

STATE OF NEW YORK

3135

2023-2024 Regular Sessions

IN SENATE

January 27, 2023

Introduced by Sens. MANNION, ADDABBO, TEDISCO, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, 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

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

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1 subdivision 2 as amended by chapter 196 of the laws of 1996, paragraphs
2 (b) and (c) of subdivision 2 as amended by chapter 489 of the laws of
3 2017, clause (A) of subparagraph 1, subparagraphs 2 and 3 of paragraph
4 (b), subparagraphs 1, 2 and 3 of paragraph (c) of subdivision 2 as
5 amended by chapter 27 of the laws of 2018, subparagraphs 1 and 2 of
6 paragraph (d) of subdivision 2 as amended by chapter 732 of the laws of
7 2006, and item (iii) of clause c of subparagraph 1 of paragraph (d) of
8 subdivision 2 as amended by section 37 of part LL of chapter 56 of the
9 laws of 2010, are amended to read as follows:

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

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

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

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

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

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

51 (3) for the purposes of this paragraph, "reasonable grounds" to
52 believe that a person has been operating a motor vehicle after having
53 consumed alcohol in violation of section eleven hundred ninety-two-a of
54 this article shall be determined by viewing the totality of circum-
55 stances surrounding the incident which, when taken together, indicate
56 that the operator was driving in violation of such subdivision. Such

1 circumstances may include any visible or behavioral indication of alco-
2 hol consumption by the operator, the existence of an open container
3 containing or having contained an alcoholic beverage in or around the
4 vehicle driven by the operator, or any other evidence surrounding the
5 circumstances of the incident which indicates that the operator has been
6 operating a motor vehicle after having consumed alcohol at the time of
7 the incident; or

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

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

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

1 210.45 of the penal law and such form notice together with the
2 subscription of the deponent shall constitute a verification of the
3 report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 subdivision thirty-two of section 1.20 of the criminal procedure law,
2 requests and obtains a court order to compel a person to submit to a
3 chemical test to determine the alcoholic [~~or~~] and/or drug content of the
4 person's blood or oral/bodily fluids upon a finding of reasonable cause
5 to believe that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 paragraphs (a), (b) and (c) of subdivision four of this section shall be
2 applicable to any chemical test administered pursuant to this section.

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

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

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

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