

STATE OF NEW YORK

174

2023-2024 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 4, 2023

Introduced by M. of A. MAGNARELLI, STERN, WALLACE, WOERNER, BUTTENSCHON, SILLITTI, THIELE, JEAN-PIERRE, BURDICK, STIRPE, McMAHON, JACOBSON -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to procedures relating to driving while ability impaired by drugs

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

1 Section 1. Section 114-a of the vehicle and traffic law, as amended by
2 chapter 92 of the laws of 2021, is amended to read as follows:

3 § 114-a. Drug. The term "drug" when used in this chapter, means and
4 includes any substance listed in section thirty-three hundred six of the
5 public health law and cannabis and concentrated cannabis as defined in
6 section 222.00 of the penal law and any substance or combination of
7 substances that impair, to any extent, physical or mental abilities.

8 § 2. Section 119-b of the vehicle and traffic law is renumbered 119-c
9 and a new section 119-b is added to read as follows:

10 § 119-b. Impaired. Impairment is reached when a driver has voluntarily
11 consumed or ingested a substance or combination of substances to the
12 extent that the driver has impaired, to any extent, the physical and
13 mental abilities which a driver is expected to possess in order to oper-
14 ate a vehicle as a reasonable and prudent driver.

15 § 3. The vehicle and traffic law is amended by adding a new section
16 120-a to read as follows:

17 § 120-a. Intoxication. Intoxication is a greater degree of impairment
18 which is reached when a driver has voluntarily consumed or ingested a
19 substance or combination of substances to the extent that the driver is
20 incapable, to a substantial extent, of employing the physical and mental
21 abilities which a driver is expected to possess in order to operate a
22 vehicle as a reasonable and prudent driver.

23 § 4. Subdivisions 1, 2 and 3 of section 1194 of the vehicle and traf-
24 fic law, as added by chapter 47 of the laws of 1988, paragraph (a) of
25 subdivision 2 as amended by chapter 196 of the laws of 1996, paragraphs
26 (b) and (c) of subdivision 2 as amended by chapter 489 of the laws of

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

LBD00346-01-3

1 2017, clause (A) of subparagraph 1, subparagraphs 2 and 3 of paragraph
2 (b), subparagraphs 1, 2 and 3 of paragraph (c) of subdivision 2 as
3 amended by chapter 27 of the laws of 2018, subparagraphs 1 and 2 of
4 paragraph (d) of subdivision 2 as amended by chapter 732 of the laws of
5 2006, and item (iii) of clause c of subparagraph 1 of paragraph (d) of
6 subdivision 2 as amended by section 37 of part LL of chapter 56 of the
7 laws of 2010, are amended to read as follows:

8 1. Arrest and field testing. (a) Arrest. Notwithstanding the
9 provisions of section 140.10 of the criminal procedure law, a police
10 officer may, without a warrant, arrest a person, in case of a violation
11 of subdivision one of section eleven hundred ninety-two of this article,
12 if such violation is coupled with an accident or collision in which such
13 person is involved, which in fact has been committed, though not in the
14 police officer's presence, when the officer has reasonable cause to
15 believe that the violation was committed by such person.

16 (b) Field testing. Every person operating a motor vehicle which has
17 been involved in an accident or which is operated in violation of any of
18 the provisions of this chapter shall, at the request of a police offi-
19 cer, submit to a breath test and/or oral/bodily fluid test to be admin-
20 istered by the police officer. If such test indicates that such operator
21 has consumed alcohol or a drug or drugs, the police officer may request
22 such operator to submit to a chemical test and/or an evaluation
23 conducted by a drug recognition expert in the manner set forth in subdi-
24 vision two of this section.

25 (c) Refusal to submit to a breath test and/or oral/bodily fluid test
26 pursuant to paragraph (b) of this subdivision shall be a traffic infrac-
27 tion.

28 2. Chemical tests and drug recognition evaluations. (a) When author-
29 ized. Any person who operates a motor vehicle in this state shall be
30 deemed to have given consent to an evaluation conducted by a certified
31 drug recognition expert, and/or a chemical test of one or more of the
32 following: breath, blood, urine, or [~~saliva~~] oral/bodily fluid, for the
33 purpose of determining the alcoholic and/or drug content [~~of the blood~~]
34 provided that such test is administered by or at the direction of a
35 police officer with respect to a chemical test of breath, urine or
36 [~~saliva~~] oral/bodily fluid or, with respect to a chemical test of blood,
37 at the direction of a police officer:

38 (1) having reasonable grounds to believe such person to have been
39 operating in violation of any subdivision of section eleven hundred
40 ninety-two of this article and within two hours after such person has
41 been placed under arrest for any such violation; or having reasonable
42 grounds to believe such person to have been operating in violation of
43 section eleven hundred ninety-two-a of this article and within two hours
44 after the stop of such person for any such violation,

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

49 (3) for the purposes of this paragraph, "reasonable grounds" to
50 believe that a person has been operating a motor vehicle after having
51 consumed alcohol in violation of section eleven hundred ninety-two-a of
52 this article shall be determined by viewing the totality of circum-
53 stances surrounding the incident which, when taken together, indicate
54 that the operator was driving in violation of such subdivision. Such
55 circumstances may include any visible or behavioral indication of alco-
56 hol consumption by the operator, the existence of an open container

1 containing or having contained an alcoholic beverage in or around the
2 vehicle driven by the operator, or any other evidence surrounding the
3 circumstances of the incident which indicates that the operator has been
4 operating a motor vehicle after having consumed alcohol at the time of
5 the incident; or

6 (4) notwithstanding any other provision of law to the contrary, no
7 person under the age of twenty-one shall be arrested for an alleged
8 violation of section eleven hundred ninety-two-a of this article.
9 However, a person under the age of twenty-one for whom a chemical test
10 and/or an evaluation conducted by a certified drug recognition expert is
11 authorized pursuant to this paragraph may be temporarily detained by the
12 police solely for the purpose of requesting or administering such chemi-
13 cal test and/or an evaluation conducted by a certified drug recognition
14 expert whenever arrest without a warrant for a petty offense would be
15 authorized in accordance with the provisions of section 140.10 of the
16 criminal procedure law or paragraph (a) of subdivision one of this
17 section.

18 (a-1) For the purposes of this section the driver shall not be deemed
19 to consent to answer custodial questions as part of an evaluation
20 conducted by a certified drug recognition expert pursuant to paragraph
21 (a) of this subdivision and declining to answer such questions shall not
22 constitute a refusal to submit to the evaluation when the driver submits
23 to the other portions of such evaluation and no report of refusal shall
24 be made pursuant to paragraph (b) of this subdivision and the driver's
25 license shall not be revoked pursuant to paragraphs (c) and (d) of this
26 subdivision solely on the basis of the driver declining to answer such
27 custodial questions.

28 (b) Report of refusal. (1) If: (A) such person having been placed
29 under arrest; or (B) after a breath and/or oral/bodily fluid test indi-
30 cates the presence of alcohol and/or a drug or drugs in the person's
31 system; or (C) with regard to a person under the age of twenty-one,
32 there are reasonable grounds to believe that such person has been oper-
33 ating a motor vehicle after having consumed alcohol in violation of
34 section eleven hundred ninety-two-a of this article; and having there-
35 after been requested to submit to such chemical test and/or an evalu-
36 ation conducted by a certified drug recognition expert and having been
37 informed that the person's license or permit to drive and any non-resi-
38 dent operating privilege shall be immediately suspended and subsequently
39 revoked, or, for operators under the age of twenty-one for whom there
40 are reasonable grounds to believe that such operator has been operating
41 a motor vehicle after having consumed alcohol in violation of section
42 eleven hundred ninety-two-a of this article, shall be revoked for
43 refusal to submit to such chemical test or any portion thereof, and/or
44 an evaluation conducted by a certified drug recognition expert or any
45 portion thereof whether or not the person is found guilty of the charge
46 for which such person is arrested or detained, refuses to submit to such
47 chemical test or any portion thereof, [~~unless a court order has been~~
48 ~~granted pursuant to subdivision three of this section,~~] and/or an evalu-
49 ation conducted by a certified drug recognition expert or any portion
50 thereof the test shall not be given and a written report of such refusal
51 shall be immediately made by the police officer before whom such refusal
52 was made. Such report may be verified by having the report sworn to, or
53 by affixing to such report a form notice that false statements made
54 therein are punishable as a class A misdemeanor pursuant to section
55 210.45 of the penal law and such form notice together with the

1 subscription of the deponent shall constitute a verification of the
2 report.

3 (2) The report of the police officer shall set forth reasonable
4 grounds to believe such arrested person or such detained person under
5 the age of twenty-one had been driving in violation of any subdivision
6 of section eleven hundred ninety-two or eleven hundred ninety-two-a of
7 this article, that said person had refused to submit to such chemical
8 test, [~~and that no chemical test was administered pursuant to the~~
9 ~~requirements of subdivision three of this section~~] or an evaluation
10 conducted by a certified drug recognition expert or any portion thereof.

11 The report shall be presented to the court upon arraignment of an
12 arrested person, provided, however, in the case of a person under the
13 age of twenty-one, for whom a test was authorized pursuant to the
14 provisions of subparagraph two or three of paragraph (a) of this subdi-
15 vision, and who has not been placed under arrest for a violation of any
16 of the provisions of section eleven hundred ninety-two of this article,
17 such report shall be forwarded to the commissioner within forty-eight
18 hours in a manner to be prescribed by the commissioner, and all subse-
19 quent proceedings with regard to refusal to submit to such chemical test
20 and/or an evaluation conducted by a certified drug recognition expert by
21 such person shall be as set forth in subdivision three of section eleven
22 hundred ninety-four-a of this article.

23 (3) For persons placed under arrest for a violation of any subdivision
24 of section eleven hundred ninety-two of this article, the license or
25 permit to drive and any non-resident operating privilege shall, upon the
26 basis of such written report, be temporarily suspended by the court
27 without notice pending the determination of a hearing as provided in
28 paragraph (c) of this subdivision. Copies of such report must be trans-
29 mitted by the court to the commissioner and such transmittal may not be
30 waived even with the consent of all the parties. Such report shall be
31 forwarded to the commissioner within forty-eight hours of such arraign-
32 ment.

33 (4) The court or the police officer, in the case of a person under the
34 age of twenty-one alleged to be driving after having consumed alcohol,
35 shall provide such person with a scheduled hearing date, a waiver form,
36 and such other information as may be required by the commissioner. If a
37 hearing, as provided for in paragraph (c) of this subdivision, or subdi-
38 vision three of section eleven hundred ninety-four-a of this article, is
39 waived by such person, the commissioner shall immediately revoke the
40 license, permit, or non-resident operating privilege, as of the date of
41 receipt of such waiver in accordance with the provisions of paragraph
42 (d) of this subdivision.

43 (c) Hearings. Any person whose license or permit to drive or any non-
44 resident driving privilege has been suspended pursuant to paragraph (b)
45 of this subdivision is entitled to a hearing in accordance with a hear-
46 ing schedule to be promulgated by the commissioner. If the department
47 fails to provide for such hearing fifteen days after the date of the
48 arraignment of the arrested person, the license, permit to drive or
49 non-resident operating privilege of such person shall be reinstated
50 pending a hearing pursuant to this section. The hearing shall be limited
51 to the following issues: (1) did the police officer have reasonable
52 grounds to believe that such person had been driving in violation of any
53 subdivision of section eleven hundred ninety-two of this article; (2)
54 did the police officer make a lawful arrest of such person; (3) was such
55 person given sufficient warning, in clear or unequivocal language, prior
56 to such refusal that such refusal to submit to such chemical test or any

1 portion thereof and/or an evaluation conducted by a certified drug
2 recognition expert or any portion thereof, would result in the immediate
3 suspension and subsequent revocation of such person's license or operat-
4 ing privilege whether or not such person is found guilty of the charge
5 for which the arrest was made; and (4) did such person refuse to submit
6 to such chemical test or any portion thereof and/or an evaluation
7 conducted by a certified drug recognition expert or any portion thereof.
8 A refusal to answer custodial questions shall not be considered a
9 refusal for the purposes of this section pursuant to paragraph (a-1) of
10 this subdivision. If, after such hearing, the hearing officer, acting on
11 behalf of the commissioner, finds on any one of said issues in the nega-
12 tive, the hearing officer shall immediately terminate any suspension
13 arising from such refusal. If, after such hearing, the hearing officer,
14 acting on behalf of the commissioner finds all of the issues in the
15 affirmative, such officer shall immediately revoke the license or permit
16 to drive or any non-resident operating privilege in accordance with the
17 provisions of paragraph (d) of this subdivision. A person who has had a
18 license or permit to drive or non-resident operating privilege suspended
19 or revoked pursuant to this subdivision may appeal the findings of the
20 hearing officer in accordance with the provisions of article three-A of
21 this chapter. Any person may waive the right to a hearing under this
22 section. Failure by such person to appear for the scheduled hearing
23 shall constitute a waiver of such hearing, provided, however, that such
24 person may petition the commissioner for a new hearing which shall be
25 held as soon as practicable.

26 (d) Sanctions. (1) Revocations. a. Any license which has been revoked
27 pursuant to paragraph (c) of this subdivision shall not be restored for
28 at least one year after such revocation, nor thereafter, except in the
29 discretion of the commissioner. However, no such license shall be
30 restored for at least eighteen months after such revocation, nor there-
31 after except in the discretion of the commissioner, in any case where
32 the person has had a prior revocation resulting from refusal to submit
33 to a chemical test and/or an evaluation conducted by a certified drug
34 recognition expert or any portion thereof, or has been convicted of or
35 found to be in violation of any subdivision of section eleven hundred
36 ninety-two or section eleven hundred ninety-two-a of this article not
37 arising out of the same incident, within the five years immediately
38 preceding the date of such revocation; provided, however, a prior find-
39 ing that a person under the age of twenty-one has refused to submit to a
40 chemical test and/or an evaluation conducted by a certified drug recog-
41 nitition expert or any portion thereof pursuant to subdivision three of
42 section eleven hundred ninety-four-a of this article shall have the same
43 effect as a prior finding of a refusal pursuant to this subdivision
44 solely for the purpose of determining the length of any license suspen-
45 sion or revocation required to be imposed under any provision of this
46 article, provided that the subsequent offense or refusal is committed or
47 occurred prior to the expiration of the retention period for such prior
48 refusal as set forth in paragraph (k) of subdivision one of section two
49 hundred one of this chapter.

50 b. Any license which has been revoked pursuant to paragraph (c) of
51 this subdivision or pursuant to subdivision three of section eleven
52 hundred ninety-four-a of this article, where the holder was under the
53 age of twenty-one years at the time of such refusal, shall not be
54 restored for at least one year, nor thereafter, except in the discretion
55 of the commissioner. Where such person under the age of twenty-one years
56 has a prior finding, conviction or youthful offender adjudication

1 resulting from a violation of section eleven hundred ninety-two or
2 section eleven hundred ninety-two-a of this article, not arising from
3 the same incident, such license shall not be restored for at least one
4 year or until such person reaches the age of twenty-one years, whichever
5 is the greater period of time, nor thereafter, except in the discretion
6 of the commissioner.

7 c. Any commercial driver's license which has been revoked pursuant to
8 paragraph (c) of this subdivision based upon a finding of refusal to
9 submit to a chemical test and/or an evaluation conducted by a certified
10 drug recognition expert or any portion thereof, where such finding
11 occurs within or outside of this state, shall not be restored for at
12 least eighteen months after such revocation, nor thereafter, except in
13 the discretion of the commissioner, but shall not be restored for at
14 least three years after such revocation, nor thereafter, except in the
15 discretion of the commissioner, if the holder of such license was oper-
16 ating a commercial motor vehicle transporting hazardous materials at the
17 time of such refusal. However, such person shall be permanently disqual-
18 ified from operating a commercial motor vehicle in any case where the
19 holder has a prior finding of refusal to submit to a chemical test
20 and/or an evaluation thereof conducted by a certified drug recognition
21 expert or any portion thereof pursuant to this section or has a prior
22 conviction of any of the following offenses: any violation of section
23 eleven hundred ninety-two of this article; any violation of subdivision
24 one or two of section six hundred of this chapter; or has a prior
25 conviction of any felony involving the use of a motor vehicle pursuant
26 to paragraph (a) of subdivision one of section five hundred ten-a of
27 this chapter. Provided that the commissioner may waive such permanent
28 revocation after a period of ten years has expired from such revocation
29 provided:

30 (i) that during such ten year period such person has not been found to
31 have refused a chemical test or an evaluation conducted by a certified
32 drug recognition expert or any portion thereof pursuant to this section
33 and has not been convicted of any one of the following offenses: any
34 violation of section eleven hundred ninety-two of this article; refusal
35 to submit to a chemical test or an evaluation conducted by a certified
36 drug recognition expert or any portion thereof pursuant to this section;
37 any violation of subdivision one or two of section six hundred of this
38 chapter; or has a prior conviction of any felony involving the use of a
39 motor vehicle pursuant to paragraph (a) of subdivision one of section
40 five hundred ten-a of this chapter;

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

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

48 d. Upon a third finding of refusal and/or conviction of any of the
49 offenses which require a permanent commercial driver's license revoca-
50 tion, such permanent revocation may not be waived by the commissioner
51 under any circumstances.

52 (2) Civil penalties. Except as otherwise provided, any person whose
53 license, permit to drive, or any non-resident operating privilege is
54 revoked pursuant to the provisions of this section shall also be liable
55 for a civil penalty in the amount of five hundred dollars except that if
56 such revocation is a second or subsequent revocation pursuant to this

1 section issued within a five year period, or such person has been
2 convicted of a violation of any subdivision of section eleven hundred
3 ninety-two of this article within the past five years not arising out of
4 the same incident, the civil penalty shall be in the amount of seven
5 hundred fifty dollars. Any person whose license is revoked pursuant to
6 the provisions of this section based upon a finding of refusal to submit
7 to a chemical test and/or an evaluation conducted by a certified drug
8 recognition expert or any portion thereof while operating a commercial
9 motor vehicle shall also be liable for a civil penalty of five hundred
10 fifty dollars except that if such person has previously been found to
11 have refused a chemical test and/or an evaluation conducted by a certi-
12 fied drug recognition expert or any portion thereof pursuant to this
13 section while operating a commercial motor vehicle or has a prior
14 conviction of any of the following offenses while operating a commercial
15 motor vehicle: any violation of section eleven hundred ninety-two of
16 this article; any violation of subdivision two of section six hundred of
17 this chapter; or has a prior conviction of any felony involving the use
18 of a commercial motor vehicle pursuant to paragraph (a) of subdivision
19 one of section five hundred ten-a of this chapter, then the civil penal-
20 ty shall be seven hundred fifty dollars. No new driver's license or
21 permit shall be issued, or non-resident operating privilege restored to
22 such person unless such penalty has been paid. All penalties collected
23 by the department pursuant to the provisions of this section shall be
24 the property of the state and shall be paid into the general fund of the
25 state treasury.

26 (3) Effect of rehabilitation program. No period of revocation arising
27 out of this section may be set aside by the commissioner for the reason
28 that such person was a participant in the alcohol and drug rehabili-
29 tation program set forth in section eleven hundred ninety-six of this
30 article.

31 (e) Regulations. The commissioner shall promulgate such rules and
32 regulations as may be necessary to effectuate the provisions of subdivi-
33 sions one and two of this section.

34 (f) Evidence. Evidence of a refusal to submit to such chemical test or
35 any portion thereof or an evaluation conducted by a drug recognition
36 expert or any portion thereof shall be admissible in any trial, proceed-
37 ing or hearing based upon a violation of the provisions of section elev-
38 en hundred ninety-two of this article but only upon a showing that the
39 person was given sufficient warning, in clear and unequivocal language,
40 of the effect of such refusal and that the person persisted in the
41 refusal. Evidence of a refusal shall be admissible pursuant to this
42 section regardless of the time of the refusal.

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

45 3. Compulsory chemical tests. (a) Court ordered chemical tests.
46 Notwithstanding the provisions of subdivision two of this section, no
47 person who operates a motor vehicle in this state may refuse to submit
48 to a chemical test of one or more of the following: breath, blood, urine
49 or [~~saliva~~] oral/bodily fluids, for the purpose of determining the alco-
50 holic and/or drug content of the blood or oral/bodily fluids when a
51 court order for such chemical test has been issued in accordance with
52 the provisions of this subdivision.

53 (b) When authorized. Upon refusal by any person to submit to a chemi-
54 cal test or any portion thereof as described above, the test shall not
55 be given unless a police officer or a district attorney, as defined in
56 subdivision thirty-two of section 1.20 of the criminal procedure law,

1 requests and obtains a court order to compel a person to submit to a
2 chemical test to determine the alcoholic [~~ex~~] and/or drug content of the
3 person's blood or oral/bodily fluids upon a finding of reasonable cause
4 to believe that:

5 (1) such person was the operator of a motor vehicle and in the course
6 of such operation [~~a person other than the operator was killed or~~
7 ~~suffered serious physical injury as defined in section 10.00 of the~~
8 ~~penal law~~] the motor vehicle was involved in a crash; or personal injury
9 has been caused to another person, due to an incident involving the
10 motor vehicle operated by such person or such person has a previous
11 conviction for a violation of any subdivision of section eleven hundred
12 ninety-two of this article; and

13 (2) a. either such person operated the vehicle in violation of any
14 subdivision of section eleven hundred ninety-two of this article, or

15 b. a breath test and/or oral/bodily fluid test administered by a
16 police officer in accordance with paragraph (b) of subdivision one of
17 this section indicates that alcohol and/or a drug or drugs has been
18 consumed by such person; and

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

20 (4) such person has refused to submit to a chemical test or any
21 portion thereof and/or an evaluation conducted by a certified drug
22 recognition expert, or any portion thereof, requested in accordance with
23 the provisions of paragraph (a) of subdivision two of this section or is
24 unable to give consent to such a test.

25 (c) Reasonable cause; definition. For the purpose of this subdivision
26 "reasonable cause" shall be determined by viewing the totality of
27 circumstances surrounding the incident which, when taken together, indi-
28 cate that the operator was driving in violation of section eleven
29 hundred ninety-two of this article. Such circumstances may include, but
30 are not limited to: evidence that the operator was operating a motor
31 vehicle in violation of any provision of this article or any other
32 moving violation at the time of the incident; any visible indication of
33 alcohol or drug consumption or impairment by the operator; the existence
34 of an open container containing an alcoholic beverage and/or a drug or
35 drugs in or around the vehicle driven by the operator; the odor of
36 cannabis or burnt cannabis; any other evidence surrounding the circum-
37 stances of the incident which indicates that the operator has been oper-
38 ating a motor vehicle while impaired by the consumption of alcohol or
39 drugs or intoxicated at the time of the incident.

40 (d) Court order; procedure. (1) An application for a court order to
41 compel submission to a chemical test or any portion thereof, may be made
42 to any supreme court justice, county court judge or district court judge
43 in the judicial district in which the incident occurred, or if the inci-
44 dent occurred in the city of New York before any supreme court justice
45 or judge of the criminal court of the city of New York. Such application
46 may be communicated by telephone, radio or other means of electronic
47 communication, or in person.

48 (2) The applicant must provide identification by name and title and
49 must state the purpose of the communication. Upon being advised that an
50 application for a court order to compel submission to a chemical test is
51 being made, the court shall place under oath the applicant and any other
52 person providing information in support of the application as provided
53 in subparagraph three of this paragraph. After being sworn the applicant
54 must state that the person from whom the chemical test was requested was
55 the operator of a motor vehicle and in the course of such operation [~~a~~
56 ~~person, other than the operator, has been killed or seriously injured~~]

1 the motor vehicle was involved in a crash; or personal injury has been
2 caused to another person, due to an incident involving the motor vehicle
3 operated by such person and/or such person has a previous arrest for a
4 violation of any subdivision of section eleven hundred ninety-two of
5 this article; and, based upon the totality of circumstances, there is
6 reasonable cause to believe that such person was operating a motor vehi-
7 cle in violation of any subdivision of section eleven hundred ninety-two
8 of this article and, after being placed under lawful arrest such person
9 refused to submit to a chemical test or any portion thereof, in accord-
10 ance with the provisions of this section or is unable to give consent to
11 such a test or any portion thereof. The applicant must make specific
12 allegations of fact to support such statement. Any other person properly
13 identified, may present sworn allegations of fact in support of the
14 applicant's statement.

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

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

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

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

51 (e) Administration of compulsory chemical test. An order issued pursu-
52 ant to the provisions of this subdivision shall require that a chemical
53 test to determine the alcoholic and/or drug content of the operator's
54 blood and/or oral/bodily fluid must be administered. The provisions of
55 paragraphs (a), (b) and (c) of subdivision four of this section shall be
56 applicable to any chemical test administered pursuant to this section.

1 § 5. The subparagraph heading and clauses a and b of subparagraph 7 of
2 paragraph (e) of subdivision 2 of section 1193 of the vehicle and traf-
3 fic law, the subparagraph heading as added by chapter 312 of the laws of
4 1994, clause a as amended by chapter 732 of the laws of 2006, and clause
5 b as separately amended by chapters 3 and 571 of the laws of 2002, are
6 amended to read as follows:

7 Suspension pending prosecution; excessive blood alcohol content or
8 impairment by a drug or drugs. a. Except as provided in clause a-1 of
9 this subparagraph, a court shall suspend a driver's license, pending
10 prosecution, of any person charged with a violation of subdivision two,
11 two-a, three, four or four-a of section eleven hundred ninety-two of
12 this article who, at the time of arrest, is alleged to have had .08 of
13 one percent or more by weight of alcohol in such driver's blood or is
14 alleged to have been impaired by the ingestion of a drug or drugs as
15 shown by chemical analysis of blood, breath, urine or [~~saliva~~]
16 oral/bodily fluid, or by an evaluation conducted by a certified drug
17 recognition expert, or any portion thereof, made pursuant to subdivision
18 two or three of section eleven hundred ninety-four of this article, or
19 the driver makes a statement admitting to driving while intoxicated by
20 alcohol or while impaired by a drug or drugs.

21 b. The suspension occurring under clause a of this subparagraph shall
22 occur no later than at the conclusion of all proceedings required for
23 the arraignment and the suspension occurring under clause a-1 of this
24 subparagraph shall occur immediately after the holder's first appearance
25 before the court on the charge which shall, whenever possible, be the
26 next regularly scheduled session of the court after the arrest or at the
27 conclusion of all proceedings required for the arraignment; provided,
28 however, that if the results of any test administered pursuant to
29 section eleven hundred ninety-four of this article are not available
30 within such time period, the complainant police officer or other public
31 servant shall transmit such results to the court at the time they become
32 available, and the court shall, as soon as practicable following the
33 receipt of such results and in compliance with the requirements of this
34 subparagraph, suspend such license. In order for the court to impose
35 such suspension it must find that the accusatory instrument conforms to
36 the requirements of section 100.40 of the criminal procedure law and
37 there exists reasonable cause to believe either that (a) the holder
38 operated a motor vehicle while such holder had .08 of one percent or
39 more by weight of alcohol or was impaired by the ingestion of a drug or
40 drugs in his or her blood as was shown by chemical analysis of such
41 person's blood, breath, urine or [~~saliva~~] oral/bodily fluid, or by an
42 evaluation conducted by a certified drug recognition expert, or any
43 portion thereof, made pursuant to the provisions of section eleven
44 hundred ninety-four of this article or the driver makes a statement
45 admitting to driving while intoxicated by alcohol or while impaired by a
46 drug or drugs; or (b) the person was the holder of a class DJ or MJ
47 learner's permit or a class DJ or MJ driver's license and operated a
48 motor vehicle while such holder was in violation of subdivision one, two
49 and/or three of section eleven hundred ninety-two of this article. At
50 the time of such license suspension the holder shall be entitled to an
51 opportunity to make a statement regarding these two issues and to pres-
52 ent evidence tending to rebut the court's findings.

53 § 6. This act shall take effect on the first of November next succeed-
54 ing the date on which it shall have become a law.