

STATE OF NEW YORK

775--A

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 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

1 Section 1. Legislative findings. The legislature hereby finds and
2 declares:
3 1. In 2009, New York adopted "Leandra's Law" to require, as a condi-
4 tion of sentence, that all individuals convicted of the crime of driving
5 while intoxicated install an ignition interlock device (IID) for a spec-
6 ified time in any vehicle they own or operate. Fifteen years later,
7 despite the mandate, only three in ten offenders actually install an
8 IID.
9 2. In addition, although the penalty model based predominantly on
10 license revocation persists, far too many offenders continue to drive
11 even after losing their license privilege, and a significant number of
12 them continue to drive under the influence of alcohol. The consensus
13 among highway safety experts is that well over fifty percent, and as
14 many as eighty percent, of revoked drivers continue to drive while unli-
15 censed.
16 3. IIDs are designed to do two things: (1) protect the public by
17 preventing drunk driving events; and (2) alter driver behavior to reduce
18 recidivism. Numerous studies have shown IIDs to be overwhelmingly effec-
19 tive on both counts:
20 (a) Public safety. Between December 1, 2006 and December 31, 2020, IID
21 installation stopped 3.8 million drivers nationally from attempting to
22 drive while legally intoxicated (.08+) and foiled an additional 25.4

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

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1 million drivers from attempting to drive after consuming enough alcohol
2 to trigger the IID's set point. Over the same time period in New York -
3 even despite the poor compliance rate - IIDs prevented more than 111,000
4 legally drunk drivers and foiled an additional 439,427 attempts by
5 convicted drunk drivers who attempted to start a vehicle after consuming
6 alcohol.

7 (b) Reduced recidivism. A 2016 University of Pennsylvania study found
8 that alcohol-related fatalities decreased by 15% in states with all-of-
9 fender interlock laws. Similarly, a 2016 California study concluded that
10 ignition interlock devices are seventy-four percent more effective in
11 reducing DWI recidivism than license suspension alone during the first
12 six months after conviction and forty-five percent more effective over
13 the course of a year.

14 4. Given the empirical data that favors the use of the IID as a condi-
15 tion of sentence, either in conjunction with or instead of license revo-
16 cation, the legislature finds that New York has fallen significantly
17 behind other states that utilize IIDs to promote public safety and
18 support rehabilitative efforts. Accordingly, the legislature declares
19 that to further advance public safety, New York must adopt best prac-
20 tices consistent with the data for model use of the ignition interlock
21 device as a proven method for saving lives and promoting rehabilitation.

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

26 (c) Felony offenses. (i) A person who operates a vehicle (A) in
27 violation of subdivision two, two-a, three, four or four-a of section
28 eleven hundred ninety-two of this article after having been convicted of
29 a violation of subdivision two, two-a, three, four or four-a of such
30 section or of vehicular assault in the second or first degree, as
31 defined, respectively, in sections 120.03 and 120.04 and aggravated
32 vehicular assault as defined in section 120.04-a of the penal law or of
33 vehicular manslaughter in the second or first degree, as defined,
34 respectively, in sections 125.12 and 125.13 and aggravated vehicular
35 homicide as defined in section 125.14 of such law, within the preceding
36 ten years, or (B) in violation of paragraph (b) of subdivision two-a of
37 section eleven hundred ninety-two of this article shall be guilty of a
38 class E felony, and shall be punished by a fine of not less than one
39 thousand dollars nor more than five thousand dollars or by a period of
40 imprisonment as provided in the penal law, or by both such fine and
41 imprisonment.

42 (ii) A person who operates a vehicle in violation of subdivision two,
43 two-a, three, four or four-a of section eleven hundred ninety-two of
44 this article after having been convicted of a violation of subdivision
45 two, two-a, three, four or four-a of such section or of vehicular
46 assault in the second or first degree, as defined, respectively, in
47 sections 120.03 and 120.04 and aggravated vehicular assault as defined
48 in section 120.04-a of the penal law or of vehicular manslaughter in the
49 second or first degree, as defined, respectively, in sections 125.12 and
50 125.13 and aggravated vehicular homicide as defined in section 125.14 of
51 such law, twice within the preceding ten years, shall be guilty of a
52 class D felony, and shall be punished by a fine of not less than two
53 thousand dollars nor more than ten thousand dollars or by a period of
54 imprisonment as provided in the penal law, or by both such fine and
55 imprisonment.

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

15 ~~[(iii) In addition to the imposition of any fine or period of impri-
16 sonment set forth in this paragraph, the court shall also sentence such
17 person convicted of, or adjudicated a youthful offender for, a violation
18 of subdivision two, two-a or three of section eleven hundred ninety-two
19 of this article to a period of probation or conditional discharge, as a
20 condition of which it shall order such person to install and maintain,
21 in accordance with the provisions of section eleven hundred ninety-eight
22 of this article, an ignition interlock device in any motor vehicle owned
23 or operated by such person during the term of such probation or condi-
24 tional discharge imposed for such violation of section eleven hundred
25 ninety-two of this article and in no event for a period of less than
26 twelve months; provided, however, that such period of interlock
27 restriction shall terminate upon submission of proof that such person
28 installed and maintained an ignition interlock device for at least six
29 months, unless the court ordered such person to install and maintain a
30 ignition interlock device for a longer period as authorized by this
31 subparagraph and specified in such order. The period of interlock
32 restriction shall commence from the earlier of the date of sentencing,
33 or the date that an ignition interlock device was installed in advance
34 of sentencing. Provided, however, the court may not authorize the opera-
35 tion of a motor vehicle by any person whose license or privilege to
36 operate a motor vehicle has been revoked pursuant to the provisions of
37 this section.]~~

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

41 (g) Condition of probation and conditional discharge; ignition inter-
42 lock device requirements; alternative sentence authorized. (1) Defi-
43 initions. For the purposes of paragraphs (g) through (m) of this subdivi-
44 sion, the terms defined in subdivision one-a of section eleven hundred
45 ninety-eight of this article shall be applicable.

46 (2) Ignition interlock device; sentence. In addition to the imposi-
47 tion of any fine or period of imprisonment as set forth in this subdivi-
48 sion and to any license sanction imposed pursuant to subdivision two of
49 this section, the court shall sentence such person convicted of, or
50 adjudicated a youthful offender for, a violation of subdivision two,
51 two-a, three or four-a of section eleven hundred ninety-two of this
52 article to a period of probation or conditional discharge, the condi-
53 tions of which shall include the following:

54 (i) an express prohibition on the operation of any motor vehicle with-
55 out a functioning ignition interlock device from a qualified manufactur-
56 er for a period of twelve months or longer, pursuant to the requirements

1 of this paragraph and paragraph (c) of subdivision one-a of this
2 section, and which shall run concurrently with any period of license
3 sanction; and

4 (ii) 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 twelve months or longer as set forth in subparagraph
8 four of this paragraph, including the one hundred eighty days after a
9 license has been restored; provided, however, a certificate of
10 completion certifying that such person has operated such motor vehicle
11 free of any events as set forth in paragraph (j) of this subdivision for
12 a period of one hundred twenty consecutive days after the restoration of
13 the operator's license, shall be deemed to have satisfied the conditions
14 of probation or conditional discharge relating to the ignition interlock
15 requirements set forth in this paragraph. The period of interlock
16 restriction shall commence on the date that such ignition interlock
17 device shall have been installed.

18 (3) Ignition interlock device; alternative sentence. Notwithstanding
19 the provisions of subparagraph two of this paragraph and subdivision two
20 of this section relating to license sanctions, a court may, upon motion
21 of the defendant, impose an alternative sentence upon such person
22 convicted of, or adjudicated a youthful offender for, a violation of
23 subdivision two, two-a, three or four-a of section eleven hundred nine-
24 ty-two of this article, a period of probation or conditional discharge,
25 the conditions of which shall include the following:

26 (i) a conditional waiver of the license sanction provisions of subdi-
27 vision two of this section;

28 (ii) an express prohibition from operating any vehicle without a func-
29 tioning ignition interlock device for a period of twelve months or long-
30 er pursuant to the requirements of this paragraph and paragraph (c) of
31 subdivision one-a of this section; and

32 (iii) an order that such person install and maintain, in accordance
33 with the provisions of section eleven hundred ninety-eight of this arti-
34 cle, an ignition interlock device in any motor vehicle owned or operated
35 by such person for a period of twelve months or longer, as set forth in
36 subparagraph four of this paragraph; provided, however, a certificate of
37 completion certifying that such person has operated the motor vehicle
38 free of any events as set forth in paragraph (j) of this subdivision for
39 a period of three hundred consecutive days shall be deemed to have
40 satisfied the conditions of probation or conditional discharge relating
41 to the ignition interlock requirements as set forth in this paragraph.
42 The period of interlock restriction shall commence on the date that such
43 ignition interlock device shall have been installed. The alternative
44 sentence set forth herein may be revoked by the court for cause. This
45 sentence not be imposed on any offender who is subject to the additional
46 penalties set forth in paragraph (a) or (b) of subdivision one-a of this
47 section or who shall have also been convicted of a violation of any
48 provision of article one hundred twenty or one hundred twenty-five of
49 the penal law involving the operation of a motor vehicle.

50 (4) License restoration. When a sentence is imposed pursuant to
51 subparagraph two or three of this paragraph, in no event shall the
52 commissioner restore the license of any such person until the commis-
53 sioner receives a certificate of completion certifying that such person
54 has operated the motor vehicle free of any events set forth in paragraph
55 (j) of this subdivision for the applicable time periods imposed pursuant
56 to subparagraphs two and three of this paragraph. Non-compliance with

1 the ignition interlock requirements set forth in paragraph (j) of this
2 subdivision shall cause the respective period of operation to reset from
3 the date of any such violation.

4 (h) Driving while ability impaired by alcohol; ignition interlock
5 device requirement. Notwithstanding any other provision of law to the
6 contrary, when a person is charged with a violation of subdivision two,
7 two-a, three, or four-a of section eleven hundred ninety-two of this
8 article and a plea of guilty shall have been entered in satisfaction of
9 such charge to a violation of subdivision one of section eleven hundred
10 ninety-two of this article, and the person has either: (1) had a prior
11 conviction for a violation of any provision of section eleven hundred
12 ninety-two of this article within the previous ten years; (2) registered
13 a BAC of .13 or more; (3) has refused to submit to a chemical test of
14 his or her blood, breath, urine or saliva pursuant to the provisions of
15 section eleven hundred ninety-four of this article, or (4) the underlying
16 charge involved the combined use of drugs and alcohol, the condi-
17 tions of such plea shall include an express prohibition on the operation
18 of any motor vehicle without a functioning ignition interlock device for
19 a period of six months, and which shall run concurrently with any period
20 of license sanction, and that such person shall install and maintain an
21 ignition interlock device for a period of not less than six months on
22 any motor vehicle owned or operated by such person. If the court
23 accepts the plea to the reduced charge, the court shall sentence such
24 person to a conditional discharge which shall include such requirement
25 in addition to any fine required by this article and any other condition
26 authorized by law or otherwise imposed by the court. A certificate of
27 completion certifying that such person has operated the motor vehicle
28 free of any events as set forth in paragraph (j) of this subdivision for
29 a period of ninety consecutive days after the date of installation,
30 shall be deemed to have satisfied the conditions of such plea relating
31 to the ignition interlock requirements set forth in this paragraph. The
32 period of interlock restriction shall be deemed to commence from the
33 date such ignition interlock device shall have been installed. If such
34 person is found to have violated the terms of the use of such ignition
35 interlock device as set forth in paragraph (j) of this subdivision, such
36 ninety day period shall reset from the date of any such violation.

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

53 (1) submission of proof that all sanctions imposed as a result of the
54 previous convictions have been satisfied, including but not limited to,
55 completion of the impaired driving program and/or proof of rehabilita-
56 tive effort, where either or both are required, payment of all fines and

1 mandatory surcharges, and payment of any restitution required as a
2 result of such convictions;

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

6 (3) such person shall install and maintain in accordance with the
7 provisions of section eleven hundred ninety-eight of this article, an
8 ignition interlock device in any motor vehicle owned or operated by such
9 person, for a period of twenty-four months. Where all other conditions
10 or the sentence have been satisfied pursuant to subparagraph one of this
11 paragraph, there shall be a rebuttable presumption of rehabilitation for
12 the purpose of petitioning the commissioner for restoration of the oper-
13 ator's license to operate a motor vehicle upon a certificate of
14 completion certifying that such person has operated such motor vehicle
15 free of any violations of this chapter, excepting violations related to
16 standing, stopping or parking, and has been free of any events set forth
17 in paragraph (j) of this subdivision during the post-revocation condi-
18 tional license period. A violation of section five hundred eleven of
19 this chapter, any provision of section eleven hundred ninety-two of this
20 article, or refusal to submit to a chemical test pursuant to section
21 eleven hundred ninety-four of this article during the post-revocation
22 conditional license period will result in immediate revocation of such
23 license subject to the rules of the commissioner. The period of inter-
24 lock restriction shall commence on the date that such ignition interlock
25 device shall have been installed.

26 (j) Non-compliance with ignition interlock requirements. For purposes
27 of paragraphs (g), (h) and (i) of this subdivision, the following events
28 shall be deemed to be non-compliant with the ignition interlock device
29 requirements:

30 (1) any violation of the provisions set forth in subdivision nine of
31 section eleven hundred ninety-eight of this article regarding circum-
32 venting or tampering with an ignition interlock device or operating a
33 vehicle without a functioning interlock device, regardless of the under-
34 lying basis for the ignition interlock requirement; or

35 (2) a certified violation on a form provided by the division of crimi-
36 nal justice services that such person has:

37 (i) attempted to start his or her vehicle when the start-up test
38 resulted in a blood alcohol concentration level of at or above the set
39 point of .025, unless a subsequent test performed within ten minutes
40 thereafter registers a blood alcohol concentration level lower than the
41 set point and the digital image provided confirms that the same person
42 provided both samples;

43 (ii) missed any random test, unless a review of the digital image
44 confirms that such vehicle was not occupied by the driver at the time of
45 the missed test;

46 (iii) failed any random test or re-test, unless a subsequent test
47 performed within ten minutes registers a blood alcohol concentration
48 level below the set point of .025, and the digital image confirms that
49 the same person provided both samples; or

50 (iv) failed to appear at the installation/service provider for instal-
51 lation or for a service visit when required for maintenance, repair,
52 calibration, monitoring, inspection, or replacement of such device. When
53 applicable, a certificate of non-compliance shall be accompanied by a
54 contemporaneous digital image verifying the identity of the violator.

55 (k) Duration of ignition interlock requirement. In any case set forth
56 in this subdivision where the period of the ignition interlock require-

1 ment exceeds the period of probation or conditional discharge, and the
2 court has not otherwise extended its jurisdiction over the matter, it
3 shall remain in full force and effect subject to the administrative
4 jurisdiction of the commissioner and any rule promulgated by the commis-
5 sioner to effectuate the provisions of this subdivision.

6 (l) Ignition interlock device requirements; terms of imprisonment.
7 When a sentence imposed pursuant to this subdivision includes a term of
8 imprisonment, the satisfaction of such term of imprisonment shall not
9 reduce or otherwise limit the requirements set forth in paragraph (g) of
10 this subdivision.

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

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

24 § 4. Paragraph (c) of subdivision 1-a of section 1193 of the vehicle
25 and traffic law, as amended by chapter 669 of the laws of 2007, is
26 amended to read as follows:

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

49 § 5. Subdivisions 1, 2, 3, 4 and 5 of section 1198 of the vehicle and
50 traffic law, subdivisions 1, 2, 3, 4 and paragraph (a) of subdivision 5
51 as amended by chapter 496 of the laws of 2009, paragraph (a) of subdivi-
52 sion 4 as amended by chapter 169 of the laws of 2013, and subdivision 5
53 as amended by chapter 669 of the laws of 2007, are amended and a new
54 subdivision 1-a is added to read as follows:

55 1. Applicability. The provisions of this section shall apply through-
56 out the state to each person required or otherwise ordered by a court as

1 a condition of sentence, plea, probation or conditional discharge, which
2 shall prohibit the operation of a motor vehicle without a functioning
3 ignition interlock device and requires such person to install and [~~oper-~~
4 ~~ate~~] maintain an ignition interlock device in any vehicle [~~which he or~~
5 ~~she owns or operates~~] owned or operated by such person.

6 1-a. Definitions. For the purposes of this section and subdivision one
7 of section eleven hundred ninety-three of this article, the following
8 terms shall have the following meanings:

9 (a) The term "blood alcohol concentration" or "BAC" shall mean the
10 weight amount of alcohol contained in a unit volume of blood, measured
11 as grams ethanol/one hundred milliliters blood, and expressed as %
12 BAC.

13 (b) The term "certificate of completion" shall mean a document issued
14 by the monitor after the conclusion of the ignition interlock period set
15 by the criminal court, including any extensions or modifications as
16 may have subsequently occurred which shows either satisfactory
17 completion of the ignition interlock condition or a change by the court
18 in a pre-sentence order no longer requiring the need for a device, or a
19 change in the conditions of probation or conditional discharge no
20 longer requiring the need for a device after completion of the ignition
21 interlock period as set forth in section eleven hundred ninety-three of
22 this article.

23 (c) The term "circumvent" shall mean to request, solicit or allow
24 any other person to blow into an ignition interlock device or to start
25 a motor vehicle equipped with the device, for the purpose of providing
26 the operator whose driving privileges is so restricted with an oper-
27 able motor vehicle, or to blow into an ignition interlock device or
28 start a motor vehicle equipped with the device for the purpose of
29 providing an operable motor vehicle to a person whose driving priv-
30 ilege is so restricted or to tamper with an operable ignition interlock
31 device.

32 (d) The term "county" shall mean every county outside of the city of
33 New York, and the city of New York as a whole.

34 (e) The term "division" shall mean the division of criminal
35 justice services.

36 (f) The term "drinking driver program" or "impaired driver program"
37 shall mean an alcohol and drug rehabilitation program established pursu-
38 ant to section eleven hundred ninety-six of this article.

39 (g) The term "failed tests" shall mean a start-up re-test or roll-
40 ing re-test at or above the set point, or a missed rolling re-test.

41 (h) The term "ignition interlock monitor" or "monitor" shall mean
42 the local probation department where the operator is under interim
43 probation supervision or probation or any person or entity designated in
44 the county's ignition interlock program plan for any operator granted
45 conditional discharge or otherwise required to install an ignition
46 interlock device who monitors compliance with the provisions of this
47 section and the concurrent regulations related thereto.

48 (i) The term "installation/service provider" shall mean an entity
49 located in the state approved by a qualified manufacturer that installs,
50 services, and/or removes an ignition interlock device.

51 (j) The term "operator" shall mean a person who is subject to instal-
52 lation of an ignition interlock device arising from a charge or
53 conviction under this article or the penal law, where a violation of
54 this article is an essential element thereof, or arising from a youth-
55 ful adjudication of any such offense.

1 (k) The term "owned or operated" shall refer to a vehicle owned by the
2 person required by a court to install an ignition interlock device as a
3 condition of probation or conditional discharge or, alternatively, the
4 vehicle most regularly operated by such person regardless of registra-
5 tion or title.

6 (l) The term "qualified manufacturer" shall mean a manufacturer or
7 distributor of an ignition interlock device certified by the depart-
8 ment of health which has satisfied the specific operational requirements
9 herein and has been approved as an eligible vendor by the division in
10 the designated region where the county is located.

11 (m) The term "random test" shall include a start-up re-test, a rolling
12 test, or rolling re-test as those terms are defined herein.

13 (n) The term "start-up test" shall mean a breath test taken by the
14 operator to measure the operator's blood alcohol concentration prior
15 to starting the vehicle's ignition.

16 (o) The term "start-up re-test" shall mean a breath test taken by the
17 operator to measure the operator's blood alcohol concentration required
18 within five to fifteen minutes of a failed start-up test.

19 (p) The term "rolling test" shall mean a breath test, administered at
20 random intervals, taken by the operator while the vehicle is running.

21 (q) The term "rolling re-test" shall mean a breath test, taken by the
22 operator while the vehicle is running, within one to three minutes after
23 a failed or missed rolling test.

24 (r) The term "failed rolling re-test" shall mean a rolling re-test in
25 which the operator's BAC is at or above the set point.

26 (s) The term "missed rolling re-test" shall mean failure to take the
27 rolling re-test within the time period allotted to do so.

28 (t) The term "service visit" shall mean a visit by the operator or
29 another driver of the subject vehicle to or with the
30 installation/service provider for purposes of having the ignition inter-
31 lock device inspected for repair, defect, and detection of tampering
32 and/or circumvention, downloaded, recalibrated, or maintained.

33 (u) The term "set point" shall mean a pre-set or pre-determined BAC
34 setting at which, or above, the device will prevent the ignition of a
35 motor vehicle from operating. For the purposes of this section and
36 subdivision one of section eleven hundred ninety-three of this article,
37 the set point shall be a BAC of .025.

38 (v) The term "tamper" shall mean to alter, disconnect, physically
39 disable, remove, deface, or destroy an ignition interlock device or any
40 of its component seals.

41 2. Requirements. (a) In addition to any other penalties prescribed by
42 law, the court shall require that any person who has been convicted [~~of~~]
43 or adjudicated a youthful offender for a violation of subdivision two,
44 two-a [~~or~~], three or four-a of section eleven hundred ninety-two of this
45 article, or any crime defined by this chapter or the penal law of which
46 an alcohol-related violation of any provision of section eleven hundred
47 ninety-two of this article is an essential element, [~~to~~] shall not oper-
48 ate a motor vehicle without a functioning ignition interlock device and
49 shall install and maintain, as a condition of plea, sentence, probation
50 or conditional discharge, a functioning ignition interlock device in
51 accordance with the provisions of this section and, as applicable, in
52 accordance with the provisions of subdivisions one and one-a of section
53 eleven hundred ninety-three of this article; provided, however, the
54 court may not authorize the operation of a motor vehicle by any person
55 whose license or privilege to operate a motor vehicle has been revoked
56 except as provided herein. For any such individual subject to a sentence

1 of probation, installation and maintenance of such ignition interlock
2 device shall be a condition of probation.

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

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

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

42 (b) Notwithstanding any inconsistent provision of this chapter, a
43 post-revocation conditional license granted pursuant to paragraph (a) of
44 this subdivision shall be valid only for use by the holder thereof, (1)
45 ~~[enroute]~~ en route to and from the holder's place of employment, (2) if
46 the holder's employment requires the operation of a motor vehicle then
47 during the hours thereof, (3) ~~[enroute]~~ en route to and from a class or
48 course at an accredited school, college or university or at a state
49 approved institution of vocational or technical training, (4) to and
50 from court ordered probation activities, (5) to and from a motor vehicle
51 office for the transaction of business relating to such license, (6) for
52 a three hour consecutive daytime period, chosen by the department, on a
53 day during which the participant is not engaged in usual employment or
54 vocation, (7) ~~[enroute]~~ en route to and from a medical examination or
55 treatment as part of a necessary medical treatment for such participant
56 or member of the participant's household, as evidenced by a written

1 statement to that effect from a licensed medical practitioner, (8)
2 [~~enroute~~] en route to and from a class or an activity which is an
3 authorized part of the alcohol and drug rehabilitation program and at
4 which participant's attendance is required, and (9) [~~enroute~~] en route
5 to and from a place, including a school, at which a child or children of
6 the participant are cared for on a regular basis and which is necessary
7 for the participant to maintain such participant's employment or enroll-
8 ment at an accredited school, college or university or at a state
9 approved institution of vocational or technical training.

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

20 (d) Nothing contained herein shall prohibit the court from requiring,
21 as a condition of probation or conditional discharge, the installation
22 of a functioning ignition interlock device in any vehicle owned or oper-
23 ated by a person sentenced for a violation of subdivision two, two-a,
24 [~~or~~] or four-a of section eleven hundred ninety-two of this [~~chap-~~
25 ~~ter~~] article, or any crime defined by this chapter or the penal law of
26 which an alcohol-related violation of any provision of section eleven
27 hundred ninety-two of this [~~chapter~~] article is an essential element, if
28 the court in its discretion, determines that such a condition is neces-
29 sary to ensure the public safety. Imposition of an ignition interlock
30 condition shall in no way limit the effect of any period of license
31 suspension or revocation set forth by the commissioner or the court.

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

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

40 4. Proof of compliance and recording of condition. (a) Following
41 imposition by the court of the use of an ignition interlock device as a
42 condition plea, sentence, of probation or conditional discharge it shall
43 require the person to provide proof of compliance with this section to
44 the court and the probation department or other monitor where such
45 person is under probation or conditional discharge supervision. A claim
46 by such person that he or she has good cause for not installing an
47 ignition interlock device shall be made to the court at or before
48 sentencing, in writing in the form of a sworn affidavit signed by such
49 person asserting under oath that: (1) he or she is not the registered or
50 titled owner of any motor vehicle and will not operate any motor vehicle
51 during the period of restriction; and (2) that such person does not have
52 access to the vehicle operated by such person at the time of the
53 violation of section eleven hundred ninety-two of this article; and (c)
54 that the registered owner of that vehicle or any vehicle registered to
55 such person's household will not give consent for the installation of an
56 interlock device on his or her vehicle. The affidavit shall include a

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

31 (b) When a court imposes the condition specified in subdivision one of
32 this section, the court shall notify the commissioner in such manner as
33 the commissioner may prescribe, and the commissioner shall note such
34 condition on the operating record of the person subject to such condi-
35 tions.

36 5. Cost, installation and maintenance. (a) The cost of installing and
37 maintaining the ignition interlock device shall be borne by the person
38 subject to such condition unless the court determines such person is
39 financially unable to afford such cost whereupon such cost may be
40 imposed pursuant to a payment plan or waived. In the event of such
41 waiver, the cost of the device shall be borne in accordance with regu-
42 lations issued under paragraph (g) of subdivision one of section eleven
43 hundred ninety-three of this article or pursuant to such other agreement
44 as may be entered into for provision of the device. Such cost shall be
45 considered a fine for the purposes of subdivision five of section 420.10
46 of the criminal procedure law. Such cost shall not replace, but shall
47 instead be in addition to, any fines, surcharges, or other costs imposed
48 pursuant to this chapter or other applicable laws.

49 (b) The installation and service provider of the device shall be
50 responsible for the installation, calibration, and maintenance of such
51 device.

52 (c) Failure to install such device, failure to appear for a service
53 visit or failure to comply with service instructions or circumvention of
54 or tampering with the device, in violation of regulations promulgated by
55 the division of criminal justice services, shall constitute a violation

1 of the conditions of a person's sentence, probation or conditional
2 discharge.

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

6 (k-1) Install and maintain a functioning ignition interlock device, as
7 that term is defined in section one hundred nineteen-a of the vehicle
8 and traffic law, in any vehicle owned or operated by the defendant [~~if~~
9 ~~the court in its discretion determines that such a condition is neces-~~
10 ~~sary to ensure the public safety. The court may require such condition~~
11 ~~only where a person has been convicted of a violation of subdivision~~
12 ~~two, two-a or three of section eleven hundred ninety two of the vehicle~~
13 ~~and traffic law, or any crime defined by the vehicle and traffic law or~~
14 ~~this chapter of which an alcohol-related violation of any provision of~~
15 ~~section eleven hundred ninety-two of the vehicle and traffic law is an~~
16 ~~essential element. The offender shall be required], provided the court
17 shall require the defendant to install and operate the ignition inter-
18 lock device [~~only~~] in accordance with the provisions of paragraphs (g),
19 (h), (j) and (l) of subdivision one of section eleven hundred ninety-
20 three and section eleven hundred ninety-eight of the vehicle and traffic
21 law.~~

22 § 7. The division of criminal justice services is authorized and
23 directed to compile and publish annually a report on its website of the
24 total number of repeat convictions with respect to violations of section
25 1192 of the vehicle and traffic law for the five years succeeding the
26 effective date of this act, and shall also include the total number of
27 repeat convictions for the five years preceding the effective date in
28 such report. The division is authorized and directed to coordinate with
29 any other agency, authority, department, division, bureau, or political
30 subdivision to compile this information, including without limitation
31 the governor's highway traffic safety committee.

32 § 8. The commissioner of the division of criminal justice services, in
33 consultation with the commissioner of the department of motor vehicles,
34 shall promulgate any rules or regulations necessary to effectuate the
35 provisions of this act.

36 § 9. This act shall take effect on the first of November next succeed-
37 ing the date on which it shall have become a law, provided, however,
38 that the amendments to section 1198 of the vehicle and traffic law made
39 by section five of this act shall not affect the repeal of such section
40 and shall be deemed repealed therewith.