

STATE OF NEW YORK

775

2023-2024 Regular Sessions

IN SENATE

January 6, 2023

Introduced by Sen. COONEY -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

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

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

1 Section 1. Paragraph (c) of subdivision 1 of section 1193 of the vehicle and traffic law, as amended by chapter 169 of the laws of 2013, and
2 subparagraph (ii-a) as added by chapter 191 of the laws of 2014, is
3 amended to read as follows:

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

21 (ii) A person who operates a vehicle in violation of subdivision two,
22 two-a, three, four or four-a of section eleven hundred ninety-two of
23 this article after having been convicted of a violation of subdivision
24 two, two-a, three, four or four-a of such section or of vehicular
25 assault in the second or first degree, as defined, respectively, in

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

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sections 120.03 and 120.04 and aggravated vehicular assault as defined in section 120.04-a of the penal law or of vehicular manslaughter in the second or first degree, as defined, respectively, in sections 125.12 and 125.13 and aggravated vehicular homicide as defined in section 125.14 of such law, twice within the preceding ten years, shall be guilty of a class D felony, and shall be punished by a fine of not less than two thousand dollars nor more than ten thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

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

~~[(iii) In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, the court shall also sentence such person convicted of, or adjudicated a youthful offender for, a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article to a period of probation or conditional discharge, as a condition of which it shall order such person to install and maintain, in accordance with the provisions of section eleven hundred ninety-eight of this article, an ignition interlock device in any motor vehicle owned or operated by such person during the term of such probation or conditional discharge imposed for such violation of section eleven hundred ninety-two of this article and in no event for a period of less than twelve months; provided, however, that such period of interlock restriction shall terminate upon submission of proof that such person installed and maintained an ignition interlock device for at least six months, unless the court ordered such person to install and maintain a ignition interlock device for a longer period as authorized by this subparagraph and specified in such order. The period of interlock restriction shall commence from the earlier of the date of sentencing, or the date that an ignition interlock device was installed in advance of sentencing. Provided, however, the court may not authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked pursuant to the provisions of this section.]~~

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

(g) Condition of probation and conditional discharge; ignition interlock device requirements; alternative sentence authorized. (1) For the purposes of this subdivision, "ignition interlock monitor" shall mean a person designated by the county where a conviction for a violation of section eleven hundred ninety-two of this article shall have occurred who monitors compliance with the provisions of section eleven hundred ninety-eight of this article and the concurrent regulations related

1 thereto, by participants in the ignition interlock program as set forth
2 in section eleven hundred ninety-eight of this article.

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

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

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

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

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

41 (ii) an order that such person install and maintain, in accordance
42 with the provisions of section eleven hundred ninety-eight of this arti-
43 cle, an ignition interlock device in any motor vehicle operated by such
44 person for a period of twelve months or longer, as set forth in subpara-
45 graph four of this paragraph; provided, however, a declaration from the
46 ignition interlock monitor on a form provided by the commissioner,
47 certifying that such person has operated the motor vehicle free of any
48 violations as set forth in paragraph (j) of this subdivision for a peri-
49 od of three hundred consecutive days shall be deemed to have satisfied
50 the conditions of probation or conditional discharge relating to the
51 ignition interlock requirements as set forth in this paragraph. The
52 period of interlock restriction shall commence on the date that such
53 ignition interlock device shall have been installed. The alternative
54 sentence set forth herein shall not be imposed on any offender subject
55 to the additional penalties set forth in paragraph (a) or (b) of subdi-
56 vision one-a of this section or who shall have also been convicted of a

1 violation of any provision of article one hundred twenty or one hundred
2 twenty-five of the penal law involving the operation of a motor vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (l) Demonstration of regular and consistent use. During the period of
54 authorized use of a motor vehicle with an ignition interlock device
55 pursuant to the provisions of this subdivision, the person so authorized

1 shall demonstrate regular and consistent use of the ignition interlock
2 device.

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

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

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

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

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

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

54 2. Requirements. (a) In addition to any other penalties prescribed by
55 law, the court shall require that any person who has been convicted ~~[of]~~
56 or adjudicated a youthful offender for a violation of subdivision two,

two-a ~~[or]~~, three or four-a of section eleven hundred ninety-two of this article, or any crime defined by this chapter or the penal law of which an alcohol-related violation of any provision of section eleven hundred ninety-two of this article is an essential element, ~~[to] shall not operate a motor vehicle without a functioning ignition interlock device and shall~~ install and maintain, as a condition of plea, sentence, probation or conditional discharge, a functioning ignition interlock device in accordance with the provisions of this section and, as applicable, in accordance with the provisions of subdivisions one and one-a of section eleven hundred ninety-three of this article; provided, however, the court may not authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked except as provided herein. For any such individual subject to a sentence of probation, installation and maintenance of such ignition interlock device shall be a condition of probation.

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

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

3. Conditions. (a) ~~[Notwithstanding any other provision of law]~~ Except as otherwise provided for sentences imposed pursuant to paragraph (g) of subdivision one of section eleven hundred ninety-three of this chapter, the commissioner may grant a post-revocation conditional license, as set forth in paragraph (b) of this subdivision, to a person who has been convicted of a violation of subdivision two, two-a ~~[or]~~, three or four-a of section eleven hundred ninety-two of this article and who has been sentenced to a period of probation or conditional discharge, provided the person has satisfied the minimum period of license revocation established by law and the commissioner has been notified that such person may operate only a motor vehicle equipped with a functioning ignition interlock device. No such request shall be made nor shall such a license be granted, however, if such person has been found by a court to have committed a violation of section five hundred eleven of this chapter during the license revocation period or deemed by a court to have violated any condition of probation or conditional discharge set forth by the court relating to the operation of a motor vehicle or the consumption of alcohol. In exercising discretion relating to the issuance of a post-revocation conditional license pursuant to this subdivision, the commissioner shall not deny such issuance based solely upon the number of convictions for violations of any subdivision of section eleven hundred ninety-two of this article committed by such person within the ten years prior to application for such license. Upon the termination of the period of probation or conditional discharge set by the court, the person may apply to the commissioner for restoration of a license or privilege to operate a motor vehicle in accordance with this chapter.

(b) Notwithstanding any inconsistent provision of this chapter, a post-revocation conditional license granted pursuant to paragraph (a) of

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

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

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

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

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

53 4. Proof of compliance and recording of condition. (a) Following
54 imposition by the court of the use of an ignition interlock device as a
55 condition plea, sentence, of probation or conditional discharge it shall
56 require the person to provide proof of compliance with this section to

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

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

49 5. Cost, installation and maintenance. (a) The cost of installing and
50 maintaining the ignition interlock device shall be borne by the person
51 subject to such condition unless the court determines such person is
52 financially unable to afford such cost whereupon such cost may be
53 imposed pursuant to a payment plan or waived. In the event of such
54 waiver, the cost of the device shall be borne in accordance with regu-
55 lations issued under paragraph (g) of subdivision one of section eleven
56 hundred ninety-three of this article or pursuant to such other agreement

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

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

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

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

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

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

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

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