

# STATE OF NEW YORK

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7494--A

2019-2020 Regular Sessions

## IN ASSEMBLY

May 7, 2019

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Introduced by M. of A. WOERNER -- read once and referred to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

4 (c) Felony offenses. (i) A person who operates a vehicle (A) in  
5 violation of subdivision two, two-a, three, four or four-a of section  
6 eleven hundred ninety-two of this article after having been convicted of  
7 a violation of subdivision two, two-a, three, four or four-a of such  
8 section or of vehicular assault in the second or first degree, as  
9 defined, respectively, in sections 120.03 and 120.04 and aggravated  
10 vehicular assault as defined in section 120.04-a of the penal law or of  
11 vehicular manslaughter in the second or first degree, as defined,  
12 respectively, in sections 125.12 and 125.13 and aggravated vehicular  
13 homicide as defined in section 125.14 of such law, within the preceding  
14 ten years, or (B) in violation of paragraph (b) of subdivision two-a of  
15 section eleven hundred ninety-two of this article shall be guilty of a  
16 class E felony, and shall be punished by a fine of not less than one  
17 thousand dollars nor more than five thousand dollars or by a period of  
18 imprisonment as provided in the penal law, or by both such fine and  
19 imprisonment.  
20

21 (ii) A person who operates a vehicle in violation of subdivision two,  
22 two-a, three, four or four-a of section eleven hundred ninety-two of  
23 this article after having been convicted of a violation of subdivision  
24 two, two-a, three, four or four-a of such section or of vehicular

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

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1 assault in the second or first degree, as defined, respectively, in  
2 sections 120.03 and 120.04 and aggravated vehicular assault as defined  
3 in section 120.04-a of the penal law or of vehicular manslaughter in the  
4 second or first degree, as defined, respectively, in sections 125.12 and  
5 125.13 and aggravated vehicular homicide as defined in section 125.14 of  
6 such law, twice within the preceding ten years, shall be guilty of a  
7 class D felony, and shall be punished by a fine of not less than two  
8 thousand dollars nor more than ten thousand dollars or by a period of  
9 imprisonment as provided in the penal law, or by both such fine and  
10 imprisonment.

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

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

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

51 (g) Condition of probation and conditional discharge; ignition inter-  
52 lock device requirements; alternative sentence. (1) For the purposes of  
53 this subdivision, "ignition interlock monitor" shall mean a person  
54 designated by the county where a conviction for a violation of section  
55 eleven hundred ninety-two of this article shall have occurred who moni-  
56 tors compliance with the provisions of section eleven hundred ninety-

1 eight of this article and the concurrent regulations related thereto, by  
2 participants in the ignition interlock program.

3 (2) In addition to the imposition of any fine or period of imprison-  
4 ment as set forth in this subdivision and to any license sanction  
5 imposed pursuant to subdivision two of this section, the court shall  
6 sentence such person convicted of, or adjudicated a youthful offender  
7 for, a violation of subdivision two, two-a, three or four-a of section  
8 eleven hundred ninety-two of this article to a period of probation or  
9 conditional discharge, the conditions of which shall include the follow-  
10 ing:

11 (i) an express prohibition on the operation of any motor vehicle with-  
12 out a functioning ignition interlock device for a period of twelve  
13 months or longer, as set forth in this paragraph or in paragraph (c) of  
14 subdivision one-a of this section; and

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

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

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

40 (ii) an order that such person install and maintain, in accordance  
41 with the provisions of section eleven hundred ninety-eight of this arti-  
42 cle, an ignition interlock device in the motor vehicle most regularly  
43 operated by such person for a period of twelve months. A declaration  
44 from the ignition interlock monitor on a form provided by the commis-  
45 sioner, certifying that such person has operated the motor vehicle free  
46 of any violations as set forth in paragraph (i) of this subdivision for  
47 a period of three hundred consecutive days shall be deemed to have  
48 satisfied the conditions of probation or conditional discharge relating  
49 to the ignition interlock requirements as set forth in this paragraph.  
50 The period of interlock restriction shall commence on the date that such  
51 ignition interlock device shall have been installed. The alternative  
52 sentence set forth herein shall not be imposed on any offender subject  
53 to the additional penalties set forth in subdivision one-a of this  
54 section or who shall have also been convicted of a violation of any  
55 provision of article one hundred twenty or one hundred twenty five of  
56 the penal law involving the operation of a vehicle.

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

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

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

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

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

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

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

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

(iv) failed to appear at the ignition interlock device vendor when required for maintenance, repair, calibration, monitoring, inspection,

1 or replacement of such device. A certificate of violation shall be  
2 accompanied by a contemporaneous digital image verifying the identity of  
3 the violator.

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

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

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

24 (c) A court sentencing a person pursuant to paragraph (a) or (b) of  
25 this subdivision shall: (i) order, as a condition of such sentence, the  
26 installation of an ignition interlock device approved pursuant to  
27 section eleven hundred ninety-eight of this article in [~~any~~] the motor  
28 vehicle [~~owned or~~] most frequently operated by the person so sentenced.  
29 Such devices shall remain installed during any period of license revoca-  
30 tion required to be imposed pursuant to paragraph (b) of subdivision two  
31 of this section, and, upon the termination of such revocation period,  
32 for an additional period as determined by the court, but in no event  
33 less than twelve months; and (ii) order that such person receive an  
34 assessment of the degree of their alcohol or substance abuse and depend-  
35 ency pursuant to the provisions of section eleven hundred ninety-eight-a  
36 of this article. Where such assessment indicates the need for treat-  
37 ment, such court is authorized to impose treatment as a condition of  
38 such sentence except that such court shall impose treatment as a condi-  
39 tion of a sentence of probation or conditional discharge pursuant to the  
40 provisions of subdivision three of section eleven hundred ninety-eight-a  
41 of this article. Any person ordered to install an ignition interlock  
42 device pursuant to this paragraph shall be subject to paragraph (j) of  
43 subdivision one of this section and the provisions of subdivisions four,  
44 five, seven, eight and nine of section eleven hundred ninety-eight of  
45 this article.

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

52 1. Applicability. The provisions of this section shall apply through-  
53 out the state to each person required or otherwise ordered by a court as  
54 a condition of sentence, plea, probation or conditional discharge, which  
55 shall prohibit the operation of a motor vehicle without a functioning  
56 ignition interlock device and requires such person to install and [~~oper-~~



1 ~~ate]~~ maintain an ignition interlock device in [~~any~~] the vehicle [~~which~~  
2 ~~he or she owns or operates~~] most frequently operated by such person.

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

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

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

33 3. Conditions. (a) [~~Notwithstanding any other provision of law~~] Except  
34 as provided for sentences imposed pursuant to paragraph (g) of subdivi-  
35 sion one of section eleven hundred ninety-three of this chapter, the  
36 commissioner may grant a post-revocation conditional license, as set  
37 forth in paragraph (b) of this subdivision, to a person who has been  
38 convicted of a violation of subdivision two, two-a [~~or~~], three or four-a  
39 of section eleven hundred ninety-two of this article and who has been  
40 sentenced to a period of probation or conditional discharge, provided  
41 the person has satisfied the minimum period of license revocation estab-  
42 lished by law and the commissioner has been notified that such person  
43 may operate only a motor vehicle equipped with a functioning ignition  
44 interlock device. No such request shall be made nor shall such a  
45 license be granted, however, if such person has been found by a court to  
46 have committed a violation of section five hundred eleven of this chap-  
47 ter during the license revocation period or deemed by a court to have  
48 violated any condition of probation or conditional discharge set forth  
49 by the court relating to the operation of a motor vehicle or the  
50 consumption of alcohol. In exercising discretion relating to the issu-  
51 ance of a post-revocation conditional license pursuant to this subdivi-  
52 sion, the commissioner shall not deny such issuance based solely upon  
53 the number of convictions for violations of any subdivision of section  
54 eleven hundred ninety-two of this article committed by such person with-  
55 in the ten years prior to application for such license. Upon the termi-  
56 nation of the period of probation or conditional discharge set by the

1 court, the person may apply to the commissioner for restoration of a  
2 license or privilege to operate a motor vehicle in accordance with this  
3 chapter.

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

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

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

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

55 (f) The commissioner shall note on the operator's record of any person  
56 restricted pursuant to this section that, in addition to any other

1 restrictions, conditions or limitations, such person may operate only a  
2 motor vehicle equipped with an ignition interlock device.

3 4. Proof of compliance and recording of condition. (a) Following  
4 imposition by the court of the use of an ignition interlock device as a  
5 condition plea, sentence, of probation or conditional discharge it shall  
6 require the person to provide proof of compliance with this section to  
7 the court and the probation department or other monitor where such  
8 person is under probation or conditional discharge supervision. A claim  
9 by such person that he or she has good cause for not installing an  
10 ignition interlock device shall be made to the court at or before  
11 sentencing, in writing in the form of a sworn affidavit signed by such  
12 person asserting under oath that he or she is not the registered or  
13 titled owner of any motor vehicle and will not operate any motor vehicle  
14 during the period of restriction, or that such person does not have  
15 access to the vehicle operated by such person at the time of the  
16 violation of section eleven hundred ninety-two of this article, or that  
17 the registered owner of that vehicle or any vehicle registered to such  
18 person's household will not give consent for the installation of an  
19 interlock device on his or her vehicle. The affidavit shall include a  
20 statement regarding whether such person owned any motor vehicle on the  
21 date of the underlying violation of section eleven hundred ninety-two of  
22 this article and whether ownership of any of those vehicles has been  
23 transferred to another party by sale, gift or any other means since the  
24 date of said violation. The affidavit shall also include a statement  
25 from such person that he or she has not and will not transfer ownership  
26 of any vehicle to evade installation of an ignition interlock device,  
27 the address of such person's employment, if applicable, and how such  
28 person intends to travel to that location during the period of  
29 restriction. The person also may include any other facts and circum-  
30 stances he or she believes to be relevant to the claim of good cause.  
31 The court shall make a finding whether good cause exists on the record  
32 and, if good cause shall be found, issue such finding in writing to be  
33 filed by such person with the probation department or the ignition  
34 interlock monitor, as appropriate. In the event the court denies such  
35 person's claim of good cause on the basis of the affidavit filed with  
36 the court, such persons shall be given an opportunity to be heard. Such  
37 person shall also be permitted to waive the opportunity to be heard, if  
38 he or she chooses to do so. If [the] a person shall be ordered to  
39 install and maintain an ignition interlock device, and such person fails  
40 to provide for such proof of installation, absent a finding by the court  
41 of good cause for that failure which is entered in the record, the court  
42 may revoke, modify, or terminate the person's sentence of probation or  
43 conditional discharge as provided under law. [Good cause may include a  
44 finding that the person is not the owner of a motor vehicle if such  
45 person asserts under oath that such person is not the owner of any motor  
46 vehicle and that he or she will not operate any motor vehicle during the  
47 period of interlock restriction except as may be otherwise authorized  
48 pursuant to law.] "Owner" shall have the same meaning as provided in  
49 section one hundred twenty-eight of this chapter.

50 (b) When a court imposes the condition specified in subdivision one of  
51 this section, the court shall notify the commissioner in such manner as  
52 the commissioner may prescribe, and the commissioner shall note such  
53 condition on the operating record of the person subject to such condi-  
54 tions.

55 5. Cost, installation and maintenance. (a) The cost of installing and  
56 maintaining the ignition interlock device shall be borne by the person



1 subject to such condition unless the court determines such person is  
2 financially unable to afford such cost whereupon such cost may be  
3 imposed pursuant to a payment plan or waived. In the event of such  
4 waiver, the cost of the device shall be borne in accordance with regu-  
5 lations issued under paragraph (g) of subdivision one of section eleven  
6 hundred ninety-three of this article or pursuant to such other agreement  
7 as may be entered into for provision of the device. Such cost shall be  
8 considered a fine for the purposes of subdivision five of section 420.10  
9 of the criminal procedure law. Such cost shall not replace, but shall  
10 instead be in addition to, any fines, surcharges, or other costs imposed  
11 pursuant to this chapter or other applicable laws.

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

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

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

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

39 § 6. The division of criminal justice services is authorized and  
40 directed to compile and publish annually a report on its website of the  
41 total number of repeat convictions with respect to violations of section  
42 1192 of the vehicle and traffic law for the five years succeeding the  
43 effective date of this act, and shall also include the total number of  
44 repeat convictions for the five years preceding the effective date in  
45 such report. The division is authorized and directed to coordinate with  
46 any other agency, authority, department, division, bureau, or political  
47 subdivision to compile this information, including without limitation  
48 the governor's highway traffic safety committee.

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