

# STATE OF NEW YORK

883

2021-2022 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. WOERNER, STERN, SAYEGH, J. M. GIGLIO, RA,  
B. MILLER, GRIFFIN -- Multi-Sponsored by -- M. of A. GALEF, MONTESANO,  
THIELE -- read once and referred to the Committee on Transportation

AN ACT to amend the navigation law, the vehicle and traffic law, the  
criminal procedure law and the penal law, in relation to operation of  
a vessel while under the influence of alcohol or drugs; and to repeal  
certain provisions of the navigation law relating thereto

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

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 Sections 49-a and 49-b of the navigation law are REPEALED  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

### ARTICLE 4-B

#### ALCOHOL AND DRUG-RELATED OFFENSES AND PROCEDURES APPLICABLE TO OPERATION OF A VESSEL

3 Section 79-d. Operation of a vessel while under the influence of alcohol  
4 or drugs.

5 79-e. Operation of a vessel after having consumed alcohol; under  
6 the age of twenty-one; per se.

7 79-f. Sanctions.

8 79-g. Arrest and testing.

9 79-h. Operation of a vessel after having consumed alcohol; under  
10 twenty-one; procedure.

11 79-i. Chemical test evidence.

12 79-j. Alcohol and drug rehabilitation program within the depart-  
13 ment of motor vehicles.

14 79-k. Special options program for operation of a vessel while  
15 intoxicated.

16 79-l. Installation and operation of ignition interlock devices.

17 79-m. Special procedures and disposition involving alcohol and  
18 substance abuse assessment and treatment.

19  
20  
21  
EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD01164-01-1

79-n. Driver and boater responsibility assessment.

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Public vessels: per se - level I. Notwithstanding the provisions of section seventy-nine-i of this article, no person shall operate a public

1 vessel while such person has .04 of one per centum or more but not more  
2 than .06 of one per centum by weight of alcohol in the person's blood as  
3 shown by chemical analysis of such person's blood, breath, urine or  
4 saliva, made pursuant to the provisions of section seventy-nine-g of  
5 this article; provided, however, nothing contained in this subdivision  
6 shall prohibit the imposition of a charge of a violation of subdivision  
7 two of this section, or of section seventy-nine-e of this article where  
8 a person under the age of twenty-one operates a public vessel where a  
9 chemical analysis of such person's blood, breath, urine, or saliva, made  
10 pursuant to the provisions of section seventy-nine-g of this article,  
11 indicates that such operator has .02 of one per centum or more but less  
12 than .04 of one per centum by weight of alcohol in such operator's  
13 blood.

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

23 10. Effect of prior out-of-state conviction. A prior out-of-state  
24 conviction for operating a vessel while under the influence of alcohol  
25 or drugs shall be deemed to be a prior conviction of a violation of this  
26 section for purposes of determining penalties imposed under this section  
27 or for purposes of any administrative action required to be taken pursu-  
28 ant to subdivision three of section seventy-nine-f of this article;  
29 provided, however, that such conduct, had it occurred in this state,  
30 would have constituted a misdemeanor or felony violation of any of the  
31 provisions of this section. Provided, however, that if such conduct, had  
32 it occurred in this state, would have constituted a violation of any  
33 provisions of this section which are not misdemeanor or felony offenses,  
34 then such conduct shall be deemed to be a prior conviction of a  
35 violation of subdivision two of this section for purposes of determining  
36 penalties imposed under this section or for purposes of any administra-  
37 tive action required to be taken pursuant to subdivision three of  
38 section seventy-nine-f of this article.

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

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

55 13. Plea bargain limitations. (a) (i) In any case wherein the charge  
56 laid before the court alleges a violation of subdivision three, five,

1 six or seven of this section, any plea of guilty thereafter entered in  
2 satisfaction of such charge must include at least a plea of guilty to  
3 the violation of the provisions of any of the subdivisions of this  
4 section, other than subdivision eight or nine, and no other disposition  
5 by plea of guilty to any other charge in satisfaction of such charge  
6 shall be authorized; provided, however, if the district attorney, upon  
7 reviewing the available evidence, determines that the charge of a  
8 violation of this section is not warranted, such district attorney may  
9 consent, and the court may allow a disposition by plea of guilty to  
10 another charge in satisfaction of such charge; provided, however, in all  
11 such cases, the court shall set forth upon the record the basis for such  
12 disposition.

13 (ii) In any case wherein the charge laid before the court alleges a  
14 violation of subdivision three, five, six or seven of this section, no  
15 plea of guilty to subdivision two of this section shall be accepted by  
16 the court unless such plea includes as a condition thereof the require-  
17 ment that the defendant attend and complete the alcohol and drug reha-  
18 bilitation program established pursuant to section seventy-nine-j of  
19 this article, including any assessment and treatment required thereby;  
20 provided, however, that such requirement may be waived by the court upon  
21 application of the district attorney or the defendant demonstrating that  
22 the defendant, as a condition of the plea, has been required to enter  
23 into and complete an alcohol or drug treatment program prescribed pursu-  
24 ant to an alcohol or substance abuse screening or assessment conducted  
25 pursuant to section seventy-nine-m of this article or for other good  
26 cause shown. The provisions of this subparagraph shall apply, notwith-  
27 standing any bars to participation in the alcohol and drug rehabili-  
28 tation program set forth in section seventy-nine-j of this article;  
29 provided, however, that nothing in this paragraph shall authorize the  
30 issuance of a conditional privilege to operate a vessel unless otherwise  
31 authorized by law.

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

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

1 (c) Except as provided in paragraph (b) of this subdivision, in any  
2 case wherein the charge laid before the court alleges a violation of  
3 subdivision two of this section by a person who was under the age of  
4 twenty-one at the time of commission of the offense, the court, with the  
5 consent of both parties, may allow the satisfaction of such charge by  
6 the defendant's agreement to be subject to action by the commissioner  
7 pursuant to section seventy-nine-h of this article. In any such case,  
8 the defendant shall waive the right to a hearing under section seventy-  
9 nine-h of this article and such waiver shall have the same force and  
10 effect as a finding of a violation of section seventy-nine-e of this  
11 article entered after a hearing conducted pursuant to such section  
12 seventy-nine-h. The defendant shall execute such waiver in open court,  
13 and, if represented by counsel, in the presence of his or her attorney,  
14 on a form to be provided by the commissioner, which shall be forwarded  
15 by the court to the commissioner within ninety-six hours. To be valid,  
16 such form shall, at a minimum, contain clear and conspicuous language  
17 advising the defendant that a duly executed waiver: (i) has the same  
18 force and effect as a guilty finding following a hearing pursuant to  
19 section seventy-nine-h of this article; (ii) shall subject the defendant  
20 to the imposition of sanctions pursuant to such section seventy-nine-h;  
21 and (iii) may subject the defendant to increased sanctions upon a subse-  
22 quent violation of this section or section seventy-nine-e of this arti-  
23 cle. Upon receipt of a duly executed waiver pursuant to this paragraph,  
24 the commissioner shall take such administrative action and impose such  
25 sanctions as may be required by section seventy-nine-h of this article.

26 (d) In any case wherein the charge laid before the court alleges a  
27 violation of subdivision four of this section, any plea of guilty there-  
28 after entered in satisfaction of such charge must include at least a  
29 plea of guilty to the violation of the provisions of subdivision three,  
30 four or five of this section, and no other disposition by plea of guilty  
31 to any other charge in satisfaction of such charge shall be authorized;  
32 provided, however, if the district attorney, upon reviewing the avail-  
33 able evidence, determines that the charge of a violation of this section  
34 is not warranted, such district attorney may consent and the court may  
35 allow a disposition by plea of guilty to another charge in satisfaction  
36 of such charge, provided, however, in all such cases, the court shall  
37 set forth upon the record the basis for such disposition. Provided,  
38 further, however, that no such plea shall be accepted by the court  
39 unless such plea includes as a condition thereof the requirement that  
40 the defendant attend and complete the alcohol and drug rehabilitation  
41 program established pursuant to section seventy-nine-j of this article,  
42 including any assessment and treatment required thereby; provided,  
43 however, that such requirement may be waived by the court upon applica-  
44 tion of the district attorney or the defendant demonstrating that the  
45 defendant, as a condition of the plea, has been required to enter into  
46 and complete an alcohol or drug treatment program prescribed pursuant to  
47 an alcohol or substance abuse screening or assessment conducted pursuant  
48 to section seventy-nine-m of this article or for other good cause shown.  
49 The provisions of this paragraph shall apply, notwithstanding any bars  
50 to participation in the alcohol and drug rehabilitation program set  
51 forth in section seventy-nine-j of this article; provided, however, that  
52 nothing in this paragraph shall authorize the issuance of a conditional  
53 privilege to operate a vessel unless otherwise authorized by law.

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



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

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

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

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

1 days in a penitentiary or county jail or by both such fine and imprison-  
2 ment. A person who operates a vessel in violation of such subdivision  
3 after having been convicted two or more times of a violation of any  
4 subdivision of section seventy-nine-d of this article within the preced-  
5 ing ten years shall be guilty of a misdemeanor, and shall be punished by  
6 a fine of not less than seven hundred fifty dollars nor more than one  
7 thousand five hundred dollars, or by imprisonment of not more than one  
8 hundred eighty days in a penitentiary or county jail or by both such  
9 fine and imprisonment.

10 (b) Operation of a vessel while intoxicated or while ability impaired  
11 by drugs or while ability impaired by the combined influence of drugs or  
12 of alcohol and any drug or drugs; aggravated operation while intoxicat-  
13 ed; misdemeanor offenses. (i) A violation of subdivision three, five,  
14 six or seven of section seventy-nine-d of this article shall be a misde-  
15 meanor and shall be punishable by a fine of not less than five hundred  
16 dollars nor more than one thousand dollars, or by imprisonment in a  
17 penitentiary or county jail for not more than one year, or by both such  
18 fine and imprisonment. A violation of paragraph (a) of subdivision four  
19 of section seventy-nine-d of this article shall be a misdemeanor and  
20 shall be punishable by a fine of not less than one thousand dollars nor  
21 more than two thousand five hundred dollars or by imprisonment in a  
22 penitentiary or county jail for not more than one year, or by both such  
23 fine and imprisonment.

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

46 (c) Felony offenses. (i) A person who operates a vessel (A) in  
47 violation of subdivision three, four, five, six or seven of section  
48 seventy-nine-d of this article after having been convicted of a  
49 violation of such subdivisions or of vehicular assault in the second or  
50 first degree, as defined, in sections 120.03 and 120.04 and aggravated  
51 vehicular assault as defined in section 120.04-a of the penal law or of  
52 vehicular manslaughter in the second or first degree, as defined, in  
53 sections 125.12 and 125.13 and aggravated vehicular homicide as defined  
54 in section 125.14 of such law, within the preceding ten years, or (B) in  
55 violation of paragraph (b) of subdivision four of section seventy-nine-d  
56 of this article shall be guilty of a class E felony, and shall be

1 punished by a fine of not less than one thousand dollars nor more than  
2 five thousand dollars or by a period of imprisonment as provided in the  
3 penal law, or by both such fine and imprisonment.

4 (ii) A person who operates a vessel in violation of subdivision three,  
5 four, five, six or seven of section seventy-nine-d of this article after  
6 having been convicted of a violation of such subdivisions or of vehicu-  
7 lar assault in the second or first degree, as defined in sections 120.03  
8 and 120.04 and aggravated vehicular assault as defined in section  
9 120.04-a of the penal law or of vehicular manslaughter in the second or  
10 first degree, as defined in sections 125.12 and 125.13 and aggravated  
11 vehicular homicide as defined in section 125.14 of such law, twice with-  
12 in the preceding ten years, shall be guilty of a class D felony, and  
13 shall be punished by a fine of not less than two thousand dollars nor  
14 more than ten thousand dollars or by a period of imprisonment as  
15 provided in the penal law, or by both such fine and imprisonment.

16 (iii) A person who operates a vessel in violation of subdivision  
17 three, four, five, six or seven of section seventy-nine-d of this arti-  
18 cle after having been convicted of a violation of such subdivisions or  
19 of vehicular assault in the second or first degree, as defined in  
20 sections 120.03 and 120.04 and aggravated vehicular assault as defined  
21 in section 120.04-a of the penal law or of vehicular manslaughter in the  
22 second or first degree, as defined in sections 125.12 and 125.13 and  
23 aggravated vehicular homicide as defined in section 125.14 of such law,  
24 three or more times within the preceding fifteen years, shall be guilty  
25 of a class D felony, and shall be punished by a fine of not less than  
26 two thousand dollars nor more than ten thousand dollars or by a period  
27 of imprisonment as provided in the penal law, or by both such fine and  
28 imprisonment.

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

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



1 public vessel shall be a misdemeanor. A violation of subdivision two,  
2 three, five, six or seven of section seventy-nine-d of this article  
3 shall be punishable by a fine of not less than five hundred dollars nor  
4 more than one thousand five hundred dollars or by a period of imprison-  
5 ment as provided in the penal law, or by both such fine and imprison-  
6 ment. A violation of subdivision nine of section seventy-nine-d of this  
7 article shall be punishable by a fine of not less than five hundred  
8 dollars nor more than one thousand five hundred dollars or by a period  
9 of imprisonment not to exceed one hundred eighty days, or by both such  
10 fine and imprisonment. A person who operates any such vessel in  
11 violation of such subdivision nine after having been convicted of a  
12 violation of subdivision two, three, four, five, six, seven or nine of  
13 section seventy-nine-d of this article within the preceding five years  
14 shall be punishable by a fine of not less than five hundred dollars nor  
15 more than one thousand five hundred dollars or by a period of imprison-  
16 ment as provided in the penal law, or by both such fine and imprison-  
17 ment. A violation of subdivision four of section seventy-nine-d of this  
18 article wherein the violator is operating a public vessel shall be a  
19 class E felony punishable by a fine of not less than one thousand  
20 dollars nor more than five thousand dollars or by a period of imprison-  
21 ment as provided in the penal law, or by both such fine and imprison-  
22 ment.

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

29 (iii) (A) A person who operates a vessel in violation of subdivision  
30 two, three, four, five, six or seven of section seventy-nine-d of this  
31 article and which is punishable as provided in subparagraph (i) or (ii)  
32 of this paragraph after having been convicted of a violation of any such  
33 subdivision of section seventy-nine-d of this article and penalized  
34 under subparagraph (i) or (ii) of this paragraph within the preceding  
35 ten years, shall be guilty of a class E felony, which shall be punisha-  
36 ble by a fine of not less than one thousand dollars nor more than five  
37 thousand dollars, or by a period of imprisonment as provided in the  
38 penal law, or by both such fine and imprisonment. A person who operates  
39 a vessel in violation of subdivision nine of section seventy-nine-d of  
40 this article after having been convicted of two or more violations of  
41 subdivisions two, three, four, five, six, seven or nine of section  
42 seventy-nine-d of this article within the preceding five years, any one  
43 of which was a misdemeanor, shall be guilty of a class E felony, which  
44 shall be punishable by a fine of not less than one thousand dollars nor  
45 more than five thousand dollars, or by a period of imprisonment as  
46 provided in the penal law, or by both such fine and imprisonment. In  
47 addition, any person sentenced pursuant to this subparagraph shall be  
48 subject to the disqualification provided in subparagraph (iii) of para-  
49 graph (e) of subdivision three of this section.

50 (B) A person who operates a vessel in violation of subdivision two,  
51 three, four, five, six or seven of section seventy-nine-d of this arti-  
52 cle and which is punishable as provided in subparagraph (i) or (ii) of  
53 this paragraph after having been convicted of a violation of any such  
54 subdivision of section seventy-nine-d of this article and penalized  
55 under subparagraph (i) or (ii) of this paragraph twice within the  
56 preceding ten years, shall be guilty of a class D felony, which shall be

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

15 (iv) A violation of subdivision three, five, six or seven of section  
16 seventy-nine-d of this article wherein the violator is operating a  
17 vessel which contains flammable gas, radioactive materials or  
18 explosives, shall be a class E felony punishable by a fine of not less  
19 than one thousand dollars and such other penalties as provided for in  
20 the penal law; provided, however, that a conviction for such violation  
21 shall not be considered a predicate felony pursuant to section 70.06 of  
22 such law, or a previous felony conviction pursuant to section 70.10 of  
23 such law. A violation of subdivision four of section seventy-nine-d of  
24 this article wherein the violator is operating a vessel which contains  
25 flammable gas, radioactive materials or explosives, shall be a class D  
26 felony punishable by a fine of not less than two thousand dollars nor  
27 more than ten thousand dollars and such other penalties as provided for  
28 in the penal law; provided, however, that a conviction for such  
29 violation shall not be considered a predicate felony pursuant to section  
30 70.06 of such law, or a previous felony conviction pursuant to section  
31 70.10 of such law.

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

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

38 (e) Certain sentences prohibited. Notwithstanding any provisions of  
39 the penal law, no judge or magistrate shall impose a sentence of uncon-  
40 ditional discharge for a violation of any subdivision of section seven-  
41 ty-nine-d of this article nor shall a judge or magistrate impose a  
42 sentence of conditional discharge or probation unless such conditional  
43 discharge or probation is accompanied by a sentence of a fine as  
44 provided in this subdivision.

45 (f) Where the court imposes a sentence for a violation of any subdivi-  
46 sion of section seventy-nine-d of this article, the court may require  
47 the defendant, as a part of or as a condition of such sentence, to  
48 attend a single session conducted by a victims impact program. For  
49 purposes of this section, "victims impact program" means a program oper-  
50 ated by a county, a city with a population of one million or more, by a  
51 not-for-profit organization authorized by any such county or city, or a  
52 combination thereof, in which presentations are made concerning the  
53 impact of operating a vessel while under the influence of alcohol or  
54 drugs to one or more persons who have been convicted of such offenses. A  
55 description of any such program shall be filed with the commissioner and  
56 with the coordinator of the special traffic options program for driving

1 while intoxicated established pursuant to section eleven hundred nine-  
2 ty-seven of the vehicle and traffic law, and shall be made available to  
3 the court upon request. Nothing contained herein shall be construed to  
4 require any governmental entity to create such a victim impact program.

5 (g) The office of probation and correctional alternatives shall recom-  
6 mend to the commissioner of the division of criminal justice services  
7 regulations governing the monitoring of compliance by persons ordered to  
8 install and maintain ignition interlock devices to provide standards for  
9 monitoring by departments of probation, and options for monitoring of  
10 compliance by such persons, that counties may adopt as an alternative to  
11 monitoring by a department of probation.

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

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

40 (c) A court sentencing a person pursuant to paragraph (a) or (b) of  
41 this subdivision shall: (i) order the installation of an ignition inter-  
42 lock device approved pursuant to section seventy-nine-l of this article  
43 in any vessel owned or operated by the person so sentenced. Such  
44 devices shall remain installed during any period of revocation of the  
45 privilege to operate a vessel required to be imposed pursuant to para-  
46 graph (b) of subdivision three of this section, and, upon the termi-  
47 nation of such revocation period, for an additional period as determined  
48 by the court; and (ii) order that such person receive an assessment of  
49 the degree of their alcohol or substance abuse and dependency pursuant  
50 to the provisions of section seventy-nine-m of this article. Where such  
51 assessment indicates the need for treatment, such court is authorized to  
52 impose treatment as a condition of such sentence except that such court  
53 shall impose treatment as a condition of a sentence of probation or  
54 conditional discharge pursuant to the provisions of subdivision three of  
55 section seventy-nine-m of this article. Any person ordered to install an  
56 ignition interlock device pursuant to this paragraph shall be subject to

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

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

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

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

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

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

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

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

32 (iii) Operation of a vessel while intoxicated or while ability  
33 impaired by drugs or while ability impaired by the combined influence of  
34 drugs or of alcohol and any drug or drugs; aggravated operation of a  
35 vessel while intoxicated. Six months, where the holder is convicted of a  
36 violation of subdivision three, five, six or seven of section seventy-  
37 nine-d of this article. One year where the holder is convicted of a  
38 violation of subdivision four of section seventy-nine-d of this article.

39 (iv) Operation of a vessel while intoxicated or while ability impaired  
40 by drugs or while ability impaired by the combined influence of drugs or  
41 of alcohol and any drug or drugs; aggravated operation of a vessel while  
42 intoxicated; prior offense. One year, where the holder is convicted of a  
43 violation of subdivision three, five, six or seven of section seventy-  
44 nine-d of this article committed within ten years of a conviction for a  
45 violation of subdivision three, five, six or seven of section seventy-  
46 nine-d of this article. Eighteen months, where the holder is convicted  
47 of a violation of subdivision four of section seventy-nine-d of this  
48 article committed within ten years of a conviction for a violation of  
49 subdivision three, four, five, six or seven of section seventy-nine-d of  
50 this article; or where the holder is convicted of a violation of subdi-  
51 vision three, five, six or seven of section seventy-nine-d of this arti-  
52 cle committed within ten years of a conviction for a violation of subdi-  
53 vision four of section seventy-nine-d of this article.

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

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

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

12 (vi) Persons under the age of twenty-one. One year, where the holder  
13 is convicted of or adjudicated a youthful offender for a violation of  
14 any subdivision of section seventy-nine-d of this article, or is  
15 convicted of or receives a youthful offender or other juvenile adjudi-  
16 cation for an offense consisting of operating a vessel under the influ-  
17 ence of intoxicating liquor where the conviction, or youthful offender  
18 or other juvenile adjudication was had outside this state, where such  
19 person was under the age of twenty-one at the time of commission of such  
20 violation.

21 (vii) Persons under the age of twenty-one; prior offense or finding.  
22 One year or until the holder reaches the age of twenty-one, whichever is  
23 the greater period of time, where the holder has been found to have  
24 operated a vessel after having consumed alcohol in violation of section  
25 seventy-nine-e of this article, or is convicted of, or adjudicated a  
26 youthful offender for, a violation of any subdivision of section seven-  
27 ty-nine-d of this article, or is convicted of or receives a youthful  
28 offender or juvenile adjudication for an offense consisting of operating  
29 a vessel under the influence of intoxicating liquor where the  
30 conviction, or youthful offender or other juvenile adjudication was had  
31 outside this state, where such person was under the age of twenty-one at  
32 the time of commission of such violation and has previously been found  
33 to have operated a vessel after having consumed alcohol in violation of  
34 section seventy-nine-e of this article, or has previously been convicted  
35 of, or adjudicated a youthful offender for, any violation of section  
36 seventy-nine-d of this article not arising out of the same incident, or  
37 has previously been convicted of or received a youthful offender or  
38 juvenile adjudication for an offense consisting of operating a vessel  
39 under the influence of intoxicating liquor when the conviction, or  
40 youthful offender or other juvenile adjudication was had outside this  
41 state and not arising out of the same.

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

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



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

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

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

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

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

52 (1) that such person provides acceptable documentation to the commis-  
53 sioner that such person has voluntarily enrolled in and successfully  
54 completed an appropriate rehabilitation program; or

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

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

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

13     (D) Upon (1) a finding of refusal after having been convicted three  
14 times within four years of a violation of any subdivision of section  
15 seventy-nine-d of this article or of the penal law for which a violation  
16 of any subdivision of such section seventy-nine-d is an essential  
17 element or any combination of three such convictions not arising out of  
18 the same incident within four years or (2) a fourth conviction of any  
19 subdivision of section seventy-nine-d of this article after having been  
20 convicted of any such subdivision of such section seventy-nine-d or of  
21 the penal law for which a violation of any of such subdivisions of such  
22 section seventy-nine-d is an essential element or any combination of  
23 three such convictions not arising out of the same incident within four  
24 years or (3) a finding of refusal after having been convicted four times  
25 within eight years of a violation of any subdivision of section seven-  
26 ty-nine-d of this article or of the penal law for which a violation of  
27 any of such subdivisions of such section seventy-nine-d is an essential  
28 element or any combination of four such convictions not arising out of  
29 the same incident within eight years or (4) a fifth conviction of any  
30 subdivision of section seventy-nine-d of this article after having been  
31 convicted of such subdivision or of the penal law for which a violation  
32 of any of such subdivisions of such section seventy-nine-d is an essen-  
33 tial element or any combination of four such convictions not arising out  
34 of the same incident within eight years, such revocation shall be perma-  
35 nent.

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

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

46     (2) that such person provides acceptable documentation to the commis-  
47 sioner that such person has voluntarily enrolled in and successfully  
48 completed an appropriate rehabilitation program; and

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

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

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

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

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

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

31 (d) Suspension or revocation; sentencing. (i) Where a suspension or  
32 revocation, other than a revocation required to be issued by the commis-  
33 sioner, is mandatory pursuant to paragraph (a) or (b) of this subdivi-  
34 sion, the magistrate, justice or judge shall issue an order suspending  
35 or revoking such privilege to operate a vessel upon sentencing, and the  
36 privilege holder shall surrender such privilege to operate a vessel to  
37 the court. Except as hereinafter provided, such suspension or revocation  
38 shall take effect immediately.

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

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

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

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

32 (ii) Bail forfeiture. A privilege to operate a vessel shall be  
33 suspended where the holder forfeits bail upon a charge of a violation of  
34 any subdivision of section seventy-nine-d of this article. Such suspen-  
35 sion shall not be terminated until the holder submits to the jurisdic-  
36 tion of the court in which the bail was forfeited.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

21 § 79-g. Arrest and testing. 1. Arrest and field testing. (a) Arrest.  
22 Notwithstanding the provisions of section 140.10 of the criminal proce-  
23 dure law, a police officer may, without a warrant, arrest a person, in  
24 case of a violation of subdivision two of section seventy-nine-d of this  
25 article, if such violation is coupled with an accident or collision in  
26 which such person is involved, which in fact has been committed, though  
27 not in the police officer's presence, when the officer has reasonable  
28 cause to believe that the violation was committed by such person.

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

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

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

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

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

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

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

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

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

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

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

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

24 (c) Hearings. Any person whose privilege to operate a vessel or any  
25 non-resident privilege has been suspended pursuant to paragraph (b) of  
26 this subdivision is entitled to a hearing in accordance with a hearing  
27 schedule to be promulgated by the commissioner of motor vehicles pursu-  
28 ant to paragraph (c) of subdivision two of section eleven hundred nine-  
29 ty-four of the vehicle and traffic law. If the department of motor vehi-  
30 cles fails to provide for such hearing fifteen days after the date of  
31 the arraignment of the arrested person, the privilege to operate a  
32 vessel or non-resident operating privilege of such person shall be rein-  
33 stated pending a hearing pursuant to this section. The hearing shall be  
34 limited to the following issues: (1) did the police officer have reason-  
35 able grounds to believe that such person had been operating a vessel in  
36 violation of any subdivision of section seventy-nine-d of this article;  
37 (2) did the police officer make a lawful arrest of such person; (3) was  
38 such person given sufficient warning, in clear or unequivocal language,  
39 prior to such refusal that such refusal to submit to such chemical test  
40 or any portion thereof, would result in the immediate suspension and  
41 subsequent revocation of such person's privilege to operate a vessel  
42 whether or not such person is found guilty of the charge for which the  
43 arrest was made; and (4) did such person refuse to submit to such chemi-  
44 cal test or any portion thereof. If, after such hearing, the hearing  
45 officer, acting on behalf of the commissioner of motor vehicles, finds  
46 on any one of said issues in the negative, the hearing officer shall  
47 immediately terminate any suspension arising from such refusal. If,  
48 after such hearing, the hearing officer, acting on behalf of the commis-  
49 sioner of motor vehicles finds all of the issues in the affirmative,  
50 such officer shall immediately revoke the privilege to operate a vessel  
51 or any non-resident operating privilege in accordance with the  
52 provisions of paragraph (d) of this subdivision. A person who has had a  
53 privilege to operate a vessel or non-resident operating privilege  
54 suspended or revoked pursuant to this subdivision may appeal the find-  
55 ings of the hearing officer in accordance with the provisions of article  
56 three-A of the vehicle and traffic law. Any person may waive the right

1 to a hearing under this section. Failure by such person to appear for  
2 the scheduled hearing shall constitute a waiver of such hearing,  
3 provided, however, that such person may petition the commissioner of  
4 motor vehicles for a new hearing which shall be held as soon as practi-  
5 cable. The results of all hearings shall be referred to the commission-  
6 er for purposes of taking proper action against a defendant's privilege  
7 to operate a vessel.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (c) Reasonable cause; definition. For the purpose of this subdivision  
38 "reasonable cause" shall be determined by viewing the totality of  
39 circumstances surrounding the incident which, when taken together, indi-  
40 cate that the operator was operating a vessel in violation of section  
41 seventy-nine-d of this article. Such circumstances may include, but are  
42 not limited to: evidence that the operator was operating a vessel in  
43 violation of any provision of this article or any other moving violation  
44 at the time of the incident; any visible indication of alcohol or drug  
45 consumption or impairment by the operator; the existence of an open  
46 container containing an alcoholic beverage in or around the vessel oper-  
47 ated by the operator; any other evidence surrounding the circumstances  
48 of the incident which indicates that the operator has been operating a  
49 vessel while impaired by the consumption of alcohol or drugs or intoxi-  
50 cated at the time of the incident.

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

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

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

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

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

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

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

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

7 4. Testing procedures. (a) Persons authorized to withdraw blood; immu-  
8 nity; testimony. (1) At the request of a police officer, the following  
9 persons may withdraw blood for the purpose of determining the alcoholic  
10 or drug content therein: (i) a physician, a registered professional  
11 nurse, a registered physician assistant, a certified nurse practitioner,  
12 or an advanced emergency medical technician as certified by the depart-  
13 ment of health; or (ii) under the supervision and at the direction of a  
14 physician, registered physician assistant or certified nurse practition-  
15 er acting within his or her lawful scope of practice, or upon the  
16 express consent of the person eighteen years of age or older from whom  
17 such blood is to be withdrawn: a clinical laboratory technician or clin-  
18 ical laboratory technologist licensed pursuant to article one hundred  
19 sixty-five of the education law; a phlebotomist; or a medical laboratory  
20 technician or medical technologist employed by a clinical laboratory  
21 approved under title five of article five of the public health law.  
22 This limitation shall not apply to the taking of a urine, saliva or  
23 breath specimen.

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

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

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

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

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

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

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

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

17 § 79-h. Operation of a vessel after having consumed alcohol; under  
18 twenty-one; procedure. 1. Chemical test report and hearing. (a) Whenever  
19 a chemical test of the breath, blood, urine or saliva of an operator who  
20 is under the age of twenty-one indicates that such person has operated a  
21 vessel in violation of section seventy-nine-e of this article, and such  
22 person is not charged with violating any subdivision of section seven-  
23 ty-nine-d of this article arising out of the same incident, the police  
24 officer who administered the test shall forward a report of the results  
25 of such test to the office of parks, recreation and historic preserva-  
26 tion and the department of motor vehicles within twenty-four hours of  
27 the time when such results are available in a manner prescribed by the  
28 commissioner of motor vehicles, and the operator shall be given a hear-  
29 ing notice as provided in subdivision two of this section, to appear  
30 before a hearing officer in the county where the chemical test was  
31 administered, or in an adjoining county under such circumstances as  
32 prescribed by the commissioner of motor vehicles, on a date to be estab-  
33 lished in accordance with a schedule promulgated by the commissioner of  
34 motor vehicles. Such hearing shall occur within thirty days of, but not  
35 less than forty-eight hours from, the date that the chemical test was  
36 administered, provided, however, where the commissioner of motor vehi-  
37 cles determines, based upon the availability of hearing officers and the  
38 anticipated volume of hearings at a particular location, that the sched-  
39 uling of such hearing within thirty days would impair the timely sched-  
40 uling or conducting of other hearings pursuant to the vehicle and traf-  
41 fic law, such hearing shall be scheduled at the next hearing date for  
42 such particular location. When providing the operator with such hearing  
43 notice, the police officer shall also give to the operator, and shall,  
44 prior to the commencement of the hearing, provide to the department of  
45 motor vehicles, copies of the following reports, documents and materi-  
46 als: any written report or document, or portion thereof, concerning a  
47 physical examination, a scientific test or experiment, including the  
48 most recent record of inspection, or calibration or repair of machines  
49 or instruments utilized to perform such scientific tests or experiments  
50 and the certification certificate, if any, held by the operator of the  
51 machine or instrument, which tests or examinations were made by or at  
52 the request or direction of a public servant engaged in law enforcement  
53 activity. The report of the police officer shall be verified by having  
54 the report sworn to, or by affixing to such report a form notice that  
55 false statements made therein are punishable as a class A misdemeanor  
56 pursuant to section 210.45 of the penal law and such form notice togeth-



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

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

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

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

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

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

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

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

3 (2) no negative inference shall be drawn from the operator's exercis-  
4 ing the right not to testify.

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

15 (vi) A person who has had a privilege to operate a vessel or non-resi-  
16 dent operating privilege suspended or revoked pursuant to the provisions  
17 of this section may appeal the finding of the hearing officer in accord-  
18 ance with the provisions of article three-A of the vehicle and traffic  
19 law.

20 (c) Unless an adjournment of the hearing date has been granted, upon  
21 the operator's failure to appear for a scheduled hearing, the commis-  
22 sioner of motor vehicles shall report the failure to appear to the  
23 commissioner and such commissioner shall suspend the privilege to oper-  
24 ate a vessel or non-resident operating privilege until the operator  
25 petitions the commissioner and a rescheduled hearing is conducted,  
26 provided, however, the commissioner shall restore such person's privi-  
27 lege to operate a vessel or non-resident operating privilege if such  
28 rescheduled hearing is adjourned at the request of a person other than  
29 the operator. Requests for adjournments shall be made and determined in  
30 accordance with regulations promulgated by the commissioner of motor  
31 vehicles. If such a request by the operator for an adjournment is grant-  
32 ed, the commissioner of motor vehicles shall notify the operator of the  
33 rescheduled hearing, which shall be scheduled for the next hearing date.  
34 If a second or subsequent request by the operator for an adjournment is  
35 granted, the operator's privilege to operate a vessel or non-resident  
36 operating privilege may be suspended pending the hearing at the time  
37 such adjournment is granted; provided, however, that the records of the  
38 department of motor vehicles or the evidence already admitted furnishes  
39 reasonable grounds to believe such suspension is necessary to prevent  
40 continuing violations or a substantial safety hazard; and provided  
41 further, that such hearing shall be scheduled for the next hearing date.

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

51 2. Hearing notice. The hearing notice issued to an operator pursuant  
52 to subdivision one of this section shall be in a form as prescribed by  
53 the commissioner of motor vehicles. In addition to containing informa-  
54 tion concerning the time, date and location of the hearing, and such  
55 other information as the commissioner of motor vehicles deems appropri-  
56 ate, such hearing notice shall also contain the following information:

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

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

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

40 (b) Unless an adjournment of the hearing date has been granted, upon  
41 the operator's failure to appear for a scheduled hearing, the commis-  
42 sioner of motor vehicles shall report the failure to appear to the  
43 commissioner and shall suspend the privilege to operate a vessel or  
44 non-resident operating privilege until the operator petitions the  
45 commissioner and a rescheduled hearing is conducted, provided, however,  
46 the commissioner shall restore such person's privilege to operate a  
47 vessel or non-resident operating privilege if such rescheduled hearing  
48 is adjourned at the request of a person other than the operator.  
49 Requests for adjournments shall be made and determined in accordance  
50 with regulations promulgated by the commissioner of motor vehicles. If  
51 such a request by the operator for an adjournment is granted, the  
52 commissioner of motor vehicles shall notify the operator of the resched-  
53 uled hearing, which shall be scheduled for the next hearing date. If a  
54 second or subsequent request by the operator for an adjournment is  
55 granted, the operator's privilege to operate a vessel or non-resident  
56 operating privilege may be suspended pending the hearing at the time

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

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

10 (c) The hearing on the refusal to submit to a chemical test pursuant  
11 to this subdivision shall be limited to the following issues: (1) was a  
12 valid request to submit to a chemical test made by the police officer in  
13 accordance with the provisions of section seventy-nine-g of this arti-  
14 cle; (2) was such person given sufficient warning, in clear or unequiv-  
15 ocal language, prior to such refusal that such refusal to submit to such  
16 chemical test or any portion thereof, would result in the revocation of  
17 such person's privilege to operate a vessel or non-resident operating  
18 privilege, whether or not such person is found to have operated a vessel  
19 after having consumed alcohol; (3) did such person refuse to submit to  
20 such chemical test or any portion thereof; (4) did such person operate  
21 the vessel; (5) was such person less than twenty-one years of age at the  
22 time of operation of the vessel; and (6) did the police officer make a  
23 lawful stop of such person. If, after such hearing, the hearing officer,  
24 acting on behalf of the commissioner of motor vehicles, finds on any  
25 said issue in the negative, the hearing officer shall not revoke the  
26 operator's privilege to operate a vessel or non-resident operating privi-  
27 lege and shall immediately terminate any outstanding suspension of the  
28 operator's privilege to operate a vessel or non-resident operating privi-  
29 lege arising from such refusal. If, after such hearing, the hearing  
30 officer, acting on behalf of the commissioner of motor vehicles, finds  
31 all of the issues in the affirmative, such hearing officer shall imme-  
32 diately revoke privilege to operate a vessel or any non-resident operat-  
33 ing privilege in accordance with the provisions of paragraph (d) of  
34 subdivision two of section seventy-nine-g of this article. A person who  
35 has had a privilege to operate a vessel or non-resident operating privi-  
36 lege suspended or revoked pursuant to the provisions of this section may  
37 appeal the findings of the hearing officer in accordance with the  
38 provisions of article three-A of the vehicle and traffic law.

39 § 79-i. Chemical test evidence. 1. Admissibility. Upon the trial of  
40 any action or proceeding arising out of actions alleged to have been  
41 committed by any person arrested for a violation of any subdivision of  
42 section seventy-nine-d of this article, the court shall admit evidence  
43 of the amount of alcohol or drugs in the defendant's blood as shown by a  
44 test administered pursuant to the provisions of section seventy-nine-g  
45 of this article.

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

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

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

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

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

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

18 § 79-j. Alcohol and drug rehabilitation program within the department  
19 of motor vehicles. The commissioner shall work with the commissioner of  
20 motor vehicles to provide access to the alcohol and drug rehabilitation  
21 program established pursuant to section eleven hundred ninety-six of the  
22 vehicle and traffic law to those persons convicted of alcohol or drug-  
23 related operation of a vessel offenses or persons who have been adjudi-  
24 cated youthful offenders for alcohol or drug-related operation of a  
25 vessel offenses, or persons found to have been operating a vessel after  
26 having consumed alcohol in violation of section seventy-nine-e of this  
27 article, who choose to participate and who satisfy the criteria and meet  
28 the requirements for participation as established by section eleven  
29 hundred ninety-six of the vehicle and traffic law and the regulations  
30 promulgated thereunder; provided, however, in the exercise of  
31 discretion, the judge imposing sentence may prohibit the defendant from  
32 enrolling in such program.

33 § 79-k. Special options program for operation of a vessel while intox-  
34 icated. The commissioner shall work with the commissioner of motor vehi-  
35 cles to include a plan for coordination of county, town, city and  
36 village efforts to reduce alcohol-related boating injuries and fatali-  
37 ties pursuant to section eleven hundred ninety-seven of the vehicle and  
38 traffic law.

39 § 79-l. Installation and operation of ignition interlock devices. 1.  
40 Applicability. The provisions of this section shall apply throughout the  
41 state to each person required or otherwise ordered by a court as a  
42 condition of probation or conditional discharge to install and operate  
43 an ignition interlock device in any vessel which he or she owns or oper-  
44 ates.

45 2. Requirements. (a) In addition to any other penalties prescribed by  
46 law, the court shall require that any person who has been convicted of a  
47 violation of subdivision three, four or five of section seventy-nine-d  
48 of this article, or any crime defined by this chapter or the penal law  
49 of which an alcohol-related violation of any provision of section seven-  
50 ty-nine-d of this article is an essential element, to install and main-  
51 tain, as a condition of probation or conditional discharge, a function-  
52 ing ignition interlock device in accordance with the provisions of this  
53 section and, as applicable, in accordance with the provisions of subdi-  
54 vision one of section seventy-nine-f of this article. For any such indi-  
55 vidual subject to a sentence of probation, installation and maintenance  
56 of such ignition interlock device shall be a condition of probation.



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

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

13     3. Conditions. (a) Notwithstanding any other provision of law, the  
14 commissioner may grant a post-revocation conditional privilege to oper-  
15 ate a vessel, as set forth in paragraph (b) of this subdivision, to a  
16 person who has been convicted of a violation of subdivision three, four  
17 or five of section seventy-nine-d of this article and who has been  
18 sentenced to a period of probation or conditional discharge, provided  
19 the person has satisfied the minimum period of the revocation of the  
20 privilege to operate a vessel established by law and the commissioner  
21 has been notified that such person may operate only a vessel equipped  
22 with a functioning ignition interlock device. In exercising discretion  
23 relating to the issuance of a post-revocation conditional privilege to  
24 operate a vessel pursuant to this subdivision, the commissioner shall  
25 not deny such issuance based solely upon the number of convictions for  
26 violations of any subdivision of section seventy-nine-d of this article  
27 committed by such person within the ten years prior to application for  
28 such privilege to operate a vessel. Upon the termination of the period  
29 of probation or conditional discharge set by the court, the person may  
30 apply to the commissioner for restoration of a privilege to operate a  
31 vessel in accordance with this chapter.

32     (b) Notwithstanding any inconsistent provision of this chapter, a  
33 post-revocation conditional privilege to operate a vessel granted pursu-  
34 ant to paragraph (a) of this subdivision shall be valid only for use by  
35 the holder thereof: (1) enroute to and from the holder's place of  
36 employment; (2) if the holder's employment requires the operation of a  
37 vessel then during the hours thereof; (3) enroute to and from a class or  
38 course at an accredited school, college or university or at a state  
39 approved institution of vocational or technical training; (4) to and  
40 from court ordered probation activities; (5) to and from an office for  
41 the transaction of business relating to such privilege to operate a  
42 vessel; (6) for a three hour consecutive daytime period, chosen by the  
43 office, on a day during which the participant is not engaged in usual  
44 employment or vocation; (7) enroute to and from a medical examination or  
45 treatment as part of a necessary medical treatment for such participant  
46 or member of the participant's household, as evidenced by a written  
47 statement to that effect from a licensed medical practitioner; (8)  
48 enroute to and from a class or an activity which is an authorized part  
49 of the alcohol and drug rehabilitation program and at which partic-  
50 ipant's attendance is required; and (9) enroute to and from a place,  
51 including a school, at which a child or children of the participant are  
52 cared for on a regular basis and which is necessary for the participant  
53 to maintain such participant's employment or enrollment at an accredited  
54 school, college or university or at a state approved institution of  
55 vocational or technical training.

1 (c) The post-revocation conditional privilege to operate a vessel  
2 described in this subdivision may be revoked by the commissioner for  
3 sufficient cause including but not limited to, failure to comply with  
4 the terms of the condition of probation or conditional discharge set  
5 forth by the court, conviction of any operation of a vessel offense  
6 other than one involving a conviction of any alcohol or drug-related  
7 offense, misdemeanor or felony or failure to install or maintain a court  
8 ordered ignition interlock device.

9 (d) Nothing contained herein shall prohibit the court from requiring,  
10 as a condition of probation or conditional discharge, the installation  
11 of a functioning ignition interlock device in any vessel owned or oper-  
12 ated by a person sentenced for a violation of subdivision three, four,  
13 or five of section seventy-nine-d of this article, or any crime defined  
14 by this chapter or the penal law of which an alcohol-related violation  
15 of any provision of section seventy-nine-d of this article is an essen-  
16 tial element, if the court in its discretion, determines that such a  
17 condition is necessary to ensure the public safety. Imposition of an  
18 ignition interlock condition shall in no way limit the effect of any  
19 period of suspension or revocation of a privilege to operate a vessel  
20 set forth by the commissioner or the court.

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

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

29 4. Proof of compliance and recording of condition. (a) Following impo-  
30 sition by the court of the use of an ignition interlock device as a  
31 condition of probation or conditional discharge it shall require the  
32 person to provide proof of compliance with this section to the court and  
33 the probation department or other monitor where such person is under  
34 probation or conditional discharge supervision. If the person fails to  
35 provide for such proof of installation, absent a finding by the court of  
36 good cause for that failure which is entered in the record, the court  
37 may revoke, modify, or terminate the person's sentence of probation or  
38 conditional discharge as provided under law. Good cause may include a  
39 finding that the person is not the owner of a vessel if such person  
40 asserts under oath that such person is not the owner of any vessel and  
41 that he or she will not operate any vessel during the period of inter-  
42 lock restriction except as may be otherwise authorized pursuant to law.  
43 "Owner" shall have the same meaning as provided in section one hundred  
44 twenty-eight of the vehicle and traffic law.

45 (b) When a court imposes the condition specified in subdivision one of  
46 this section, the court shall notify the commissioner in such manner as  
47 the commissioner may prescribe, and the commissioner shall note such  
48 condition on the operating record of the person subject to such condi-  
49 tions.

50 5. Cost, installation and maintenance. (a) The cost of installing and  
51 maintaining the ignition interlock device shall be borne by the person  
52 subject to such condition unless the court determines such person is  
53 financially unable to afford such cost whereupon such cost may be  
54 imposed pursuant to a payment plan or waived. In the event of such waiv-  
55 er, the cost of the device shall be borne in accordance with regulations  
56 issued under paragraph (g) of subdivision one of section seventy-nine-f

1 of this article or pursuant to such other agreement as may be entered  
2 into for provision of the device. Such cost shall be considered a fine  
3 for the purposes of subdivision five of section 420.10 of the criminal  
4 procedure law. Such cost shall not replace, but shall instead be in  
5 addition to, any fines, surcharges, or other costs imposed pursuant to  
6 this chapter or other applicable laws.

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

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

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

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

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

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

25 (4) minimize inconvenience to a sober user;

26 (5) require a proper, deep, lung breath sample or other accurate meas-  
27 ure of blood alcohol content equivalence;

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

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

32 (8) are manufactured by a party covered by product liability insur-  
33 ance.

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

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

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

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

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

1 only in the course and scope of such employment and only if the employer  
2 has been notified that the person's privilege to operate a vessel has  
3 been restricted under the provisions of this article or the penal law  
4 and the person whose privilege to operate a vessel has been so  
5 restricted has provided the court and probation department with written  
6 documentation indicating the employer has knowledge of the restriction  
7 imposed and has granted permission for the person to operate the employ-  
8 er's vessel without the device only for business purposes. The person  
9 shall notify the court and the probation department of his or her inten-  
10 tion to so operate the employer's vessel. A vessel owned by a business  
11 entity when such business entity is all or partly owned or controlled by  
12 a person otherwise subject to the provisions of this article or the  
13 penal law is not a vessel owned by the employer for purposes of the  
14 exemption provided in this subdivision. The provisions of this subdivi-  
15 sion shall apply only to the operation of such vessel in the scope of  
16 such employment.

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

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

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

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

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

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

37 § 79-m. Special procedures and disposition involving alcohol and  
38 substance abuse assessment and treatment. 1. Definitions. For purposes  
39 of this section, the following terms shall have the following meanings:

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

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

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

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

12 (b) Mandatory assessment; when authorized. The court shall order a  
13 defendant to undergo a formal alcohol or substance abuse and dependency  
14 assessment by an alcohol or substance abuse professional or a licensed  
15 agency: (i) when the screening required by paragraph (a) of this subdi-  
16 vision indicates that a defendant is abusing or dependent upon alcohol  
17 or drugs; (ii) following the arraignment of any person charged with or,  
18 at the discretion of the court, prior to the sentencing of any person  
19 convicted of a violation of subdivision two, three, five, six or seven  
20 of section seventy-nine-d of this article after having been convicted of  
21 a violation of any subdivision of section seventy-nine-d of this article  
22 or of vehicular assault in the second or first degree, as defined,  
23 respectively, in sections 120.03 and 120.04 of the penal law or of  
24 aggravated vehicular assault, as defined in section 120.04-a of such law  
25 or of vehicular manslaughter in the second or first degree, as defined,  
26 respectively, in sections 125.12 and 125.13 of such law or of aggravated  
27 vehicular homicide, as defined in section 125.14 of such law within the  
28 preceding five years or after having been convicted of a violation of  
29 any subdivision of section seventy-nine-d of this article or of vehicu-  
30 lar assault in the second or first degree, as defined, respectively, in  
31 sections 120.03 and 120.04 of the penal law or of aggravated vehicular  
32 assault, as defined in section 120.04-a of the penal law or of vehicular  
33 manslaughter in the second or first degree, as defined, respectively, in  
34 sections 125.12 and 125.13 of the penal law or of aggravated vehicular  
35 homicide, as defined in section 125.14 of such law, two or more times  
36 within the preceding ten years; or (iii) following the arraignment of  
37 any person charged with or, at the discretion of the court, prior to the  
38 sentencing of any person convicted of operating a vessel in violation of  
39 subdivision three or five or paragraph (b) of subdivision four of  
40 section seventy-nine-d of this article while such person has .15 of one  
41 per centum or more by weight of alcohol in the person's blood as shown  
42 by a chemical analysis of such person's blood, breath, urine or saliva  
43 made pursuant to the provisions of section seventy-nine-g of this arti-  
44 cle or in violation of paragraph (a) of subdivision four of section  
45 seventy-nine-d of this article.

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

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



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

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

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

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

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

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

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

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

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

55 § 79-n. Driver and boater responsibility assessment. The commissioner  
56 shall work with the commissioner of motor vehicles to provide access to

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

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

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

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

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

13 § 4. Section 1199 of the vehicle and traffic law, as added by section  
14 1 of part E of chapter 59 of the laws of 2004, is amended to read as  
15 follows:

16 § 1199. Driver and boater responsibility assessment. 1. In addition to  
17 any fines, fees, penalties and surcharges authorized by law, any person  
18 convicted of a violation of any subdivision of section eleven hundred  
19 ninety-two of this article or section seventy-nine-d of the navigation  
20 law, or any person found to have refused a chemical test in accordance  
21 with section eleven hundred ninety-four of this article or section  
22 seventy-nine-g of the navigation law not arising out of the same inci-  
23 dent as a conviction for a violation of any of the provisions of section  
24 eleven hundred ninety-two of this article or section seventy-nine-d of  
25 the navigation law, shall become liable to the department for payment of  
26 a driver and boater responsibility assessment as provided in this  
27 section.

28 2. The amount of the driver and boater responsibility assessment under  
29 this section shall be two hundred fifty dollars per year for a three-  
30 year period.

31 3. Upon receipt of evidence that a person is liable for the driver and  
32 boater responsibility assessment required by this section, the commis-  
33 sioner shall notify such person by first class mail to the address of  
34 such person on file with the department or at the current address  
35 provided by the United States postal service of the amount of such  
36 assessment, the time and manner of making required payments, and that  
37 failure to make payment shall result in the suspension of his or her  
38 driver's license or privilege of obtaining a driver's license or privi-  
39 lege to operate a vessel.

40 4. If a person shall fail to pay any driver and boater responsibility  
41 assessment as provided in this section, the commissioner shall suspend  
42 such person's driver's license or privilege of obtaining a license or  
43 privilege to operate a vessel. Such suspension shall remain in effect  
44 until any and all outstanding driver and boater responsibility assess-  
45 ments have been paid in full.

46 5. The provisions of this section shall also be applicable to any  
47 person convicted of any violation of [~~section forty-nine-a~~] article  
48 four-B of the navigation law, any person convicted of a violation of  
49 section 25.24 of the parks, recreation and historic preservation law, or  
50 any person found to have refused a chemical test in accordance with the  
51 applicable provisions of either the navigation law or the parks, recre-  
52 ation and historic preservation law not arising out of the same incident  
53 as such conviction.

54 § 5. Subdivision 5 of section 710.20 of the criminal procedure law, as  
55 amended by chapter 629 of the laws of 1998, is amended to read as  
56 follows:

1 5. Consists of a chemical test of the defendant's blood administered  
2 in violation of the provisions of subdivision three of section eleven  
3 hundred ninety-four of the vehicle and traffic law, subdivision [~~eight~~]  
4 ~~three~~ of section [~~forty-nine-a~~] seventy-nine-g of the navigation law,  
5 subdivision seven of section 25.24 of the parks, recreation and historic  
6 preservation law, or any other applicable law; or

7 § 6. Subdivision 4 of section 49 of the navigation law, as added by  
8 chapter 805 of the laws of 1992, is amended to read as follows:

9 4. Whenever any police officer or peace officer authorized to enforce  
10 the provisions of this chapter having reasonable cause to believe that a  
11 person is operating a vessel in violation of section [~~forty-nine-a~~]  
12 seventy-nine-d of this [~~article~~] chapter, or any other provision of this  
13 article or article four-B of this chapter for which a suspension may be  
14 imposed, such officer may demand of such person his or her name, address  
15 and an explanation of his or her conduct.

16 § 7. Subdivision 1 of section 120.03 of the penal law, as amended by  
17 chapter 732 of the laws of 2006, is amended to read as follows:

18 (1) operates a motor vehicle in violation of subdivision two, three,  
19 four or four-a of section eleven hundred ninety-two of the vehicle and  
20 traffic law or operates a vessel or public vessel in violation of [~~para-~~  
21 ~~graph (b), (c), (d) or (e) of~~] subdivision [~~two~~] three, five, six, or  
22 seven of section [~~forty-nine-a~~] seventy-nine-d of the navigation law,  
23 and as a result of such intoxication or impairment by the use of a drug,  
24 or by the combined influence of drugs or of alcohol and any drug or  
25 drugs, operates such motor vehicle, vessel or public vessel in a manner  
26 that causes such serious physical injury to such other person, or

27 § 8. Subdivision 1 of section 125.12 of the penal law, as amended by  
28 chapter 732 of the laws of 2006, is amended to read as follows:

29 (1) operates a motor vehicle in violation of subdivision two, three,  
30 four or four-a of section eleven hundred ninety-two of the vehicle and  
31 traffic law or operates a vessel or public vessel in violation of [~~para-~~  
32 ~~graph (b), (c), (d) or (e) of~~] subdivision [~~two~~] three, five, six, or  
33 seven of section [~~forty-nine-a~~] seventy-nine-d of the navigation law,  
34 and as a result of such intoxication or impairment by the use of a drug,  
35 or by the combined influence of drugs or of alcohol and any drug or  
36 drugs, operates such motor vehicle, vessel or public vessel in a manner  
37 that causes the death of such other person, or

38 § 9. Subdivision 5 of section 160.55 of the criminal procedure law, as  
39 amended by chapter 391 of the laws of 1998, is amended to read as  
40 follows:

41 5. (a) When a criminal action or proceeding is terminated against a  
42 person by the entry of a waiver of a hearing pursuant to paragraph (c)  
43 of subdivision ten of section eleven hundred ninety-two of the vehicle  
44 and traffic law or paragraph (c) of subdivision thirteen of section  
45 [~~forty-nine-b~~] seventy-nine-d of the navigation law, the record of the  
46 criminal action shall be sealed in accordance with this subdivision.  
47 Upon the entry of such waiver, the court or the clerk of the court shall  
48 immediately notify the commissioner of the division of criminal justice  
49 services and the heads of all appropriate police departments and other  
50 law enforcement agencies that a waiver has been entered and that the  
51 record of the action shall be sealed when the person reaches the age of  
52 twenty-one or three years from the date of commission of the offense,  
53 whichever is the greater period of time. At the expiration of such peri-  
54 od, the commissioner of the division of criminal justice services and  
55 the heads of all appropriate police departments and other law enforce-

1 ment agencies shall take the actions required by paragraphs (a), (b) and  
2 (c) of subdivision one of section 160.50 of this article.

3 (b) Where a person under the age of twenty-one is referred by the  
4 police to the department of motor vehicles for action pursuant to  
5 section eleven hundred ninety-two-a or eleven hundred ninety-four-a of  
6 the vehicle and traffic law, or section [~~forty-nine-b~~] seventy-nine-e or  
7 seventy-nine-h of the navigation law and a finding in favor of the  
8 motorist or operator is rendered, the commissioner of the department of  
9 motor vehicles shall, as soon as practicable, but not later than three  
10 years from the date of commission of the offense or when such person  
11 reaches the age of twenty-one, whichever is the greater period of time,  
12 notify the commissioner of the division of criminal justice services and  
13 the heads of all appropriate police departments and other law enforce-  
14 ment agencies that such finding in favor of the motorist or operator was  
15 rendered. Upon receipt of such notification, the commissioner of the  
16 division of criminal justice services and the heads of such police  
17 departments and other law enforcement agencies shall take the actions  
18 required by paragraphs (a), (b) and (c) of subdivision one of section  
19 160.50 of this article.

20 (c) Where a person under the age of twenty-one is referred by the  
21 police to the department of motor vehicles for action pursuant to  
22 section eleven hundred ninety-two-a or eleven hundred ninety-four-a of  
23 the vehicle and traffic law, or section [~~forty-nine-b~~] seventy-nine-e or  
24 seventy-nine-h of the navigation law, and no notification is received by  
25 the commissioner of the division of criminal justice services and the  
26 heads of all appropriate police departments and other law enforcement  
27 agencies pursuant to paragraph (b) of this subdivision, such commis-  
28 sioner of the division of criminal justice services and such heads of police  
29 departments and other law enforcement agencies shall, after three years  
30 from the date of commission of the offense or when the person reaches  
31 the age of twenty-one, whichever is the greater period of time, take the  
32 actions required by paragraphs (a), (b) and (c) of subdivision one of  
33 section 160.50 of this article.

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

37 (k) any records, including any reproductions or electronically created  
38 images of such records and including any records received by the commis-  
39 sioner from a court pursuant to paragraph (c) of subdivision ten of  
40 section eleven hundred ninety-two of this chapter or paragraph (c) of  
41 paragraph thirteen of section [~~forty-nine-b~~] seventy-nine-d of the navi-  
42 gation law, relating to a finding of a violation of section eleven  
43 hundred ninety-two-a of this chapter or a waiver of the right to a hear-  
44 ing under section eleven hundred ninety-four-a of this chapter or a  
45 finding of a refusal following a hearing conducted pursuant to subdivi-  
46 sion three of section eleven hundred ninety-four-a of this chapter or a  
47 finding of a violation of subdivision four of section [~~forty-nine-b~~]  
48 seventy-nine-g of the navigation law or a waiver of the right to a hear-  
49 ing or a finding of refusal following a hearing conducted pursuant to  
50 such section, after remaining on file for three years after such finding  
51 or entry of such waiver or refusal or until the person that is found to  
52 have violated such section reaches the age of twenty-one, whichever is  
53 the greater period of time. Upon the expiration of the period for  
54 destruction of records pursuant to this paragraph, the entirety of the  
55 proceedings concerning the violation or alleged violation of such  
56 section eleven hundred ninety-two-a of this chapter or such section

1 [~~forty-nine-b~~] seventy-nine-e of the navigation law, from the initial  
2 stop and detention of the operator to the entering of a finding and  
3 imposition of sanctions pursuant to any subdivision of section eleven  
4 hundred ninety-four-a of this chapter or of section [~~forty-nine-b~~]  
5 seventy-nine-h of the navigation law shall be deemed a nullity, and the  
6 operator shall be restored, in contemplation of law, to the status he or  
7 she occupied before the initial stop and prosecution.  
8 § 11. This act shall take effect on the one hundred twentieth day  
9 after it shall have become a law.