

# STATE OF NEW YORK

1325--A

2021-2022 Regular Sessions

## IN ASSEMBLY

January 8, 2021

Introduced by M. of A. WOERNER, THIELE, SEAWRIGHT, DeSTEFANO, McDONOUGH, GALEF, SIMON, WILLIAMS, McDONALD, WALLACE, JACOBSON, SILLITTI, GRIFFIN -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT, TAGUE -- read once and referred to the Committee on Transportation -- recommitted to the Committee on Transportation in accordance with Assembly Rule 3, sec. 2 -- 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.

LBD01428-03-2

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 and six new paragraphs (h), (i), (j), (k), (l),  
55 and (m) are added to subdivision 1 to read as follows:

1 (g) Condition of probation and conditional discharge; ignition inter-  
2 lock device requirements; alternative sentence authorized. (1) For the  
3 purposes of this subdivision, "ignition interlock monitor" shall mean a  
4 person designated by the county where a conviction for a violation of  
5 section eleven hundred ninety-two of this article shall have occurred  
6 who monitors compliance with the provisions of section eleven hundred  
7 ninety-eight of this article and the concurrent regulations related  
8 thereto, by participants in the ignition interlock program as set forth  
9 in section eleven hundred ninety-eight of this article.

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

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

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

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

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

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

1 interlock restriction shall commence on the date that such ignition  
2 interlock device shall have been installed. The alternative sentence set  
3 forth herein shall not be imposed on any offender subject to the addi-  
4 tional penalties set forth in subdivision one-a of this section or who  
5 shall have also been convicted of a violation of any provision of arti-  
6 cle one hundred twenty or one hundred twenty-five of the penal law  
7 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 free of any violations set forth in paragraph (j) of  
13 this subdivision for a period of one hundred twenty days for a sentence  
14 imposed pursuant to subparagraph two of this paragraph and for a period  
15 of three hundred consecutive days for a sentence imposed pursuant to  
16 subparagraph three of this paragraph. A violation of any of the  
17 provisions of paragraph (j) of this subdivision shall cause the respec-  
18 tive period of operation to reset from the date of any such violation.

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

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

1 period, been convicted of a violation of this chapter regarding the  
2 operation of a motor vehicle. Upon application, the commissioner shall  
3 provide such applicant with a provisional license that will include the  
4 following conditions:

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

8 (2) such person shall install and maintain in accordance with the  
9 provisions of section eleven hundred ninety-eight of this article, an  
10 ignition interlock device in any motor vehicle operated by such person,  
11 for a period of twenty-four months. A declaration from the ignition  
12 interlock monitor on a form provided by the commissioner, certifying  
13 that such person has operated such motor vehicle free of any violations  
14 of this chapter, excepting violations related to standing, stopping or  
15 parking, and has been substantially devoid of any violations set forth  
16 in paragraph (j) of this subdivision during the provisional license  
17 period, shall be presumptive proof of rehabilitation for the purpose of  
18 petitioning the commissioner for restoration of the operator's license  
19 to operate a motor vehicle. A violation of section five hundred eleven  
20 of this chapter, any provision of section eleven hundred ninety-two of  
21 this article, or refusal to submit to a chemical test pursuant to  
22 section eleven hundred ninety-four of this article during the provi-  
23 sional license period will result in immediate revocation of such  
24 license. The period of interlock restriction shall commence on the date  
25 that such 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. A certificate of violation shall be  
49 accompanied by a contemporaneous digital image verifying the identity of  
50 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 ninety-  
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, but in no event less than twelve  
31 months; and (ii) order that such person receive an assessment of the  
32 degree of their alcohol or substance abuse and dependency pursuant to  
33 the provisions of section eleven hundred ninety-eight-a of this article.  
34 Where such assessment indicates the need for treatment, such court is  
35 authorized to impose treatment as a condition of such sentence except  
36 that such court shall impose treatment as a condition of a sentence of  
37 probation or conditional discharge pursuant to the provisions of subdivi-  
38 sion three of section eleven hundred ninety-eight-a of this article.  
39 Any person ordered to install an ignition interlock device pursuant to  
40 this paragraph shall be subject to paragraph (k) of subdivision one of  
41 this section and the provisions of subdivisions four, five, seven, eight  
42 and nine of section eleven hundred ninety-eight of this article.

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

49 1. Applicability. The provisions of this section shall apply through-  
50 out the state to each person required or otherwise ordered by a court as  
51 a condition of sentence, plea, probation or conditional discharge, which  
52 shall prohibit the operation of a motor vehicle without a functioning  
53 ignition interlock device and requires such person to install and [~~oper-~~  
54 ~~ate~~] maintain an ignition interlock device in any vehicle [~~which he or~~  
55 ~~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 an ignition interlock device and shall  
9 install and maintain, as a condition of plea, sentence, probation or  
10 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 provided for sentences imposed pursuant to paragraph (g) of subdivi-  
33 sion one of section eleven hundred ninety-three of this chapter, the  
34 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 an ignition interlock device when required to do  
35 so, or failure to install or maintain a court ordered ignition interlock  
36 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 to install and oper-  
33 ate the ignition interlock device only in accordance with the provisions  
34 of paragraphs (g), (h), (j) and (k) of subdivision one of section eleven  
35 hundred ninety-three and section eleven hundred ninety-eight of the  
36 vehicle and traffic law.~~

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

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

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