

STATE OF NEW YORK

1325

2021-2022 Regular Sessions

IN ASSEMBLY

January 8, 2021

Introduced by M. of A. WOERNER, THIELE, SEAWRIGHT, DeSTEFANO, McDONOUGH, GALEF -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT, TAGUE -- read once and referred to the Committee on Transportation

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 vehi-
2 cle and traffic law, as amended by chapter 169 of the laws of 2013, and
3 subparagraph (ii-a) as added by chapter 191 of the laws of 2014, is
4 amended to read as follows:

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

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.

LBD01428-01-1

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.

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

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

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

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

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

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

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

50 (iii) failed to pass any random re-test with a blood alcohol concen-
51 tration level of .025 or lower, unless a subsequent test performed with-
52 in ten minutes registers a blood alcohol concentration level lower than
53 .025, and the digital image confirms that the same person provided both
54 samples; or

55 (iv) failed to appear at the ignition interlock device vendor when
56 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~~] 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.