

# STATE OF NEW YORK

775

2023-2024 Regular Sessions

## IN SENATE

January 6, 2023

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

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

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

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

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

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

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

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1 sections 120.03 and 120.04 and aggravated vehicular assault as defined  
2 in section 120.04-a of the penal law or of vehicular manslaughter in the  
3 second or first degree, as defined, respectively, in sections 125.12 and  
4 125.13 and aggravated vehicular homicide as defined in section 125.14 of  
5 such law, twice within the preceding ten years, shall be guilty of a  
6 class D felony, and shall be punished by a fine of not less than two  
7 thousand dollars nor more than ten thousand dollars or by a period of  
8 imprisonment as provided in the penal law, or by both such fine and  
9 imprisonment.

10 (ii-a) A person who operates a vehicle in violation of subdivision  
11 two, two-a, three, four or four-a of section eleven hundred ninety-two  
12 of this article after having been convicted of a violation of subdivi-  
13 sion two, two-a, three, four or four-a of such section or of vehicular  
14 assault in the second or first degree, as defined, respectively, in  
15 sections 120.03 and 120.04 and aggravated vehicular assault as defined  
16 in section 120.04-a of the penal law or of vehicular manslaughter in the  
17 second or first degree, as defined, respectively, in sections 125.12 and  
18 125.13 and aggravated vehicular homicide as defined in section 125.14 of  
19 such law, three or more times within the preceding fifteen years, shall  
20 be guilty of a class D felony, and shall be punished by a fine of not  
21 less than two thousand dollars nor more than ten thousand dollars or by  
22 a period of imprisonment as provided in the penal law, or by both such  
23 fine and imprisonment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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