STATE OF NEW YORK

1486

2019-2020 Regular Sessions

IN ASSEMBLY

January 15, 2019

Introduced by M. of A. WOERNER -- Multi-Sponsored by -- M. of A. FINCH, GALEF, GIGLIO, M. G. MILLER, MONTESANO, RA, RAIA, STEC, THIELE -- 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:

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 Sections 49-a and 49-b of the navigation law are REPEALED and a new article 4-B is added to read as follows: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

Section 79-d. Operation of a vessel while under the influence of alcohol or drugs.
79-e. Operation of a vessel after having consumed alcohol; under the age of twenty-one; per se.
79-f. Sanctions.
79-g. Arrest and testing.
79-h. Operation of a vessel after having consumed alcohol; under twenty-one; procedure.
79-i. Chemical test evidence.
79-j. Alcohol and drug rehabilitation program within the department of motor vehicles.
79-k. Special options program for operation of a vessel while intoxicated.
79-l. Installation and operation of ignition interlock devices.
79-m. Special procedures and disposition involving alcohol and substance abuse assessment and treatment.
79-n. Driver and boater responsibility assessment.

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

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

(a) The term "vessel" shall be every description of watercraft or other artificial contrivance propelled in whole or in part by mechanical power and, which is used or capable of being used as a means of transportation over water, and which is underway and not at anchor or made fast to the shore or ground. The term "vessel" shall include a "public vessel" as defined in this section unless otherwise specified.

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

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

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

(e) The term "commissioner" means the commissioner of parks, recreation and historic preservation.

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

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

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

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

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

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

7. Operation of a vessel while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs. No person shall operate a vessel while the person's ability to operate such vessel is impaired by the combined influence of drugs or of alcohol and any drug or drugs.

8. Public vessels: per se - level I. Notwithstanding the provisions of section seventy-nine-i of this article, no person shall operate a public vessel while such person has .04 of one per centum or more but not more

than .06 of one per centum by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section seventy-nine-g of this article; provided, however, nothing contained in this subdivision shall prohibit the imposition of a charge of a violation of subdivision two of this section, or of section seventy-nine-e of this article where a person under the age of twenty-one operates a public vessel where a chemical analysis of such person's blood, breath, urine, or saliva, made pursuant to the provisions of section seventy-nine-g of this article, indicates that such operator has .02 of one per centum or more but less than .04 of one per centum by weight of alcohol in such operator's blood.

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

10. Effect of prior out-of-state conviction. A prior out-of-state conviction for operating a vessel while under the influence of alcohol or drugs shall be deemed to be a prior conviction of a violation of this section for purposes of determining penalties imposed under this section or for purposes of any administrative action required to be taken pursuant to subdivision three of section seventy-nine-f of this article; provided, however, that such conduct, had it occurred in this state, would have constituted a misdemeanor or felony violation of any of the provisions of this section. Provided, however, that if such conduct, had it occurred in this state, would have constituted a violation of any provisions of this section which are not misdemeanor or felony offenses, then such conduct shall be deemed to be a prior conviction of a violation of subdivision two of this section for purposes of determining penalties imposed under this section or for purposes of any administrative action required to be taken pursuant to subdivision three of section seventy-nine-f of this article.

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

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

13. Plea bargain limitations. (a) (i) In any case wherein the charge laid before the court alleges a violation of subdivision three, five, six or seven of this section, any plea of guilty thereafter entered in

satisfaction of such charge must include at least a plea of guilty to the violation of the provisions of any of the subdivisions of this section, other than subdivision eight or nine, and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, if the district attorney, upon reviewing the available evidence, determines that the charge of a violation of this section is not warranted, such district attorney may consent, and the court may allow a disposition by plea of guilty to another charge in satisfaction of such charge; provided, however, in all such cases, the court shall set forth upon the record the basis for such disposition.

(ii) In any case wherein the charge laid before the court alleges a violation of subdivision three, five, six or seven of this section, no plea of guilty to subdivision two of this section shall be accepted by the court unless such plea includes as a condition thereof the requirement that the defendant attend and complete the alcohol and drug rehabilitation program established pursuant to section seventy-nine-j of this article, including any assessment and treatment required thereby; provided, however, that such requirement may be waived by the court upon application of the district attorney or the defendant demonstrating that the defendant, as a condition of the plea, has been required to enter into and complete an alcohol or drug treatment program prescribed pursuant to an alcohol or substance abuse screening or assessment conducted pursuant to section seventy-nine-m of this article or for other good cause shown. The provisions of this subparagraph shall apply, notwithstanding any bars to participation in the alcohol and drug rehabilitation program set forth in section seventy-nine-j of this article; provided, however, that nothing in this paragraph shall authorize the issuance of a conditional privilege to operate a vessel unless otherwise authorized by law.

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

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

(c) Except as provided in paragraph (b) of this subdivision, in any case wherein the charge laid before the court alleges a violation of

subdivision two of this section by a person who was under the age of twenty-one at the time of commission of the offense, the court, with the consent of both parties, may allow the satisfaction of such charge by the defendant's agreement to be subject to action by the commissioner pursuant to section seventy-nine-h of this article. In any such case, the defendant shall waive the right to a hearing under section seventy-nine-h of this article and such waiver shall have the same force and effect as a finding of a violation of section seventy-nine-e of this article entered after a hearing conducted pursuant to such section seventy-nine-h. The defendant shall execute such waiver in open court, and, if represented by counsel, in the presence of his or her attorney, on a form to be provided by the commissioner, which shall be forwarded by the court to the commissioner within ninety-six hours. To be valid, such form shall, at a minimum, contain clear and conspicuous language advising the defendant that a duly executed waiver: (i) has the same force and effect as a guilty finding following a hearing pursuant to section seventy-nine-h of this article; (ii) shall subject the defendant to the imposition of sanctions pursuant to such section seventy-nine-h; and (iii) may subject the defendant to increased sanctions upon a subsequent violation of this section or section seventy-nine-e of this article. Upon receipt of a duly executed waiver pursuant to this paragraph, the commissioner shall take such administrative action and impose such sanctions as may be required by section seventy-nine-h of this article.

(d) In any case wherein the charge laid before the court alleges a violation of subdivision four of this section, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of the provisions of subdivision three, four or five of this section, and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, if the district attorney, upon reviewing the available evidence, determines that the charge of a violation of this section is not warranted, such district attorney may consent and the court may allow a disposition by plea of guilty to another charge in satisfaction of such charge, provided, however, in all such cases, the court shall set forth upon the record the basis for such disposition. Provided, further, however, that no such plea shall be accepted by the court unless such plea includes as a condition thereof the requirement that the defendant attend and complete the alcohol and drug rehabilitation program established pursuant to section seventy-nine-j of this article, including any assessment and treatment required thereby; provided, however, that such requirement may be waived by the court upon application of the district attorney or the defendant demonstrating that the defendant, as a condition of the plea, has been required to enter into and complete an alcohol or drug treatment program prescribed pursuant to an alcohol or substance abuse screening or assessment conducted pursuant to section seventy-nine-m of this article or for other good cause shown. The provisions of this paragraph shall apply, notwithstanding any bars to participation in the alcohol and drug rehabilitation program set forth in section seventy-nine-j of this article; provided, however, that nothing in this paragraph shall authorize the issuance of a conditional privilege to operate a vessel unless otherwise authorized by law.

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

15. Operation of a vessel while intoxicated or while ability impaired by drugs--serious physical injury or death or child in the vessel. (a)

In every case where a person is charged with a violation of subdivision three, four, five, six or seven of this section, the law enforcement officer alleging such charge shall make a clear notation in the "Description of Violation" section of a simplified traffic information (i) if, arising out of the same incident, someone other than the person charged was killed or suffered serious physical injury as defined in section 10.00 of the penal law; such notation shall be in the form of a "D" if someone other than the person charged was killed and such notation shall be in the form of a "S.P.I." if someone other than the person charged suffered serious physical injury; and (ii) if a child aged fifteen years or less was present in the vessel of the person charged with a violation of subdivision three, four, five, six or seven of this section; such notation shall be in the form of "C.I.V.". Provided, however, that the failure to make such notations shall in no way affect a charge for a violation of subdivision three, four, five, six or seven of this section.

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

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

§ 79-f. Sanctions. 1. Criminal penalties. (a) Operation of a vessel while ability impaired. A violation of subdivision two of section seventy-nine-d of this article shall be a violation and shall be punishable by a fine of not less than three hundred dollars nor more than five hundred dollars or by imprisonment in a penitentiary or county jail for not more than fifteen days, or by both such fine and imprisonment. A person who operates a vessel in violation of such subdivision after having been convicted of a violation of any subdivision of section seventy-nine-d of this article within the preceding five years shall be punished by a fine of not less than five hundred dollars nor more than seven hundred fifty dollars, or by imprisonment of not more than thirty days in a penitentiary or county jail or by both such fine and imprisonment. A person who operates a vessel in violation of such subdivision

after having been convicted two or more times of a violation of any subdivision of section seventy-nine-d of this article within the preceding ten years shall be guilty of a misdemeanor, and shall be punished by a fine of not less than seven hundred fifty dollars nor more than one thousand five hundred dollars, or by imprisonment of not more than one hundred eighty days in a penitentiary or county jail or by both such 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 first degree, as defined 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.

(iii) 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 first degree, as defined 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.

(iv) 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 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 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.

(d) Alcohol or drug-related offenses; special vessels. (i) A violation of subdivision eight of section seventy-nine-d of this article shall be a violation punishable as provided in paragraph (a) of this subdivision. Except as provided in subparagraph (ii) or (vi) of this paragraph, a violation of subdivision two, three, five, six, seven or nine of section seventy-nine-d of this article wherein the violator is operating a public vessel shall be a misdemeanor. A violation of subdivision two,

three, five, six or seven of section seventy-nine-d of this article shall be punishable by a fine of not less than five hundred dollars nor more than one thousand five hundred dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A violation of subdivision nine of section seventy-nine-d of this article shall be punishable by a fine of not less than five hundred dollars nor more than one thousand five hundred dollars or by a period of imprisonment not to exceed one hundred eighty days, or by both such fine and imprisonment. A person who operates any such vessel in violation of such subdivision nine after having been convicted of a violation of subdivision two, three, four, five, six, seven or nine of section seventy-nine-d of this article within the preceding five years shall be punishable by a fine of not less than five hundred dollars nor more than one thousand five hundred dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A violation of subdivision four of section seventy-nine-d of this article wherein the violator is operating a public vessel shall be a class E felony punishable by a fine of not less than one thousand dollars nor more than five thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

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

(iii) (A) A person who operates a vessel in violation of subdivision two, three, four, five, six or seven of section seventy-nine-d of this article and which is punishable as provided in subparagraph (i) or (ii) of this paragraph after having been convicted of a violation of any such subdivision of section seventy-nine-d of this article and penalized under subparagraph (i) or (ii) of this paragraph within the preceding ten years, shall be guilty of a class E felony, which shall be punishable by a fine of not less than one thousand dollars nor more than five thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A person who operates a vessel in violation of subdivision nine of section seventy-nine-d of this article after having been convicted of two or more violations of subdivisions two, three, four, five, six, seven or nine of section seventy-nine-d of this article within the preceding five years, any one of which was a misdemeanor, shall be guilty of a class E felony, which shall be punishable by a fine of not less than one thousand dollars nor more than five thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. In addition, any person sentenced pursuant to this subparagraph shall be subject to the disqualification provided in subparagraph (iii) of paragraph (e) of subdivision three of this section.

(B) A person who operates a vessel in violation of subdivision two, three, four, five, six or seven of section seventy-nine-d of this article and which is punishable as provided in subparagraph (i) or (ii) of this paragraph after having been convicted of a violation of any such subdivision of section seventy-nine-d of this article and penalized under subparagraph (i) or (ii) of this paragraph twice within the preceding ten years, shall be guilty of a class D felony, which shall be punishable by a fine of not less than two thousand dollars nor more than

ten thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A person who operates a vessel in violation of subdivision nine of section seventy-nine-d of this article after having been convicted of three or more violations of subdivisions two, three, four, five, six, seven or nine of section seventy-nine-d of this article within the preceding five years, any one of which was a misdemeanor, shall be guilty of a class D felony, which shall be punishable by a fine of not less than two thousand dollars nor more than ten thousand dollars, or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. In addition, any person sentenced pursuant to this subparagraph shall be subject to the disqualification provided in subparagraph (iii) of paragraph (e) of subdivision three of this section.

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

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

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

(e) Certain sentences prohibited. Notwithstanding any provisions of the penal law, no judge or magistrate shall impose a sentence of unconditional discharge for a violation of any subdivision of section seventy-nine-d of this article nor shall a judge or magistrate impose a sentence of conditional discharge or probation unless such conditional discharge or probation is accompanied by a sentence of a fine as provided in this subdivision.

(f) Where the court imposes a sentence for a violation of any subdivision of section seventy-nine-d of this article, the court may require the defendant, as a part of or as a condition of such sentence, to attend a single session conducted by a victims impact program. For purposes of this section, "victims impact program" means a program operated by a county, a city with a population of one million or more, by a not-for-profit organization authorized by any such county or city, or a combination thereof, in which presentations are made concerning the impact of operating a vessel while under the influence of alcohol or drugs to one or more persons who have been convicted of such offenses. A description of any such program shall be filed with the commissioner and with the coordinator of the special traffic options program for driving while intoxicated established pursuant to section eleven hundred nine-

ty-seven of the vehicle and traffic law, and shall be made available to the court upon request. Nothing contained herein shall be construed to require any governmental entity to create such a victim impact program.

(g) The office of probation and correctional alternatives shall recommend to the commissioner of the division of criminal justice services regulations governing the monitoring of compliance by persons ordered 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.

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

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

(c) A court sentencing a person pursuant to paragraph (a) or (b) of this subdivision shall: (i) order the installation of an ignition interlock device approved pursuant to section seventy-nine-l of this article in any vessel owned or operated by the person so sentenced. Such devices shall remain installed during any period of revocation of the privilege to operate a vessel required to be imposed pursuant to paragraph (b) of subdivision three of this section, and, upon the termination of such revocation period, for an additional period as determined by the court; and (ii) order that such person receive an assessment of the degree of their alcohol or substance abuse and dependency pursuant to the provisions of section seventy-nine-m 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 seventy-nine-m of this article. Any person ordered to install an ignition interlock device pursuant to this paragraph shall be subject to

the provisions of subdivisions four, five, seven, eight and nine of section seventy-nine-l of this article.

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

3. Privilege to operate a vessel sanctions. (a) Suspensions. Except as otherwise provided in this subdivision, a privilege to operate a vessel shall be suspended and a registration may be suspended for the following periods:

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

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

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

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

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

(iii) 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 of a vessel while intoxicated. Six months, where the holder is convicted of a violation of subdivision three, five, six or seven of section seventy-nine-d of this article. One year where the holder is convicted of a violation of subdivision four of section seventy-nine-d of this article.

(iv) 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 of a vessel while intoxicated; prior offense. One year, where the holder is convicted of a violation of subdivision three, five, six or seven of section seventy-nine-d of this article committed within ten years of a conviction for a violation of subdivision three, five, six or seven of section seventy-nine-d of this article. Eighteen months, where the holder is convicted of a violation of subdivision four of section seventy-nine-d of this article committed within ten years of a conviction for a violation of subdivision three, four, five, six or seven of section seventy-nine-d of this article; or where the holder is convicted of a violation of subdivision three, five, six or seven of section seventy-nine-d of this article committed within ten years of a conviction for a violation of subdivision four of section seventy-nine-d of this article.

(v) Holder of a license issued to a master, pilot, engineer or joint pilot and engineer. (A) Except as otherwise provided in this subparagraph, one year where the holder of a license issued to a master, pilot,

engineer or joint pilot and engineer, subject to section sixty-four of this chapter, is convicted of a violation of any subdivision of section seventy-nine-d of this article or if such holder is convicted of an offense consisting of operating a vessel under the influence of alcohol or drugs where such conviction was had outside of this state.

(B) Three years, where the holder is convicted of a violation of any subdivision of section seventy-nine-d of this article, such violation was committed while the holder was operating a public vessel transporting hazardous materials or if such holder is convicted of an offense consisting of operating a public vessel under the influence of alcohol or drugs where such conviction was had outside of this state.

(vi) Persons under the age of twenty-one. One year, where the holder is convicted of or adjudicated a youthful offender for a violation of any subdivision of section seventy-nine-d of this article, or is convicted of or receives a youthful offender or other juvenile adjudication for an offense consisting of operating a vessel under the influence of intoxicating liquor where the conviction, or youthful offender or other juvenile adjudication was had outside this state, where such person was under the age of twenty-one at the time of commission of such violation.

(vii) Persons under the age of twenty-one; prior offense or finding. One year or until the holder reaches the age of twenty-one, whichever is the greater period of time, where the holder has been found to have operated a vessel after having consumed alcohol in violation of section seventy-nine-e of this article, or is convicted of, or adjudicated a youthful offender for, a violation of any subdivision of section seventy-nine-d of this article, or is convicted of or receives a youthful offender or juvenile adjudication for an offense consisting of operating a vessel under the influence of intoxicating liquor where the conviction, or youthful offender or other juvenile adjudication was had outside this state, where such person was under the age of twenty-one at the time of commission of such violation and has previously been found to have operated a vessel after having consumed alcohol in violation of section seventy-nine-e of this article, or has previously been convicted of, or adjudicated a youthful offender for, any violation of section seventy-nine-d of this article not arising out of the same incident, or has previously been convicted of or received a youthful offender or juvenile adjudication for an offense consisting of operating a vessel under the influence of intoxicating liquor when the conviction, or youthful offender or other juvenile adjudication was had outside this state and not arising out of the same.

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

(ix) Effect of rehabilitation program. No period of revocation arising out of subparagraph (v), (vi) or (vii) of this paragraph may be set aside by the commissioner for the reason that such person was a partic-

ipant in the alcohol and drug rehabilitation program set forth in section eleven hundred ninety-six of the vehicle and traffic law.

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

(xi) Limitation of certain mandatory revocations. Where revocation is mandatory pursuant to subparagraph (v) of this paragraph for a conviction of a violation of subdivision eight of section seventy-nine-d of this article, such revocation shall be issued only by the commissioner and shall be applicable only to that portion of the holder's license which permits the operation of public vessels, and the commissioner shall immediately issue a privilege to operate a vessel, other than a license issued to a master, pilot, engineer or joint pilot and engineer, to such person provided that such person is otherwise eligible to receive such privilege to operate a vessel and further provided that issuing a license to such person does not create a substantial safety hazard to the waters of the state.

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

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

(1) that such person provides acceptable documentation to the commissioner that such person has voluntarily enrolled in and successfully completed an appropriate rehabilitation program; or

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

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

(C) For revocations imposed pursuant to clause (A) of this subparagraph, the commissioner may adopt rules to permit conditional or restricted operation of a vessel by any such person after a mandatory revocation period of not less than three years subject to such criteria, terms and conditions as established by the commissioner.

(D) Upon (1) a finding of refusal after having been convicted three times within four years of a violation of any subdivision of section seventy-nine-d of this article or of the penal law for which a violation of any subdivision of such section seventy-nine-d is an essential element or any combination of three such convictions not arising out of the same incident within four years or (2) a fourth conviction of any subdivision of section seventy-nine-d of this article after having been convicted of any such subdivision of such section seventy-nine-d or of the penal law for which a violation of any of such subdivisions of such section seventy-nine-d is an essential element or any combination of three such convictions not arising out of the same incident within four years or (3) a finding of refusal after having been convicted four times within eight years of a violation of any subdivision of section seventy-nine-d of this article or of the penal law for which a violation of any of such subdivisions of such section seventy-nine-d is an essential element or any combination of four such convictions not arising out of the same incident within eight years or (4) a fifth conviction of any subdivision of section seventy-nine-d of this article after having been convicted of such subdivision or of the penal law for which a violation of any of such subdivisions of such section seventy-nine-d is an essential element or any combination of four such convictions not arising out of the same incident within eight years, such revocation shall be permanent.

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

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

(2) that such person provides acceptable documentation to the commissioner that such person has voluntarily enrolled in and successfully completed an appropriate rehabilitation program; and

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

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

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

(c) Reissuance of the privilege to operate a vessel; restrictions. (i) Except as otherwise provided in this paragraph, where a privilege to operate a vessel is revoked pursuant to paragraph (b) of this subdivision, no new privilege to operate a vessel shall be issued after the expiration of the minimum period specified in such paragraph, except in the discretion of the commissioner.

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

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

(d) Suspension or revocation; sentencing. (i) Where a suspension or revocation, other than a revocation required to be issued by the commissioner, is mandatory pursuant to paragraph (a) or (b) of this subdivision, the magistrate, justice or judge shall issue an order suspending or revoking such privilege to operate a vessel upon sentencing, and the privilege holder shall surrender such privilege to operate a vessel to the court. Except as hereinafter provided, such suspension or revocation shall take effect immediately.

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

(e) Special provisions. (i) Suspension pending prosecution; procedure. (A) Without notice, pending any prosecution, the court shall suspend such privilege to operate a vessel, where the holder has been charged with a violation of subdivision three, four, five, six or seven of section seventy-nine-d of this article and either (1) a violation of a felony under article one hundred twenty or one hundred twenty-five of

the penal law arising out of the same incident, or (2) has been convicted of any violation under section seventy-nine-d of this article within the preceding five years.

(B) The suspension under the preceding clause shall occur no later than twenty days after the holder's first appearance before the court on the charges or at the conclusion of all proceedings required for the arraignment. In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of section 100.40 of the criminal procedure law and there exists reasonable cause to believe that the holder operated a vessel in violation of subdivision three, four, five, six or seven of section seventy-nine-d of this article and either (1) the person had been convicted of any violation under such section seventy-nine-d of this article within the preceding five years; or (2) that the holder committed a violation of a felony under article one hundred twenty or one hundred twenty-five of the penal law. At such time the holder shall be entitled to an opportunity to make a statement regarding the enumerated issues and to present evidence tending to rebut the court's findings. Where such suspension is imposed upon a pending charge of a violation of a felony under article one hundred twenty or one hundred twenty-five of the penal law and the holder has requested a hearing pursuant to article one hundred eighty of the criminal procedure law, the court shall conduct such hearing. If upon completion of the hearing, the court fails to find that there is reasonable cause to believe that the holder committed a felony under article one hundred twenty or one hundred twenty-five of the penal law and the holder has not been previously convicted of any violation of section seventy-nine-d of this article within the preceding five years the court shall promptly notify the commissioner and direct restoration of such privilege to operate a vessel to the privilege holder unless such privilege to operate a vessel is suspended or revoked pursuant to any other provision of this chapter.

(ii) Bail forfeiture. A privilege to operate a vessel shall be suspended where the holder forfeits bail upon a charge of a violation of any subdivision of section seventy-nine-d of this article. Such suspension shall not be terminated until the holder submits to the jurisdiction of the court in which the bail was forfeited.

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

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

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

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

(B) Any person who is a holder of a license issued to a master, pilot, engineer or joint pilot and engineer, on board of a public vessel and is convicted of a violation of any subdivision of section seventy-nine-d of this article who has had a prior finding of refusal to submit to a chemical test pursuant to section seventy-nine-g of this article or has had a prior conviction of any of the following offenses: any violation of section seventy-nine-d of this article; any violation of section forty-seven of this chapter; or has a prior conviction of any felony involving the use of a vessel pursuant to section sixty-four-a of this chapter, shall be permanently disqualified from operating a public vessel. The commissioner may waive such disqualification and prohibition hereinbefore provided after a period of ten years has expired from such sentence provided:

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

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

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

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

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

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

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

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

(B) The suspension occurring under clause (A) of this subparagraph shall occur no later than at the conclusion of all proceedings required for the arraignment; provided, however, that if the results of any test administered pursuant to section seventy-nine-g of this article are not available within such time period, the complainant police officer or other public servant shall transmit such results to the court at the time they become available, and the court shall, as soon as practicable following the receipt of such results and in compliance with the requirements of this subparagraph, suspend such privilege to operate a vessel. In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of section 100.40 of the criminal procedure law and there exists reasonable cause to believe either that the holder operated a vessel while such holder had .08 of one percent or more by weight of alcohol in his or her blood as was shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section seventy-nine-g of this article. At the time of such suspension the holder shall be entitled to an opportunity to make a statement regarding this issue and to present evidence tending to rebut the court's findings.

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

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

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

hold. A hardship privilege shall not be valid for the operation of a public vessel.

(f) Notice of charges to parent or guardian. Upon the first scheduled appearance of any person under eighteen years of age who resides within the household of his or her parent or guardian upon a charge of a violation of subdivision two, three and/or five of section seventy-nine-d of this article, the local criminal court before which such first appearance is scheduled shall forthwith transmit written notice of such appearance or failure to make such appearance to the parent or guardian of such minor person; provided, however, that if an arraignment and conviction of such person follows such appearance upon the same day, or in case such person waives arraignment and enters a plea of guilty to the offense as charged in accordance with the provisions of section eighteen hundred five of the vehicle and traffic law, transmittal of notice of his or her conviction as provided in section five hundred fourteen of the vehicle and traffic law shall be sufficient and the notice required by this paragraph need not be given; provided further that the failure of a local criminal court to transmit the notice required by this paragraph shall in no manner affect the validity of a conviction subsequently obtained.

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

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

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

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

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

(3) for the purposes of this paragraph, "reasonable grounds" to believe that a person has been operating a vessel after having consumed

alcohol in violation of section seventy-nine-e of this article shall be determined by viewing the totality of circumstances surrounding the incident which, when taken together, indicate that the operator was operating a vessel in violation of such subdivision. Such circumstances may include any visible or behavioral indication of alcohol consumption by the operator, the existence of an open container containing or having contained an alcoholic beverage in or around the vessel operated by the operator, or any other evidence surrounding the circumstances of the incident which indicates that the operator has been operating a vessel after having consumed alcohol at the time of the incident; or

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

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

(2) The report of the police officer shall set forth reasonable grounds to believe such arrested person or such detained person under the age of twenty-one had been operating a vessel in violation of any subdivision of section seventy-nine-d or seventy-nine-e of this article, that said person had refused to submit to such chemical test, and that no chemical test was administered pursuant to the requirements of subdivision three of this section. The report shall be presented to the court upon arraignment of an arrested person, provided, however, in the case of a person under the age of twenty-one, for whom a test was authorized pursuant to the provisions of subparagraph two or three of paragraph (a) of this subdivision, and who has not been placed under arrest for a violation of any of the provisions of section seventy-nine-d of this article, such report shall be forwarded to the commissioner within

forty-eight hours in a manner to be prescribed by the commissioner, and all subsequent proceedings with regard to refusal to submit to such chemical test by such person shall be as set forth in subdivision four of section seventy-nine-h of this article.

(3) For persons placed under arrest for a violation of any subdivision of section seventy-nine-d of this article, the privilege to operate a vessel and any non-resident operating privilege shall, upon the basis of such written report, be temporarily suspended by the court without notice pending the determination of a hearing as provided in paragraph (c) of this subdivision. Copies of such report must be transmitted by the court to the commissioner and such transmittal may not be waived even with the consent of all the parties. Such report shall be forwarded to the commissioner within forty-eight hours of such arraignment.

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

(c) Hearings. Any person whose privilege to operate a vessel or any non-resident privilege has been suspended pursuant to paragraph (b) of this subdivision is entitled to a hearing in accordance with a hearing schedule to be promulgated by the commissioner of motor vehicles pursuant to paragraph (c) of subdivision two of section eleven hundred ninety-four of the vehicle and traffic law. If the department of motor vehicles fails to provide for such hearing fifteen days after the date of the arraignment of the arrested person, the privilege to operate a vessel or non-resident operating privilege of such person shall be reinstated pending a hearing pursuant to this section. The hearing shall be limited to the following issues: (1) did the police officer have reasonable grounds to believe that such person had been operating a vessel in violation of any subdivision of section seventy-nine-d of this article; (2) did the police officer make a lawful arrest of such person; (3) was such person given sufficient warning, in clear or unequivocal language, prior to such refusal that such refusal to submit to such chemical test or any portion thereof, would result in the immediate suspension and subsequent revocation of such person's privilege to operate a vessel whether or not such person is found guilty of the charge for which the arrest was made; and (4) did such person refuse to submit to such chemical test or any portion thereof. If, after such hearing, the hearing officer, acting on behalf of the commissioner of motor vehicles, finds on any one of said issues in the negative, the hearing officer shall immediately terminate any suspension arising from such refusal. If, after such hearing, the hearing officer, acting on behalf of the commissioner of motor vehicles finds all of the issues in the affirmative, such officer shall immediately revoke the privilege to operate a vessel or any non-resident operating privilege in accordance with the provisions of paragraph (d) of this subdivision. A person who has had a privilege to operate a vessel or non-resident operating privilege suspended or revoked pursuant to this subdivision may appeal the findings of the hearing officer in accordance with the provisions of article three-A of the vehicle and traffic law. Any person may waive the right

to a hearing under this section. Failure by such person to appear for the scheduled hearing shall constitute a waiver of such hearing, provided, however, that such person may petition the commissioner of motor vehicles for a new hearing which shall be held as soon as practicable. The results of all hearings shall be referred to the commissioner for purposes of taking proper action against a defendant's privilege to operate a vessel.

(d) Sanctions. (1) Revocations. (A) Any privilege to operate a vessel which has been revoked pursuant to paragraph (c) of this subdivision shall not be restored for at least one year after such revocation, nor thereafter, except in the discretion of the commissioner. However, no such privilege to operate a vessel shall be restored for at least eighteen months after such revocation, nor thereafter except in the discretion of the commissioner, in any case where the person has had a prior revocation resulting from refusal to submit to a chemical test, or has been convicted of or found to be in violation of any subdivision of section seventy-nine-d or section seventy-nine-e of this article not arising out of the same incident, within the five years immediately preceding the date of such revocation; provided, however, a prior finding that a person under the age of twenty-one has refused to submit to a chemical test pursuant to subdivision four of section seventy-nine-h of this article shall have the same effect as a prior finding of a refusal pursuant to this subdivision solely for the purpose of determining the length of any license suspension or revocation required to be imposed under any provision of this article, provided that the subsequent offense or refusal is committed or occurred prior to the expiration of the retention period for such prior refusal as set forth in paragraph (k) of subdivision one of section two hundred one of the vehicle and traffic law.

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

(C) Any license issued to a master, pilot, engineer or joint pilot and engineer which has been revoked pursuant to paragraph (c) of this subdivision based upon a finding of refusal to submit to a chemical test, where such finding occurs within or outside of this state, shall not be restored for at least eighteen months after such revocation, nor thereafter, except in the discretion of the commissioner, but shall not be restored for at least three years after such revocation, nor thereafter, except in the discretion of the commissioner, if the holder of such license was operating a vessel transporting hazardous materials at the time of such refusal. However, such person shall be permanently disqualified from operating a public vessel in any case where the holder has a prior finding of refusal to submit to a chemical test pursuant to this section or has a prior conviction of any of the following offenses: any violation of section seventy-nine-d of this article; or any violation of

section forty-seven of this chapter. Provided that the commissioner may waive such permanent revocation after a period of ten years has expired from such revocation provided:

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

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

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

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

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

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

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

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

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

3. Compulsory chemical tests. (a) Court ordered chemical tests. Notwithstanding the provisions of subdivision two of this section, no person who operates a vessel upon the waters of the state may refuse to submit to a chemical test of one or more of the following: breath, blood, urine or saliva, for the purpose of determining the alcoholic and/or drug content of the blood when a court order for such chemical test has been issued in accordance with the provisions of this subdivision.

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

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

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

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

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

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

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

(d) Court order; procedure. (1) An application for a court order to compel submission to a chemical test or any portion thereof, may be made to any supreme court justice, county court judge or district court judge in the judicial district in which the incident occurred, or if the incident occurred in the city of New York before any supreme court justice or judge of the criminal court of the city of New York. Such application

may be communicated by telephone, radio or other means of electronic communication, or in person.

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

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

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

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

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

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

4. Testing procedures. (a) Persons authorized to withdraw blood; immunity; testimony. (1) At the request of a police officer, the following persons may withdraw blood for the purpose of determining the alcoholic or drug content therein: (i) a physician, a registered professional nurse, a registered physician assistant, a certified nurse practitioner, or an advanced emergency medical technician as certified by the department of health; or (ii) under the supervision and at the direction of a physician, registered physician assistant or certified nurse practitioner acting within his or her lawful scope of practice, or upon the express consent of the person eighteen years of age or older from whom such blood is to be withdrawn: a clinical laboratory technician or clinical laboratory technologist licensed pursuant to article one hundred sixty-five of the education law; a phlebotomist; or a medical laboratory technician or medical technologist employed by a clinical laboratory approved under title five of article five of the public health law. This limitation shall not apply to the taking of a urine, saliva or breath specimen.

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

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

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

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

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

drawing blood at the request of a police officer pursuant to a court order in accordance with subdivision three of this section.

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

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

§ 79-h. Operation of a vessel after having consumed alcohol; under twenty-one; procedure. 1. Chemical test report and hearing. (a) Whenever a chemical test of the breath, blood, urine or saliva of an operator who is under the age of twenty-one indicates that such person has operated a vessel in violation of section seventy-nine-e of this article, and such person is not charged with violating any subdivision of section seventy-nine-d of this article arising out of the same incident, the police officer who administered the test shall forward a report of the results of such test to the office of parks, recreation and historic preservation and the department of motor vehicles within twenty-four hours of the time when such results are available in a manner prescribed by the commissioner of motor vehicles, and the operator shall be given a hearing notice as provided in subdivision two of this section, to appear before a hearing officer in the county where the chemical test was administered, or in an adjoining county under such circumstances as prescribed by the commissioner of motor vehicles, on a date to be established in accordance with a schedule promulgated by the commissioner of motor vehicles. Such hearing shall occur within thirty days of, but not less than forty-eight hours from, the date that the chemical test was administered, provided, however, where the commissioner of motor vehicles determines, based upon the availability of hearing officers and the anticipated volume of hearings at a particular location, that the scheduling of such hearing within thirty days would impair the timely scheduling or conducting of other hearings pursuant to the vehicle and traffic law, such hearing shall be scheduled at the next hearing date for such particular location. When providing the operator with such hearing notice, the police officer shall also give to the operator, and shall, prior to the commencement of the hearing, provide to the department of motor vehicles, copies of the following reports, documents and materials: any written report or document, or portion thereof, concerning a physical examination, a scientific test or experiment, including the most recent record of inspection, or calibration or repair of machines or instruments utilized to perform such scientific tests or experiments and the certification certificate, if any, held by the operator of the machine or instrument, which tests or examinations were made by or at the request or direction of a public servant engaged in law enforcement activity. The report of the police officer shall be verified by having the report sworn to, or by affixing to such report a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law and such form notice togeth-

er with the subscription of the deponent shall constitute verification of the report.

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

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

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

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

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

(1) on the merits of the charge, and whether or not a party objects, the hearing officer shall exclude from consideration the following: a privileged communication; evidence which, for constitutional reasons, would not be admissible in a court of law; evidence of prior misconduct,

incompetency or illness, except where such evidence would be admissible in a court of law; evidence which is irrelevant or immaterial;

(2) no negative inference shall be drawn from the operator's exercising the right not to testify.

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

(vi) A person who has had a privilege to operate a vessel or non-resident operating privilege suspended or revoked pursuant to the provisions of this section may appeal the finding of the hearing officer in accordance with the provisions of article three-A of the vehicle and traffic law.

(c) Unless an adjournment of the hearing date has been granted, upon the operator's failure to appear for a scheduled hearing, the commissioner of motor vehicles shall report the failure to appear to the commissioner and such commissioner shall suspend the privilege to operate a vessel or non-resident operating privilege until the operator petitions the commissioner and a rescheduled hearing is conducted, provided, however, the commissioner shall restore such person's privilege to operate a vessel or non-resident operating privilege if such rescheduled hearing is adjourned at the request of a person other than the operator. Requests for adjournments shall be made and determined in accordance with regulations promulgated by the commissioner of motor vehicles. If such a request by the operator for an adjournment is granted, the commissioner of motor vehicles shall notify the operator of the rescheduled hearing, which shall be scheduled for the next hearing date. If a second or subsequent request by the operator for an adjournment is granted, the operator's privilege to operate a vessel or non-resident operating privilege may be suspended pending the hearing at the time such adjournment is granted; provided, however, that the records of the department of motor vehicles or the evidence already admitted furnishes reasonable grounds to believe such suspension is necessary to prevent continuing violations or a substantial safety hazard; and provided further, that such hearing shall be scheduled for the next hearing date.

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

2. Hearing notice. The hearing notice issued to an operator pursuant to subdivision one of this section shall be in a form as prescribed by the commissioner of motor vehicles. In addition to containing information concerning the time, date and location of the hearing, and such other information as the commissioner of motor vehicles deems appropriate, such hearing notice shall also contain the following information:

the date, time and place of the offense charged; the procedures for requesting an adjournment of a scheduled hearing as provided in this section, the operator's right to a hearing conducted pursuant to this section and the right to waive such hearing and plead guilty, either in person or by mail, to the offense charged.

3. Civil penalty. Unless otherwise provided, any person whose privilege to operate a vessel or any non-resident operating privilege is suspended or revoked pursuant to the provisions of this section shall also be liable for a civil penalty in the amount of one hundred twenty-five dollars. The first fifty dollars of each penalty collected by the department of motor vehicles pursuant to the provisions of this subdivision shall be paid to the commissioner of motor vehicles for deposit to the general fund and the remainder of all such penalties shall be paid to the commissioner for deposit in the "I Love NY Waterways" boating safety fund established pursuant to section ninety-seven-nn of the state finance law, as added by chapter eight hundred five of the laws of nineteen hundred ninety-two.

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

(b) Unless an adjournment of the hearing date has been granted, upon the operator's failure to appear for a scheduled hearing, the commissioner of motor vehicles shall report the failure to appear to the commissioner and shall suspend the privilege to operate a vessel or non-resident operating privilege until the operator petitions the commissioner and a rescheduled hearing is conducted, provided, however, the commissioner shall restore such person's privilege to operate a vessel or non-resident operating privilege if such rescheduled hearing is adjourned at the request of a person other than the operator. Requests for adjournments shall be made and determined in accordance with regulations promulgated by the commissioner of motor vehicles. If such a request by the operator for an adjournment is granted, the commissioner of motor vehicles shall notify the operator of the rescheduled hearing, which shall be scheduled for the next hearing date. If a second or subsequent request by the operator for an adjournment is granted, the operator's privilege to operate a vessel or non-resident operating privilege may be suspended pending the hearing at the time

such adjournment is granted; provided, however, that the records of the department of motor vehicles or the evidence already admitted furnishes reasonable grounds to believe such suspension is necessary to prevent continuing violations or a substantial traffic safety hazard; and provided further, that such hearing shall be scheduled for the next hearing.

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

(c) The hearing on the refusal to submit to a chemical test pursuant to this subdivision shall be limited to the following issues: (1) was a valid request to submit to a chemical test made by the police officer in accordance with the provisions of section seventy-nine-g of this article; (2) was such person given sufficient warning, in clear or unequivocal language, prior to such refusal that such refusal to submit to such chemical test or any portion thereof, would result in the revocation of such person's privilege to operate a vessel or non-resident operating privilege, whether or not such person is found to have operated a vessel after having consumed alcohol; (3) did such person refuse to submit to such chemical test or any portion thereof; (4) did such person operate the vessel; (5) was such person less than twenty-one years of age at the time of operation of the vessel; and (6) did the police officer make a lawful stop of such person. If, after such hearing, the hearing officer, acting on behalf of the commissioner of motor vehicles, finds on any said issue in the negative, the hearing officer shall not revoke the operator's privilege to operate a vessel or non-resident operating privilege and shall immediately terminate any outstanding suspension of the operator's privilege to operate a vessel or non-resident operating privilege arising from such refusal. If, after such hearing, the hearing officer, acting on behalf of the commissioner of motor vehicles, finds all of the issues in the affirmative, such hearing officer shall immediately revoke privilege to operate a vessel or any non-resident operating privilege in accordance with the provisions of paragraph (d) of subdivision two of section seventy-nine-g of this article. A person who has had a privilege to operate a vessel or non-resident operating privilege suspended or revoked pursuant to the provisions of this section may appeal the findings of the hearing officer in accordance with the provisions of article three-A of the vehicle and traffic law.

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

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

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

(b) Evidence that there was more than .05 of one per centum but less than .07 of one per centum by weight of alcohol in such person's blood shall be prima facie evidence that such person was not in an intoxicated

condition, but such evidence shall be relevant evidence, but shall not be given prima facie effect, in determining whether the ability of such person to operate a vessel was impaired by the consumption of alcohol; and

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

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

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

§ 79-k. Special options program for operation of a vessel while intoxicated. The commissioner shall work with the commissioner of motor vehicles to include a plan for coordination of county, town, city and village efforts to reduce alcohol-related boating injuries and fatalities pursuant to section eleven hundred ninety-seven of the vehicle and traffic law.

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

2. Requirements. (a) In addition to any other penalties prescribed by law, the court shall require that any person who has been convicted of a violation of subdivision three, four or five of section seventy-nine-d 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 seventy-nine-d of this article is an essential element, to install and maintain, as a condition of probation or conditional discharge, a functioning ignition interlock device in accordance with the provisions of this section and, as applicable, in accordance with the provisions of subdivision one of section seventy-nine-f of this article. 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, the commissioner may grant a post-revocation conditional privilege to operate a vessel, as set forth in paragraph (b) of this subdivision, to a person who has been convicted of a violation of subdivision three, four or five of section seventy-nine-d 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 the revocation of the privilege to operate a vessel established by law and the commissioner has been notified that such person may operate only a vessel equipped with a functioning ignition interlock device. In exercising discretion relating to the issuance of a post-revocation conditional privilege to operate a vessel 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 seventy-nine-d of this article committed by such person within the ten years prior to application for such privilege to operate a vessel. 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 privilege to operate a vessel in accordance with this chapter.

(b) Notwithstanding any inconsistent provision of this chapter, a post-revocation conditional privilege to operate a vessel granted pursuant to paragraph (a) of this subdivision shall be valid only for use by the holder thereof: (1) enroute to and from the holder's place of employment; (2) if the holder's employment requires the operation of a vessel then during the hours thereof; (3) enroute 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 an office for the transaction of business relating to such privilege to operate a vessel; (6) for a three hour consecutive daytime period, chosen by the office, on a day during which the participant is not engaged in usual employment or vocation; (7) enroute 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 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 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 privilege to operate a vessel 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 operation of a vessel offense other than one involving a conviction of any alcohol or drug-related offense, misdemeanor or felony 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 vessel owned or operated by a person sentenced for a violation of subdivision three, four, or five of section seventy-nine-d 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 seventy-nine-d of this 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 suspension or revocation of a privilege to operate a vessel 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 vessel equipped with an ignition interlock device.

4. Proof of compliance and recording of condition. (a) Following imposition by the court of the use of an ignition interlock device as a condition of probation or conditional discharge it shall require the person to provide proof of compliance with this section to the court and the probation department or other monitor where such person is under probation or conditional discharge supervision. If the 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 vessel if such person asserts under oath that such person is not the owner of any vessel and that he or she will not operate any vessel 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 the vehicle and traffic law.

(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 seventy-nine-f

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.

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

(b) After consultation with manufacturers of ignition interlock devices and the commissioner, the commissioner of the department of health, in consultation with the office of probation and correctional alternatives, shall promulgate regulations regarding standards for, and use of, ignition interlock devices. Such standards shall include provisions for setting a minimum and maximum calibration range and shall include, but not be limited to, requirements that the devices:

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

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

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

(4) minimize inconvenience to a sober user;

(5) require a proper, deep, lung breath sample or other accurate measure of blood alcohol content equivalence;

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

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

(8) are manufactured by a party covered by product liability insurance.

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

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

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

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

8. Employer vessel. Notwithstanding the provisions of subdivision one and paragraph (d) of subdivision nine of this section, if a person is required to operate a vessel owned by said person's employer in the course and scope of his or her employment, the person may operate that vessel without installation of an approved ignition interlock device

only in the course and scope of such employment and only if the employer has been notified that the person's privilege to operate a vessel has been restricted under the provisions of this article or the penal law and the person whose privilege to operate a vessel has been so restricted has provided the court and probation department with written documentation indicating the employer has knowledge of the restriction imposed and has granted permission for the person to operate the employer's vessel without the device only for business purposes. The person shall notify the court and the probation department of his or her intention to so operate the employer's vessel. A vessel owned by a business entity when such business entity is all or partly owned or controlled by a person otherwise subject to the provisions of this article or the penal law is not a vessel owned by the employer for purposes of the exemption provided in this subdivision. The provisions of this subdivision shall apply only to the operation of such vessel in the scope of such employment.

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

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

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

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

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

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

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

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

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

2. Procedure. (a) Mandatory screening; when authorized. Upon the arraignment of, or at the discretion of the court, prior to the sentencing of any person who (i) at arraignment is charged with or prior to sentencing convicted of a first violation of operating a vessel in violation of subdivision two, three or five or paragraph (b) of subdivision four of section seventy-nine-d of this article while such person

has less than .15 of one per centum by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva made pursuant to the provisions of section seventy-nine-g of this article, or in violation of subdivision six of section seventy-nine-d of this article, or (ii) has refused to submit to a chemical test pursuant to section seventy-nine-g of this article, the court shall order such person to submit to screening for alcohol or substance abuse and dependency using a standardized written screening instrument developed by the office of alcoholism and substance abuse services, to be administered by an alcohol or substance abuse professional.

(b) Mandatory assessment; when authorized. The court shall order a defendant to undergo a formal alcohol or substance abuse and dependency assessment by an alcohol or substance abuse professional or a licensed agency: (i) when the screening required by paragraph (a) of this subdivision indicates that a defendant is abusing or dependent upon alcohol or drugs; (ii) following the arraignment of any person charged with or, at the discretion of the court, prior to the sentencing of any person convicted of a violation of subdivision two, three, five, six or seven of section seventy-nine-d of this article after having been convicted of a violation of any subdivision of section seventy-nine-d of this article or of vehicular assault in the second or first degree, as defined, respectively, in sections 120.03 and 120.04 of the penal law or of aggravated vehicular assault, as defined in section 120.04-a of such law or of vehicular manslaughter in the second or first degree, as defined, respectively, in sections 125.12 and 125.13 of such law or of aggravated vehicular homicide, as defined in section 125.14 of such law within the preceding five years or after having been convicted of a violation of any subdivision of section seventy-nine-d of this article or of vehicular assault in the second or first degree, as defined, respectively, in sections 120.03 and 120.04 of the penal law or of 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 of the penal law or of aggravated vehicular homicide, as defined in section 125.14 of such law, two or more times within the preceding ten years; or (iii) following the arraignment of any person charged with or, at the discretion of the court, prior to the sentencing of any person convicted of operating a vessel in violation of subdivision three or five or paragraph (b) of subdivision four of section seventy-nine-d of this article while such person has .15 of one per centum or more by weight of alcohol in the person's blood as shown by a chemical analysis of such person's blood, breath, urine or saliva made pursuant to the provisions of section seventy-nine-g of this article or in violation of paragraph (a) of subdivision four of section seventy-nine-d of this article.

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

3. Authorized disposition. When a sentence of probation or a conditional discharge is imposed upon a person who has been required to undergo an alcohol or substance abuse and dependency assessment pursuant to subdivision two of this section and where such assessment indicates that such person is in need of treatment for alcohol or substance abuse or dependency, the court shall require, as a condition of such sentence,

that such person participate in and successfully complete such treatment. Such treatment shall be provided by an alcohol or substance abuse professional or a licensed agency.

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

5. The chief administrator of the office of court administration shall make available to all courts in this state with jurisdiction in criminal cases a list of alcohol and substance abuse professionals and licensed agencies as provided by the office of alcoholism and substance abuse services pursuant to subdivision (g) of section 19.07 of the mental hygiene law.

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

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

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

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

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

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

§ 79-n. Driver and boater responsibility assessment. The commissioner shall work with the commissioner of motor vehicles to provide access to

the driver and boater responsibility assessment as provided in section eleven hundred ninety-nine of the vehicle and traffic law.

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

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

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

11. The provisions of this section shall also be applicable to pertinent provisions of article four-B of the navigation law.

§ 4. Section 1199 of the vehicle and traffic law, as added by section 1 of part E of chapter 59 of the laws of 2004, is amended to read as 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 enforce-

ment 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 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.

(c) 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 no notification is received by the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies pursuant to paragraph (b) of this subdivision, such commissioner of the division of criminal justice services and such heads of police departments and other law enforcement agencies shall, after three years from the date of commission of the offense or when the person reaches the age of twenty-one, whichever is the greater period of time, take the actions required by paragraphs (a), (b) and (c) of subdivision one of section 160.50 of this article.

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

(k) any records, including any reproductions or electronically created images of such records and including any records received by the commissioner from a court pursuant to paragraph (c) of subdivision ten of section eleven hundred ninety-two of this chapter or **paragraph (c) of paragraph thirteen of** section [~~forty-nine-b~~] **seventy-nine-d** of the navigation law, relating to a finding of a violation of section eleven hundred ninety-two-a of this chapter or a waiver of the right to a hearing under section eleven hundred ninety-four-a of this chapter or a finding of a refusal following a hearing conducted pursuant to subdivision three of section eleven hundred ninety-four-a of this chapter or a finding of a violation of **subdivision four of** section [~~forty-nine-b~~] **seventy-nine-g** of the navigation law or a waiver of the right to a hearing or a finding of refusal following a hearing conducted pursuant to such section, after remaining on file for three years after such finding or entry of such waiver or refusal or until the person that is found to have violated such section reaches the age of twenty-one, whichever is the greater period of time. Upon the expiration of the period for destruction of records pursuant to this paragraph, the entirety of the proceedings concerning the violation or alleged violation of such section eleven hundred ninety-two-a of this chapter or such section

[~~forty-nine-b~~] **seventy-nine-e** of the navigation law, from the initial stop and detention of the operator to the entering of a finding and imposition of sanctions pursuant to any subdivision of section eleven hundred ninety-four-a of this chapter or of section [~~forty-nine-b~~] **seventy-nine-h** of the navigation law shall be deemed a nullity, and the operator shall be restored, in contemplation of law, to the status he **or she** occupied before the initial stop and prosecution.

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