

# STATE OF NEW YORK

9554

## IN ASSEMBLY

March 16, 2022

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

AN ACT to amend the vehicle and traffic law, in relation to procedures  
relating to driving while ability impaired by drugs

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

1 Section 1. Section 114-a of the vehicle and traffic law, as amended by  
2 chapter 92 of the laws of 2021, is amended to read as follows:

3 § 114-a. Drug. The term "drug" when used in this chapter, means and  
4 includes any substance listed in section thirty-three hundred six of the  
5 public health law and cannabis and concentrated cannabis as defined in  
6 section 222.00 of the penal law and any substance or combination of  
7 substances that impair, to any extent, physical or mental abilities.

8 § 2. Section 119-b of the vehicle and traffic law is renumbered 119-c  
9 and a new section 119-b is added to read as follows:

10 § 119-b. Impaired. Impairment is reached when a driver has voluntarily  
11 consumed or ingested a substance or combination of substances to the  
12 extent that the driver has impaired, to any extent, the physical and  
13 mental abilities which a driver is expected to possess in order to oper-  
14 ate a vehicle as a reasonable and prudent driver.

15 § 3. The vehicle and traffic law is amended by adding a new section  
16 120-a to read as follows:

17 § 120-a. Intoxication. Intoxication is a greater degree of impairment  
18 which is reached when a driver has voluntarily consumed or ingested a  
19 substance or combination of substances to the extent that the driver is  
20 incapable, to a substantial extent, of employing the physical and mental  
21 abilities which a driver is expected to possess in order to operate a  
22 vehicle as a reasonable and prudent driver.

23 § 4. Subdivisions 1, 2 and 3 of section 1194 of the vehicle and traf-  
24 fic law, as added by chapter 47 of the laws of 1988, paragraph (a) of  
25 subdivision 2 as amended by chapter 196 of the laws of 1996, paragraphs  
26 (b) and (c) of subdivision 2 as amended by chapter 489 of the laws of  
27 2017, clause (A) of subparagraph 1, subparagraphs 2 and 3 of paragraph  
28 (b), subparagraphs 1, 2 and 3 of paragraph (c) of subdivision 2 as

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

LBD14815-02-2

1 amended by chapter 27 of the laws of 2018, subparagraphs 1 and 2 of  
2 paragraph (d) of subdivision 2 as amended by chapter 732 of the laws of  
3 2006, and item (iii) of clause c of subparagraph 1 of paragraph (d) of  
4 subdivision 2 as amended by section 37 of part LL of chapter 56 of the  
5 laws of 2010, are amended to read as follows:

6 1. Arrest and field testing. (a) Arrest. Notwithstanding the  
7 provisions of section 140.10 of the criminal procedure law, a police  
8 officer may, without a warrant, arrest a person, in case of a violation  
9 of subdivision one of section eleven hundred ninety-two of this article,  
10 if such violation is coupled with an accident or collision in which such  
11 person is involved, which in fact has been committed, though not in the  
12 police officer's presence, when the officer has reasonable cause to  
13 believe that the violation was committed by such person.

14 (b) Field testing. Every person operating a motor vehicle which has  
15 been involved in an accident or which is operated in violation of any of  
16 the provisions of this chapter shall, at the request of a police offi-  
17 cer, submit to a breath test and/or oral/bodily fluid test to be admin-  
18 istered by the police officer. If such test indicates that such operator  
19 has consumed alcohol or a drug or drugs, the police officer may request  
20 such operator to submit to a chemical test and/or an evaluation  
21 conducted by a drug recognition expert in the manner set forth in subdi-  
22 vision two of this section.

23 (c) Refusal to submit to a breath test and/or oral/bodily fluid test  
24 pursuant to paragraph (b) of this subdivision shall be a traffic infrac-  
25 tion.

26 2. Chemical tests and drug recognition evaluations. (a) When author-  
27 ized. Any person who operates a motor vehicle in this state shall be  
28 deemed to have given consent to an evaluation conducted by a certified  
29 drug recognition expert, and/or a chemical test of one or more of the  
30 following: breath, blood, urine, or [~~saliva~~] oral/bodily fluid, for the  
31 purpose of determining the alcoholic and/or drug content [~~of the blood~~]  
32 provided that such test is administered by or at the direction of a  
33 police officer with respect to a chemical test of breath, urine or  
34 [~~saliva~~] oral/bodily fluid or, with respect to a chemical test of blood,  
35 at the direction of a police officer:

36 (1) having reasonable grounds to believe such person to have been  
37 operating in violation of any subdivision of section eleven hundred  
38 ninety-two of this article and within two hours after such person has  
39 been placed under arrest for any such violation; or having reasonable  
40 grounds to believe such person to have been operating in violation of  
41 section eleven hundred ninety-two-a of this article and within two hours  
42 after the stop of such person for any such violation,

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

47 (3) for the purposes of this paragraph, "reasonable grounds" to  
48 believe that a person has been operating a motor vehicle after having  
49 consumed alcohol in violation of section eleven hundred ninety-two-a of  
50 this article shall be determined by viewing the totality of circum-  
51 stances surrounding the incident which, when taken together, indicate  
52 that the operator was driving in violation of such subdivision. Such  
53 circumstances may include any visible or behavioral indication of alco-  
54 hol consumption by the operator, the existence of an open container  
55 containing or having contained an alcoholic beverage in or around the  
56 vehicle driven by the operator, or any other evidence surrounding the

1 circumstances of the incident which indicates that the operator has been  
2 operating a motor vehicle after having consumed alcohol at the time of  
3 the incident; or

4 (4) notwithstanding any other provision of law to the contrary, no  
5 person under the age of twenty-one shall be arrested for an alleged  
6 violation of section eleven hundred ninety-two-a of this article.  
7 However, a person under the age of twenty-one for whom a chemical test  
8 and/or an evaluation conducted by a certified drug recognition expert is  
9 authorized pursuant to this paragraph may be temporarily detained by the  
10 police solely for the purpose of requesting or administering such chemi-  
11 cal test and/or an evaluation conducted by a certified drug recognition  
12 expert whenever arrest without a warrant for a petty offense would be  
13 authorized in accordance with the provisions of section 140.10 of the  
14 criminal procedure law or paragraph (a) of subdivision one of this  
15 section.

16 (a-1) For the purposes of this section the driver shall not be deemed  
17 to consent to answer custodial questions as part of an evaluation  
18 conducted by a certified drug recognition expert pursuant to paragraph  
19 (a) of this subdivision and declining to answer such questions shall not  
20 constitute a refusal to submit to the evaluation when the driver submits  
21 to the other portions of such evaluation and no report of refusal shall  
22 be made pursuant to paragraph (b) of this subdivision and the driver's  
23 license shall not be revoked pursuant to paragraphs (c) and (d) of this  
24 subdivision solely on the basis of the driver declining to answer such  
25 custodial questions.

26 (b) Report of refusal. (1) If: (A) such person having been placed  
27 under arrest; or (B) after a breath and/or oral/bodily fluid test indi-  
28 cates the presence of alcohol and/or a drug or drugs in the person's  
29 system; or (C) with regard to a person under the age of twenty-one,  
30 there are reasonable grounds to believe that such person has been oper-  
31 ating a motor vehicle after having consumed alcohol in violation of  
32 section eleven hundred ninety-two-a of this article; and having there-  
33 after been requested to submit to such chemical test and/or an evalu-  
34 ation conducted by a certified drug recognition expert and having been  
35 informed that the person's license or permit to drive and any non-resi-  
36 dent operating privilege shall be immediately suspended and subsequently  
37 revoked, or, for operators under the age of twenty-one for whom there  
38 are reasonable grounds to believe that such operator has been operating  
39 a motor vehicle after having consumed alcohol in violation of section  
40 eleven hundred ninety-two-a of this article, shall be revoked for  
41 refusal to submit to such chemical test or any portion thereof, and/or  
42 an evaluation conducted by a certified drug recognition expert or any  
43 portion thereof whether or not the person is found guilty of the charge  
44 for which such person is arrested or detained, refuses to submit to such  
45 chemical test or any portion thereof, [~~unless a court order has been~~  
46 ~~granted pursuant to subdivision three of this section,~~] and/or an evalu-  
47 ation conducted by a certified drug recognition expert or any portion  
48 thereof the test shall not be given and a written report of such refusal  
49 shall be immediately made by the police officer before whom such refusal  
50 was made. Such report may be verified by having the report sworn to, or  
51 by affixing to such report a form notice that false statements made  
52 therein are punishable as a class A misdemeanor pursuant to section  
53 210.45 of the penal law and such form notice together with the  
54 subscription of the deponent shall constitute a verification of the  
55 report.

1 (2) The report of the police officer shall set forth reasonable  
2 grounds to believe such arrested person or such detained person under  
3 the age of twenty-one had been driving in violation of any subdivision  
4 of section eleven hundred ninety-two or eleven hundred ninety-two-a of  
5 this article, that said person had refused to submit to such chemical  
6 test, [~~and that no chemical test was administered pursuant to the~~  
7 ~~requirements of subdivision three of this section~~] or an evaluation  
8 conducted by a certified drug recognition expert or any portion thereof.

9 The report shall be presented to the court upon arraignment of an  
10 arrested person, provided, however, in the case of a person under the  
11 age of twenty-one, for whom a test was authorized pursuant to the  
12 provisions of subparagraph two or three of paragraph (a) of this subdi-  
13 vision, and who has not been placed under arrest for a violation of any  
14 of the provisions of section eleven hundred ninety-two of this article,  
15 such report shall be forwarded to the commissioner within forty-eight  
16 hours in a manner to be prescribed by the commissioner, and all subse-  
17 quent proceedings with regard to refusal to submit to such chemical test  
18 and/or an evaluation conducted by a certified drug recognition expert by  
19 such person shall be as set forth in subdivision three of section eleven  
20 hundred ninety-four-a of this article.

21 (3) For persons placed under arrest for a violation of any subdivision  
22 of section eleven hundred ninety-two of this article, the license or  
23 permit to drive and any non-resident operating privilege shall, upon the  
24 basis of such written report, be temporarily suspended by the court  
25 without notice pending the determination of a hearing as provided in  
26 paragraph (c) of this subdivision. Copies of such report must be trans-  
27 mitted by the court to the commissioner and such transmittal may not be  
28 waived even with the consent of all the parties. Such report shall be  
29 forwarded to the commissioner within forty-eight hours of such arraign-  
30 ment.

31 (4) The court or the police officer, in the case of a person under the  
32 age of twenty-one alleged to be driving after having consumed alcohol,  
33 shall provide such person with a scheduled hearing date, a waiver form,  
34 and such other information as may be required by the commissioner. If a  
35 hearing, as provided for in paragraph (c) of this subdivision, or subdi-  
36 vision three of section eleven hundred ninety-four-a of this article, is  
37 waived by such person, the commissioner shall immediately revoke the  
38 license, permit, or non-resident operating privilege, as of the date of  
39 receipt of such waiver in accordance with the provisions of paragraph  
40 (d) of this subdivision.

41 (c) Hearings. Any person whose license or permit to drive or any non-  
42 resident driving privilege has been suspended pursuant to paragraph (b)  
43 of this subdivision is entitled to a hearing in accordance with a hear-  
44 ing schedule to be promulgated by the commissioner. If the department  
45 fails to provide for such hearing fifteen days after the date of the  
46 arraignment of the arrested person, the license, permit to drive or  
47 non-resident operating privilege of such person shall be reinstated  
48 pending a hearing pursuant to this section. The hearing shall be limited  
49 to the following issues: (1) did the police officer have reasonable  
50 grounds to believe that such person had been driving in violation of any  
51 subdivision of section eleven hundred ninety-two of this article; (2)  
52 did the police officer make a lawful arrest of such person; (3) was such  
53 person given sufficient warning, in clear or unequivocal language, prior  
54 to such refusal that such refusal to submit to such chemical test or any  
55 portion thereof and/or an evaluation conducted by a certified drug  
56 recognition expert or any portion thereof, would result in the immediate

1 suspension and subsequent revocation of such person's license or operat-  
2 ing privilege whether or not such person is found guilty of the charge  
3 for which the arrest was made; and (4) did such person refuse to submit  
4 to such chemical test or any portion thereof and/or an evaluation  
5 conducted by a certified drug recognition expert or any portion thereof.  
6 A refusal to answer custodial questions shall not be considered a  
7 refusal for the purposes of this section pursuant to paragraph (a-1) of  
8 this subdivision. If, after such hearing, the hearing officer, acting on  
9 behalf of the commissioner, finds on any one of said issues in the nega-  
10 tive, the hearing officer shall immediately terminate any suspension  
11 arising from such refusal. If, after such hearing, the hearing officer,  
12 acting on behalf of the commissioner finds all of the issues in the  
13 affirmative, such officer shall immediately revoke the license or permit  
14 to drive or any non-resident operating privilege in accordance with the  
15 provisions of paragraph (d) of this subdivision. A person who has had a  
16 license or permit to drive or non-resident operating privilege suspended  
17 or revoked pursuant to this subdivision may appeal the findings of the  
18 hearing officer in accordance with the provisions of article three-A of  
19 this chapter. Any person may waive the right to a hearing under this  
20 section. Failure by such person to appear for the scheduled hearing  
21 shall constitute a waiver of such hearing, provided, however, that such  
22 person may petition the commissioner for a new hearing which shall be  
23 held as soon as practicable.

24 (d) Sanctions. (1) Revocations. a. Any license which has been revoked  
25 pursuant to paragraph (c) of this subdivision shall not be restored for  
26 at least one year after such revocation, nor thereafter, except in the  
27 discretion of the commissioner. However, no such license shall be  
28 restored for at least eighteen months after such revocation, nor there-  
29 after except in the discretion of the commissioner, in any case where  
30 the person has had a prior revocation resulting from refusal to submit  
31 to a chemical test and/or an evaluation conducted by a certified drug  
32 recognition expert or any portion thereof, or has been convicted of or  
33 found to be in violation of any subdivision of section eleven hundred  
34 ninety-two or section eleven hundred ninety-two-a of this article not  
35 arising out of the same incident, within the five years immediately  
36 preceding the date of such revocation; provided, however, a prior find-  
37 ing that a person under the age of twenty-one has refused to submit to a  
38 chemical test and/or an evaluation conducted by a certified drug recog-  
39 nitition expert or any portion thereof pursuant to subdivision three of  
40 section eleven hundred ninety-four-a of this article shall have the same  
41 effect as a prior finding of a refusal pursuant to this subdivision  
42 solely for the purpose of determining the length of any license suspen-  
43 sion or revocation required to be imposed under any provision of this  
44 article, provided that the subsequent offense or refusal is committed or  
45 occurred prior to the expiration of the retention period for such prior  
46 refusal as set forth in paragraph (k) of subdivision one of section two  
47 hundred one of this chapter.

48 b. Any license which has been revoked pursuant to paragraph (c) of  
49 this subdivision or pursuant to subdivision three of section eleven  
50 hundred ninety-four-a of this article, where the holder was under the  
51 age of twenty-one years at the time of such refusal, shall not be  
52 restored for at least one year, nor thereafter, except in the discretion  
53 of the commissioner. Where such person under the age of twenty-one years  
54 has a prior finding, conviction or youthful offender adjudication  
55 resulting from a violation of section eleven hundred ninety-two or  
56 section eleven hundred ninety-two-a of this article, not arising from

1 the same incident, such license shall not be restored for at least one  
2 year or until such person reaches the age of twenty-one years, whichever  
3 is the greater period of time, nor thereafter, except in the discretion  
4 of the commissioner.

5 c. Any commercial driver's license which has been revoked pursuant to  
6 paragraph (c) of this subdivision based upon a finding of refusal to  
7 submit to a chemical test and/or an evaluation conducted by a certified  
8 drug recognition expert or any portion thereof, where such finding  
9 occurs within or outside of this state, shall not be restored for at  
10 least eighteen months after such revocation, nor thereafter, except in  
11 the discretion of the commissioner, but shall not be restored for at  
12 least three years after such revocation, nor thereafter, except in the  
13 discretion of the commissioner, if the holder of such license was oper-  
14 ating a commercial motor vehicle transporting hazardous materials at the  
15 time of such refusal. However, such person shall be permanently disqual-  
16 ified from operating a commercial motor vehicle in any case where the  
17 holder has a prior finding of refusal to submit to a chemical test  
18 and/or an evaluation thereof conducted by a certified drug recognition  
19 expert or any portion thereof pursuant to this section or has a prior  
20 conviction of any of the following offenses: any violation of section  
21 eleven hundred ninety-two of this article; any violation of subdivision  
22 one or two of section six hundred of this chapter; or has a prior  
23 conviction of any felony involving the use of a motor vehicle pursuant  
24 to paragraph (a) of subdivision one of section five hundred ten-a of  
25 this chapter. Provided that the commissioner may waive such permanent  
26 revocation after a period of ten years has expired from such revocation  
27 provided:

28 (i) that during such ten year period such person has not been found to  
29 have refused a chemical test or an evaluation conducted by a certified  
30 drug recognition expert or any portion thereof pursuant to this section  
31 and has not been convicted of any one of the following offenses: any  
32 violation of section eleven hundred ninety-two of this article; refusal  
33 to submit to a chemical test or an evaluation conducted by a certified  
34 drug recognition expert or any portion thereof pursuant to this section;  
35 any violation of subdivision one or two of section six hundred of this  
36 chapter; or has a prior conviction of any felony involving the use of a  
37 motor vehicle pursuant to paragraph (a) of subdivision one of section  
38 five hundred ten-a of this chapter;

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

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

46 d. Upon a third finding of refusal and/or conviction of any of the  
47 offenses which require a permanent commercial driver's license revoca-  
48 tion, such permanent revocation may not be waived by the commissioner  
49 under any circumstances.

50 (2) Civil penalties. Except as otherwise provided, any person whose  
51 license, permit to drive, or any non-resident operating privilege is  
52 revoked pursuant to the provisions of this section shall also be liable  
53 for a civil penalty in the amount of five hundred dollars except that if  
54 such revocation is a second or subsequent revocation pursuant to this  
55 section issued within a five year period, or such person has been  
56 convicted of a violation of any subdivision of section eleven hundred

1 ninety-two of this article within the past five years not arising out of  
2 the same incident, the civil penalty shall be in the amount of seven  
3 hundred fifty dollars. Any person whose license is revoked pursuant to  
4 the provisions of this section based upon a finding of refusal to submit  
5 to a chemical test and/or an evaluation conducted by a certified drug  
6 recognition expert or any portion thereof while operating a commercial  
7 motor vehicle shall also be liable for a civil penalty of five hundred  
8 fifty dollars except that if such person has previously been found to  
9 have refused a chemical test and/or an evaluation conducted by a certi-  
10 fied drug recognition expert or any portion thereof pursuant to this  
11 section while operating a commercial motor vehicle or has a prior  
12 conviction of any of the following offenses while operating a commercial  
13 motor vehicle: any violation of section eleven hundred ninety-two of  
14 this article; any violation of subdivision two of section six hundred of  
15 this chapter; or has a prior conviction of any felony involving the use  
16 of a commercial motor vehicle pursuant to paragraph (a) of subdivision  
17 one of section five hundred ten-a of this chapter, then the civil penal-  
18 ty shall be seven hundred fifty dollars. No new driver's license or  
19 permit shall be issued, or non-resident operating privilege restored to  
20 such person unless such penalty has been paid. All penalties collected  
21 by the department pursuant to the provisions of this section shall be  
22 the property of the state and shall be paid into the general fund of the  
23 state treasury.

24 (3) Effect of rehabilitation program. No period of revocation arising  
25 out of this section may be set aside by the commissioner for the reason  
26 that such person was a participant in the alcohol and drug rehabili-  
27 tation program set forth in section eleven hundred ninety-six of this  
28 article.

29 (e) Regulations. The commissioner shall promulgate such rules and  
30 regulations as may be necessary to effectuate the provisions of subdivi-  
31 sions one and two of this section.

32 (f) Evidence. Evidence of a refusal to submit to such chemical test or  
33 any portion thereof or an evaluation conducted by a drug recognition  
34 expert or any portion thereof shall be admissible in any trial, proceed-  
35 ing or hearing based upon a violation of the provisions of section elev-  
36 en hundred ninety-two of this article but only upon a showing that the  
37 person was given sufficient warning, in clear and unequivocal language,  
38 of the effect of such refusal and that the person persisted in the  
39 refusal. Evidence of a refusal shall be admissible pursuant to this  
40 section regardless of the time of the refusal.

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

43 3. Compulsory chemical tests. (a) Court ordered chemical tests.  
44 Notwithstanding the provisions of subdivision two of this section, no  
45 person who operates a motor vehicle in this state may refuse to submit  
46 to a chemical test of one or more of the following: breath, blood, urine  
47 or [~~saliva~~] oral/bodily fluids, for the purpose of determining the alco-  
48 holic and/or drug content of the blood or oral/bodily fluids when a  
49 court order for such chemical test has been issued in accordance with  
50 the provisions of this subdivision.

51 (b) When authorized. Upon refusal by any person to submit to a chemi-  
52 cal test or any portion thereof as described above, the test shall not  
53 be given unless a police officer or a district attorney, as defined in  
54 subdivision thirty-two of section 1.20 of the criminal procedure law,  
55 requests and obtains a court order to compel a person to submit to a  
56 chemical test to determine the alcoholic [~~or~~] and/or drug content of the

1 person's blood or oral/bodily fluids upon a finding of reasonable cause  
2 to believe that:

3 (1) such person was the operator of a motor vehicle and in the course  
4 of such operation [~~a person other than the operator was killed or~~  
5 ~~suffered serious physical injury as defined in section 10.00 of the~~  
6 ~~penal law~~] the motor vehicle was involved in a crash; or personal injury  
7 has been caused to another person, due to an incident involving the  
8 motor vehicle operated by such person or such person has a previous  
9 conviction for a violation of any subdivision of section eleven hundred  
10 ninety-two of this article; and

11 (2) a. either such person operated the vehicle in violation of any  
12 subdivision of section eleven hundred ninety-two of this article, or

13 b. a breath test and/or oral/bodily fluid test administered by a  
14 police officer in accordance with paragraph (b) of subdivision one of  
15 this section indicates that alcohol and/or a drug or drugs has been  
16 consumed by such person; and

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

18 (4) such person has refused to submit to a chemical test or any  
19 portion thereof and/or an evaluation conducted by a certified drug  
20 recognition expert, or any portion thereof, requested in accordance with  
21 the provisions of paragraph (a) of subdivision two of this section or is  
22 unable to give consent to such a test.

23 (c) Reasonable cause; definition. For the purpose of this subdivision  
24 "reasonable cause" shall be determined by viewing the totality of  
25 circumstances surrounding the incident which, when taken together, indi-  
26 cate that the operator was driving in violation of section eleven  
27 hundred ninety-two of this article. Such circumstances may include, but  
28 are not limited to: evidence that the operator was operating a motor  
29 vehicle in violation of any provision of this article or any other  
30 moving violation at the time of the incident; any visible indication of  
31 alcohol or drug consumption or impairment by the operator; the existence  
32 of an open container containing an alcoholic beverage and/or a drug or  
33 drugs in or around the vehicle driven by the operator; the odor of  
34 cannabis or burnt cannabis; any other evidence surrounding the circum-  
35 stances of the incident which indicates that the operator has been oper-  
36 ating a motor vehicle while impaired by the consumption of alcohol or  
37 drugs or intoxicated at the time of the incident.

38 (d) Court order; procedure. (1) An application for a court order to  
39 compel submission to a chemical test or any portion thereof, may be made  
40 to any supreme court justice, county court judge or district court judge  
41 in the judicial district in which the incident occurred, or if the inci-  
42 dent occurred in the city of New York before any supreme court justice  
43 or judge of the criminal court of the city of New York. Such application  
44 may be communicated by telephone, radio or other means of electronic  
45 communication, or in person.

46 (2) The applicant must provide identification by name and title and  
47 must state the purpose of the communication. Upon being advised that an  
48 application for a court order to compel submission to a chemical test is  
49 being made, the court shall place under oath the applicant and any other  
50 person providing information in support of the application as provided  
51 in subparagraph three of this paragraph. After being sworn the applicant  
52 must state that the person from whom the chemical test was requested was  
53 the operator of a motor vehicle and in the course of such operation [~~a~~  
54 ~~person, other than the operator, has been killed or seriously injured~~]  
55 the motor vehicle was involved in a crash; or personal injury has been  
56 caused to another person, due to an incident involving the motor vehicle

1 operated by such person and/or such person has a previous arrest for a  
2 violation of any subdivision of section eleven hundred ninety-two of  
3 this article; and, based upon the totality of circumstances, there is  
4 reasonable cause to believe that such person was operating a motor vehi-  
5 cle in violation of any subdivision of section eleven hundred ninety-two  
6 of this article and, after being placed under lawful arrest such person  
7 refused to submit to a chemical test or any portion thereof, in accord-  
8 ance with the provisions of this section or is unable to give consent to  
9 such a test or any portion thereof. The applicant must make specific  
10 allegations of fact to support such statement. Any other person properly  
11 identified, may present sworn allegations of fact in support of the  
12 applicant's statement.

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

26 (4) If the court is satisfied that the requirements for the issuance  
27 of a court order pursuant to the provisions of paragraph (b) of this  
28 subdivision have been met, it may grant the application and issue an  
29 order requiring the accused to submit to a chemical test to determine  
30 the alcoholic and/or drug content of his or her blood [~~and~~] and/or  
31 oral/bodily fluids and ordering the withdrawal of a blood and/or  
32 oral/bodily fluid sample in accordance with the provisions of paragraph  
33 (a) of subdivision four of this section. When a judge or justice deter-  
34 mines to issue an order to compel submission to a chemical test based on  
35 an oral application, the applicant therefor shall prepare the order in  
36 accordance with the instructions of the judge or justice. In all cases  
37 the order shall include the name of the issuing judge or justice, the  
38 name of the applicant, and the date and time it was issued. It must be  
39 signed by the judge or justice if issued in person, or by the applicant  
40 if issued orally.

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

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

49 (e) Administration of compulsory chemical test. An order issued pursu-  
50 ant to the provisions of this subdivision shall require that a chemical  
51 test to determine the alcoholic and/or drug content of the operator's  
52 blood and/or oral/bodily fluid must be administered. The provisions of  
53 paragraphs (a), (b) and (c) of subdivision four of this section shall be  
54 applicable to any chemical test administered pursuant to this section.

55 § 5. The subparagraph heading and clauses a and b of subparagraph 7 of  
56 paragraph (e) of subdivision 2 of section 1193 of the vehicle and traf-

1 fic law, the subparagraph heading as added by chapter 312 of the laws of  
2 1994, clause a as amended by chapter 732 of the laws of 2006, and clause  
3 b as separately amended by chapters 3 and 571 of the laws of 2002, are  
4 amended to read as follows:

5 Suspension pending prosecution; excessive blood alcohol content or  
6 impairment by a drug or drugs. a. Except as provided in clause a-1 of  
7 this subparagraph, a court shall suspend a driver's license, pending  
8 prosecution, of any person charged with a violation of subdivision two,  
9 two-a, three, four or four-a of section eleven hundred ninety-two of  
10 this article who, at the time of arrest, is alleged to have had .08 of  
11 one percent or more by weight of alcohol in such driver's blood or is  
12 alleged to have been impaired by the ingestion of a drug or drugs as  
13 shown by chemical analysis of blood, breath, urine or [~~saliva~~]  
14 oral/bodily fluid, or by an evaluation conducted by a certified drug  
15 recognition expert, or any portion thereof, made pursuant to subdivision  
16 two or three of section eleven hundred ninety-four of this article, or  
17 the driver makes a statement admitting to driving while intoxicated by  
18 alcohol or while impaired by a drug or drugs.

19 b. The suspension occurring under clause a of this subparagraph shall  
20 occur no later than at the conclusion of all proceedings required for  
21 the arraignment and the suspension occurring under clause a-1 of this  
22 subparagraph shall occur immediately after the holder's first appearance  
23 before the court on the charge which shall, whenever possible, be the  
24 next regularly scheduled session of the court after the arrest or at the  
25 conclusion of all proceedings required for the arraignment; provided,  
26 however, that if the results of any test administered pursuant to  
27 section eleven hundred ninety-four of this article are not available  
28 within such time period, the complainant police officer or other public  
29 servant shall transmit such results to the court at the time they become  
30 available, and the court shall, as soon as practicable following the  
31 receipt of such results and in compliance with the requirements of this  
32 subparagraph, suspend such license. In order for the court to impose  
33 such suspension it must find that the accusatory instrument conforms to  
34 the requirements of section 100.40 of the criminal procedure law and  
35 there exists reasonable cause to believe either that (a) the holder  
36 operated a motor vehicle while such holder had .08 of one percent or  
37 more by weight of alcohol or was impaired by the ingestion of a drug or  
38 drugs in his or her blood as was shown by chemical analysis of such  
39 person's blood, breath, urine or [~~saliva~~] oral/bodily fluid, or by an  
40 evaluation conducted by a certified drug recognition expert, or any  
41 portion thereof, made pursuant to the provisions of section eleven  
42 hundred ninety-four of this article or the driver makes a statement  
43 admitting to driving while intoxicated by alcohol or while impaired by a  
44 drug or drugs; or (b) the person was the holder of a class DJ or MJ  
45 learner's permit or a class DJ or MJ driver's license and operated a  
46 motor vehicle while such holder was in violation of subdivision one, two  
47 and/or three of section eleven hundred ninety-two of this article. At  
48 the time of such license suspension the holder shall be entitled to an  
49 opportunity to make a statement regarding these two issues and to pres-  
50 ent evidence tending to rebut the court's findings.

51 § 6. This act shall take effect on the first of November next succeed-  
52 ing the date on which it shall have become a law.