STATE OF NEW YORK

5671--A

Cal. No. 1080

2019-2020 Regular Sessions

IN SENATE

May 10, 2019

Introduced by Sen. MARTINEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the vehicle and traffic law and the penal law, in relation to the ignition interlock program

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

Section 1. Paragraph (c) of subdivision 1 of section 1193 of the vehicle and traffic law, as amended by chapter 169 of the laws of 2013, and subparagraph (ii-a) as added by chapter 191 of the laws of 2014, is amended to read as follows:

(c) Felony offenses. (i) A person who operates a vehicle (A) in violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of this article after having been convicted of a violation of subdivision two, two-a, three, four or four-a of such section or of vehicular assault in the second or first degree, as defined, respectively, 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, respectively, 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 two-a of section eleven hundred ninety-two 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 vehicle in violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of

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

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this article after having been convicted of a violation of subdivision two, two-a, three, four or four-a of such section or of vehicular assault in the second or first degree, as defined, respectively, 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, respectively, in sections 125.12 and 125.13 and aggravated vehicular homicide as defined in section 125.14 of such law, twice within the preceding ten years, shall be guilty of a class D felony, and shall be punished by a fine of not less than two thousand dollars nor more than ten thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(ii-a) A person who operates a vehicle in violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of this article after having been convicted of a violation of subdivision two, two-a, three, four or four-a of such section or of vehicular assault in the second or first degree, as defined, respectively, 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, respectively, in sections 125.12 and 125.13 and aggravated vehicular homicide as defined in section 125.14 of such law, three or more times within the preceding fifteen years, shall be guilty of a class D felony, and shall be punished by a fine of not less than two thousand dollars nor more than ten thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

[~~(iii) In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, the court shall also sentence such person convicted of, or adjudicated a youthful offender for, a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article to a period of probation or conditional discharge, as a condition of which it shall order such person to install and maintain, in accordance with the provisions of section eleven hundred ninety-eight of this article, an ignition interlock device in any motor vehicle owned or operated by such person during the term of such probation or conditional discharge imposed for such violation of section eleven hundred ninety-two of this article and in no event for a period of less than 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 a 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 motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked pursuant to the provisions of this section.~~]

§ 2. Paragraph (g) of subdivision 1 of section 1193 of the vehicle and traffic law, as amended by section 57 of part A of chapter 56 of the laws of 2010, is amended to read as follows:

(g) **Condition of probation and conditional discharge; ignition interlock device requirements; alternative sentence. (1) For the purposes of this subdivision, "ignition interlock monitor" shall mean a person designated by the county where a conviction for a violation of section**

eleven hundred ninety-two of this article shall have occurred who monitors compliance with the provisions of section eleven hundred ninety-eight of this article and the concurrent regulations related thereto, by participants in the ignition interlock program.

(2) In addition to the imposition of any fine or period of imprisonment as set forth in this subdivision and to any license sanction imposed pursuant to subdivision two of this section, the court shall sentence such person convicted of, or adjudicated a youthful offender for, a violation of subdivision two, two-a, three or four-a of section eleven hundred ninety-two of this article to a period of probation or conditional discharge, the conditions of which shall include the following:

(i) an express prohibition on the operation of any motor vehicle without a functioning ignition interlock device for a period of twelve months or longer, as set forth in this paragraph or in paragraph (c) of subdivision one-a of this section; and

(ii) such person shall install and maintain in accordance with the provisions of section eleven hundred ninety-eight of this article, an ignition interlock device in the motor vehicle most frequently operated by such person for a period of twelve months or longer as set forth in subparagraph three of this paragraph, including the one hundred eighty days after a license has been restored. A declaration from the ignition interlock monitor on a form provided by the commissioner, certifying that such person has operated such motor vehicle free of any violations as set forth in paragraph (i) of this subdivision for a period of one hundred twenty consecutive days after the restoration of the operator's license, shall be deemed to have satisfied the conditions of probation or conditional discharge relating to the ignition interlock requirements set forth in this paragraph. The period of interlock restriction shall commence on the date that such ignition interlock device shall have been installed.

(3) Notwithstanding the provisions of subparagraph two of this paragraph and subdivision two of this section relating to license sanctions, a court may impose an alternative sentence upon such person convicted of, or adjudicated a youthful offender for, a violation of subdivision two, two-a, three or four-a of section eleven hundred ninety-two of this article, a period of probation or conditional discharge, the conditions of which shall include the following:

(i) a prohibition from operating any vehicle without a functioning ignition interlock device for a period of twelve months or longer as set forth in subparagraph four of this paragraph; and

(ii) an order that such person install and maintain, in accordance with the provisions of section eleven hundred ninety-eight of this article, an ignition interlock device in the motor vehicle most regularly operated by such person for a period of twelve months. A declaration from the ignition interlock monitor on a form provided by the commissioner, certifying that such person has operated the motor vehicle free of any violations as set forth in paragraph (i) of this subdivision for a period of three hundred consecutive days shall be deemed to have satisfied the conditions of probation or conditional discharge relating to the ignition interlock requirements as set forth in this paragraph. The period of interlock restriction shall commence on the date that such ignition interlock device shall have been installed. The alternative sentence set forth herein shall not be imposed on any offender subject to the additional penalties set forth in subdivision one-a of this section or who shall have also been convicted of a violation of any

provision of article one hundred twenty or one hundred twenty five of the penal law involving the operation of a vehicle.

(4) When a sentence is imposed pursuant to subparagraph two or three of this paragraph, in no event shall the commissioner restore the license of any such person until the commissioner receives certification by the ignition interlock monitor that such person shall have operated the motor vehicle free of any violations set forth in paragraph (i) of this subdivision for a period of one hundred twenty days for a sentence imposed pursuant to subparagraph two of this paragraph and for a period of three hundred consecutive days for a sentence imposed pursuant to subparagraph three of this paragraph. A violation of any of the provisions of paragraph (i) of this subdivision shall cause the respective period of operation to reset from the date of any such violation.

(h) Driving while ability impaired by alcohol; ignition interlock device requirement. Notwithstanding any other provision of law to the contrary, when a person shall be charged with a violation of subdivision two, two-a, three, or four-a of section eleven hundred ninety-two of this article and a plea of guilty shall have been entered in satisfaction of such charge to a violation of subdivision one of section eleven hundred ninety-two of this article, the conditions of such plea shall include an express prohibition on the operation of any motor vehicle without a functioning ignition interlock device for a period of six months, and such person shall install and maintain an ignition interlock device for a period of not less than six months on the motor vehicle operated most frequently by such person. A declaration from the ignition interlock monitor on a form provided by the commissioner, certifying that such person has operated the motor vehicle free of any violations as set forth in paragraph (i) of this subdivision for a period of ninety consecutive days after the date of installation, shall be deemed to have satisfied the conditions of such plea relating to the ignition interlock requirements set forth in this paragraph. The period of interlock restriction shall be deemed to commence from the date such ignition interlock device shall have been installed. If such person is found to have violated the terms of the use of such ignition interlock device as set forth in paragraph (i) of this subdivision, such ninety day period shall reset from the date of any such violation.

(i) Violations of ignition interlock requirements. For purposes of paragraphs (g) and (h) of this subdivision, the following shall be deemed a violation of the ignition interlock device requirements:

(1) any violation of the provisions of subdivision nine of section eleven hundred ninety-eight of this chapter; or

(2) a certified violation on a form provided by the commissioner that such person has:

(i) attempted to start his or her vehicle with a blood alcohol concentration level of .04 or more, unless a subsequent test performed within ten minutes thereafter registers a blood alcohol concentration level lower than .04 and the digital image provided confirms that the same person provided both samples;

(ii) failed to take any random test, unless a review of the digital image confirms that such vehicle was not occupied by the driver at the time of the missed test;

(iii) failed to pass any random re-test with a blood alcohol concentration level of .025 or lower, unless a subsequent test performed within ten minutes registers a blood alcohol concentration level lower than .025, and the digital image confirms that the same person provided both samples; or

(iv) failed to appear at the ignition interlock device vendor when required for maintenance, repair, calibration, monitoring, inspection, or replacement of such device. A certificate of violation shall be accompanied by a contemporaneous digital image verifying the identity of the violator.

(j) Ignition interlock device requirements; terms of imprisonment. When a sentence imposed pursuant to this subdivision includes a term of imprisonment, the satisfaction of such term of imprisonment shall not reduce or otherwise limit the requirements set forth in paragraph (g) of this subdivision.

(k) Demonstration of regular and consistent use. During the period of authorized use of a motor vehicle with an ignition interlock device pursuant to the provisions of this subdivision, the person so authorized shall demonstrate regular and consistent use of the ignition interlock device.

(l) The office of probation and correctional alternatives shall recommend to the commissioner of the division of criminal justice services regulations governing the monitoring of compliance by persons ordered to install and maintain ignition interlock devices to provide standards for monitoring by departments of probation, and options for monitoring of compliance by such persons, that counties may adopt as an alternative to monitoring by a department of probation.

§ 3. Paragraph (c) of subdivision 1-a of section 1193 of the vehicle and traffic law, as amended by chapter 669 of the laws of 2007, is amended to read as follows:

(c) A court sentencing a person pursuant to paragraph (a) or (b) of this subdivision shall: (i) order, as a condition of such sentence, the installation of an ignition interlock device approved pursuant to section eleven hundred ninety-eight of this article in [~~any~~] the motor vehicle [~~owned or~~] most frequently operated by the person so sentenced. Such devices shall remain installed during any period of license revocation required to be imposed pursuant to paragraph (b) of subdivision two of this section, and, upon the termination of such revocation period, for an additional period as determined by the court, but in no event less than twelve months; and (ii) order that such person receive an assessment of the degree of their alcohol or substance abuse and dependency pursuant to the provisions of section eleven hundred ninety-eight-a of this article. Where such assessment indicates the need for treatment, such court is authorized to impose treatment as a condition of such sentence except that such court shall impose treatment as a condition of a sentence of probation or conditional discharge pursuant to the provisions of subdivision three of section eleven hundred ninety-eight-a of this article. Any person ordered to install an ignition interlock device pursuant to this paragraph shall be subject to paragraph (j) of subdivision one of this section and the provisions of subdivisions four, five, seven, eight and nine of section eleven hundred ninety-eight of this article.

§ 4. Subdivisions 1, 2, 3, 4 and 5 of section 1198 of the vehicle and traffic law, subdivisions 1, 2, 3, 4 and paragraph (a) of subdivision 5 as amended by chapter 496 of the laws of 2009, paragraph (a) of subdivision 4 as amended by chapter 169 of the laws of 2013, and subdivision 5 as amended by chapter 669 of the laws of 2007, are amended to read as follows:

1. Applicability. The provisions of this section shall apply throughout the state to each person required or otherwise ordered by a court as a condition of sentence, plea, probation or conditional discharge, which

shall prohibit the operation of a motor vehicle without a functioning ignition interlock device and requires such person to install and [~~operate~~] maintain an ignition interlock device in [~~any~~] the vehicle [~~which he or she owns or operates~~] most frequently operated by such person.

2. Requirements. (a) In addition to any other penalties prescribed by law, the court shall require that any person who has been convicted [~~of~~] or adjudicated a youthful offender for a violation of subdivision two, two-a [~~or~~], three or four-a of section eleven hundred ninety-two of this article, or any crime defined by this chapter or the penal law of which an alcohol-related violation of any provision of section eleven hundred ninety-two of this article is an essential element, [~~to~~] shall not operate a motor vehicle without an ignition interlock device and shall install and maintain, as a condition of plea, sentence, probation or conditional discharge, a functioning ignition interlock device in accordance with the provisions of this section and, as applicable, in accordance with the provisions of subdivisions one and one-a of section eleven hundred ninety-three of this article; provided, however, the court may not authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked except as provided herein. For any such individual subject to a sentence of probation, installation and maintenance of such ignition interlock device shall be a condition of probation.

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

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

3. Conditions. (a) [~~Notwithstanding any other provision of law~~] Except as provided for sentences imposed pursuant to paragraph (g) of subdivision one of section eleven hundred ninety-three of this chapter, the commissioner may grant a post-revocation conditional license, as set forth in paragraph (b) of this subdivision, to a person who has been convicted of a violation of subdivision two, two-a [~~or~~], three or four-a of section eleven hundred ninety-two of this article and who has been sentenced to a period of probation or conditional discharge, provided the person has satisfied the minimum period of license revocation established by law and the commissioner has been notified that such person may operate only a motor vehicle equipped with a functioning ignition interlock device. No such request shall be made nor shall such a license be granted, however, if such person has been found by a court to have committed a violation of section five hundred eleven of this chapter during the license revocation period or deemed by a court to have violated any condition of probation or conditional discharge set forth by the court relating to the operation of a motor vehicle or the consumption of alcohol. In exercising discretion relating to the issuance of a post-revocation conditional license pursuant to this subdivision, the commissioner shall not deny such issuance based solely upon the number of convictions for violations of any subdivision of section eleven hundred ninety-two of this article committed by such person with-

in the ten years prior to application for such license. Upon the termination of the period of probation or conditional discharge set by the court, the person may apply to the commissioner for restoration of a license or privilege to operate a motor vehicle in accordance with this chapter.

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

(c) The post-revocation conditional license described in this subdivision may be revoked by the commissioner for sufficient cause including but not limited to, failure to comply with the terms of the condition of probation or conditional discharge set forth by the court, conviction of any traffic offense other than one involving parking, stopping or standing [~~or~~], conviction of any alcohol or drug related offense, misdemeanor or felony, any violation of section five hundred eleven of this chapter or section eleven hundred ninety-two of this article with respect to operating a motor vehicle without an ignition interlock device when required to do so, or failure to install or maintain a court ordered ignition interlock device.

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

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

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

4. Proof of compliance and recording of condition. (a) Following imposition by the court of the use of an ignition interlock device as a condition **plea, sentence,** of probation or conditional discharge it shall require the person to provide proof of compliance with this section to the court and the probation department or other monitor where such person is under probation or conditional discharge supervision. **A claim by such person that he or she has good cause for not installing an ignition interlock device shall be made to the court at or before sentencing, in writing in the form of a sworn affidavit signed by such person asserting under oath that he or she is not the registered or titled owner of any motor vehicle and will not operate any motor vehicle during the period of restriction, or that such person does not have access to the vehicle operated by such person at the time of the violation of section eleven hundred ninety-two of this article, or that the registered owner of that vehicle or any vehicle registered to such person's household will not give consent for the installation of an interlock device on his or her vehicle. The affidavit shall include a statement regarding whether such person owned any motor vehicle on the date of the underlying violation of section eleven hundred ninety-two of this article and whether ownership of any of those vehicles has been transferred to another party by sale, gift or any other means since the date of said violation. The affidavit shall also include a statement from such person that he or she has not and will not transfer ownership of any vehicle to evade installation of an ignition interlock device, the address of such person's employment, if applicable, and how such person intends to travel to that location during the period of restriction. The person also may include any other facts and circumstances he or she believes to be relevant to the claim of good cause. The court shall make a finding whether good cause exists on the record and, if good cause shall be found, issue such finding in writing to be filed by such person with the probation department or the ignition interlock monitor, as appropriate. In the event the court denies such person's claim of good cause on the basis of the affidavit filed with the court, such persons shall be given an opportunity to be heard. Such person shall also be permitted to waive the opportunity to be heard, if he or she chooses to do so.** If [~~the~~] **a** person **shall be ordered to install and maintain an ignition interlock device, and such person** fails to provide for such proof of installation, absent a finding by the court of good cause for that failure which is entered in the record, the court may revoke, modify, or terminate the person's sentence of probation or conditional discharge as provided under law. [~~Good cause may include a finding that the person is not the owner of a motor vehicle if such person asserts under oath that such person is not the owner of any motor vehicle and that he or she will not operate any motor vehicle during the period of interlock restriction except as may be otherwise authorized pursuant to law.~~] "Owner" shall have the same meaning as provided in section one hundred twenty-eight of this chapter.

(b) When a court imposes the condition specified in subdivision one of this section, the court shall notify the commissioner in such manner as the commissioner may prescribe, and the commissioner shall note such condition on the operating record of the person subject to such conditions.

5. Cost, installation and maintenance. (a) The cost of installing and maintaining the ignition interlock device shall be borne by the person subject to such condition unless the court determines such person is financially unable to afford such cost whereupon such cost may be imposed pursuant to a payment plan or waived. In the event of such waiver, the cost of the device shall be borne in accordance with regulations issued under paragraph (g) of subdivision one of section eleven hundred ninety-three of this article or pursuant to such other agreement as may be entered into for provision of the device. Such cost shall be considered a fine for the purposes of subdivision five of section 420.10 of the criminal procedure law. Such cost shall not replace, but shall instead be in addition to, any fines, surcharges, or other costs imposed pursuant to this chapter or other applicable laws.

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

(c) Failure to install such device, failure to appear for a service visit or failure to comply with service instructions or circumvention of or tampering with the device, in violation of regulations promulgated by the division of criminal justice services, shall constitute a violation of the conditions of a person's sentence, probation or conditional discharge.

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

(k-1) Install and maintain a functioning ignition interlock device, as that term is defined in section one hundred nineteen-a of the vehicle and traffic law, in any vehicle owned or operated by the defendant [~~if the court in its discretion determines that such a condition is necessary to ensure the public safety. The court may require such condition only where a person has been convicted of a violation of subdivision two, two-a or three of section eleven hundred ninety-two of the vehicle and traffic law, or any crime defined by the vehicle and traffic law or this chapter of which an alcohol-related violation of any provision of section eleven hundred ninety-two of the vehicle and traffic law is an essential element~~]. The offender shall be required to install and operate the ignition interlock device only in accordance with **the provisions of paragraphs (g), (h), (i) and (j) of subdivision one of section eleven hundred ninety-three and** section eleven hundred ninety-eight of the vehicle and traffic law.

§ 6. The division of criminal justice services is authorized and directed to compile and publish annually a report on its website of the total number of repeat convictions with respect to violations of section 1192 of the vehicle and traffic law for the five years succeeding the effective date of this act, and shall also include the total number of repeat convictions for the five years preceding the effective date in such report. The division is authorized and directed to coordinate with any other agency, authority, department, division, bureau, or political subdivision to compile this information, including without limitation the governor's highway traffic safety committee.

§ 7. This act shall take effect on the first of November next succeeding the date on which it shall have become a law, provided, however, that the amendments to section 1198 of the vehicle and traffic law made by section four of this act shall not affect the repeal of such section and shall be deemed repealed therewith.