

# STATE OF NEW YORK

6598--B

2021-2022 Regular Sessions

## IN SENATE

May 10, 2021

Introduced by Sens. COONEY, KAMINSKY, REICHLIN-MELNICK -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- recommitted to the Committee on Transportation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

1 Section 1. Paragraph (c) of subdivision 1 of section 1193 of the vehi-  
2 cle and traffic law, as amended by chapter 169 of the laws of 2013, and  
3 subparagraph (ii-a) as added by chapter 191 of the laws of 2014, is  
4 amended to read as follows:  
5 (c) Felony offenses. (i) A person who operates a vehicle (A) in  
6 violation of subdivision two, two-a, three, four or four-a of section  
7 eleven hundred ninety-two of this article after having been convicted of  
8 a violation of subdivision two, two-a, three, four or four-a of such  
9 section or of vehicular assault in the second or first degree, as  
10 defined, respectively, in sections 120.03 and 120.04 and aggravated  
11 vehicular assault as defined in section 120.04-a of the penal law or of  
12 vehicular manslaughter in the second or first degree, as defined,  
13 respectively, in sections 125.12 and 125.13 and aggravated vehicular  
14 homicide as defined in section 125.14 of such law, within the preceding  
15 ten years, or (B) in violation of paragraph (b) of subdivision two-a of  
16 section eleven hundred ninety-two of this article shall be guilty of a  
17 class E felony, and shall be punished by a fine of not less than one  
18 thousand dollars nor more than five thousand dollars or by a period of  
19 imprisonment as provided in the penal law, or by both such fine and  
20 imprisonment.

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

LBD01428-04-2

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

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

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

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

55 (g) Condition of probation and conditional discharge; ignition inter-  
56 lock device requirements; alternative sentence authorized. (1) For the

1 purposes of this subdivision, "ignition interlock monitor" shall mean a  
2 person designated by the county where a conviction for a violation of  
3 section eleven hundred ninety-two of this article shall have occurred  
4 who monitors compliance with the provisions of section eleven hundred  
5 ninety-eight of this article and the concurrent regulations related  
6 thereto, by participants in the ignition interlock program as set forth  
7 in section eleven hundred ninety-eight of this article.

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

16 (i) an express prohibition on the operation of any motor vehicle with-  
17 out a functioning ignition interlock device for a period of twelve  
18 months or longer, pursuant to the requirements of this paragraph and  
19 paragraph (c) of subdivision one-a of this section; and

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

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

42 (i) an express prohibition from operating any vehicle without a func-  
43 tioning ignition interlock device for a period of twelve months or long-  
44 er pursuant to the requirements of this paragraph and paragraph (c) of  
45 subdivision one-a of this section; and

46 (ii) an order that such person install and maintain, in accordance  
47 with the provisions of section eleven hundred ninety-eight of this arti-  
48 cle, an ignition interlock device in any motor vehicle operated by such  
49 person for a period of twelve months or longer, as set forth in subpara-  
50 graph four of this paragraph; provided, however, a declaration from the  
51 ignition interlock monitor on a form provided by the commissioner,  
52 certifying that such person has operated the motor vehicle free of any  
53 violations as set forth in paragraph (j) of this subdivision for a peri-  
54 od of three hundred consecutive days shall be deemed to have satisfied  
55 the conditions of probation or conditional discharge relating to the  
56 ignition interlock requirements as set forth in this paragraph. The

1 period of interlock restriction shall commence on the date that such  
2 ignition interlock device shall have been installed. The alternative  
3 sentence set forth herein shall not be imposed on any offender subject  
4 to the additional penalties set forth in paragraph (a) or (b) of subdivi-  
5 vision one-a of this section or who shall have also been convicted of a  
6 violation of any provision of article one hundred twenty or one hundred  
7 twenty-five of the penal law involving the operation of a motor vehicle.

8 (4) When a sentence is imposed pursuant to subparagraph two or three  
9 of this paragraph, in no event shall the commissioner restore the  
10 license of any such person until the commissioner receives certification  
11 by the ignition interlock monitor that such person shall have operated  
12 the motor vehicle substantially free of any violations set forth in  
13 paragraph (j) of this subdivision for the applicable time periods  
14 imposed pursuant to subparagraphs two and three of this paragraph. A  
15 violation of any of the provisions of paragraph (j) of this subdivision  
16 shall cause the respective period of operation to reset from the date of  
17 any such violation.

18 (h) Driving while ability impaired by alcohol; ignition interlock  
19 device requirement. Notwithstanding any other provision of law to the  
20 contrary, when a person is charged with a violation of subdivision two,  
21 two-a, three, or four-a of section eleven hundred ninety-two of this  
22 article and a plea of guilty shall have been entered in satisfaction of  
23 such charge to a violation of subdivision one of section eleven hundred  
24 ninety-two of this article, the conditions of such plea shall include an  
25 express prohibition on the operation of any motor vehicle without a  
26 functioning ignition interlock device for a period of six months, and  
27 that such person shall install and maintain an ignition interlock device  
28 for a period of not less than six months on any motor vehicle operated  
29 by such person. If the court accepts the plea to the reduced charge,  
30 the court shall sentence such person to a conditional discharge which  
31 shall include such requirement in addition to any fine required by this  
32 article and any other condition authorized by law. A declaration from  
33 the ignition interlock monitor on a form provided by the commissioner,  
34 certifying that such person has operated the motor vehicle free of any  
35 violations as set forth in paragraph (j) of this subdivision for a peri-  
36 od of ninety consecutive days after the date of installation, shall be  
37 deemed to have satisfied the conditions of such plea relating to the  
38 ignition interlock requirements set forth in this paragraph. The period  
39 of interlock restriction shall be deemed to commence from the date such  
40 ignition interlock device shall have been installed. If such person is  
41 found to have violated the terms of the use of such ignition interlock  
42 device as set forth in paragraph (j) of this subdivision, such ninety  
43 day period shall reset from the date of any such violation.

44 (i) Permanent revocation; ignition interlock requirement. A person  
45 subject to a permanent license revocation pursuant to a provision of  
46 this chapter or any rule promulgated pursuant to this chapter, when the  
47 underlying basis for the permanent revocation relates to two or more of  
48 violations of section eleven hundred ninety-two of this article and/or  
49 refusal to submit to a chemical test pursuant to section eleven hundred  
50 ninety-four of this article, such person shall be entitled to a post-re-  
51 vocation conditional license provided that the person has not within the  
52 past twenty-five years been convicted of a violation of article one  
53 hundred twenty or article one hundred twenty-five of the penal law  
54 related to the operation of a motor vehicle, and the person has been  
55 subject to a license revocation for not less than five years and has  
56 not, during that period, been convicted of a violation of this chapter

1 regarding the operation of a motor vehicle. Upon application, the  
2 commissioner shall provide such applicant with a post-revocation condi-  
3 tional license that will include the following conditions:

4 (1) an express prohibition on the operation of any motor vehicle with-  
5 out a functioning ignition interlock device for a period of twenty-four  
6 months as set forth in this paragraph; and

7 (2) such person shall install and maintain in accordance with the  
8 provisions of section eleven hundred ninety-eight of this article, an  
9 ignition interlock device in any motor vehicle operated by such person,  
10 for a period of twenty-four months. There shall be a rebuttable  
11 presumption of rehabilitation for the purpose of petitioning the commis-  
12 sioner for restoration of the operator's license to operate a motor  
13 vehicle upon a declaration from the ignition interlock monitor, on a  
14 form provided by the commissioner, certifying that such person has oper-  
15 ated such motor vehicle free of any violations of this chapter, except-  
16 ing violations related to standing, stopping or parking, and has been  
17 substantially devoid of any violations set forth in paragraph (j) of  
18 this subdivision during the post-revocation conditional license period.  
19 A violation of section five hundred eleven of this chapter, any  
20 provision of section eleven hundred ninety-two of this article, or  
21 refusal to submit to a chemical test pursuant to section eleven hundred  
22 ninety-four of this article during the post-revocation conditional  
23 license period will result in immediate revocation of such license. The  
24 period of interlock restriction shall commence on the date that such  
25 ignition interlock device shall have been installed.

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

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

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

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

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

41 (iii) failed to pass any random re-test with a blood alcohol concen-  
42 tration level of .025 or lower, unless a subsequent test performed with-  
43 in ten minutes registers a blood alcohol concentration level lower than  
44 .025, and the digital image confirms that the same person provided both  
45 samples; or

46 (iv) failed to appear at the ignition interlock device vendor when  
47 required for maintenance, repair, calibration, monitoring, inspection,  
48 or replacement of such device. When applicable, a certificate of  
49 violation shall be accompanied by a contemporaneous digital image veri-  
50 fying the identity of the violator.

51 (k) Ignition interlock device requirements; terms of imprisonment.  
52 When a sentence imposed pursuant to this subdivision includes a term of  
53 imprisonment, the satisfaction of such term of imprisonment shall not  
54 reduce or otherwise limit the requirements set forth in paragraph (g) of  
55 this subdivision.

1 (l) Demonstration of regular and consistent use. During the period of  
2 authorized use of a motor vehicle with an ignition interlock device  
3 pursuant to the provisions of this subdivision, the person so authorized  
4 shall demonstrate regular and consistent use of the ignition interlock  
5 device.

6 (m) A person who has successfully satisfied the ignition interlock  
7 requirements set forth in paragraph (g) or (h) of this subdivision shall  
8 no longer be subject to the provisions of section eleven hundred nine-  
9 ty-nine of this article relating to the driver responsibility assessment  
10 and any fee paid by such person pursuant to such section shall be  
11 returned by the commissioner upon satisfactory proof of compliance.

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

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

22 (c) A court sentencing a person pursuant to paragraph (a) or (b) of  
23 this subdivision shall: (i) order, as a condition of such sentence, the  
24 installation of an ignition interlock device approved pursuant to  
25 section eleven hundred ninety-eight of this article in any motor vehicle  
26 [~~owned or~~] operated by the person so sentenced. Such devices shall  
27 remain installed during any period of license revocation required to be  
28 imposed pursuant to paragraph (b) of subdivision two of this section,  
29 and, upon the termination of such revocation period, for an additional  
30 period as determined by the court or as otherwise provided in paragraph  
31 (g) of subdivision one of this section; and (ii) order that such person  
32 receive an assessment of the degree of their alcohol or substance abuse  
33 and dependency pursuant to the provisions of section eleven hundred  
34 ninety-eight-a of this article. Where such assessment indicates the  
35 need for treatment, such court is authorized to impose treatment as a  
36 condition of such sentence except that such court shall impose treatment  
37 as a condition of a sentence of probation or conditional discharge  
38 pursuant to the provisions of subdivision three of section eleven  
39 hundred ninety-eight-a of this article. Any person ordered to install an  
40 ignition interlock device pursuant to this paragraph shall be subject to  
41 paragraph (g) of subdivision one of this section and the provisions of  
42 subdivisions four, five, seven, eight and nine of section eleven hundred  
43 ninety-eight of this article.

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

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

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

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

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

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

1 license or privilege to operate a motor vehicle in accordance with this  
2 chapter.

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

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

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

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

53 (f) The commissioner shall note on the operator's record of any person  
54 restricted pursuant to this section that, in addition to any other  
55 restrictions, conditions or limitations, such person may operate only a  
56 motor vehicle equipped with an ignition interlock device.

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

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

53 5. Cost, installation and maintenance. (a) The cost of installing and  
54 maintaining the ignition interlock device shall be borne by the person  
55 subject to such condition unless the court determines such person is  
56 financially unable to afford such cost whereupon such cost may be

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

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

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

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

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

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

48 § 7. The commissioner of the division of criminal justice services, in  
49 consultation with the commissioner of the department of motor vehicles,  
50 shall promulgate any rules or regulations necessary to effectuate the  
51 provisions of this act.

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