dollars nor
51 more than one thousand five hundred dollars or by a period of imprison-
52 ment as provided in the penal law, or by both such fine and imprison-
53 ment. A violation of subdivision nine of section seventy-nine-d of this
54 article shall be punishable by a fine of not less than five hundred
55 dollars nor more than one thousand five hundred dollars or by a period
56 of imprisonment not to exceed one hundred eighty days, or by both such

1 fine and imprisonment. A person who operates any such vessel in
2 violation of such subdivision nine after having been convicted of a
3 violation of subdivision two, three, four, five, six, seven or nine of
4 section seventy-nine-d of this article within the preceding five years
5 shall be punishable by a fine of not less than five hundred dollars nor
6 more than one thousand five hundred dollars or by a period of imprison-
7 ment as provided in the penal law, or by both such fine and imprison-
8 ment. A violation of subdivision four of section seventy-nine-d of this
9 article wherein the violator is operating a public vessel shall be a
10 class E felony punishable by a fine of not less than one thousand
11 dollars nor more than five thousand dollars or by a period of imprison-
12 ment as provided in the penal law, or by both such fine and imprison-
13 ment.

14 (ii) A violation of subdivision two of section seventy-nine-d of this
15 article wherein the violator is operating a vessel which contains flamm-
16 able gas, radioactive materials or explosives shall be a misdemeanor
17 punishable by a fine of not less than five hundred dollars nor more than
18 one thousand five hundred dollars or by a period of imprisonment as
19 provided in the penal law, or by both such fine and imprisonment.

20 (iii) (A) A person who operates a vessel in violation of subdivision
21 two, three, four, five, six or seven of section seventy-nine-d of this
22 article and which is punishable as provided in subparagraph (i) or (ii)
23 of this paragraph after having been convicted of a violation of any such
24 subdivision of section seventy-nine-d of this article and penalized
25 under subparagraph (i) or (ii) of this paragraph within the preceding
26 ten years, shall be guilty of a class E felony, which shall be punisha-
27 ble by a fine of not less than one thousand dollars nor more than five
28 thousand dollars, or by a period of imprisonment as provided in the
29 penal law, or by both such fine and imprisonment. A person who operates
30 a vessel in violation of subdivision nine of section seventy-nine-d of
31 this article after having been convicted of two or more violations of
32 subdivisions two, three, four, five, six, seven or nine of section
33 seventy-nine-d of this article within the preceding five years, any one
34 of which was a misdemeanor, shall be guilty of a class E felony, which
35 shall be punishable by a fine of not less than one thousand dollars nor
36 more than five thousand dollars, or by a period of imprisonment as
37 provided in the penal law, or by both such fine and imprisonment. In
38 addition, any person sentenced pursuant to this subparagraph shall be
39 subject to the disqualification provided in subparagraph (iii) of para-
40 graph (e) of subdivision three of this section.

41 (B) A person who operates a vessel in violation of subdivision two,
42 three, four, five, six or seven of section seventy-nine-d of this arti-
43 cle and which is punishable as provided in subparagraph (i) or (ii) of
44 this paragraph after having been convicted of a violation of any such
45 subdivision of section seventy-nine-d of this article and penalized
46 under subparagraph (i) or (ii) of this paragraph twice within the
47 preceding ten years, shall be guilty of a class D felony, which shall be
48 punishable by a fine of not less than two thousand dollars nor more than
49 ten thousand dollars, or by a period of imprisonment as provided in the
50 penal law, or by both such fine and imprisonment. A person who operates
51 a vessel in violation of subdivision nine of section seventy-nine-d of
52 this article after having been convicted of three or more violations of
53 subdivisions two, three, four, five, six, seven or nine of section
54 seventy-nine-d of this article within the preceding five years, any one
55 of which was a misdemeanor, shall be guilty of a class D felony, which
56 shall be punishable by a fine of not less than two thousand dollars nor

1 more than ten thousand dollars, or by a period of imprisonment as
2 provided in the penal law, or by both such fine and imprisonment. In
3 addition, any person sentenced pursuant to this subparagraph shall be
4 subject to the disqualification provided in subparagraph (iii) of para-
5 graph (e) of subdivision three of this section.

6 (iv) A violation of subdivision three, five, six or seven of section
7 seventy-nine-d of this article wherein the violator is operating a
8 vessel which contains flammable gas, radioactive materials or
9 explosives, shall be a class E felony punishable by a fine of not less
10 than one thousand dollars and such other penalties as provided for in
11 the penal law; provided, however, that a conviction for such violation
12 shall not be considered a predicate felony pursuant to section 70.06 of
13 such law, or a previous felony conviction pursuant to section 70.10 of
14 such law. A violation of subdivision four of section seventy-nine-d of
15 this article wherein the violator is operating a vessel which contains
16 flammable gas, radioactive materials or explosives, shall be a class D
17 felony punishable by a fine of not less than two thousand dollars nor
18 more than ten thousand dollars and such other penalties as provided for
19 in the penal law; provided, however, that a conviction for such
20 violation shall not be considered a predicate felony pursuant to section
21 70.06 of such law, or a previous felony conviction pursuant to section
22 70.10 of such law.

23 (v) The sentences required to be imposed by subparagraph (i), (ii),
24 (iii) or (iv) of this paragraph shall be imposed notwithstanding any
25 contrary provision of this chapter or the penal law.

26 (vi) Nothing contained in this paragraph shall prohibit the imposition
27 of a charge of any other felony set forth in this or any other provision
28 of law for any acts arising out of the same incident.

29 (e) Certain sentences prohibited. Notwithstanding any provisions of
30 the penal law, no judge or magistrate shall impose a sentence of uncon-
31 ditional discharge for a violation of any subdivision of section seven-
32 ty-nine-d of this article nor shall a judge or magistrate impose a
33 sentence of conditional discharge or probation unless such conditional
34 discharge or probation is accompanied by a sentence of a fine as
35 provided in this subdivision.

36 (f) Where the court imposes a sentence for a violation of any subdivi-
37 sion of section seventy-nine-d of this article, the court may require
38 the defendant, as a part of or as a condition of such sentence, to
39 attend a single session conducted by a victims impact program. For
40 purposes of this section, "victims impact program" means a program oper-
41 ated by a county, a city with a population of one million or more, by a
42 not-for-profit organization authorized by any such county or city, or a
43 combination thereof, in which presentations are made concerning the
44 impact of operating a vessel while under the influence of alcohol or
45 drugs to one or more persons who have been convicted of such offenses. A
46 description of any such program shall be filed with the commissioner and
47 with the coordinator of the special traffic options program for driving
48 while intoxicated established pursuant to section eleven hundred nine-
49 ty-seven of the vehicle and traffic law, and shall be made available to
50 the court upon request. Nothing contained herein shall be construed to
51 require any governmental entity to create such a victim impact program.

52 (g) The office of probation and correctional alternatives shall recom-
53 mend to the commissioner of the division of criminal justice services
54 regulations governing the monitoring of compliance by persons ordered to
55 install and maintain ignition interlock devices to provide standards for
56 monitoring by departments of probation, and options for monitoring of

1 compliance by such persons, that counties may adopt as an alternative to
2 monitoring by a department of probation.

3 2. Additional penalties. (a) Except as provided for in paragraph (b)
4 of this subdivision, a person who operates a vessel in violation of
5 subdivision three or five of section seventy-nine-d of this article
6 after having been convicted of a violation of such subdivisions within
7 the preceding five years shall, in addition to any other penalties which
8 may be imposed pursuant to subdivision one of this section, be sentenced
9 to a term of imprisonment of five days or, as an alternative to such
10 imprisonment, be required to perform thirty days of service for a public
11 or not-for-profit corporation, association, institution or agency as set
12 forth in paragraph (h) of subdivision two of section 65.10 of the penal
13 law as a condition of sentencing for such violation. Notwithstanding
14 the provisions of this paragraph, a sentence of a term of imprisonment
15 of five days or more pursuant to the provisions of subdivision one of
16 this section shall be deemed to be in compliance with this subdivision.

17 (b) A person who operates a vessel in violation of subdivision three
18 or five of section seventy-nine-d of this article after having been
19 convicted on two or more occasions of a violation of any of such subdivi-
20 visions within the preceding five years shall, in addition to any other
21 penalties which may be imposed pursuant to subdivision one of this
22 section, be sentenced to a term of imprisonment of ten days or, as an
23 alternative to such imprisonment, be required to perform sixty days of
24 service for a public or not-for-profit corporation, association, insti-
25 tution or agency as set forth in paragraph (h) of subdivision two of
26 section 65.10 of the penal law as a condition of sentencing for such
27 violation. Notwithstanding the provisions of this paragraph, a sentence
28 of a term of imprisonment of ten days or more pursuant to the provisions
29 of subdivision one of this section shall be deemed to be in compliance
30 with this subdivision.

31 (c) A court sentencing a person pursuant to paragraph (a) or (b) of
32 this subdivision shall: (i) order the installation of an ignition inter-
33 lock device approved pursuant to section seventy-nine-l of this article
34 in any vessel owned or operated by the person so sentenced. Such
35 devices shall remain installed during any period of revocation of the
36 privilege to operate a vessel required to be imposed pursuant to para-
37 graph (b) of subdivision three of this section, and, upon the termi-
38 nation of such revocation period, for an additional period as determined
39 by the court; and (ii) order that such person receive an assessment of
40 the degree of their alcohol or substance abuse and dependency pursuant
41 to the provisions of section seventy-nine-m of this article. Where such
42 assessment indicates the need for treatment, such court is authorized to
43 impose treatment as a condition of such sentence except that such court
44 shall impose treatment as a condition of a sentence of probation or
45 conditional discharge pursuant to the provisions of subdivision three of
46 section seventy-nine-m of this article. Any person ordered to install an
47 ignition interlock device pursuant to this paragraph shall be subject to
48 the provisions of subdivisions four, five, seven, eight and nine of
49 section seventy-nine-l of this article.

50 (d) Confidentiality of records. The provisions of subdivision six of
51 section seventy-nine-m of this article shall apply to the records and
52 content of all assessments and treatment conducted pursuant to this
53 subdivision.

54 3. Privilege to operate a vessel sanctions. (a) Suspensions. Except as
55 otherwise provided in this subdivision, a privilege to operate a vessel

1 shall be suspended and a registration may be suspended for the following
2 periods:

3 (i) Operation of a vessel while ability impaired. Ninety days, where
4 the holder is convicted of a violation of subdivision two of section
5 seventy-nine-d of this article;

6 (ii) Persons under the age of twenty-one; operating after having
7 consumed alcohol. Six months, where the holder has been found to have
8 operated a vessel after having consumed alcohol in violation of section
9 seventy-nine-e of this article where such person was under the age of
10 twenty-one at the time of commission of such violation.

11 (b) Revocations of the privilege to operate a vessel. A privilege to
12 operate a vessel shall be revoked and a registration may be revoked for
13 the following minimum periods:

14 (i) Operation of a vessel while ability impaired; prior offense. Six
15 months, where the holder is convicted of a violation of subdivision two
16 of section seventy-nine-d of this article committed within five years of
17 a conviction for a violation of any subdivision of such section seven-
18 ty-nine-d.

19 (ii) Operation of a vessel while ability impaired; misdemeanor
20 offense. Six months, where the holder is convicted of a violation of
21 subdivision two of section seventy-nine-d of this article committed
22 within ten years of two previous convictions for a violation of any
23 subdivision of such section seventy-nine-d.

24 (iii) Operation of a vessel while intoxicated or while ability
25 impaired by drugs or while ability impaired by the combined influence of
26 drugs or of alcohol and any drug or drugs; aggravated operation of a
27 vessel while intoxicated. Six months, where the holder is convicted of a
28 violation of subdivision three, five, six or seven of section seventy-
29 nine-d of this article. One year where the holder is convicted of a
30 violation of subdivision four of section seventy-nine-d of this article.

31 (iv) Operation of a vessel while intoxicated or while ability impaired
32 by drugs or while ability impaired by the combined influence of drugs or
33 of alcohol and any drug or drugs; aggravated operation of a vessel while
34 intoxicated; prior offense. One year, where the holder is convicted of a
35 violation of subdivision three, five, six or seven of section seventy-
36 nine-d of this article committed within ten years of a conviction for a
37 violation of subdivision three, five, six or seven of section seventy-
38 nine-d of this article. Eighteen months, where the holder is convicted
39 of a violation of subdivision four of section seventy-nine-d of this
40 article committed within ten years of a conviction for a violation of
41 subdivision three, four, five, six or seven of section seventy-nine-d of
42 this article; or where the holder is convicted of a violation of subdi-
43 vision three, five, six or seven of section seventy-nine-d of this arti-
44 cle committed within ten years of a conviction for a violation of subdi-
45 vision four of section seventy-nine-d of this article.

46 (v) Holder of a license issued to a master, pilot, engineer or joint
47 pilot and engineer. (A) Except as otherwise provided in this subpara-
48 graph, one year where the holder of a license issued to a master, pilot,
49 engineer or joint pilot and engineer, subject to section sixty-four of
50 this chapter, is convicted of a violation of any subdivision of section
51 seventy-nine-d of this article or if such holder is convicted of an
52 offense consisting of operating a vessel under the influence of alcohol
53 or drugs where such conviction was had outside of this state.

54 (B) Three years, where the holder is convicted of a violation of any
55 subdivision of section seventy-nine-d of this article, such violation
56 was committed while the holder was operating a public vessel transport-

1 ing hazardous materials or if such holder is convicted of an offense
2 consisting of operating a public vessel under the influence of alcohol
3 or drugs where such conviction was had outside of this state.

4 (vi) Persons under the age of twenty-one. One year, where the holder
5 is convicted of or adjudicated a youthful offender for a violation of
6 any subdivision of section seventy-nine-d of this article, or is
7 convicted of or receives a youthful offender or other juvenile adjudi-
8 cation for an offense consisting of operating a vessel under the influ-
9 ence of intoxicating liquor where the conviction, or youthful offender
10 or other juvenile adjudication was had outside this state, where such
11 person was under the age of twenty-one at the time of commission of such
12 violation.

13 (vii) Persons under the age of twenty-one; prior offense or finding.
14 One year or until the holder reaches the age of twenty-one, whichever is
15 the greater period of time, where the holder has been found to have
16 operated a vessel after having consumed alcohol in violation of section
17 seventy-nine-e of this article, or is convicted of, or adjudicated a
18 youthful offender for, a violation of any subdivision of section seven-
19 ty-nine-d of this article, or is convicted of or receives a youthful
20 offender or juvenile adjudication for an offense consisting of operating
21 a vessel under the influence of intoxicating liquor where the
22 conviction, or youthful offender or other juvenile adjudication was had
23 outside this state, where such person was under the age of twenty-one at
24 the time of commission of such violation and has previously been found
25 to have operated a vessel after having consumed alcohol in violation of
26 section seventy-nine-e of this article, or has previously been convicted
27 of, or adjudicated a youthful offender for, any violation of section
28 seventy-nine-d of this article not arising out of the same incident, or
29 has previously been convicted of or received a youthful offender or
30 juvenile adjudication for an offense consisting of operating a vessel
31 under the influence of intoxicating liquor when the conviction, or
32 youthful offender or other juvenile adjudication was had outside this
33 state and not arising out of the same.

34 (viii) Out-of-state offenses. Except as provided in subparagraph (vi)
35 or (vii) of this paragraph: (A) ninety days, where the holder is
36 convicted of an offense consisting of operating a vessel under the
37 influence of intoxicating liquor where the conviction was had outside
38 this state and (B) six months, where the holder is convicted of, or
39 receives a youthful offender or other juvenile adjudication, which would
40 have been a misdemeanor or felony if committed by an adult, in
41 connection with, an offense consisting of operating a vessel under the
42 influence of or while impaired by the use of drugs where the conviction
43 or youthful offender or other juvenile adjudication was had outside this
44 state.

45 (ix) Effect of rehabilitation program. No period of revocation arising
46 out of subparagraph (v), (vi) or (vii) of this paragraph may be set
47 aside by the commissioner for the reason that such person was a partic-
48 ipant in the alcohol and drug rehabilitation program set forth in
49 section eleven hundred ninety-six of the vehicle and traffic law.

50 (x) Action required by commissioner. Where a court fails to impose, or
51 incorrectly imposes, a suspension or revocation required by this subdi-
52 vision, the commissioner shall, upon receipt of a certificate of
53 conviction filed, impose such mandated suspension or revocation, which
54 shall supersede any such order which the court may have imposed.

55 (xi) Limitation of certain mandatory revocations. Where revocation is
56 mandatory pursuant to subparagraph (v) of this paragraph for a

1 conviction of a violation of subdivision eight of section seventy-nine-d
2 of this article, such revocation shall be issued only by the commission-
3 er and shall be applicable only to that portion of the holder's license
4 which permits the operation of public vessels, and the commissioner
5 shall immediately issue a privilege to operate a vessel, other than a
6 license issued to a master, pilot, engineer or joint pilot and engineer,
7 to such person provided that such person is otherwise eligible to
8 receive such privilege to operate a vessel and further provided that
9 issuing a license to such person does not create a substantial safety
10 hazard to the waters of the state.

11 (xii) Permanent revocation. (A) Notwithstanding any other provision of
12 this chapter to the contrary, whenever a revocation is imposed upon a
13 person for the refusal to submit to a chemical test pursuant to the
14 provisions of section seventy-nine-g of this article or conviction for
15 any violation of section seventy-nine-d of this article for which a
16 sentence of imprisonment may be imposed, and such person has: (1) within
17 the previous four years been twice convicted of any provisions of
18 section seventy-nine-d of this article or a violation of the penal law
19 for which a violation of such section seventy-nine-d is an essential
20 element and at least one such conviction was for a crime, or has twice
21 been found to have refused to submit to a chemical test pursuant to
22 section seventy-nine-g of this article, or has any combination of two
23 such convictions and findings of refusal not arising out of the same
24 incident; or (2) within the previous eight years been convicted three
25 times of any provision of section seventy-nine-d of this article for
26 which a sentence of imprisonment may be imposed or a violation of the
27 penal law for which a violation of such section seventy-nine-d is an
28 essential element and at least two such convictions were for crimes, or
29 has been found, on three separate occasions, to have refused to submit
30 to a chemical test pursuant to section seventy-nine-g of this article,
31 or has any combination of such convictions and findings of refusal not
32 arising out of the same incident, such revocation shall be permanent.

33 (B) The permanent revocation of the privilege to operate a vessel
34 required by clause (A) of this subparagraph shall be waived by the
35 commissioner after a period of five years has expired since the imposi-
36 tion of such permanent revocation, provided that during such five-year
37 period such person has not been found to have refused a chemical test
38 pursuant to section seventy-nine-g of this article while operating a
39 vessel and has not been convicted of a violation of any subdivision of
40 section seventy-nine-d of this article or a violation of the penal law
41 for which a violation of any subdivision of such section seventy-nine-d
42 is an essential element and either:

43 (1) that such person provides acceptable documentation to the commis-
44 sioner that such person has voluntarily enrolled in and successfully
45 completed an appropriate rehabilitation program; or

46 (2) that such person is granted a certificate of relief from disabili-
47 ties or a certificate of good conduct pursuant to article twenty-three
48 of the correction law.

49 Provided, however, that the commissioner may, on a case by case basis,
50 refuse to restore a privilege to operate a vessel which otherwise would
51 be restored pursuant to this item, in the interest of the public safety
52 and welfare.

53 (C) For revocations imposed pursuant to clause (A) of this subpara-
54 graph, the commissioner may adopt rules to permit conditional or
55 restricted operation of a vessel by any such person after a mandatory

1 revocation period of not less than three years subject to such criteria,
2 terms and conditions as established by the commissioner.

3 (D) Upon (1) a finding of refusal after having been convicted three
4 times within four years of a violation of any subdivision of section
5 seventy-nine-d of this article or of the penal law for which a violation
6 of any subdivision of such section seventy-nine-d is an essential
7 element or any combination of three such convictions not arising out of
8 the same incident within four years or (2) a fourth conviction of any
9 subdivision of section seventy-nine-d of this article after having been
10 convicted of any such subdivision of such section seventy-nine-d or of
11 the penal law for which a violation of any of such subdivisions of such
12 section seventy-nine-d is an essential element or any combination of
13 three such convictions not arising out of the same incident within four
14 years or (3) a finding of refusal after having been convicted four times
15 within eight years of a violation of any subdivision of section seven-
16 ty-nine-d of this article or of the penal law for which a violation of
17 any of such subdivisions of such section seventy-nine-d is an essential
18 element or any combination of four such convictions not arising out of
19 the same incident within eight years or (4) a fifth conviction of any
20 subdivision of section seventy-nine-d of this article after having been
21 convicted of such subdivision or of the penal law for which a violation
22 of any of such subdivisions of such section seventy-nine-d is an essen-
23 tial element or any combination of four such convictions not arising out
24 of the same incident within eight years, such revocation shall be perma-
25 nent.

26 (E) The permanent revocation of the privilege to operate a vessel
27 required by clause (D) of this subparagraph may be waived by the commis-
28 sioner after a period of eight years has expired since the imposition of
29 such permanent revocation provided:

30 (1) that during such eight-year period such person has not been found
31 to have refused a chemical test pursuant to section seventy-nine-g of
32 this article while operating a vessel and has not been convicted of a
33 violation of any subdivision of section seventy-nine-d of this article
34 or a violation of the penal law for which a violation of any such subdivi-
35 sions of such section seventy-nine-d is an essential element; and

36 (2) that such person provides acceptable documentation to the commis-
37 sioner that such person has voluntarily enrolled in and successfully
38 completed an appropriate rehabilitation program; and

39 (3) after such documentation is accepted, that such person is granted
40 a certificate of relief from disabilities or a certificate of good
41 conduct pursuant to article twenty-three of the correction law.

42 Notwithstanding the provisions of this clause, nothing contained in
43 this clause shall be deemed to require the commissioner to restore a
44 privilege to operate a vessel to an applicant who otherwise has complied
45 with the requirements of this item, in the interest of the public safety
46 and welfare.

47 (F) Nothing contained in this subparagraph shall be deemed to reduce a
48 revocation of a privilege to operate a vessel period imposed pursuant to
49 any other provision of law.

50 (c) Reissuance of the privilege to operate a vessel; restrictions.

51 (i) Except as otherwise provided in this paragraph, where a privilege to
52 operate a vessel is revoked pursuant to paragraph (b) of this subdivi-
53 sion, no new privilege to operate a vessel shall be issued after the
54 expiration of the minimum period specified in such paragraph, except in
55 the discretion of the commissioner.

1 (ii) Where a privilege to operate a vessel is revoked pursuant to
2 subparagraph (iii), (iv) or (viii) of paragraph (b) of this subdivision
3 for a violation of subdivision six of section seventy-nine-d of this
4 article, and where the individual does not have a privilege to operate a
5 vessel or the individual's privilege to operate a vessel was suspended
6 at the time of conviction or youthful offender or other juvenile adjudi-
7 cation, the commissioner shall not issue a new privilege to operate a
8 vessel nor restore the former privilege to operate a vessel for a period
9 of six months after such individual would otherwise have become eligible
10 to obtain a new privilege to operate a vessel or to have the former
11 privilege to operate a vessel restored; provided, however, that during
12 such delay period the commissioner may issue a restricted use privilege
13 to operate a vessel.

14 (iii) In no event shall a new privilege to operate a vessel be issued
15 where a person has been twice convicted of a violation of subdivision
16 five, six or seven of section seventy-nine-d of this article or of driv-
17 ing while intoxicated or of driving while ability is impaired by the use
18 of a drug or of driving while ability is impaired by the combined influ-
19 ence of drugs or of alcohol and any drug or drugs where physical injury,
20 as defined in section 10.00 of the penal law, has resulted from such
21 offense in each instance.

22 (d) Suspension or revocation; sentencing. (i) Where a suspension or
23 revocation, other than a revocation required to be issued by the commis-
24 sioner, is mandatory pursuant to paragraph (a) or (b) of this subdivi-
25 sion, the magistrate, justice or judge shall issue an order suspending
26 or revoking such privilege to operate a vessel upon sentencing, and the
27 privilege holder shall surrender such privilege to operate a vessel to
28 the court. Except as hereinafter provided, such suspension or revocation
29 shall take effect immediately.

30 (ii) Except where the privilege holder has been charged with a
31 violation of article one hundred twenty or one hundred twenty-five of
32 the penal law arising out of the same incident or convicted of such
33 violation or a violation of any subdivision of section seventy-nine-d of
34 this article within the preceding five years, the judge, justice or
35 magistrate may issue an order making said privilege to operate a vessel
36 suspension or revocation take effect twenty days after the date of
37 sentencing. The privilege holder shall be given a copy of said order
38 permitting the continuation of operating privileges for twenty days
39 after sentencing, if granted by the court. The court shall forward to
40 the commissioner a copy of any order issued pursuant to this paragraph
41 and the license, within ninety-six hours of sentencing.

42 (e) Special provisions. (i) Suspension pending prosecution; procedure.
43 (A) Without notice, pending any prosecution, the court shall suspend
44 such privilege to operate a vessel, where the holder has been charged
45 with a violation of subdivision three, four, five, six or seven of
46 section seventy-nine-d of this article and either (1) a violation of a
47 felony under article one hundred twenty or one hundred twenty-five of
48 the penal law arising out of the same incident, or (2) has been
49 convicted of any violation under section seventy-nine-d of this article
50 within the preceding five years.

51 (B) The suspension under the preceding clause shall occur no later
52 than twenty days after the holder's first appearance before the court on
53 the charges or at the conclusion of all proceedings required for the
54 arraignment. In order for the court to impose such suspension it must
55 find that the accusatory instrument conforms to the requirements of
56 section 100.40 of the criminal procedure law and there exists reasonable

1 cause to believe that the holder operated a vessel in violation of
2 subdivision three, four, five, six or seven of section seventy-nine-d of
3 this article and either (1) the person had been convicted of any
4 violation under such section seventy-nine-d of this article within the
5 preceding five years; or (2) that the holder committed a violation of a
6 felony under article one hundred twenty or one hundred twenty-five of
7 the penal law. At such time the holder shall be entitled to an opportu-
8 nity to make a statement regarding the enumerated issues and to present
9 evidence tending to rebut the court's findings. Where such suspension is
10 imposed upon a pending charge of a violation of a felony under article
11 one hundred twenty or one hundred twenty-five of the penal law and the
12 holder has requested a hearing pursuant to article one hundred eighty of
13 the criminal procedure law, the court shall conduct such hearing. If
14 upon completion of the hearing, the court fails to find that there is
15 reasonable cause to believe that the holder committed a felony under
16 article one hundred twenty or one hundred twenty-five of the penal law
17 and the holder has not been previously convicted of any violation of
18 section seventy-nine-d of this article within the preceding five years
19 the court shall promptly notify the commissioner and direct restoration
20 of such privilege to operate a vessel to the privilege holder unless
21 such privilege to operate a vessel is suspended or revoked pursuant to
22 any other provision of this chapter.

23 (ii) Bail forfeiture. A privilege to operate a vessel shall be
24 suspended where the holder forfeits bail upon a charge of a violation of
25 any subdivision of section seventy-nine-d of this article. Such suspen-
26 sion shall not be terminated until the holder submits to the jurisdic-
27 tion of the court in which the bail was forfeited.

28 (iii) Permanent disqualification from operating certain vessels. (A)
29 Except as otherwise provided herein, in addition to any revocation set
30 forth in subparagraph (v) of paragraph (b) of this subdivision, any
31 person sentenced pursuant to subparagraph (ii) of paragraph (d) of
32 subdivision one of this section shall be permanently disqualified from
33 operating any vessel set forth in such paragraph. In addition, the
34 commissioner shall not issue such person a privilege to operate a vessel
35 valid for the operation of any vessel set forth therein by such person.
36 The commissioner may waive such disqualification and prohibition
37 hereinbefore provided after a period of five years has expired from such
38 sentencing provided:

39 (1) that during such five year period such person has not violated any
40 of the provisions of section seventy-nine-d of this article or any alco-
41 hol or drug related traffic offense in this state or in any jurisdiction
42 outside this state;

43 (2) that such person provides acceptable documentation to the commis-
44 sioner that such person is not in need of alcohol or drug treatment or
45 has satisfactorily completed a prescribed course of such treatment; and

46 (3) after such documentation is accepted, that such person is granted
47 a certificate of relief from disabilities or a certificate of good
48 conduct pursuant to article twenty-three of the correction law.

49 (B) Any person who is a holder of a license issued to a master, pilot,
50 engineer or joint pilot and engineer, on board of a public vessel and is
51 convicted of a violation of any subdivision of section seventy-nine-d of
52 this article who has had a prior finding of refusal to submit to a chem-
53 ical test pursuant to section seventy-nine-g of this article or has had
54 a prior conviction of any of the following offenses: any violation of
55 section seventy-nine-d of this article; any violation of section forty-
56 seven of this chapter; or has a prior conviction of any felony involving

1 the use of a vessel pursuant to section sixty-four-a of this chapter,
2 shall be permanently disqualified from operating a public vessel. The
3 commissioner may waive such disqualification and prohibition hereinbe-
4 fore provided after a period of ten years has expired from such sentence
5 provided:

6 (1) that during such ten year period such person has not been found to
7 have refused a chemical test pursuant to section seventy-nine-g of this
8 article while operating a vessel and has not been convicted of any one
9 of the following offenses while operating a vessel: any violation of
10 section seventy-nine-d of this article; any violation of section forty-
11 seven of this chapter; or has a prior conviction of any felony involving
12 the use of a vessel pursuant to section sixty-four-a of this chapter;

13 (2) that such person provides acceptable documentation to the commis-
14 sioner that such person is not in need of alcohol or drug treatment or
15 has satisfactorily completed a prescribed course of such treatment; and

16 (3) after such documentation is accepted, that such person is granted
17 a certificate of relief from disabilities or a certificate of good
18 conduct pursuant to article twenty-three of the correction law.

19 (C) Upon a third finding of refusal and/or conviction of any of the
20 offenses which require a permanent master, pilot, engineer or joint
21 pilot and engineer license revocation, such permanent revocation may not
22 be waived by the commissioner under any circumstances.

23 (iv) Youthful offenders. Where a youth is determined to be a youthful
24 offender, following a conviction of a violation of section
25 seventy-nine-d of this article for which a privilege to operate a vessel
26 suspension or revocation is mandatory, the court shall impose such
27 suspension or revocation as is otherwise required upon conviction and,
28 further, shall notify the commissioner of said suspension or revocation
29 and its finding that said violator is granted youthful offender status.

30 (v) Probation. When a privilege to operate a vessel has been revoked
31 pursuant to this chapter, and the holder has been sentenced to a period
32 of probation pursuant to section 65.00 of the penal law for a violation
33 of any provision of this chapter, or any other provision of the laws of
34 this state, and a condition of such probation is that the holder thereof
35 not operate a vessel or not apply for a privilege to operate a vessel
36 during the period of such condition of probation, the commissioner may
37 not restore such privilege until the period of the condition of
38 probation has expired.

39 (vi) Application for new privilege to operate a vessel. Where a privi-
40 lege to operate a vessel has been revoked pursuant to paragraph (b) of
41 this subdivision, or where the holder is subject to a condition of
42 probation as provided in subparagraph (v) of this paragraph, application
43 for a new privilege to operate a vessel may be made within forty-five
44 days prior to the expiration of such minimum period of revocation or
45 condition of probation, whichever expires last.

46 (vii) Suspension pending prosecution; excessive blood alcohol content.

47 (A) A court shall suspend a person's privilege to operate a vessel,
48 pending prosecution, of any person charged with a violation of subdivi-
49 sion three, four, five or seven of section seventy-nine-d of this arti-
50 cle who, at the time of arrest, is alleged to have had .08 of one
51 percent or more by weight of alcohol in such boater's blood as shown by
52 chemical analysis of blood, breath, urine or saliva, made pursuant to
53 subdivision two or three of section seventy-nine-g of this article.

54 (B) The suspension occurring under clause (A) of this subparagraph
55 shall occur no later than at the conclusion of all proceedings required
56 for the arraignment; provided, however, that if the results of any test

1 administered pursuant to section seventy-nine-g of this article are not
2 available within such time period, the complainant police officer or
3 other public servant shall transmit such results to the court at the
4 time they become available, and the court shall, as soon as practicable
5 following the receipt of such results and in compliance with the
6 requirements of this subparagraph, suspend such privilege to operate a
7 vessel. In order for the court to impose such suspension it must find
8 that the accusatory instrument conforms to the requirements of section
9 100.40 of the criminal procedure law and there exists reasonable cause
10 to believe either that the holder operated a vessel while such holder
11 had .08 of one percent or more by weight of alcohol in his or her blood
12 as was shown by chemical analysis of such person's blood, breath, urine
13 or saliva, made pursuant to the provisions of section seventy-nine-g of
14 this article. At the time of such suspension the holder shall be enti-
15 tled to an opportunity to make a statement regarding this issue and to
16 present evidence tending to rebut the court's findings.

17 (C) Nothing contained in this subparagraph shall be construed to
18 prohibit or limit a court from imposing any other suspension pending
19 prosecution required or permitted by law.

20 (D) Notwithstanding any contrary provision of this chapter, if any
21 suspension occurring under this subparagraph has been in effect for a
22 period of thirty days, the holder may be issued a conditional privilege
23 to operate a vessel, in accordance with section seventy-nine-j of this
24 article, provided the holder of such privilege is otherwise eligible to
25 receive such conditional privilege. A conditional privilege issued
26 pursuant to this subparagraph shall not be valid for the operation of a
27 public vessel. The commissioner shall prescribe by regulation the proce-
28 dures for the issuance of such conditional privilege.

29 (E) If the court finds that the suspension imposed pursuant to this
30 subparagraph will result in extreme hardship, the court must issue such
31 suspension, but may grant a hardship privilege, which shall be issued on
32 a form prescribed by the commissioner. For the purposes of this clause,
33 "extreme hardship" shall mean the inability to obtain alternative means
34 of travel to or from the holder's employment, or to or from necessary
35 medical treatment for the holder or a member of the holder's household.
36 The burden of proving extreme hardship shall be on the holder who may
37 present material and relevant evidence. A finding of extreme hardship
38 may not be based solely upon the testimony of the holder. In no event
39 shall arraignment be adjourned or otherwise delayed more than three
40 business days solely for the purpose of allowing the holder to present
41 evidence of extreme hardship. The court shall set forth upon the
42 record, or otherwise set forth in writing, the factual basis for such
43 finding. The hardship privilege shall permit the operation of a vessel
44 only for travel to or from the holder's employment, or to or from neces-
45 sary medical treatment for the holder or a member of the holder's house-
46 hold. A hardship privilege shall not be valid for the operation of a
47 public vessel.

48 (f) Notice of charges to parent or guardian. Upon the first scheduled
49 appearance of any person under eighteen years of age who resides within
50 the household of his or her parent or guardian upon a charge of a
51 violation of subdivision two, three and/or five of section
52 seventy-nine-d of this article, the local criminal court before which
53 such first appearance is scheduled shall forthwith transmit written
54 notice of such appearance or failure to make such appearance to the
55 parent or guardian of such minor person; provided, however, that if an
56 arraignment and conviction of such person follows such appearance upon

1 the same day, or in case such person waives arraignment and enters a
2 plea of guilty to the offense as charged in accordance with the
3 provisions of section eighteen hundred five of the vehicle and traffic
4 law, transmittal of notice of his or her conviction as provided in
5 section five hundred fourteen of the vehicle and traffic law shall be
6 sufficient and the notice required by this paragraph need not be given;
7 provided further that the failure of a local criminal court to transmit
8 the notice required by this paragraph shall in no manner affect the
9 validity of a conviction subsequently obtained.

10 § 79-g. Arrest and testing. 1. Arrest and field testing. (a) Arrest.
11 Notwithstanding the provisions of section 140.10 of the criminal proce-
12 dure law, a police officer may, without a warrant, arrest a person, in
13 case of a violation of subdivision two of section seventy-nine-d of this
14 article, if such violation is coupled with an accident or collision in
15 which such person is involved, which in fact has been committed, though
16 not in the police officer's presence, when the officer has reasonable
17 cause to believe that the violation was committed by such person.

18 (b) Field testing. Every person operating a vessel which has been
19 involved in an accident or which is operated in violation of any of the
20 provisions of this chapter shall, at the request of a police officer,
21 submit to a breath test to be administered by the police officer. If
22 such test indicates that such operator has consumed alcohol, the police
23 officer may request such operator to submit to a chemical test in the
24 manner set forth in subdivision two of this section.

25 2. Chemical tests. (a) When authorized. Any person who operates a
26 vessel in this state shall be deemed to have given consent to a chemical
27 test of one or more of the following: breath, blood, urine, or saliva,
28 for the purpose of determining the alcoholic and/or drug content of the
29 blood provided that such test is administered by or at the direction of
30 a police officer with respect to a chemical test of breath, urine or
31 saliva or, with respect to a chemical test of blood, at the direction of
32 a police officer:

33 (1) having reasonable grounds to believe such person to have been
34 operating in violation of any subdivision of section seventy-nine-d of
35 this article and within two hours after such person has been placed
36 under arrest for any such violation; or having reasonable grounds to
37 believe such person to have been operating in violation of section
38 seventy-nine-e of this article and within two hours after the stop of
39 such person for any such violation;

40 (2) within two hours after a breath test, as provided in paragraph (b)
41 of subdivision one of this section, indicates that alcohol has been
42 consumed by such person and in accordance with the rules and regulations
43 established by the police force of which the officer is a member;

44 (3) for the purposes of this paragraph, "reasonable grounds" to
45 believe that a person has been operating a vessel after having consumed
46 alcohol in violation of section seventy-nine-e of this article shall be
47 determined by viewing the totality of circumstances surrounding the
48 incident which, when taken together, indicate that the operator was
49 operating a vessel in violation of such subdivision. Such circumstances
50 may include any visible or behavioral indication of alcohol consumption
51 by the operator, the existence of an open container containing or having
52 contained an alcoholic beverage in or around the vessel operated by the
53 operator, or any other evidence surrounding the circumstances of the
54 incident which indicates that the operator has been operating a vessel
55 after having consumed alcohol at the time of the incident; or

1 (4) notwithstanding any other provision of law to the contrary, no
2 person under the age of twenty-one shall be arrested for an alleged
3 violation of section seventy-nine-e of this article. However, a person
4 under the age of twenty-one for whom a chemical test is authorized
5 pursuant to this paragraph may be temporarily detained by the police
6 solely for the purpose of requesting or administering such chemical test
7 whenever arrest without a warrant for a petty offense would be author-
8 ized in accordance with the provisions of section 140.10 of the criminal
9 procedure law or paragraph (a) of subdivision one of this section.

10 (b) Report of refusal. (1) If: (A) such person having been placed
11 under arrest; or (B) after a breath test indicates the presence of alco-
12 hol in the person's system; or (C) with regard to a person under the age
13 of twenty-one, there are reasonable grounds to believe that such person
14 has been operating a vessel after having consumed alcohol in violation
15 of section seventy-nine-e of this article; and having thereafter been
16 requested to submit to such chemical test and having been informed that
17 the person's privilege to operate a vessel and any non-resident operat-
18 ing privilege shall be immediately suspended and subsequently revoked,
19 or, for operators under the age of twenty-one for whom there are reason-
20 able grounds to believe that such operator has been operating a vessel
21 after having consumed alcohol in violation of section seventy-nine-e of
22 this article, shall be revoked for refusal to submit to such chemical
23 test or any portion thereof, whether or not the person is found guilty
24 of the charge for which such person is arrested or detained, refuses to
25 submit to such chemical test or any portion thereof, unless a court
26 order has been granted pursuant to subdivision three of this section,
27 the test shall not be given and a written report of such refusal shall
28 be immediately made by the police officer before whom such refusal was
29 made. Such report may be verified by having the report sworn to, or by
30 affixing to such report a form notice that false statements made therein
31 are punishable as a class A misdemeanor pursuant to section 210.45 of
32 the penal law and such form notice together with the subscription of the
33 deponent shall constitute a verification of the report.

34 (2) The report of the police officer shall set forth reasonable
35 grounds to believe such arrested person or such detained person under
36 the age of twenty-one had been operating a vessel in violation of any
37 subdivision of section seventy-nine-d or seventy-nine-e of this article,
38 that said person had refused to submit to such chemical test, and that
39 no chemical test was administered pursuant to the requirements of subdi-
40 vision three of this section. The report shall be presented to the court
41 upon arraignment of an arrested person, provided, however, in the case
42 of a person under the age of twenty-one, for whom a test was authorized
43 pursuant to the provisions of subparagraph two or three of paragraph (a)
44 of this subdivision, and who has not been placed under arrest for a
45 violation of any of the provisions of section seventy-nine-d of this
46 article, such report shall be forwarded to the commissioner within
47 forty-eight hours in a manner to be prescribed by the commissioner, and
48 all subsequent proceedings with regard to refusal to submit to such
49 chemical test by such person shall be as set forth in subdivision four
50 of section seventy-nine-h of this article.

51 (3) For persons placed under arrest for a violation of any subdivision
52 of section seventy-nine-d of this article, the privilege to operate a
53 vessel and any non-resident operating privilege shall, upon the basis of
54 such written report, be temporarily suspended by the court without
55 notice pending the determination of a hearing as provided in paragraph
56 (c) of this subdivision. Copies of such report must be transmitted by

1 the court to the commissioner and such transmittal may not be waived
2 even with the consent of all the parties. Such report shall be forwarded
3 to the commissioner within forty-eight hours of such arraignment.

4 (4) The court or the police officer, in the case of a person under the
5 age of twenty-one alleged to be operating a vessel after having consumed
6 alcohol, shall provide such person with a scheduled hearing date, a
7 waiver form, and such other information as may be required by the
8 commissioner. If a hearing, as provided for in paragraph (c) of this
9 subdivision, or subdivision four of section seventy-nine-h of this arti-
10 cle, is waived by such person, the commissioner shall immediately revoke
11 the privilege to operate a vessel or non-resident operating privilege,
12 as of the date of receipt of such waiver in accordance with the
13 provisions of paragraph (d) of this subdivision.

14 (c) Hearings. Any person whose privilege to operate a vessel or any
15 non-resident privilege has been suspended pursuant to paragraph (b) of
16 this subdivision is entitled to a hearing in accordance with a hearing
17 schedule to be promulgated by the commissioner of motor vehicles pursu-
18 ant to paragraph (c) of subdivision two of section eleven hundred nine-
19 ty-four of the vehicle and traffic law. If the department of motor vehi-
20 cles fails to provide for such hearing fifteen days after the date of
21 the arraignment of the arrested person, the privilege to operate a
22 vessel or non-resident operating privilege of such person shall be rein-
23 stated pending a hearing pursuant to this section. The hearing shall be
24 limited to the following issues: (1) did the police officer have reason-
25 able grounds to believe that such person had been operating a vessel in
26 violation of any subdivision of section seventy-nine-d of this article;
27 (2) did the police officer make a lawful arrest of such person; (3) was
28 such person given sufficient warning, in clear or unequivocal language,
29 prior to such refusal that such refusal to submit to such chemical test
30 or any portion thereof, would result in the immediate suspension and
31 subsequent revocation of such person's privilege to operate a vessel
32 whether or not such person is found guilty of the charge for which the
33 arrest was made; and (4) did such person refuse to submit to such chemi-
34 cal test or any portion thereof. If, after such hearing, the hearing
35 officer, acting on behalf of the commissioner of motor vehicles, finds
36 on any one of said issues in the negative, the hearing officer shall
37 immediately terminate any suspension arising from such refusal. If,
38 after such hearing, the hearing officer, acting on behalf of the commis-
39 sioner of motor vehicles finds all of the issues in the affirmative,
40 such officer shall immediately revoke the privilege to operate a vessel
41 or any non-resident operating privilege in accordance with the
42 provisions of paragraph (d) of this subdivision. A person who has had a
43 privilege to operate a vessel or non-resident operating privilege
44 suspended or revoked pursuant to this subdivision may appeal the find-
45 ings of the hearing officer in accordance with the provisions of article
46 three-A of the vehicle and traffic law. Any person may waive the right
47 to a hearing under this section. Failure by such person to appear for
48 the scheduled hearing shall constitute a waiver of such hearing,
49 provided, however, that such person may petition the commissioner of
50 motor vehicles for a new hearing which shall be held as soon as practi-
51 cable. The results of all hearings shall be referred to the commissioner
52 for purposes of taking proper action against a defendant's privilege
53 to operate a vessel.

54 (d) Sanctions. (1) Revocations. (A) Any privilege to operate a vessel
55 which has been revoked pursuant to paragraph (c) of this subdivision
56 shall not be restored for at least one year after such revocation, nor

1 thereafter, except in the discretion of the commissioner. However, no
2 such privilege to operate a vessel shall be restored for at least eigh-
3 teen months after such revocation, nor thereafter except in the
4 discretion of the commissioner, in any case where the person has had a
5 prior revocation resulting from refusal to submit to a chemical test, or
6 has been convicted of or found to be in violation of any subdivision of
7 section seventy-nine-d or section seventy-nine-e of this article not
8 arising out of the same incident, within the five years immediately
9 preceding the date of such revocation; provided, however, a prior find-
10 ing that a person under the age of twenty-one has refused to submit to a
11 chemical test pursuant to subdivision four of section seventy-nine-h of
12 this article shall have the same effect as a prior finding of a refusal
13 pursuant to this subdivision solely for the purpose of determining the
14 length of any license suspension or revocation required to be imposed
15 under any provision of this article, provided that the subsequent
16 offense or refusal is committed or occurred prior to the expiration of
17 the retention period for such prior refusal as set forth in paragraph
18 (k) of subdivision one of section two hundred one of the vehicle and
19 traffic law.

20 (B) Any privilege to operate a vessel which has been revoked pursuant
21 to paragraph (c) of this subdivision or pursuant to subdivision four of
22 section seventy-nine-h of this article, where the holder was under the
23 age of twenty-one years at the time of such refusal, shall not be
24 restored for at least one year, nor thereafter, except in the discretion
25 of the commissioner. Where such person under the age of twenty-one years
26 has a prior finding, conviction or youthful offender adjudication
27 resulting from a violation of section seventy-nine-d or section seven-
28 ty-nine-e of this article, not arising from the same incident, such
29 privilege to operate a vessel shall not be restored for at least one
30 year or until such person reaches the age of twenty-one years, whichever
31 is the greater period of time, nor thereafter, except in the discretion
32 of the commissioner.

33 (C) Any license issued to a master, pilot, engineer or joint pilot and
34 engineer which has been revoked pursuant to paragraph (c) of this subdivi-
35 vision based upon a finding of refusal to submit to a chemical test,
36 where such finding occurs within or outside of this state, shall not be
37 restored for at least eighteen months after such revocation, nor there-
38 after, except in the discretion of the commissioner, but shall not be
39 restored for at least three years after such revocation, nor thereafter,
40 except in the discretion of the commissioner, if the holder of such
41 license was operating a vessel transporting hazardous materials at the
42 time of such refusal. However, such person shall be permanently disqual-
43 ified from operating a public vessel in any case where the holder has a
44 prior finding of refusal to submit to a chemical test pursuant to this
45 section or has a prior conviction of any of the following offenses: any
46 violation of section seventy-nine-d of this article; or any violation of
47 section forty-seven of this chapter. Provided that the commissioner may
48 waive such permanent revocation after a period of ten years has expired
49 from such revocation provided:

50 (i) that during such ten year period such person has not been found to
51 have refused a chemical test pursuant to this section and has not been
52 convicted of any one of the following offenses: any violation of section
53 seventy-nine-d of this article; refusal to submit to a chemical test
54 pursuant to this section; any violation of section forty-seven of this
55 chapter; or has a prior conviction of any felony involving the use of a
56 vessel pursuant to section sixty-four-a of this chapter;

1 (ii) that such person provides acceptable documentation to the commis-
2 sioner that such person is not in need of alcohol or drug treatment or
3 has satisfactorily completed a prescribed course of such treatment; and

4 (iii) after such documentation is accepted, that such person is grant-
5 ed a certificate of relief from disabilities or a certificate of good
6 conduct pursuant to article twenty-three of the correction law by the
7 court in which such person was last penalized.

8 (D) Upon a third finding of refusal and/or conviction of any of the
9 offenses which require a permanent master, pilot, engineer or joint
10 pilot and engineer license revocation, such permanent revocation may not
11 be waived by the commissioner under any circumstances.

12 (2) Civil penalties. Except as otherwise provided, any person whose
13 privilege to operate a vessel or any non-resident operating privilege is
14 revoked pursuant to the provisions of this section shall also be liable
15 for a civil penalty in the amount of five hundred dollars except that if
16 such revocation is a second or subsequent revocation pursuant to this
17 section issued within a five year period, or such person has been
18 convicted of a violation of any subdivision of section seventy-nine-d of
19 this article within the past five years not arising out of the same
20 incident, the civil penalty shall be in the amount of seven hundred
21 fifty dollars. Any person whose privilege to operate a vessel is
22 revoked pursuant to the provisions of this section based upon a finding
23 of refusal to submit to a chemical test while operating a public vessel
24 shall also be liable for a civil penalty of five hundred fifty dollars
25 except that if such person has previously been found to have refused a
26 chemical test pursuant to this section while operating a public vessel
27 or has a prior conviction of any of the following offenses while operat-
28 ing a public vessel: any violation of section seventy-nine-d of this
29 article; any violation of section forty-seven of this chapter; or has a
30 prior conviction of any felony involving the use of a public vessel
31 pursuant to section sixty-four-a of this chapter, then the civil penalty
32 shall be seven hundred fifty dollars. No new privilege to operate a
33 vessel shall be issued, or non-resident operating privilege restored to
34 such person unless such penalty has been paid. All penalties collected
35 by the office pursuant to the provisions of this section shall be the
36 property of the state and shall be paid into the general fund of the
37 state treasury.

38 (3) Effect of rehabilitation program. No period of revocation arising
39 out of this section may be set aside by the commissioner for the reason
40 that such person was a participant in the alcohol and drug rehabili-
41 tation program set forth in section eleven hundred ninety-six of the
42 vehicle and traffic law.

43 (e) Regulations. The commissioner shall promulgate such rules and
44 regulations as may be necessary to effectuate the provisions of this
45 subdivision and subdivision one of this section.

46 (f) Evidence. Evidence of a refusal to submit to such chemical test or
47 any portion thereof shall be admissible in any trial, proceeding or
48 hearing based upon a violation of the provisions of section seventy-
49 nine-d of this article but only upon a showing that the person was given
50 sufficient warning, in clear and unequivocal language, of the effect of
51 such refusal and that the person persisted in the refusal.

52 (g) Results. Upon the request of the person who was tested, the
53 results of such test shall be made available to such person.

54 3. Compulsory chemical tests. (a) Court ordered chemical tests.
55 Notwithstanding the provisions of subdivision two of this section, no
56 person who operates a vessel upon the waters of the state may refuse to

1 submit to a chemical test of one or more of the following: breath,
2 blood, urine or saliva, for the purpose of determining the alcoholic
3 and/or drug content of the blood when a court order for such chemical
4 test has been issued in accordance with the provisions of this subdivi-
5 sion.

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

13 (1) such person was the operator of a vessel and in the course of such
14 operation a person other than the operator was killed or suffered seri-
15 ous physical injury as defined in section 10.00 of the penal law; and

16 (2) (A) either such person operated the vessel in violation of any
17 subdivision of section seventy-nine-d of this article, or

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

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

22 (4) such person has refused to submit to a chemical test or any
23 portion thereof, requested in accordance with the provisions of para-
24 graph (a) of subdivision two of this section or is unable to give
25 consent to such a test.

26 (c) Reasonable cause; definition. For the purpose of this subdivision
27 "reasonable cause" shall be determined by viewing the totality of
28 circumstances surrounding the incident which, when taken together, indi-
29 cate that the operator was operating a vessel in violation of section
30 seventy-nine-d of this article. Such circumstances may include, but are
31 not limited to: evidence that the operator was operating a vessel in
32 violation of any provision of this article or any other moving violation
33 at the time of the incident; any visible indication of alcohol or drug
34 consumption or impairment by the operator; the existence of an open
35 container containing an alcoholic beverage in or around the vessel oper-
36 ated by the operator; any other evidence surrounding the circumstances
37 of the incident which indicates that the operator has been operating a
38 vessel while impaired by the consumption of alcohol or drugs or intoxi-
39 cated at the time of the incident.

40 (d) Court order; procedure. (1) An application for a court order to
41 compel submission to a chemical test or any portion thereof, may be made
42 to any supreme court justice, county court judge or district court judge
43 in the judicial district in which the incident occurred, or if the inci-
44 dent occurred in the city of New York before any supreme court justice
45 or judge of the criminal court of the city of New York. Such application
46 may be communicated by telephone, radio or other means of electronic
47 communication, or in person.

48 (2) The applicant must provide identification by name and title and
49 must state the purpose of the communication. Upon being advised that an
50 application for a court order to compel submission to a chemical test is
51 being made, the court shall place under oath the applicant and any other
52 person providing information in support of the application as provided
53 in subparagraph three of this paragraph. After being sworn the applicant
54 must state that the person from whom the chemical test was requested was
55 the operator of a vessel and in the course of such operation a person,
56 other than the operator, has been killed or seriously injured and, based

1 upon the totality of circumstances, there is reasonable cause to believe
2 that such person was operating a vessel in violation of any subdivision
3 of section seventy-nine-d of this article and, after being placed under
4 lawful arrest such person refused to submit to a chemical test or any
5 portion thereof, in accordance with the provisions of this section or is
6 unable to give consent to such a test or any portion thereof. The
7 applicant must make specific allegations of fact to support such state-
8 ment. Any other person properly identified, may present sworn allega-
9 tions of fact in support of the applicant's statement.

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

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

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

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

45 (e) Administration of compulsory chemical test. An order issued pursu-
46 ant to the provisions of this subdivision shall require that a chemical
47 test to determine the alcoholic and/or drug content of the operator's
48 blood must be administered. The provisions of subdivision four of this
49 section shall be applicable to any chemical test administered pursuant
50 to this section.

51 4. Testing procedures. (a) Persons authorized to withdraw blood; immu-
52 nity; testimony. (1) At the request of a police officer, the following
53 persons may withdraw blood for the purpose of determining the alcoholic
54 or drug content therein: (i) a physician, a registered professional
55 nurse, a registered physician assistant, a certified nurse practitioner,
56 or an advanced emergency medical technician as certified by the depart-

1 ment of health; or (ii) under the supervision and at the direction of a
2 physician, registered physician assistant or certified nurse practition-
3 er acting within his or her lawful scope of practice, or upon the
4 express consent of the person eighteen years of age or older from whom
5 such blood is to be withdrawn: a clinical laboratory technician or clin-
6 ical laboratory technologist licensed pursuant to article one hundred
7 sixty-five of the education law; a phlebotomist; or a medical laboratory
8 technician or medical technologist employed by a clinical laboratory
9 approved under title five of article five of the public health law.
10 This limitation shall not apply to the taking of a urine, saliva or
11 breath specimen.

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

17 (3) Any person who may have a cause of action arising from the with-
18 drawal of blood as aforesaid, for which no personal liability exists
19 under subparagraph two of this paragraph, may maintain such action
20 against the state if any person entitled to withdraw blood pursuant to
21 this paragraph acted at the request of a police officer employed by the
22 state, or against the appropriate political subdivision of the state if
23 such person acted at the request of a police officer employed by a poli-
24 tical subdivision of the state. No action shall be maintained pursuant
25 to this subparagraph unless notice of claim is duly filed or served in
26 compliance with law.

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

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

41 (6) The provisions of subparagraphs two, three and four of this para-
42 graph shall also apply with regard to any person employed by a hospital
43 as security personnel for any act done or omitted in the course of with-
44 drawing blood at the request of a police officer pursuant to a court
45 order in accordance with subdivision three of this section.

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

49 (c) Rules and regulations. The department of health shall issue and
50 file rules and regulations approving satisfactory techniques or methods
51 of conducting chemical analyses of a person's blood, urine, breath or
52 saliva and to ascertain the qualifications and competence of individuals
53 to conduct and supervise chemical analyses of a person's blood, urine,
54 breath or saliva. If the analyses were made by an individual possessing
55 a permit issued by the department of health, this shall be presumptive
56 evidence that the examination was properly given. The provisions of this

1 paragraph do not prohibit the introduction as evidence of an analysis
2 made by an individual other than a person possessing a permit issued by
3 the department of health.

4 § 79-h. Operation of a vessel after having consumed alcohol; under
5 twenty-one; procedure. 1. Chemical test report and hearing. (a) Whenever
6 a chemical test of the breath, blood, urine or saliva of an operator who
7 is under the age of twenty-one indicates that such person has operated a
8 vessel in violation of section seventy-nine-e of this article, and such
9 person is not charged with violating any subdivision of section seven-
10 ty-nine-d of this article arising out of the same incident, the police
11 officer who administered the test shall forward a report of the results
12 of such test to the office of parks, recreation and historic preserva-
13 tion and the department of motor vehicles within twenty-four hours of
14 the time when such results are available in a manner prescribed by the
15 commissioner of motor vehicles, and the operator shall be given a hear-
16 ing notice as provided in subdivision two of this section, to appear
17 before a hearing officer in the county where the chemical test was
18 administered, or in an adjoining county under such circumstances as
19 prescribed by the commissioner of motor vehicles, on a date to be estab-
20 lished in accordance with a schedule promulgated by the commissioner of
21 motor vehicles. Such hearing shall occur within thirty days of, but not
22 less than forty-eight hours from, the date that the chemical test was
23 administered, provided, however, where the commissioner of motor vehi-
24 cles determines, based upon the availability of hearing officers and the
25 anticipated volume of hearings at a particular location, that the sched-
26 uling of such hearing within thirty days would impair the timely sched-
27 uling or conducting of other hearings pursuant to the vehicle and traf-
28 fic law, such hearing shall be scheduled at the next hearing date for
29 such particular location. When providing the operator with such hearing
30 notice, the police officer shall also give to the operator, and shall,
31 prior to the commencement of the hearing, provide to the department of
32 motor vehicles, copies of the following reports, documents and materi-
33 als: any written report or document, or portion thereof, concerning a
34 physical examination, a scientific test or experiment, including the
35 most recent record of inspection, or calibration or repair of machines
36 or instruments utilized to perform such scientific tests or experiments
37 and the certification certificate, if any, held by the operator of the
38 machine or instrument, which tests or examinations were made by or at
39 the request or direction of a public servant engaged in law enforcement
40 activity. The report of the police officer shall be verified by having
41 the report sworn to, or by affixing to such report a form notice that
42 false statements made therein are punishable as a class A misdemeanor
43 pursuant to section 210.45 of the penal law and such form notice togeth-
44 er with the subscription of the deponent shall constitute verification
45 of the report.

46 (b) Every person under the age of twenty-one who is alleged to have
47 operated a vessel after having consumed alcohol as set forth in section
48 seventy-nine-e of this article, and who is not charged with violating
49 any subdivision of section seventy-nine-d of this article arising out of
50 the same incident, is entitled to a hearing before a hearing officer in
51 accordance with the provisions of this section. Unless otherwise
52 provided by law, the privilege to operate a vessel or any non-resident
53 operating privilege of such person shall not be suspended or revoked
54 prior to the scheduled date for such hearing.

55 (i) The hearing shall be limited to the following issues: (1) did such
56 person operate the vessel; (2) was a valid request to submit to a chemi-

1 cal test made by the police officer in accordance with the provisions of
2 section seventy-nine-g of this article; (3) was such person less than
3 twenty-one years of age at the time of operation of the vessel; (4) was
4 the chemical test properly administered in accordance with the
5 provisions of section seventy-nine-g of this article; (5) did the test
6 find that such person had operated a vessel after having consumed alco-
7 hol as defined in section seventy-nine-e of this article; and (6) did
8 the police officer make a lawful stop of such person. The burden of
9 proof shall be on the police officer to prove each of these issues by
10 clear and convincing evidence.

11 (ii) Every person who is entitled to a hearing pursuant to this subdi-
12 vision has the right to be present at the hearing; the right to be
13 represented by attorney, or in the hearing officer's discretion, by any
14 other person the operator chooses; the right to receive and review
15 discovery materials as provided in this subdivision; the right not to
16 testify; the right to present evidence and witnesses in his or her own
17 behalf; the right to cross examine adverse witnesses; and the right to
18 appeal from an adverse determination in accordance with article three-A
19 of the vehicle and traffic law. Any person representing the operator
20 must conform to the standards of conduct required of attorneys appearing
21 before state courts, and failure to conform to these standards will be
22 grounds for declining to permit his or her continued appearance in the
23 hearing.

24 (iii) Hearings conducted pursuant to this subdivision shall be in
25 accordance with this subdivision and with the provisions applicable to
26 the adjudication of traffic infractions pursuant to the following
27 provisions of part 124 of title fifteen of the codes, rules and regu-
28 lations of the state of New York: paragraph (b) of section 124.1 regard-
29 ing the opening statement; paragraph (b) of section 124.2 regarding the
30 right to representation and to remain silent and paragraphs (a) through
31 (e) of section 124.4 regarding the conduct of the hearing, procedure and
32 recusal; provided, however, that nothing contained in this subparagraph
33 shall be deemed to preclude a hearing officer from changing the order of
34 a hearing conducted pursuant to this subdivision as justice may require
35 and for good cause shown.

36 (iv) The rules governing receipt of evidence in a court of law shall
37 not apply in a hearing conducted pursuant to this subdivision except as
38 follows:

39 (1) on the merits of the charge, and whether or not a party objects,
40 the hearing officer shall exclude from consideration the following: a
41 privileged communication; evidence which, for constitutional reasons,
42 would not be admissible in a court of law; evidence of prior misconduct,
43 incompetency or illness, except where such evidence would be admissible
44 in a court of law; evidence which is irrelevant or immaterial;

45 (2) no negative inference shall be drawn from the operator's exercis-
46 ing the right not to testify.

47 (v) If, after such hearing, the hearing officer, acting on behalf of
48 the commissioner of motor vehicles, finds all of the issues set forth in
49 this subdivision in the affirmative, the hearing officer shall suspend
50 or revoke the privilege to operate a vessel or non-resident operating
51 privilege of such person in accordance with the time periods set forth
52 in subdivision two of section seventy-nine-f of this article. If, after
53 such hearing, the hearing officer, acting on behalf of the commissioner
54 of motor vehicles, finds any of said issues in the negative, the hearing
55 officer must find that the operator did not operate a vessel after
56 having consumed alcohol.

1 (vi) A person who has had a privilege to operate a vessel or non-resi-
2 dent operating privilege suspended or revoked pursuant to the provisions
3 of this section may appeal the finding of the hearing officer in accord-
4 ance with the provisions of article three-A of the vehicle and traffic
5 law.

6 (c) Unless an adjournment of the hearing date has been granted, upon
7 the operator's failure to appear for a scheduled hearing, the commis-
8 sioner of motor vehicles shall report the failure to appear to the
9 commissioner and such commissioner shall suspend the privilege to oper-
10 ate a vessel or non-resident operating privilege until the operator
11 petitions the commissioner and a rescheduled hearing is conducted,
12 provided, however, the commissioner shall restore such person's privi-
13 lege to operate a vessel or non-resident operating privilege if such
14 rescheduled hearing is adjourned at the request of a person other than
15 the operator. Requests for adjournments shall be made and determined in
16 accordance with regulations promulgated by the commissioner of motor
17 vehicles. If such a request by the operator for an adjournment is grant-
18 ed, the commissioner of motor vehicles shall notify the operator of the
19 rescheduled hearing, which shall be scheduled for the next hearing date.
20 If a second or subsequent request by the operator for an adjournment is
21 granted, the operator's privilege to operate a vessel or non-resident
22 operating privilege may be suspended pending the hearing at the time
23 such adjournment is granted; provided, however, that the records of the
24 department of motor vehicles or the evidence already admitted furnishes
25 reasonable grounds to believe such suspension is necessary to prevent
26 continuing violations or a substantial safety hazard; and provided
27 further, that such hearing shall be scheduled for the next hearing date.

28 If a police officer does not appear for a hearing, the hearing officer
29 shall have the authority to dismiss the charge. Any person may waive the
30 right to a hearing under this subdivision, in a form and manner
31 prescribed by the commissioner of motor vehicles, and may enter an
32 admission of guilt, in person or by mail, to the charge of operating a
33 vessel in violation of section seventy-nine-e of this article. Such
34 admission of guilt shall have the same force and effect as a finding of
35 guilt entered following a hearing conducted pursuant to this subdivi-
36 sion.

37 2. Hearing notice. The hearing notice issued to an operator pursuant
38 to subdivision one of this section shall be in a form as prescribed by
39 the commissioner of motor vehicles. In addition to containing informa-
40 tion concerning the time, date and location of the hearing, and such
41 other information as the commissioner of motor vehicles deems appropri-
42 ate, such hearing notice shall also contain the following information:
43 the date, time and place of the offense charged; the procedures for
44 requesting an adjournment of a scheduled hearing as provided in this
45 section, the operator's right to a hearing conducted pursuant to this
46 section and the right to waive such hearing and plead guilty, either in
47 person or by mail, to the offense charged.

48 3. Civil penalty. Unless otherwise provided, any person whose privi-
49 lege to operate a vessel or any non-resident operating privilege is
50 suspended or revoked pursuant to the provisions of this section shall
51 also be liable for a civil penalty in the amount of one hundred twenty-
52 five dollars. The first fifty dollars of each penalty collected by the
53 department of motor vehicles pursuant to the provisions of this subdivi-
54 sion shall be paid to the commissioner of motor vehicles for deposit to
55 the general fund and the remainder of all such penalties shall be paid
56 to the commissioner for deposit in the "I Love NY Waterways" boating

1 safety fund established pursuant to section ninety-seven-nn of the state
2 finance law.

3 4. Refusal report and hearing. (a) Any person under the age of twen-
4 ty-one who is suspected of operating a vessel after having consumed
5 alcohol in violation of section seventy-nine-e of this article, and who
6 is not charged with violating any subdivision of section seventy-nine-d
7 of this article arising out of the same incident, and who has been
8 requested to submit to a chemical test pursuant to paragraph (a) of
9 subdivision two of section seventy-nine-g of this article and after
10 having been informed that his or her privilege to operate a vessel and
11 any non-resident operating privilege shall be revoked for refusal to
12 submit to such chemical test or any portion thereof, whether or not
13 there is a finding of operation of a vessel after having consumed alco-
14 hol, and such person refuses to submit to such chemical test or any
15 portion thereof, shall be entitled to a hearing in accordance with a
16 schedule promulgated by the commissioner of motor vehicles, and such
17 hearing shall occur within thirty days of, but not less than forty-eight
18 hours from, the date of such refusal, provided, however, where the
19 commissioner of motor vehicles determines, based upon the availability
20 of hearing officers and the anticipated volume of hearings at a partic-
21 ular location, that the scheduling of such hearing within thirty days
22 would impair the timely scheduling or conducting of other hearings
23 pursuant to this chapter, such hearing shall be scheduled at the next
24 hearing date for such particular location.

25 (b) Unless an adjournment of the hearing date has been granted, upon
26 the operator's failure to appear for a scheduled hearing, the commis-
27 sioner of motor vehicles shall report the failure to appear to the
28 commissioner and shall suspend the privilege to operate a vessel or
29 non-resident operating privilege until the operator petitions the
30 commissioner and a rescheduled hearing is conducted, provided, however,
31 the commissioner shall restore such person's privilege to operate a
32 vessel or non-resident operating privilege if such rescheduled hearing
33 is adjourned at the request of a person other than the operator.
34 Requests for adjournments shall be made and determined in accordance
35 with regulations promulgated by the commissioner of motor vehicles. If
36 such a request by the operator for an adjournment is granted, the
37 commissioner of motor vehicles shall notify the operator of the resched-
38 uled hearing, which shall be scheduled for the next hearing date. If a
39 second or subsequent request by the operator for an adjournment is
40 granted, the operator's privilege to operate a vessel or non-resident
41 operating privilege may be suspended pending the hearing at the time
42 such adjournment is granted; provided, however, that the records of the
43 department of motor vehicles or the evidence already admitted furnishes
44 reasonable grounds to believe such suspension is necessary to prevent
45 continuing violations or a substantial traffic safety hazard; and
46 provided further, that such hearing shall be scheduled for the next
47 hearing.

48 If a police officer does not appear for a hearing, the hearing officer
49 shall have the authority to dismiss the charge. Any person may waive the
50 right to a hearing under this subdivision.

51 (c) The hearing on the refusal to submit to a chemical test pursuant
52 to this subdivision shall be limited to the following issues: (1) was a
53 valid request to submit to a chemical test made by the police officer in
54 accordance with the provisions of section seventy-nine-g of this arti-
55 cle; (2) was such person given sufficient warning, in clear or unequiv-
56 ocal language, prior to such refusal that such refusal to submit to such

1 chemical test or any portion thereof, would result in the revocation of
2 such person's privilege to operate a vessel or non-resident operating
3 privilege, whether or not such person is found to have operated a vessel
4 after having consumed alcohol; (3) did such person refuse to submit to
5 such chemical test or any portion thereof; (4) did such person operate
6 the vessel; (5) was such person less than twenty-one years of age at the
7 time of operation of the vessel; and (6) did the police officer make a
8 lawful stop of such person. If, after such hearing, the hearing officer,
9 acting on behalf of the commissioner of motor vehicles, finds on any
10 said issue in the negative, the hearing officer shall not revoke the
11 operator's privilege to operate a vessel or non-resident operating priv-
12 ilege and shall immediately terminate any outstanding suspension of the
13 operator's privilege to operate a vessel or non-resident operating priv-
14 ilege arising from such refusal. If, after such hearing, the hearing
15 officer, acting on behalf of the commissioner of motor vehicles, finds
16 all of the issues in the affirmative, such hearing officer shall imme-
17 diately revoke privilege to operate a vessel or any non-resident operat-
18 ing privilege in accordance with the provisions of paragraph (d) of
19 subdivision two of section seventy-nine-g of this article. A person who
20 has had a privilege to operate a vessel or non-resident operating privi-
21 lege suspended or revoked pursuant to the provisions of this section may
22 appeal the findings of the hearing officer in accordance with the
23 provisions of article three-A of the vehicle and traffic law.

24 § 79-i. Chemical test evidence. 1. Admissibility. Upon the trial of
25 any action or proceeding arising out of actions alleged to have been
26 committed by any person arrested for a violation of any subdivision of
27 section seventy-nine-d of this article, the court shall admit evidence
28 of the amount of alcohol or drugs in the defendant's blood as shown by a
29 test administered pursuant to the provisions of section seventy-nine-g
30 of this article.

31 2. Probative value. The following effect shall be given to evidence of
32 blood-alcohol content, as determined by such tests, of a person arrested
33 for violation of section seventy-nine-d of this article:

34 (a) Evidence that there was .05 of one per centum or less by weight of
35 alcohol in such person's blood shall be prima facie evidence that the
36 ability of such person to operate a vessel was not impaired by the
37 consumption of alcohol, and that such person was not in an intoxicated
38 condition;

39 (b) Evidence that there was more than .05 of one per centum but less
40 than .07 of one per centum by weight of alcohol in such person's blood
41 shall be prima facie evidence that such person was not in an intoxicated
42 condition, but such evidence shall be relevant evidence, but shall not
43 be given prima facie effect, in determining whether the ability of such
44 person to operate a vessel was impaired by the consumption of alcohol;
45 and

46 (c) Evidence that there was .07 of one per centum or more but less
47 than .08 of one per centum by weight of alcohol in such person's blood
48 shall be prima facie evidence that such person was not in an intoxicated
49 condition, but such evidence shall be given prima facie effect in deter-
50 mining whether the ability of such person to operate a vessel was
51 impaired by the consumption of alcohol.

52 3. Suppression. A defendant who has been compelled to submit to a
53 chemical test pursuant to the provisions of subdivision three of section
54 seventy-nine-g of this article may move for the suppression of such
55 evidence in accordance with article seven hundred ten of the criminal
56 procedure law on the grounds that the order was obtained and the test

1 administered in violation of the provisions of such subdivision or any
2 other applicable law.

3 § 79-j. Alcohol and drug rehabilitation program within the department
4 of motor vehicles. The commissioner shall work with the commissioner of
5 motor vehicles to provide access to the alcohol and drug rehabilitation
6 program established pursuant to section eleven hundred ninety-six of the
7 vehicle and traffic law to those persons convicted of alcohol or drug-
8 related operation of a vessel offenses or persons who have been adjudi-
9 cated youthful offenders for alcohol or drug-related operation of a
10 vessel offenses, or persons found to have been operating a vessel after
11 having consumed alcohol in violation of section seventy-nine-e of this
12 article, who choose to participate and who satisfy the criteria and meet
13 the requirements for participation as established by section eleven
14 hundred ninety-six of the vehicle and traffic law and the regulations
15 promulgated thereunder; provided, however, in the exercise of
16 discretion, the judge imposing sentence may prohibit the defendant from
17 enrolling in such program.

18 § 79-k. Special options program for operation of a vessel while intox-
19 icated. The commissioner shall work with the commissioner of motor vehi-
20 cles to include a plan for coordination of county, town, city and
21 village efforts to reduce alcohol-related boating injuries and fatali-
22 ties pursuant to section eleven hundred ninety-seven of the vehicle and
23 traffic law.

24 § 79-l. Installation and operation of ignition interlock devices. 1.
25 Applicability. The provisions of this section shall apply throughout the
26 state to each person required or otherwise ordered by a court as a
27 condition of probation or conditional discharge to install and operate
28 an ignition interlock device in any vessel which he or she owns or oper-
29 ates.

30 2. Requirements. (a) In addition to any other penalties prescribed by
31 law, the court shall require that any person who has been convicted of a
32 violation of subdivision three, four or five of section seventy-nine-d
33 of this article, or any crime defined by this chapter or the penal law
34 of which an alcohol-related violation of any provision of section seven-
35 ty-nine-d of this article is an essential element, to install and main-
36 tain, as a condition of probation or conditional discharge, a function-
37 ing ignition interlock device in accordance with the provisions of this
38 section and, as applicable, in accordance with the provisions of subdivi-
39 vision one of section seventy-nine-f of this article. For any such indi-
40 vidual subject to a sentence of probation, installation and maintenance
41 of such ignition interlock device shall be a condition of probation.

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

49 (c) Nothing contained in this section shall authorize a court to
50 sentence any person to a period of probation or conditional discharge
51 for the purpose of subjecting such person to the provisions of this
52 section, unless such person would have otherwise been so eligible for a
53 sentence of probation or conditional discharge.

54 3. Conditions. (a) Notwithstanding any other provision of law, the
55 commissioner may grant a post-revocation conditional privilege to oper-
56 ate a vessel, as set forth in paragraph (b) of this subdivision, to a

1 person who has been convicted of a violation of subdivision three, four
2 or five of section seventy-nine-d of this article and who has been
3 sentenced to a period of probation or conditional discharge, provided
4 the person has satisfied the minimum period of the revocation of the
5 privilege to operate a vessel established by law and the commissioner
6 has been notified that such person may operate only a vessel equipped
7 with a functioning ignition interlock device. In exercising discretion
8 relating to the issuance of a post-revocation conditional privilege to
9 operate a vessel pursuant to this subdivision, the commissioner shall
10 not deny such issuance based solely upon the number of convictions for
11 violations of any subdivision of section seventy-nine-d of this article
12 committed by such person within the ten years prior to application for
13 such privilege to operate a vessel. Upon the termination of the period
14 of probation or conditional discharge set by the court, the person may
15 apply to the commissioner for restoration of a privilege to operate a
16 vessel in accordance with this chapter.

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

41 (c) The post-revocation conditional privilege to operate a vessel
42 described in this subdivision may be revoked by the commissioner for
43 sufficient cause including but not limited to, failure to comply with
44 the terms of the condition of probation or conditional discharge set
45 forth by the court, conviction of any operation of a vessel offense
46 other than one involving a conviction of any alcohol or drug-related
47 offense, misdemeanor or felony or failure to install or maintain a court
48 ordered ignition interlock device.

49 (d) Nothing contained herein shall prohibit the court from requiring,
50 as a condition of probation or conditional discharge, the installation
51 of a functioning ignition interlock device in any vessel owned or oper-
52 ated by a person sentenced for a violation of subdivision three, four,
53 or five of section seventy-nine-d of this article, or any crime defined
54 by this chapter or the penal law of which an alcohol-related violation
55 of any provision of section seventy-nine-d of this article is an essen-
56 tial element, if the court in its discretion, determines that such a

1 condition is necessary to ensure the public safety. Imposition of an
2 ignition interlock condition shall in no way limit the effect of any
3 period of suspension or revocation of a privilege to operate a vessel
4 set forth by the commissioner or the court.

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

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

13 4. Proof of compliance and recording of condition. (a) Following impo-
14 sition by the court of the use of an ignition interlock device as a
15 condition of probation or conditional discharge it shall require the
16 person to provide proof of compliance with this section to the court and
17 the probation department or other monitor where such person is under
18 probation or conditional discharge supervision. If the person fails to
19 provide for such proof of installation, absent a finding by the court of
20 good cause for that failure which is entered in the record, the court
21 may revoke, modify, or terminate the person's sentence of probation or
22 conditional discharge as provided under law. Good cause may include a
23 finding that the person is not the owner of a vessel if such person
24 asserts under oath that such person is not the owner of any vessel and
25 that he or she will not operate any vessel during the period of inter-
26 lock restriction except as may be otherwise authorized pursuant to law.
27 "Owner" shall have the same meaning as provided in section one hundred
28 twenty-eight of the vehicle and traffic law.

29 (b) When a court imposes the condition specified in subdivision one of
30 this section, the court shall notify the commissioner in such manner as
31 the commissioner may prescribe, and the commissioner shall note such
32 condition on the operating record of the person subject to such condi-
33 tions.

34 5. Cost, installation and maintenance. (a) The cost of installing and
35 maintaining the ignition interlock device shall be borne by the person
36 subject to such condition unless the court determines such person is
37 financially unable to afford such cost whereupon such cost may be
38 imposed pursuant to a payment plan or waived. In the event of such waiv-
39 er, the cost of the device shall be borne in accordance with regulations
40 issued under paragraph (g) of subdivision one of section seventy-nine-f
41 of this article or pursuant to such other agreement as may be entered
42 into for provision of the device. Such cost shall be considered a fine
43 for the purposes of subdivision five of section 420.10 of the criminal
44 procedure law. Such cost shall not replace, but shall instead be in
45 addition to, any fines, surcharges, or other costs imposed pursuant to
46 this chapter or other applicable laws.

47 (b) The installation and service provider of the device shall be
48 responsible for the installation, calibration, and maintenance of such
49 device.

50 6. Certification. (a) The commissioner of the department of health
51 shall approve ignition interlock devices for installation pursuant to
52 subdivision one of this section and shall publish a list of approved
53 devices.

54 (b) After consultation with manufacturers of ignition interlock
55 devices and the commissioner, the commissioner of the department of
56 health, in consultation with the office of probation and correctional

1 alternatives, shall promulgate regulations regarding standards for, and
2 use of, ignition interlock devices. Such standards shall include
3 provisions for setting a minimum and maximum calibration range and shall
4 include, but not be limited to, requirements that the devices:

5 (1) have features that make circumventing difficult and that do not
6 interfere with the normal or safe operation of the vessel;

7 (2) work accurately and reliably in an unsupervised environment;

8 (3) resist tampering and give evidence if tampering is attempted;

9 (4) minimize inconvenience to a sober user;

10 (5) require a proper, deep, lung breath sample or other accurate meas-
11 ure of blood alcohol content equivalence;

12 (6) operate reliably over the range of vessel environments;

13 (7) correlate well with permissible levels of alcohol consumption as
14 may be established by the sentencing court or by any provision of law;
15 and

16 (8) are manufactured by a party covered by product liability insur-
17 ance.

18 (c) The commissioner of the department of health may, in his or her
19 discretion, adopt in whole or relevant part, the guidelines, rules,
20 regulations, studies, or independent laboratory tests performed on and
21 relied upon for the certification or approval of ignition interlock
22 devices by other states, their agencies or commissions.

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

28 (b) No person shall knowingly rent, lease, or lend a vessel to a
29 person known to have had his or her privilege to operate a vessel
30 restricted to vessels equipped with an ignition interlock device unless
31 the vessel is so equipped. Any person whose privilege to operate a
32 vessel is so restricted shall notify any other person who rents, leases,
33 or loans a vessel to him or her of such operating restriction.

34 (c) Any violation of paragraph (a) or (b) of this subdivision shall be
35 a misdemeanor.

36 8. Employer vessel. Notwithstanding the provisions of subdivision one
37 and paragraph (d) of subdivision nine of this section, if a person is
38 required to operate a vessel owned by said person's employer in the
39 course and scope of his or her employment, the person may operate that
40 vessel without installation of an approved ignition interlock device
41 only in the course and scope of such employment and only if the employer
42 has been notified that the person's privilege to operate a vessel has
43 been restricted under the provisions of this article or the penal law
44 and the person whose privilege to operate a vessel has been so
45 restricted has provided the court and probation department with written
46 documentation indicating the employer has knowledge of the restriction
47 imposed and has granted permission for the person to operate the employ-
48 er's vessel without the device only for business purposes. The person
49 shall notify the court and the probation department of his or her inten-
50 tion to so operate the employer's vessel. A vessel owned by a business
51 entity when such business entity is all or partly owned or controlled by
52 a person otherwise subject to the provisions of this article or the
53 penal law is not a vessel owned by the employer for purposes of the
54 exemption provided in this subdivision. The provisions of this subdivi-
55 sion shall apply only to the operation of such vessel in the scope of
56 such employment.

1 9. Circumvention of interlock device. (a) No person whose privilege to
2 operate a vessel is restricted pursuant to this article shall request,
3 solicit or allow any other person to blow into an ignition interlock
4 device, or to start a vessel equipped with the device, for the purpose
5 of providing the person so restricted with an operable vessel.

6 (b) No person shall blow into an ignition interlock device or start a
7 vessel equipped with the device for the purpose of providing an operable
8 vessel to a person whose privilege to operate a vessel is so restricted.

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

11 (d) No person subject to a court ordered ignition interlock device
12 shall operate a vessel without such device.

13 (e) In addition to any other provisions of law, any person convicted
14 of a violation of paragraph (a), (b), (c), or (d) of this subdivision
15 shall be guilty of a class A misdemeanor.

16 10. Warning label. The department of health shall design a warning
17 label which the manufacturer shall affix to each ignition interlock
18 device upon installation in the state. The label shall contain a warning
19 that any person tampering, circumventing, or otherwise misusing the
20 device is guilty of a misdemeanor and may be subject to civil liability.

21 § 79-m. Special procedures and disposition involving alcohol and
22 substance abuse assessment and treatment. 1. Definitions. For purposes
23 of this section, the following terms shall have the following meanings:

24 (a) "Alcohol and substance abuse professional" shall mean persons
25 credentialed by the office of alcoholism and substance abuse services to
26 provide alcohol and substance abuse services pursuant to the mental
27 hygiene law and persons licensed by the state education department in an
28 appropriate health field, including licensed clinical social worker,
29 licensed master social worker, licensed mental health counselor, nurse
30 practitioner, physician, physician's assistant, psychiatrist, psychol-
31 ogist, and registered nurse.

32 (b) "Licensed agency" shall mean an agency licensed by the office of
33 alcoholism and substance abuse services to provide alcohol and substance
34 abuse services pursuant to the mental hygiene law.

35 2. Procedure. (a) Mandatory screening; when authorized. Upon the
36 arrest of, or at the discretion of the court, prior to the sentenc-
37 ing of any person who (i) at arraignment is charged with or prior to
38 sentencing convicted of a first violation of operating a vessel in
39 violation of subdivision two, three or five or paragraph (b) of subdivi-
40 sion four of section seventy-nine-d of this article while such person
41 has less than .15 of one per centum by weight of alcohol in the person's
42 blood as shown by chemical analysis of such person's blood, breath,
43 urine or saliva made pursuant to the provisions of section
44 seventy-nine-g of this article, or in violation of subdivision six of
45 section seventy-nine-d of this article, or (ii) has refused to submit to
46 a chemical test pursuant to section seventy-nine-g of this article, the
47 court shall order such person to submit to screening for alcohol or
48 substance abuse and dependency using a standardized written screening
49 instrument developed by the office of alcoholism and substance abuse
50 services, to be administered by an alcohol or substance abuse profes-
51 sional.

52 (b) Mandatory assessment; when authorized. The court shall order a
53 defendant to undergo a formal alcohol or substance abuse and dependency
54 assessment by an alcohol or substance abuse professional or a licensed
55 agency: (i) when the screening required by paragraph (a) of this subdivi-
56 vision indicates that a defendant is abusing or dependent upon alcohol

1 or drugs; (ii) following the arraignment of any person charged with or,
2 at the discretion of the court, prior to the sentencing of any person
3 convicted of a violation of subdivision two, three, five, six or seven
4 of section seventy-nine-d of this article after having been convicted of
5 a violation of any subdivision of section seventy-nine-d of this article
6 or of vehicular assault in the second or first degree, as defined,
7 respectively, in sections 120.03 and 120.04 of the penal law or of
8 aggravated vehicular assault, as defined in section 120.04-a of such law
9 or of vehicular manslaughter in the second or first degree, as defined,
10 respectively, in sections 125.12 and 125.13 of such law or of aggravated
11 vehicular homicide, as defined in section 125.14 of such law within the
12 preceding five years or after having been convicted of a violation of
13 any subdivision of section seventy-nine-d of this article or of vehicu-
14 lar assault in the second or first degree, as defined, respectively, in
15 sections 120.03 and 120.04 of the penal law or of aggravated vehicular
16 assault, as defined in section 120.04-a of the penal law or of vehicular
17 manslaughter in the second or first degree, as defined, respectively, in
18 sections 125.12 and 125.13 of the penal law or of aggravated vehicular
19 homicide, as defined in section 125.14 of such law, two or more times
20 within the preceding ten years; or (iii) following the arraignment of
21 any person charged with or, at the discretion of the court, prior to the
22 sentencing of any person convicted of operating a vessel in violation of
23 subdivision three or five or paragraph (b) of subdivision four of
24 section seventy-nine-d of this article while such person has .15 of one
25 per centum or more by weight of alcohol in the person's blood as shown
26 by a chemical analysis of such person's blood, breath, urine or saliva
27 made pursuant to the provisions of section seventy-nine-g of this arti-
28 cle or in violation of paragraph (a) of subdivision four of section
29 seventy-nine-d of this article.

30 (c) Mandatory assessment; procedure. The assessment ordered by a court
31 pursuant to this section shall be performed by an alcohol or substance
32 abuse professional or a licensed agency which shall forward the results,
33 in writing, to the court and to the defendant or his or her counsel
34 within thirty days of the date of such order.

35 3. Authorized disposition. When a sentence of probation or a condi-
36 tional discharge is imposed upon a person who has been required to
37 undergo an alcohol or substance abuse and dependency assessment pursuant
38 to subdivision two of this section and where such assessment indicates
39 that such person is in need of treatment for alcohol or substance abuse
40 or dependency, the court shall require, as a condition of such sentence,
41 that such person participate in and successfully complete such treat-
42 ment. Such treatment shall be provided by an alcohol or substance abuse
43 professional or a licensed agency.

44 4. Any case wherein a court has accepted a plea pursuant to the
45 provisions of subparagraph (ii) of paragraph (a) of subdivision thirteen
46 of section seventy-nine-d of this article and such plea includes as a
47 condition thereof that the defendant attend and complete the alcohol and
48 drug rehabilitation program established pursuant to section seventy-
49 nine-j of this article, including any assessment and treatment required
50 thereby, shall be deemed to be in compliance with the provisions of this
51 section.

52 5. The chief administrator of the office of court administration shall
53 make available to all courts in this state with jurisdiction in criminal
54 cases a list of alcohol and substance abuse professionals and licensed
55 agencies as provided by the office of alcoholism and substance abuse

1 services pursuant to subdivision (g) of section 19.07 of the mental
2 hygiene law.

3 6. Confidentiality of records. (a) The records and content of all
4 screenings, assessments and treatment conducted pursuant to this
5 section, including the identity, diagnosis and prognosis of each indi-
6 vidual who is the subject of such records, and including any statements
7 or admissions of such individual made during the course of such screen-
8 ings, assessments and treatment, shall be confidential, shall not be
9 disclosed except as authorized by this subdivision, and shall not be
10 entered or received as evidence at any civil, criminal or administrative
11 trial, hearing or proceeding. No person, other than a defendant to whom
12 such records are disclosed, may redisclose such records.

13 (b) Consistent with Section 290 dd-2 of Title 42 of the United States
14 Code, as such law may, from time to time, be amended, such records and
15 content may only be disclosed as follows:

16 (i) to a court for the sole purpose of requiring a defendant charged
17 with or convicted of a violation of subdivision two, three, four, five,
18 six, or seven of section seventy-nine-d of this article to undergo alco-
19 hol or substance abuse or dependency assessment or treatment;

20 (ii) to the defendant or his or her authorized representative; and

21 (iii) to medical personnel to the extent necessary to meet a bona fide
22 medical emergency.

23 7. Effect of completion of treatment. Except as provided in subpara-
24 graph (ix) of paragraph (b) of subdivision three of section seventy-
25 nine-f or in subparagraph three of paragraph (d) of subdivision two of
26 section seventy-nine-g of this article, upon successful completion of
27 treatment ordered pursuant to this section as certified by the alcohol
28 or substance abuse professional or licensed agency which provided such
29 treatment, the defendant may apply to the commissioner on a form
30 provided for that purpose, for the termination of the suspension or
31 revocation order issued as a result of the defendant's conviction. In
32 the exercise of discretion, upon receipt of such application, and upon
33 payment of any civil penalties for which the defendant may be liable,
34 the commissioner is authorized to terminate such order or orders and
35 return the defendant's privilege to operate a vessel in this state.
36 However, the commissioner shall not issue any new privilege to operate a
37 vessel nor restore any such privilege where said issuance or restoration
38 is prohibited by subdivision three of section seventy-nine-f of this
39 article.

40 § 79-n. Driver and boater responsibility assessment. The commissioner
41 shall work with the commissioner of motor vehicles to provide access to
42 the driver and boater responsibility assessment as provided in section
43 eleven hundred ninety-nine of the vehicle and traffic law.

44 § 2. Section 1196 of the vehicle and traffic law is amended by adding
45 a new subdivision 8 to read as follows:

46 8. The provisions of this section shall also be applicable to any
47 person convicted of any violation of section seventy-nine-d of the navi-
48 gation law, or any person found to have refused a chemical test in
49 accordance with the applicable provisions of the navigation law.

50 § 3. Section 1197 of the vehicle and traffic law is amended by adding
51 a new subdivision 11 to read as follows:

52 11. The provisions of this section shall also be applicable to perti-
53 nent provisions of article four-B of the navigation law.

54 § 4. Section 1199 of the vehicle and traffic law, as added by section
55 1 of part E of chapter 59 of the laws of 2004, is amended to read as
56 follows:

§ 1199. Driver and boater responsibility assessment. 1. In addition to any fines, fees, penalties and surcharges authorized by law, any person convicted of a violation of any subdivision of section eleven hundred ninety-two of this article or section seventy-nine-d of the navigation law, or any person found to have refused a chemical test in accordance with section eleven hundred ninety-four of this article or section seventy-nine-g of the navigation law not arising out of the same incident as a conviction for a violation of any of the provisions of section eleven hundred ninety-two of this article or section seventy-nine-d of the navigation law, shall become liable to the department for payment of a driver and boater responsibility assessment as provided in this section.

2. The amount of the driver and boater responsibility assessment under this section shall be two hundred fifty dollars per year for a three-year period.

3. Upon receipt of evidence that a person is liable for the driver and boater responsibility assessment required by this section, the commissioner shall notify such person by first class mail to the address of such person on file with the department or at the current address provided by the United States postal service of the amount of such assessment, the time and manner of making required payments, and that failure to make payment shall result in the suspension of his or her driver's license or privilege of obtaining a driver's license or privilege to operate a vessel.

4. If a person shall fail to pay any driver and boater responsibility assessment as provided in this section, the commissioner shall suspend such person's driver's license or privilege of obtaining a license or privilege to operate a vessel. Such suspension shall remain in effect until any and all outstanding driver and boater responsibility assessments have been paid in full.

5. The provisions of this section shall also be applicable to any person convicted of any violation of [~~section forty-nine-a~~] article four-B of the navigation law, any person convicted of a violation of section 25.24 of the parks, recreation and historic preservation law, or any person found to have refused a chemical test in accordance with the applicable provisions of either the navigation law or the parks, recreation and historic preservation law not arising out of the same incident as such conviction.

§ 5. Subdivision 5 of section 710.20 of the criminal procedure law, as amended by chapter 629 of the laws of 1998, is amended to read as follows:

5. Consists of a chemical test of the defendant's blood administered in violation of the provisions of subdivision three of section eleven hundred ninety-four of the vehicle and traffic law, subdivision [~~eight~~] three of section [~~forty-nine-a~~] seventy-nine-g of the navigation law, subdivision seven of section 25.24 of the parks, recreation and historic preservation law, or any other applicable law; or

§ 6. Subdivision 4 of section 49 of the navigation law, as added by chapter 805 of the laws of 1992, is amended to read as follows:

4. Whenever any police officer or peace officer authorized to enforce the provisions of this chapter having reasonable cause to believe that a person is operating a vessel in violation of section [~~forty-nine-a~~] seventy-nine-d of this [~~article~~] chapter, or any other provision of this article or article four-B of this chapter for which a suspension may be imposed, such officer may demand of such person his or her name, address and an explanation of his or her conduct.

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

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

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

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

§ 9. Subdivision 5 of section 160.55 of the criminal procedure law, as amended by chapter 391 of the laws of 1998, is amended to read as follows:

5. (a) When a criminal action or proceeding is terminated against a person by the entry of a waiver of a hearing pursuant to paragraph (c) of subdivision ten of section eleven hundred ninety-two of the vehicle and traffic law or paragraph (c) of subdivision thirteen of section ~~[forty-nine-b]~~ seventy-nine-d of the navigation law, the record of the criminal action shall be sealed in accordance with this subdivision. Upon the entry of such waiver, the court or the clerk of the court shall immediately notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies that a waiver has been entered and that the record of the action shall be sealed when the person reaches the age of twenty-one or three years from the date of commission of the offense, whichever is the greater period of time. At the expiration of such period, the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies shall take the actions required by paragraphs (a), (b) and (c) of subdivision one of section 160.50 of this article.

(b) Where a person under the age of twenty-one is referred by the police to the department of motor vehicles for action pursuant to section eleven hundred ninety-two-a or eleven hundred ninety-four-a of the vehicle and traffic law, or section ~~[forty-nine-b]~~ seventy-nine-e or seventy-nine-h of the navigation law and a finding in favor of the motorist or operator is rendered, the commissioner of the department of motor vehicles shall, as soon as practicable, but not later than three years from the date of commission of the offense or when such person reaches the age of twenty-one, whichever is the greater period of time, notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies that such finding in favor of the motorist or operator was rendered. Upon receipt of such notification, the commissioner of the division of criminal justice services and the heads of such police

1 departments and other law enforcement agencies shall take the actions
2 required by paragraphs (a), (b) and (c) of subdivision one of section
3 160.50 of this article.

4 (c) Where a person under the age of twenty-one is referred by the
5 police to the department of motor vehicles for action pursuant to
6 section eleven hundred ninety-two-a or eleven hundred ninety-four-a of
7 the vehicle and traffic law, or section [~~forty-nine-b~~] seventy-nine-e or
8 seventy-nine-h of the navigation law, and no notification is received by
9 the commissioner of the division of criminal justice services and the
10 heads of all appropriate police departments and other law enforcement
11 agencies pursuant to paragraph (b) of this subdivision, such commis-
12 sioner of the division of criminal justice services and such heads of police
13 departments and other law enforcement agencies shall, after three years
14 from the date of commission of the offense or when the person reaches
15 the age of twenty-one, whichever is the greater period of time, take the
16 actions required by paragraphs (a), (b) and (c) of subdivision one of
17 section 160.50 of this article.

18 § 10. Paragraph (k) of subdivision 1 of section 201 of the vehicle and
19 traffic law, as amended by chapter 391 of the laws of 1998, is amended
20 to read as follows:

21 (k) any records, including any reproductions or electronically created
22 images of such records and including any records received by the commis-
23 sioner from a court pursuant to paragraph (c) of subdivision ten of
24 section eleven hundred ninety-two of this chapter or paragraph (c) of
25 paragraph thirteen of section [~~forty-nine-b~~] seventy-nine-d of the navi-
26 gation law, relating to a finding of a violation of section eleven
27 hundred ninety-two-a of this chapter or a waiver of the right to a hear-
28 ing under section eleven hundred ninety-four-a of this chapter or a
29 finding of a refusal following a hearing conducted pursuant to subdivi-
30 sion three of section eleven hundred ninety-four-a of this chapter or a
31 finding of a violation of subdivision four of section [~~forty-nine-b~~]
32 seventy-nine-g of the navigation law or a waiver of the right to a hear-
33 ing or a finding of refusal following a hearing conducted pursuant to
34 such section, after remaining on file for three years after such finding
35 or entry of such waiver or refusal or until the person that is found to
36 have violated such section reaches the age of twenty-one, whichever is
37 the greater period of time. Upon the expiration of the period for
38 destruction of records pursuant to this paragraph, the entirety of the
39 proceedings concerning the violation or alleged violation of such
40 section eleven hundred ninety-two-a of this chapter or such section
41 [~~forty-nine-b~~] seventy-nine-e of the navigation law, from the initial
42 stop and detention of the operator to the entering of a finding and
43 imposition of sanctions pursuant to any subdivision of section eleven
44 hundred ninety-four-a of this chapter or of section [~~forty-nine-b~~]
45 seventy-nine-h of the navigation law shall be deemed a nullity, and the
46 operator shall be restored, in contemplation of law, to the status he or
47 she occupied before the initial stop and prosecution.

48 § 11. This act shall take effect on the one hundred twentieth day
49 after it shall have become a law.