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IN ASSEMBLY

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Introduced by M. of A. WOERNER, THIELE, SEAWRIGHT, DeSTEFANO, McDONOUGH, SIMON, WILLIAMS, WALLACE, JACOBSON, SILLITTI, STERN, LAVINE, ZINERMAN, ANGELINO, K. BROWN, FAHY -- Multi-Sponsored by -- M. of A. TAGUE -- read once and referred 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:

Section 1. Legislative findings. The legislature hereby finds and declares:

1. In 2009, New York adopted "Leandra's Law" to require, as a condition of sentence, that all individuals convicted of the crime of driving while intoxicated install an ignition interlock device (IID) for a specified time in any vehicle they own or operate. Fifteen years later, despite the mandate, only three in ten offenders actually install an IID.

2. In addition, although the penalty model based predominantly on license revocation persists, far too many offenders continue to drive even after losing their license privilege, and a significant number of them continue to drive under the influence of alcohol. The consensus among highway safety experts is that well over fifty percent, and as many as eighty percent, of revoked drivers continue to drive while unlicensed.

3. IIDs are designed to do two things: (1) protect the public by preventing drunk driving events; and (2) alter driver behavior to reduce recidivism. Numerous studies have shown IIDs to be overwhelmingly effective on both counts:

(a) Public safety. Between December 1, 2006 and December 31, 2020, IID installation stopped 3.8 million drivers nationally from attempting to drive while legally intoxicated (.08+) and foiled an additional 25.4 million drivers from attempting to drive after consuming enough alcohol

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

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

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

4. Given the empirical data that favors the use of the IID as a condition of sentence, either in conjunction with or instead of license revocation, the legislature finds that New York has fallen significantly behind other states that utilize IIDs to promote public safety and support rehabilitative efforts. Accordingly, the legislature declares that to further advance public safety, New York must adopt best practices consistent with the data for model use of the ignition interlock device as a proven method for saving lives and promoting rehabilitation.

§ 2. 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 subparagraph (ii-a) as added by chapter 191 of the laws of 2014, is amended to read as follows:

(c) Felony offenses. (i) A person who operates a vehicle (A) 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, within the preceding ten years, or (B) in violation of paragraph (b) of subdivision two-a of section eleven hundred ninety-two of this article shall be guilty of a class E felony, and shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(ii) 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, 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.~~]

§ 3. 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) Definitions. For the purposes of paragraphs (g) through (m) of this subdivision, the terms defined in subdivision one-a of section eleven hundred ninety-eight of this article shall be applicable.**

(2) Ignition interlock device; sentence. In addition to the imposition of any fine or period of imprisonment as set forth in this subdivision and to any license sanction imposed pursuant to subdivision two of this section, the court shall sentence such person convicted of, or adjudicated a youthful offender for, a violation of subdivision two, two-a, three or four-a of section eleven hundred ninety-two of this article to a period of probation or conditional discharge, the conditions of which shall include the following:

(i) an express prohibition on the operation of any motor vehicle without a functioning ignition interlock device from a qualified manufacturer for a period of twelve months or longer, pursuant to the requirements of this paragraph and paragraph (c) of subdivision one-a of this

section, and which shall run concurrently with any period of license sanction; and

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

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

(i) a conditional waiver of the license sanction provisions of subdivision two of this section;

(ii) an express prohibition from operating any vehicle without a functioning ignition interlock device for a period of twelve months or longer pursuant to the requirements of this paragraph and paragraph (c) of subdivision one-a of this section; and

(iii) an order that such person 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 for a period of twelve months or longer, as set forth in subparagraph four of this paragraph; provided, however, a certificate of completion certifying that such person has operated the motor vehicle free of any events as set forth in paragraph (j) of this subdivision for a period of three hundred consecutive days shall be deemed to have satisfied the conditions of probation or conditional discharge relating to the ignition interlock requirements as set forth in this paragraph. The period of interlock restriction shall commence on the date that such ignition interlock device shall have been installed. The alternative sentence set forth herein may be revoked by the court for cause. This sentence not be imposed on any offender who is subject to the additional penalties set forth in paragraph (a) or (b) of subdivision one-a of this section or who shall have also been convicted of a violation of any provision of article one hundred twenty or one hundred twenty-five of the penal law involving the operation of a motor vehicle.

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

subdivision shall cause the respective period of operation to reset from the date of any such violation.

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

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

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

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

(2) an express prohibition on the operation of any motor vehicle without a functioning ignition interlock device for a period of twenty-four months as set forth in this paragraph; and

(3) such person shall 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, for a period of twenty-four months. Where all other conditions or the sentence have been satisfied pursuant to subparagraph one of this paragraph, there shall be a rebuttable presumption of rehabilitation for the purpose of petitioning the commissioner for restoration of the operator's license to operate a motor vehicle upon a certificate of completion certifying that such person has operated such motor vehicle free of any violations of this chapter, excepting violations related to standing, stopping or parking, and has been free of any events set forth in paragraph (j) of this subdivision during the post-revocation conditional license period. A violation of section five hundred eleven of this chapter, any provision of section eleven hundred ninety-two of this article, or refusal to submit to a chemical test pursuant to section eleven hundred ninety-four of this article during the post-revocation conditional license period will result in immediate revocation of such license subject to the rules of the commissioner. The period of interlock restriction shall commence on the date that such ignition interlock device shall have been installed.

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

(1) any violation of the provisions set forth in subdivision nine of section eleven hundred ninety-eight of this article regarding circumventing or tampering with an ignition interlock device or operating a vehicle without a functioning interlock device, regardless of the underlying basis for the ignition interlock requirement; or

(2) a certified violation on a form provided by the division of criminal justice services that such person has:

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

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

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

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

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

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

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

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

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

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

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

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

1. Applicability. The provisions of this section shall apply throughout the state to each person required or otherwise ordered by a court as

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

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

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

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

(c) The term "circumvent" shall mean to request, solicit or allow any other person to blow into an ignition interlock device or to start a motor vehicle equipped with the device, for the purpose of providing the operator whose driving privileges is so restricted with an operable motor vehicle, or to blow into an ignition interlock device or start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to a person whose driving privilege is so restricted or to tamper with an operable ignition interlock device.

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

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

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

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

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

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

(j) The term "operator" shall mean a person who is subject to installation of an ignition interlock device arising from a charge or conviction under this article or the penal law, where a violation of this article is an essential element thereof, or arising from a youthful adjudication of any such offense.

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

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

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

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

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

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

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

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

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

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

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

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

2. Requirements. (a) In addition to any other penalties prescribed by law, the court shall require that any person who has been convicted [~~of~~] 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 article**, 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 this subdivision shall be valid only for use by the holder thereof, (1) [~~enroute~~] **en route** to and from the holder's place of employment, (2) if the holder's employment requires the operation of a motor vehicle then during the hours thereof, (3) [~~enroute~~] **en route** to and from a class or course at an accredited school, college or university or at a state approved institution of vocational or technical training, (4) to and from court ordered probation activities, (5) to and from a motor vehicle office for the transaction of business relating to such license, (6) for a three hour consecutive daytime period, chosen by the department, on a day during which the participant is not engaged in usual employment or vocation, (7) [~~enroute~~] **en route** to and from a medical examination or treatment as part of a necessary medical treatment for such participant or member of the participant's household, as evidenced by a written

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

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

(d) Nothing contained herein shall prohibit the court from requiring, as a condition of probation or conditional discharge, the installation of a functioning ignition interlock device in any vehicle owned or operated by a person sentenced for a violation of subdivision two, two-a, [~~or~~] three **or four-a** of section eleven hundred ninety-two of this [~~chapter~~] **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 [~~chapter~~] **article** is an essential element, if the court in its discretion, determines that such a condition is necessary to ensure the public safety. Imposition of an ignition interlock condition shall in no way limit the effect of any period of license suspension or revocation set forth by the commissioner or the court.

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

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

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

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

(b) When a court imposes the condition specified in subdivision one of this section, the court shall notify the commissioner in such manner as the commissioner may prescribe, and the commissioner shall note such condition on the operating record of the person subject to such conditions.

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

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

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

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

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

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

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

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

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