

STATE OF NEW YORK

883

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

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

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

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

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 Sections 49-a and 49-b of the navigation law are REPEALED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

ARTICLE 4-B

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

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

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

7 79-f. Sanctions.

8 79-g. Arrest and testing.

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

11 79-i. Chemical test evidence.

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

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

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

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

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

LBD01164-01-1

79-n. Driver and boater responsibility assessment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (4) minimize inconvenience to a sober user;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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