

# STATE OF NEW YORK

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2379

2019-2020 Regular Sessions

## IN ASSEMBLY

January 22, 2019

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

AN ACT to amend the vehicle and traffic law, in relation to increasing the criminal penalties for driving while ability impaired and driving while intoxicated or while ability impaired by drugs and increasing the penalties for aggravated unlicensed operation of a vehicle in the first and second degrees

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

1 Section 1. Subdivision 1 of section 1193 of the vehicle and traffic  
2 law, as added by chapter 47 of the laws of 1988, paragraph (a) as  
3 amended by chapter 75 of the laws of 1994, paragraphs (b) and (c) as  
4 amended by chapter 169 of the laws of 2013, subparagraph (ii-a) of para-  
5 graph (c) as added by chapter 191 of the laws of 2014, paragraph (d) as  
6 amended by chapter 732 of the laws of 2006, paragraph (f) as added by  
7 chapter 714 of the laws of 1990 and paragraph (g) as amended by section  
8 57 of part A of chapter 56 of the laws of 2010, is amended to read as  
9 follows:  
10 1. Criminal penalties. (a) Driving while ability impaired. A violation  
11 of subdivision one of section eleven hundred ninety-two of this article  
12 shall be a traffic infraction and shall be punishable by a fine of not  
13 less than [~~three~~] five hundred dollars nor more than [~~five~~] seven  
14 hundred fifty dollars or by imprisonment in a penitentiary or county  
15 jail for not more than fifteen days, or by both such fine and imprison-  
16 ment. A person who operates a vehicle in violation of such subdivision  
17 after having been convicted of a violation of any subdivision of section  
18 eleven hundred ninety-two of this article within the preceding five  
19 years shall be punished by a fine of not less than [~~five~~] seven hundred  
20 fifty dollars nor more than [~~seven hundred fifty~~] one thousand dollars,  
21 or by imprisonment of not more than thirty days in a penitentiary or  
22 county jail or by both such fine and imprisonment. A person who operates

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

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1 a vehicle in violation of such subdivision after having been convicted  
2 two or more times of a violation of any subdivision of section eleven  
3 hundred ninety-two of this article within the preceding ten years shall  
4 be guilty of a misdemeanor, and shall be punished by a fine of not less  
5 than [~~seven hundred fifty~~] one thousand dollars nor more than fifteen  
6 hundred dollars, or by imprisonment of not more than one hundred eighty  
7 days in a penitentiary or county jail or by both such fine and imprison-  
8 ment.

9 (b) Driving while intoxicated or while ability impaired by drugs or  
10 while ability impaired by the combined influence of drugs or of alcohol  
11 and any drug or drugs; aggravated driving while intoxicated; misdemeanor  
12 offenses. (i) A violation of subdivision two, three, four or four-a of  
13 section eleven hundred ninety-two of this article shall be a misdemeanor  
14 and shall be punishable by a fine of not less than [~~five~~] seven hundred  
15 fifty dollars nor more than one thousand five hundred dollars, or by  
16 imprisonment in a penitentiary or county jail for not more than one  
17 year, or by both such fine and imprisonment. A violation of paragraph  
18 (a) of subdivision two-a of section eleven hundred ninety-two of this  
19 article shall be a misdemeanor and shall be punishable by a fine of not  
20 less than one thousand dollars nor more than two thousand five hundred  
21 dollars or by imprisonment in a penitentiary or county jail for not more  
22 than one year, or by both such fine and imprisonment.

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

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

1 section eleven hundred ninety-two of this article shall be guilty of a  
2 class E felony, and shall be punished by a fine of not less than one  
3 thousand five hundred dollars nor more than five thousand dollars or by  
4 a period of imprisonment as provided in the penal law, or by both such  
5 fine and imprisonment.

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

20 (ii-a) A person who operates a vehicle in violation of subdivision  
21 two, two-a, three, four or four-a of section eleven hundred ninety-two  
22 of this article after having been convicted of a violation of subdivi-  
23 sion two, two-a, three, four or four-a of such section or of vehicular  
24 assault in the second or first degree, as defined, respectively, in  
25 sections 120.03 and 120.04 and aggravated vehicular assault as defined  
26 in section 120.04-a of the penal law or of vehicular manslaughter in the  
27 second or first degree, as defined, respectively, in sections 125.12 and  
28 125.13 and aggravated vehicular homicide as defined in section 125.14 of  
29 such law, three or more times within the preceding fifteen years, shall  
30 be guilty of a class D felony, and shall be punished by a fine of not  
31 less than two thousand dollars nor more than ten thousand dollars or by  
32 a period of imprisonment as provided in the penal law, or by both such  
33 fine and imprisonment.

34 (iii) In addition to the imposition of any fine or period of imprison-  
35 ment set forth in this paragraph, the court shall also sentence such  
36 person convicted of, or adjudicated a youthful offender for, a violation  
37 of subdivision two, two-a or three of section eleven hundred ninety-two  
38 of this article to a period of probation or conditional discharge, as a  
39 condition of which it shall order such person to install and maintain,  
40 in accordance with the provisions of section eleven hundred ninety-eight  
41 of this article, an ignition interlock device in any motor vehicle owned  
42 or operated by such person during the term of such probation or condi-  
43 tional discharge imposed for such violation of section eleven hundred  
44 ninety-two of this article and in no event for a period of less than  
45 twelve months; provided, however, that such period of interlock  
46 restriction shall terminate upon submission of proof that such person  
47 installed and maintained an ignition interlock device for at least six  
48 months, unless the court ordered such person to install and maintain a  
49 ignition interlock device for a longer period as authorized by this  
50 subparagraph and specified in such order. The period of interlock  
51 restriction shall commence from the earlier of the date of sentencing,  
52 or the date that an ignition interlock device was installed in advance  
53 of sentencing. Provided, however, the court may not authorize the opera-  
54 tion of a motor vehicle by any person whose license or privilege to  
55 operate a motor vehicle has been revoked pursuant to the provisions of  
56 this section.

(d) Alcohol or drug related offenses; special vehicles. (1) Except as provided in subparagraph four of this paragraph, a violation of subdivision one, two, three, four or four-a of section eleven hundred ninety-two of this article wherein the violator is operating a taxicab as defined in section one hundred forty-eight-a of this chapter, or livery as defined in section one hundred twenty-one-e of this chapter, and such taxicab or livery is carrying a passenger for compensation, or a truck with a GVWR of more than eighteen thousand pounds but not more than twenty-six thousand pounds and which is not a commercial motor vehicle shall be a misdemeanor punishable by a fine of not less than [~~five hundred~~] one thousand dollars nor more than [~~fifteen~~] two 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 two-a of section eleven hundred ninety-two of this article wherein the violator is operating a taxicab as defined in section one hundred forty-eight-a of this chapter, or livery as defined in section one hundred twenty-one-e of this chapter, and such taxicab or livery is carrying a passenger for compensation, or a truck with a GVWR of more than eighteen thousand pounds but not more than twenty-six thousand pounds and which is not a commercial motor vehicle 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.

(1-a) A violation of subdivision one of section eleven hundred ninety-two of this article wherein the violator is operating a school bus as defined in section one hundred forty-two of this chapter and such school bus is carrying at least one student passenger shall be a misdemeanor punishable by a fine of not less than [~~five hundred~~] one thousand dollars nor more than [~~fifteen~~] two thousand five hundred dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(2) A violation of subdivision five of section eleven hundred ninety-two of this article shall be a traffic infraction punishable as provided in paragraph (a) of this subdivision. Except as provided in subparagraph three or five of this paragraph, a violation of subdivision one, two, three, four, four-a or six of section eleven hundred ninety-two of this article wherein the violator is operating a commercial motor vehicle, or any motor vehicle registered or registerable under schedule F of subdivision seven of section four hundred one of this chapter shall be a misdemeanor. A violation of subdivision one, two, three, four or four-a of section eleven hundred ninety-two of this article shall be punishable by a fine of not less than [~~five hundred~~] one thousand dollars nor more than [~~fifteen~~] two 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 six of section eleven hundred ninety-two of this article shall be punishable by a fine of not less than [~~five hundred~~] one thousand dollars nor more than [~~fifteen~~] two 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 vehicle in violation of such subdivision six after having been convicted of a violation of subdivision one, two, two-a, three, four, four-a or six of section eleven hundred ninety-two of this article within the preceding five years shall be punishable by a fine of not less than two thousand five hundred dollars nor more than [~~fifteen hundred~~] five thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A

1 violation of subdivision two-a of section eleven hundred ninety-two of  
2 this article wherein the violator is operating a commercial motor vehi-  
3 cle, or any motor vehicle registered or registerable under schedule F of  
4 subdivision seven of section four hundred one of this chapter shall be a  
5 class E felony punishable by a fine of not less than one thousand  
6 dollars nor more than five thousand dollars or by a period of imprison-  
7 ment as provided in the penal law, or by both such fine and imprison-  
8 ment.

9 (3) A violation of subdivision one of section eleven hundred ninety-  
10 two of this article wherein the violator is operating a motor vehicle  
11 with a gross vehicle weight rating of more than eighteen thousand pounds  
12 which contains flammable gas, radioactive materials or explosives shall  
13 be a misdemeanor punishable by a fine of not less than two thousand  
14 hundred dollars nor more than [~~fifteen hundred~~] five thousand dollars or  
15 by a period of imprisonment as provided in the penal law, or by both  
16 such fine and imprisonment.

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

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

1 thousand dollars nor more than ten thousand dollars, or by a period of  
2 imprisonment as provided in the penal law, or by both such fine and  
3 imprisonment. In addition, any person sentenced pursuant to this subpar-  
4 agraph shall be subject to the disqualification provided in subparagraph  
5 three of paragraph (e) of subdivision two of this section.

6 (4-a) A violation of subdivision two, three, four or four-a of section  
7 eleven hundred ninety-two of this article wherein the violator is oper-  
8 ating a school bus as defined in section one hundred forty-two of this  
9 chapter and such school bus is carrying at least one student passenger  
10 shall be a class E felony punishable by a fine of not less than [~~one~~]  
11 two thousand five hundred dollars nor more than [~~five~~] ten thousand  
12 dollars, or by a period of imprisonment as provided in the penal law, or  
13 by both such fine and imprisonment. A violation of subdivision two-a of  
14 section eleven hundred ninety-two of this article wherein the violator  
15 is operating a school bus as defined in section one hundred forty-two of  
16 this chapter and such school bus is carrying at least one student  
17 passenger shall be a class D felony punishable by a fine of not less  
18 than two thousand dollars nor more than ten thousand dollars, or by a  
19 period of imprisonment as provided in the penal law, or by both such  
20 fine and imprisonment.

21 (5) A violation of subdivision two, three, four or four-a of section  
22 eleven hundred ninety-two of this article wherein the violator is oper-  
23 ating a motor vehicle with a gross vehicle weight rating of more than  
24 eighteen thousand pounds which contains flammable gas, radioactive mate-  
25 rials or explosives, shall be a class E felony punishable by a fine of  
26 not less than [~~one~~] two thousand five hundred dollars nor more than ten  
27 thousand dollars and such other penalties as provided for in the penal  
28 law; provided, however, that a conviction for such violation shall not  
29 be considered a predicate felony pursuant to section 70.06 of such law,  
30 or a previous felony conviction pursuant to section 70.10 of such law. A  
31 violation of subdivision two-a of section eleven hundred ninety-two of  
32 this article wherein the violator is operating a motor vehicle with a  
33 gross vehicle weight rating of more than eighteen thousand pounds which  
34 contains flammable gas, radioactive materials or explosives, shall be a  
35 class D felony punishable by a fine of not less than two thousand nor  
36 more than ten thousand dollars and such other penalties as provided for  
37 in the penal law; provided, however, that a conviction for such  
38 violation shall not be considered a predicate felony pursuant to section  
39 70.06 of such law, or a previous felony conviction pursuant to section  
40 70.10 of such law.

41 (6) The sentences required to be imposed by subparagraph one, one-a,  
42 two, three, four, four-a or five of this paragraph shall be imposed  
43 notwithstanding any contrary provision of this chapter or the penal law.

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

47 (e) Certain sentences prohibited. Notwithstanding any provisions of  
48 the penal law, no judge or magistrate shall impose a sentence of uncon-  
49 ditional discharge for a violation of any subdivision of section eleven  
50 hundred ninety-two of this article nor shall a judge or magistrate  
51 impose a sentence of conditional discharge, imprisonment or probation  
52 unless such conditional discharge, imprisonment or probation is accompa-  
53 nied by a sentence of a fine as provided in this subdivision.

54 (f) Where the court imposes a sentence for a violation of section  
55 eleven hundred ninety-two of this article, the court may require the  
56 defendant, as a part of or as a condition of such sentence, to attend a

1 single session conducted by a victims impact program. For purposes of  
2 this section, "victims impact program" means a program operated by a  
3 county, a city with a population of one million or more, by a not-for-  
4 profit organization authorized by any such county or city, or a combina-  
5 tion thereof, in which presentations are made concerning the impact of  
6 operating a motor vehicle while under the influence of alcohol or drugs  
7 to one or more persons who have been convicted of such offenses. A  
8 description of any such program shall be filed with the commissioner and  
9 with the coordinator of the special traffic options program for driving  
10 while intoxicated established pursuant to section eleven hundred nine-  
11 ty-seven of this article, and shall be made available to the court upon  
12 request. Nothing contained herein shall be construed to require any  
13 governmental entity to create such a victim impact program.

14 (g) The office of probation and correctional alternatives shall recom-  
15 mend to the commissioner of the division of criminal justice services  
16 regulations governing the monitoring of compliance by persons ordered to  
17 install and maintain ignition interlock devices to provide standards for  
18 monitoring by departments of probation, and options for monitoring of  
19 compliance by such persons, that counties may adopt as an alternative to  
20 monitoring by a department of probation.

21 § 2. Paragraph (b) of subdivision 2 of section 511 of the vehicle and  
22 traffic law, as amended by chapter 607 of the laws of 1993, is amended  
23 to read as follows:

24 (b) Aggravated unlicensed operation of a motor vehicle in the second  
25 degree is a misdemeanor. When a person is convicted of this crime under  
26 subparagraph (i) of paragraph (a) of this subdivision, the sentence of  
27 the court must be: (i) a fine of not less than five hundred dollars; and  
28 (ii) a term of imprisonment not to exceed one hundred eighty days; or  
29 (iii) where appropriate a sentence of probation as provided in subdivi-  
30 sion six of this section; or (iv) a term of imprisonment as a condition  
31 of a sentence of probation as provided in the penal law and consistent  
32 with this section. When a person is convicted of this crime under  
33 subparagraph (ii), (iii) or (iv) of paragraph (a) of this subdivision,  
34 the sentence of the court must be: (i) a fine of not less than [~~five~~  
35 ~~hundred~~] one thousand dollars nor more than [~~one~~] two thousand five  
36 hundred dollars; and (ii) a term of imprisonment of not less than seven  
37 days nor more than one hundred eighty days, or (iii) where appropriate a  
38 sentence of probation as provided in subdivision six of this section; or  
39 (iv) a term of imprisonment as a condition of a sentence of probation as  
40 provided in the penal law and consistent with this section.

41 § 3. Paragraph (b) of subdivision 3 of section 511 of the vehicle and  
42 traffic law, as separately amended by chapters 786 and 892 of the laws  
43 of 1990, is amended to read as follows:

44 (b) Aggravated unlicensed operation of a motor vehicle in the first  
45 degree is a class E felony. When a person is convicted of this crime,  
46 the sentence of the court must be: (i) a fine in an amount not less than  
47 [~~five hundred~~] two thousand dollars nor more than five thousand dollars;  
48 and (ii) a term of imprisonment as provided in the penal law, or (iii)  
49 where appropriate and a term of imprisonment is not required by the  
50 penal law, a sentence of probation as provided in subdivision six of  
51 this section, or (iv) a term of imprisonment as a condition of a  
52 sentence of probation as provided in the penal law.

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