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Introduced by M. of A. WOERNER, STERN, McMAHON, HEVESI, McDONALD, KAY, SHIMSKY, KASSAY, ANGELINO, McDONOUGH, TAGUE, K. BROWN, DeSTEFANO, CHANG, DAVILA, BUTTENSCHON, REYES, WALSH, HAWLEY, MAHER, SIMON, DINOWITZ, WILLIAMS, SEAWRIGHT, SCHIAVONI, LUPARDO, ZINERMAN, GRIFFIN, CUNNINGHAM, CLARK, STIRPE, BURDICK, STECK, PAULIN, EACHUS -- read once and referred to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Transportation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

1 Section 1. Subparagraph (ii) of paragraph (b) of subdivision 1 of
2 section 1193 of the vehicle and traffic law, as amended by chapter 169
3 of the laws of 2013, is amended to read as follows:
4 (ii) In addition to the imposition of any fine or period of imprison-
5 ment set forth in this paragraph, the court shall also sentence such
6 person convicted of, or adjudicated a youthful offender for, a violation
7 of subdivision two, two-a or three of section eleven hundred ninety-two
8 of this article to a term of probation or conditional discharge, and as
9 a condition of [~~which it~~] such probation or conditional discharge, shall
10 order such person to install and maintain, in accordance with the
11 provisions of section eleven hundred ninety-eight of this article, [~~an~~
12 a functioning ignition interlock device in any motor vehicle owned or
13 operated by such person so sentenced during the term of such probation
14 or conditional discharge [~~imposed for such violation of section eleven~~
15 ~~hundred ninety-two of this article~~] and in no event for a period of less
16 than twelve months[~~, provided, however, that such~~]. Such devices shall

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

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1 remain installed and maintained during any period of license revocation
2 required to be imposed pursuant to paragraph (b) of subdivision two of
3 this section, and, upon the termination of such revocation period shall
4 remain installed, maintained and regularly used by such person, for an
5 additional period as determined by the court, and in no event for a
6 period of less than six months. Such period of interlock restriction
7 shall terminate upon submission of proof that such person installed and
8 maintained a functioning ignition interlock device during the period of
9 revocation and, as permitted by the commissioner, installed, maintained
10 and regularly used an ignition interlock device post-revocation for at
11 least six continuous months, unless the court ordered such person to
12 install [~~and~~], maintain and regularly use an ignition interlock device
13 for a longer period as authorized by this subparagraph and specified in
14 such order. Provided, however, that upon such person's failure to submit
15 proof of compliance with the interlock restriction prior to the expira-
16 tion or termination of such period of probation or conditional
17 discharge, the court shall impose an additional period of probation or
18 conditional discharge and in no event for a period of less than six
19 months. The period of interlock restriction shall commence from the
20 earlier of the date of sentencing, or the date that an ignition inter-
21 lock device was installed in advance of sentencing. Provided, however,
22 the court may not authorize the operation of a motor vehicle by any
23 person whose license or privilege to operate a motor vehicle has been
24 revoked pursuant to the provisions of this section.

25 § 2. Subparagraph (iii) of paragraph (c) of subdivision 1 of section
26 1193 of the vehicle and traffic law, as amended by chapter 169 of the
27 laws of 2013, is amended to read as follows:

28 (iii) In addition to the imposition of any fine or period of imprison-
29 ment set forth in this paragraph, the court shall also sentence such
30 person convicted of, or adjudicated a youthful offender for, a violation
31 of subdivision two, two-a or three of section eleven hundred ninety-two
32 of this article to a period of probation or conditional discharge, and
33 as a condition of [~~which it~~] such probation or conditional discharge,
34 shall order such person to install and maintain, in accordance with the
35 provisions of section eleven hundred ninety-eight of this article, [~~an~~]
36 a functioning ignition interlock device in any motor vehicle owned or
37 operated by such person so sentenced during the term of such probation
38 or conditional discharge [~~imposed for such violation of section eleven~~
39 ~~hundred ninety-two of this article~~] and in no event for a period of less
40 than twelve months[~~, provided, however, that such~~]. Such devices shall
41 remain installed and maintained during any period of license revocation
42 required to be imposed pursuant to paragraph (b) of subdivision two of
43 this section, and, upon the termination of such revocation period shall
44 remain installed, maintained and regularly used by such person, for an
45 additional period as determined by the court, and in no event for a
46 period of less than six months. Such period of interlock restriction
47 shall terminate upon submission of proof that such person installed and
48 maintained a functioning ignition interlock device during the period of
49 revocation and, as permitted by the commissioner, installed, maintained
50 and regularly used an ignition interlock device post-revocation for at
51 least six continuous months, unless the court ordered such person to
52 install [~~and~~], maintain [~~a~~] and regularly use an ignition interlock
53 device for a longer period as authorized by this subparagraph and speci-
54 fied in such order. Provided, however, that upon such person's failure
55 to submit proof of compliance with the interlock restriction prior to
56 the expiration or termination of such period of probation or conditional

1 discharge, the court shall impose an additional period of probation or
2 conditional discharge and in no event for a period of less than six
3 months. The period of interlock restriction shall commence from the
4 earlier of the date of sentencing, or the date that an ignition inter-
5 lock device was installed in advance of sentencing. Provided, however,
6 the court may not authorize the operation of a motor vehicle by any
7 person whose license or privilege to operate a motor vehicle has been
8 revoked pursuant to the provisions of this section.

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

12 (c) A court sentencing a person pursuant to paragraph (a) or (b) of
13 this subdivision shall: (i) order the installation and maintenance of an
14 ignition interlock device approved pursuant to section eleven hundred
15 ninety-eight of this article in any motor vehicle owned or operated by
16 the person so sentenced. Such devices shall remain installed and main-
17 tained during any period of license revocation required to be imposed
18 pursuant to paragraph (b) of subdivision two of this section, and, upon
19 the termination of such revocation period shall remain installed, main-
20 tained and regularly used by the person for an additional period as
21 determined by the court and in no event for a period of less than six
22 months; and (ii) order that such person receive an assessment of the
23 degree of their alcohol or substance abuse and dependency pursuant to
24 the provisions of section eleven hundred ninety-eight-a of this article.
25 Where such assessment indicates the need for treatment, such court is
26 authorized to impose treatment as a condition of such sentence except
27 that such court shall impose treatment as a condition of a sentence of
28 probation or conditional discharge pursuant to the provisions of subdivi-
29 sion three of section eleven hundred ninety-eight-a of this article.
30 Any person ordered to install, maintain and regularly use an ignition
31 interlock device pursuant to this paragraph shall be subject to the
32 provisions of subdivisions four, five, seven, eight and nine of section
33 eleven hundred ninety-eight of this article.

34 § 4. Subdivision 1 of section 1198 of the vehicle and traffic law,
35 as amended by chapter 496 of the laws of 2009, is amended to read as
36 follows:

37 1. Applicability. The provisions of this section shall apply through-
38 out the state to each person required or otherwise ordered by a court as
39 a condition of probation or conditional discharge to install and operate
40 an ignition interlock device in any vehicle which [~~he or she owns~~] they
41 own or [~~operates~~] operate.

42 § 5. Paragraphs (a) and (b) of subdivision 2 of section 1198 of the
43 vehicle and traffic law, as amended by chapter 496 of the laws of 2009,
44 are amended to read as follows:

45 (a) In addition to any other penalties prescribed by law, the court
46 shall require [~~that~~] any person who has been convicted of a violation of
47 subdivision two, two-a or three of section eleven hundred ninety-two of
48 this article, or any crime defined by this chapter or the penal law of
49 which an alcohol-related violation of any provision of section eleven
50 hundred ninety-two of this article is an essential element, to install
51 and maintain, as a condition of probation or conditional discharge, a
52 functioning ignition interlock device in accordance with the provisions
53 of this section and, as applicable, in accordance with the provisions of
54 subdivisions one and one-a of section eleven hundred ninety-three of
55 this article; provided, however, the court may not authorize the opera-
56 tion of a motor vehicle by any person whose license or privilege to

1 operate a motor vehicle has been revoked except as provided herein. For
2 any such individual subject to a sentence of probation, installation and
3 maintenance of such ignition interlock device shall be a condition of
4 probation. Such devices shall remain installed and maintained during any
5 period of license revocation required to be imposed pursuant to para-
6 graph (b) of subdivision two of section eleven hundred ninety-two of
7 this article, and, upon the termination of such revocation period, as a
8 condition of probation or conditional discharge, shall remain installed,
9 maintained and regularly used by such person for an additional period as
10 determined by the court and in no event for a period of less than six
11 months. Nothing contained in this section shall prohibit the court from
12 modifying or enlarging the sentence of probation or conditional
13 discharge as provided under law, and, upon such person's failure to
14 submit proof of compliance with the interlock restriction prior to the
15 expiration or termination of such period of probation or conditional
16 discharge, the court shall impose an additional period of probation or
17 conditional discharge and in no event for a period of less than six
18 months.

19 (b) Nothing contained in this section shall prohibit a court, upon
20 application by a probation department, from modifying the conditions of
21 probation of any person convicted of any violation set forth in para-
22 graph (a) of this subdivision prior to the effective date of this
23 section, to require the installation [~~and~~], maintenance and regular use
24 of a functioning ignition interlock device, and such person shall there-
25 after be subject to the provisions of this section.

26 § 6. Paragraph (a) of subdivision 3 of section 1198 of the vehicle and
27 traffic law, as amended by chapter 496 of the laws of 2009, is amended
28 to read as follows:

29 (a) Notwithstanding any other provision of law, the commissioner may
30 grant a post-revocation conditional license, as set forth in paragraph
31 (b) of this subdivision, to a person who has been convicted of a
32 violation of subdivision two, two-a or three of section eleven hundred
33 ninety-two of this article and who has been sentenced to a period of
34 probation or conditional discharge, provided the person has satisfied
35 the minimum period of license revocation established by law, provides
36 proof to the commissioner of installation and maintenance of a function-
37 ing ignition interlock device in a vehicle owned or operated by such
38 person for the duration of the revocation period, and the commissioner
39 has been notified that such person may operate only a motor vehicle
40 equipped with a functioning ignition interlock device. No such request
41 shall be made nor shall such a license be granted, however, if such
42 person has been found by a court to have committed a violation of
43 section five hundred eleven of this chapter during the license revoca-
44 tion period or deemed by a court to have violated any condition of
45 probation or conditional discharge set forth by the court relating to
46 the operation of a motor vehicle or the consumption of alcohol. In exer-
47 cising discretion relating to the issuance of a post-revocation condi-
48 tional license pursuant to this subdivision, the commissioner shall not
49 deny such issuance based solely upon the number of convictions for
50 violations of any subdivision of section eleven hundred ninety-two of
51 this article committed by such person within the ten years prior to
52 application for such license. Upon the termination of the period of
53 probation or conditional discharge set by the court, the person may
54 apply to the commissioner for restoration of a license or privilege to
55 operate a motor vehicle in accordance with this chapter, provided such
56 person submits proof of compliance of installation, maintenance and

1 regular use of an ignition interlock device post-revocation for a period
2 of at least six continuous months or a finding by the court of good
3 cause for such failure in accordance with this section.

4 § 7. Paragraph (a) of subdivision 4 of section 1198 of the vehicle and
5 traffic law, as amended by chapter 169 of the laws of 2013, is amended
6 to read as follows:

7 (a) Following imposition by the court of the use of an ignition inter-
8 lock device as a condition of probation or conditional discharge it
9 shall require the person to provide proof of compliance with this
10 section to the court and the probation department or other monitor where
11 such person is under probation or conditional discharge supervision. If
12 the person fails to provide for such proof (i) of installation during
13 the period of revocation of a license or privilege to operate a motor
14 vehicle and (ii) of installation, maintenance and regular use post-revo-
15 cation for a period of at least six continuous months, absent a finding
16 by the court of good cause for [~~that failure~~] such failures which is
17 entered in the record, the court may revoke, modify, or terminate the
18 person's sentence of probation or conditional discharge as provided
19 under law. Good cause [~~may include~~] includes a finding that the person
20 is not the owner of a motor vehicle if such person asserts under oath
21 that such person is not the owner of any motor vehicle, did not own a
22 motor vehicle at the time of arrest for the subject violation, does not
23 reside with a spouse who owns a vehicle such person drives at least
24 occasionally, is not an adjudicated youthful offender who resides with a
25 parent or legal guardian who owns a vehicle such offender drives at
26 least occasionally, and [~~that he or she~~] will not operate any motor
27 vehicle during the period of interlock restriction except as may be
28 otherwise authorized pursuant to law. "Owner" shall have the same mean-
29 ing as provided in section one hundred twenty-eight of this chapter.

30 § 8. Subdivision 5 of section 1198 of the vehicle and traffic law is
31 amended by adding a new paragraph (c) to read as follows:

32 (c) Notwithstanding any other provision of law to the contrary, once a
33 court-ordered ignition interlock device is installed, a person may start
34 their car while it is parked during a period of license suspension or
35 revocation in order to preserve the battery life of the vehicle without
36 incurring any penalty or fine or otherwise violating the terms of their
37 suspension or revocation.

38 § 9. Section 1198 of the vehicle and traffic law is amended by adding
39 a new subdivision 11 to read as follows:

40 11. Continuous use standards. The commissioner shall establish guide-
41 lines, rules or regulations setting forth the minimum standards a person
42 shall meet to establish proof of compliance with the continuous and
43 regular use requirements of this section.

44 § 10. Paragraph (d) of subdivision 3 of section 65.00 of the penal
45 law, as amended by chapter 556 of the laws of 2013, is amended to read
46 as follows:

47 (d) For an unclassified misdemeanor, the period of probation shall be
48 a term of two or three years if the authorized sentence of imprisonment
49 is in excess of three months, otherwise the period of probation shall be
50 one year. Where the court has required, as a condition of the sentence
51 for a violation of subdivision two, two-a or three of section eleven
52 hundred ninety-two of the vehicle and traffic law, that the defendant
53 install, maintain and regularly use an ignition interlock device for at
54 least six continuous months and such condition has not been satisfied,
55 the court, at any time prior to the expiration or termination of the
56 period of probation, may impose an additional period. The length of the

1 additional period shall be fixed by the court at the time it is imposed
2 and shall not be more than two years. All of the incidents of the
3 original sentence, including the authority of the court to modify or
4 enlarge the conditions, shall continue to apply during such additional
5 period.

6 § 11. The closing paragraph of subdivision 3 of section 65.05 of the
7 penal law, as amended by chapter 618 of the laws of 1992, is amended to
8 read as follows:

9 Where the court has required, as a condition of the sentence, that the
10 defendant make restitution of the fruits of [~~his or her~~] such defend-
11 ant's offense [~~ex~~], make reparation for the loss caused thereby, or
12 install, maintain and regularly use an ignition interlock device for at
13 least six continuous months pursuant to a sentence for a violation of
14 subdivision two, two-a or three of section eleven hundred ninety-two of
15 the vehicle and traffic law, and such condition has not been satisfied,
16 the court, at any time prior to the expiration or termination of the
17 period of conditional discharge, may impose an additional period. The
18 length of the additional period shall be fixed by the court at the time
19 it is imposed and shall not be more than two years. All of the incidents
20 of the original sentence, including the authority of the court to modify
21 or enlarge the conditions, shall continue to apply during such addi-
22 tional period.

23 § 12. This act shall take effect on the ninetieth day after it shall
24 have become a law, provided, however, that the amendments to section
25 1198 of the vehicle and traffic law made by sections four, five, six,
26 seven, eight and nine of this act shall not affect the expiration and
27 repeal of such section and shall be deemed repealed therewith. Effec-
28 tive immediately, the addition, amendment and/or repeal of any rule or
29 regulation necessary for the implementation of this act on its effective
30 date are authorized to be made and completed on or before such effective
31 date.