STATE OF NEW YORK

3981--B

2025-2026 Regular Sessions

IN ASSEMBLY

January 30, 2025

Introduced by M. of A. MAGNARELLI, STERN, WOERNER, BUTTENSCHON, BURDICK, STIRPE, McMAHON, JACOBSON, DINOWITZ, SHIMSKY, DE LOS SANTOS, SIMON, LEVENBERG, BERGER, PHEFFER AMATO, CONRAD, McDONOUGH, FALL, LUNSFORD, DAVILA, JONES, TAPIA, GRIFFIN, McDONALD, YEGER, COLTON, STECK, KASSAY, SEAWRIGHT, SCHIAVONI, O'PHARROW, ANDERSON, LUPARDO, KAY, BRONSON, CLARK, FORREST, OTIS, WIEDER, P. CARROLL, BARRETT, EACHUS, PAULIN, LASHER, LAVINE, TORRES, R. CARROLL, ALVAREZ, RAGA, ROZIC, SANTABARBARA, TAYLOR, SAYEGH, WEPRIN, CUNNINGHAM, ZACCARO, WILLIAMS, SIMONE -- read once and referred to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the vehicle and traffic law, in relation to procedures relating to driving while ability impaired by drugs; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Section 119-b of the vehicle and traffic law is renumbered 119-c and a new section 119-b is added to read as follows:

§ 119-b. Impaired. Impairment is reached when a driver has voluntarily consumed or ingested alcohol or any substance listed in section thirty-three hundred six of the public health law and cannabis and concentrated cannabis as defined in section 222.00 of the penal law to the extent that the driver has impaired, to any extent, the physical and mental abilities which a driver is expected to possess in order to operate a vehicle as a reasonable and prudent driver.

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

§ 120-a. Intoxication. Intoxication is a greater degree of impairment which is reached when a driver has voluntarily consumed or ingested alcohol or a substance or combination of substances to the extent that

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

LBD00438-09-5

the driver is incapable, to a substantial extent, of employing the physical and mental abilities which a driver is expected to possess in order to operate a vehicle as a reasonable and prudent driver.

§ 3. Subdivisions 1, 2 and 3 of section 1194 of the vehicle and traffic law, as added by chapter 47 of the laws of 1988, paragraph (a) of subdivision 2 as amended by chapter 196 of the laws of 1996, paragraphs (b) and (c) of subdivision 2 as amended by chapter 489 of the laws of 2017, clause (A) of subparagraph 1, subparagraphs 2 and 3 of paragraph (b) and subparagraphs 1, 2 and 3 of paragraph (c) of subdivision 2 as amended by chapter 27 of the laws of 2018, subparagraphs 1 and 2 of paragraph (d) of subdivision 2 as amended by chapter 732 of the laws of 2006, and item (iii) of clause c of subparagraph 1 of paragraph (d) of subdivision 2 as amended by section 37 of part LL of chapter 56 of the laws of 2010, are amended to read as follows:

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

(b) Field testing. Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this chapter shall, at the request of a police officer, submit to a breath test **and/or oral/bodily fluid test** to be administered by the police officer. If such test indicates that such operator has consumed alcohol **or a drug or drugs**, the police officer may request such operator to submit to a chemical test in the manner set forth in subdivision two of this section.

(c) Refusal to submit to a breath test and/or oral/bodily fluid test pursuant to paragraph (b) of this subdivision shall be a traffic infraction.

2. Chemical tests. (a) When authorized. Any person who operates a motor vehicle in this state shall be deemed to have given consent to a chemical test of one or more of the following: breath, blood, urine, or [~~saliva~~] **oral/bodily fluid**, for the purpose of determining the alcoholic and/or drug content [~~of the blood~~] provided that such test is administered by or at the direction of a police officer with respect to a chemical test of breath, urine or [~~saliva~~] **oral/bodily fluid** or, with respect to a chemical test of blood, at the direction of a police officer[~~:~~

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

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

~~(3) for the purposes of this paragraph, "reasonable grounds" to believe that a person has been operating a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of~~

~~this article shall be determined by viewing the totality of circumstances surrounding the incident which, when taken together, indicate that the operator was driving in violation of such subdivision. Such circumstances may include any visible or behavioral indication of alcohol consumption by the operator, the existence of an open container containing or having contained an alcoholic beverage in or around the vehicle driven by the operator, or any other evidence surrounding the circumstances of the incident which indicates that the operator has been operating a motor vehicle after having consumed alcohol at the time of the incident; or~~

~~(4) notwithstanding any other provision of law to the contrary, no person under the age of twenty-one shall be arrested for an alleged violation of section eleven hundred ninety-two-a of this article. However, a person under the age of twenty-one for whom a chemical test is authorized pursuant to this paragraph may be temporarily detained by the police solely for the purpose of requesting or administering such chemical test whenever arrest without a warrant for a petty offense would be authorized in accordance with the provisions of section 140.10 of the criminal procedure law or paragraph (a) of subdivision one of this section~~].

(b) Report of refusal. [~~(1)~~] If: [~~(A)~~] **(1)** such person having been placed under arrest; or [~~(B)~~] **(2)** after a breath **and/or oral/bodily fluid** test indicates the presence of alcohol **and/or a drug or drugs** in the person's system; or [~~(C)~~] **(3)** with regard to a person under the age of twenty-one, there are reasonable grounds to believe that such person has been operating a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article; and having thereafter been requested to submit to such chemical test and having been informed that the person's license or permit to drive and any non-resident operating privilege shall be immediately suspended and subsequently revoked, or, for operators under the age of twenty-one for whom there are reasonable grounds to believe that such operator has been operating a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article, shall be revoked for refusal to submit to such chemical test or any portion thereof, whether or not the person is found guilty of the charge for which such person is arrested or detained, refuses to submit to such chemical test or any portion thereof, [~~unless a court order has been granted pursuant to subdivision three of this section,~~] the test shall not be given and a written report of such refusal shall be immediately made by the police officer before whom such refusal was made. Such report may be verified by having the report sworn to, or by affixing to such report a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law and such form notice together with the subscription of the deponent shall constitute a verification of the report.

[~~(2) The report of the police officer shall set forth reasonable grounds to believe such arrested person or such detained person under the age of twenty-one had been driving in violation of any subdivision of section eleven hundred ninety-two or eleven hundred ninety-two-a of this article, that said person had refused to submit to such chemical test, and that no chemical test was administered pursuant to the requirements of subdivision three of this section. The report shall be presented to the court upon arraignment of an arrested person, provided, however, in the case of a person under the age of twenty-one, for whom a test was authorized pursuant to the provisions of subparagraph two or~~

~~three of paragraph (a) of this subdivision, and who has not been placed under arrest for a violation of any of the provisions of section eleven hundred ninety-two of this article, such report shall be forwarded to the commissioner within forty-eight hours in a manner to be prescribed by the commissioner, and all subsequent proceedings with regard to refusal to submit to such chemical test by such person shall be as set forth in subdivision three of section eleven hundred ninety-four-a of this article.~~

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

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

~~(c) Hearings. Any person whose license or permit to drive or any non-resident driving privilege has been suspended pursuant to paragraph (b) of this subdivision is entitled to a hearing in accordance with a hearing schedule to be promulgated by the commissioner. If the department fails to provide for such hearing fifteen days after the date of the arraignment of the arrested person, the license, permit to drive or non-resident operating privilege of such person shall be reinstated pending a hearing pursuant to this section. The hearing shall be limited to the following issues: (1) did the police officer have reasonable grounds to believe that such person had been driving in violation of any subdivision of section eleven hundred ninety-two of this article; (2) did the police officer make a lawful arrest of such person; (3) was such person given sufficient warning, in clear or unequivocal language, prior to such refusal that such refusal to submit to such chemical test or any portion thereof, would result in the immediate suspension and subsequent revocation of such person's license or operating privilege whether or not such person is found guilty of the charge for which the arrest was made; and (4) did such person refuse to submit to such chemical test or any portion thereof. If, after such hearing, the hearing officer, acting on behalf of the commissioner, finds on any one of said issues in the negative, the hearing officer shall immediately terminate any suspension arising from such refusal. If, after such hearing, the hearing officer, acting on behalf of the commissioner finds all of the issues in the affirmative, such officer shall immediately revoke the license or permit to drive or any non-resident operating privilege in accordance with the provisions of paragraph (d) of this subdivision. A person who has had a license or permit to drive or non-resident operating privilege suspended or revoked pursuant to this subdivision may~~

~~appeal the findings of the hearing officer in accordance with the provisions of article three-A of this chapter. Any person may waive the right to a hearing under this section. Failure by such person to appear for the scheduled hearing shall constitute a waiver of such hearing, provided, however, that such person may petition the commissioner for a new hearing which shall be held as soon as practicable.~~

~~(d) Sanctions. (1) Revocations. a. Any license which has been revoked pursuant to paragraph (c) of this subdivision shall not be restored for at least one year after such revocation, nor thereafter, except in the discretion of the commissioner. However, no such license shall be restored for at least eighteen months after such revocation, nor thereafter except in the discretion of the commissioner, in any case where the person has had a prior revocation resulting from refusal to submit to a chemical test, or has been convicted of or found to be in violation of any subdivision of section eleven hundred ninety-two or section eleven hundred ninety-two-a of this article not arising out of the same incident, within the five years immediately preceding the date of such revocation; provided, however, a prior finding that a person under the age of twenty-one has refused to submit to a chemical test pursuant to subdivision three of section eleven hundred ninety-four-a of this article shall have the same effect as a prior finding of a refusal pursuant to this subdivision solely for the purpose of determining the length of any license suspension or revocation required to be imposed under any provision of this article, provided that the subsequent offense or refusal is committed or occurred prior to the expiration of the retention period for such prior refusal as set forth in paragraph (k) of subdivision one of section two hundred one of this chapter.~~

~~b. Any license which has been revoked pursuant to paragraph (c) of this subdivision or pursuant to subdivision three of section eleven hundred ninety-four-a of this article, where the holder was under the age of twenty-one years at the time of such refusal, shall not be restored for at least one year, nor thereafter, except in the discretion of the commissioner. Where such person under the age of twenty-one years has a prior finding, conviction or youthful offender adjudication resulting from a violation of section eleven hundred ninety-two or section eleven hundred ninety-two-a of this article, not arising from the same incident, such license shall not be restored for at least one year or until such person reaches the age of twenty-one years, whichever is the greater period of time, nor thereafter, except in the discretion of the commissioner.~~

~~c. Any commercial driver's license which has been revoked pursuant to paragraph (c) of this subdivision based upon a finding of refusal to submit to a chemical test, where such finding occurs within or outside of this state, shall not be restored for at least eighteen months after such revocation, nor thereafter, except in the discretion of the commissioner, but shall not be restored for at least three years after such revocation, nor thereafter, except in the discretion of the commissioner, if the holder of such license was operating a commercial motor vehicle transporting hazardous materials at the time of such refusal. However, such person shall be permanently disqualified from operating a commercial motor vehicle in any case where the holder has a prior finding of refusal to submit to a chemical test pursuant to this section or has a prior conviction of any of the following offenses: any violation of section eleven hundred ninety-two of this article; any violation of subdivision one or two of section six hundred of this chapter; or has a prior conviction of any felony involving the use of a motor vehicle~~

~~pursuant to paragraph (a) of subdivision one of section five hundred ten-a of this chapter. Provided that the commissioner may waive such permanent revocation after a period of ten years has expired from such revocation provided:~~

~~(i) that during such ten year period such person has not been found to have refused a chemical test pursuant to this section and has not been convicted of any one of the following offenses: any violation of section eleven hundred ninety-two of this article; refusal to submit to a chemical test pursuant to this section; any violation of subdivision one or two of section six hundred of this chapter; or has a prior conviction of any felony involving the use of a motor vehicle pursuant to paragraph (a) of subdivision one of section five hundred ten-a of this chapter;~~

~~(ii) that such person provides acceptable documentation to the commissioner that such person is not in need of alcohol or drug treatment or has satisfactorily completed a prescribed course of such treatment; and~~

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

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

~~(2) Civil penalties. Except as otherwise provided, any person whose license, permit to drive, or any non-resident operating privilege is revoked pursuant to the provisions of this section shall also be liable for a civil penalty in the amount of five hundred dollars except that if such revocation is a second or subsequent revocation pursuant to this section issued within a five year period, or such person has been convicted of a violation of any subdivision of section eleven hundred ninety-two of this article within the past five years not arising out of the same incident, the civil penalty shall be in the amount of seven hundred fifty dollars. Any person whose license is revoked pursuant to the provisions of this section based upon a finding of refusal to submit to a chemical test while operating a commercial motor vehicle shall also be liable for a civil penalty of five hundred fifty dollars except that if such person has previously been found to have refused a chemical test pursuant to this section while operating a commercial motor vehicle or has a prior conviction of any of the following offenses while operating a commercial motor vehicle: any violation of section eleven hundred ninety-two of this article; any violation of subdivision two of section six hundred of this chapter; or has a prior conviction of any felony involving the use of a commercial motor vehicle pursuant to paragraph (a) of subdivision one of section five hundred ten-a of this chapter, then the civil penalty shall be seven hundred fifty dollars. No new driver's license or permit shall be issued, or non-resident operating privilege restored to such person unless such penalty has been paid. All penalties collected by the department pursuant to the provisions of this section shall be the property of the state and shall be paid into the general fund of the state treasury.~~

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

~~(e) Regulations. The commissioner shall promulgate such rules and regulations as may be necessary to effectuate the provisions of subdivisions one and two of this section.~~

~~(f) Evidence. Evidence of a refusal to submit to such chemical test or any portion thereof shall be admissible in any trial, proceeding or hearing based upon a violation of the provisions of section eleven hundred ninety-two of this article but only upon a showing that the person was given sufficient warning, in clear and unequivocal language, of the effect of such refusal and that the person persisted in the refusal.~~

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

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

(b) When authorized. Upon refusal by any person to submit to a chemical test or any portion thereof as described above, the test shall not be given unless a police officer or a district attorney, as defined in subdivision thirty-two of section 1.20 of the criminal procedure law, requests and obtains a court order to compel a person to submit to a chemical test to determine the alcoholic [~~or~~] **and/or** drug content of the person's blood **or oral/bodily fluids** upon a finding of reasonable cause to believe that:

(1) such person was the operator of a motor vehicle and in the course of such operation [~~a person other than the operator was killed or suffered serious physical injury as defined in section 10.00 of the penal law~~]; and

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

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

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

(4) such person has refused to submit to a chemical test or any portion thereof, requested in accordance with the provisions of paragraph (a) of subdivision two of this section or is unable to give consent to such a test.

(c) Reasonable cause; definition. For the purpose of this subdivision "reasonable cause" shall be determined by viewing the totality of circumstances surrounding the incident which, when taken together, indicate that the operator was driving in violation of section eleven hundred ninety-two of this article. Such circumstances may include, but are not limited to: evidence that the operator was operating a motor vehicle in violation of any provision of this article or any other moving violation at the time of the incident; any visible indication of alcohol or drug consumption or impairment by the operator; the existence of an open container containing an alcoholic beverage **and/or a drug or drugs** in or around the vehicle driven by the operator; any other evidence surrounding the circumstances of the incident which indicates that the operator has been operating a motor vehicle while impaired by

the consumption of alcohol or drugs or intoxicated at the time of the incident.

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

~~(2) The applicant must provide identification by name and title and must state the purpose of the communication. Upon being advised that an application for a court order to compel submission to a chemical test is being made, the court shall place under oath the applicant and any other person providing information in support of the application as provided in subparagraph three of this paragraph. After being sworn the applicant must state that the person from whom the chemical test was requested was the operator of a motor vehicle and in the course of such operation a person, other than the operator, has been killed or seriously injured and, based upon the totality of circumstances, there is reasonable cause to believe that such person was operating a motor vehicle in violation of any subdivision of section eleven hundred ninety-two of this article and, after being placed under lawful arrest such person refused to submit to a chemical test or any portion thereof, in accordance with the provisions of this section or is unable to give consent to such a test or any portion thereof. The applicant must make specific allegations of fact to support such statement. Any other person properly identified, may present sworn allegations of fact in support of the applicant's statement.~~

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

~~(4)~~] If the court is satisfied that the requirements for the issuance of a court order pursuant to the provisions of paragraph (b) of this subdivision have been met, it may grant the application and issue an order requiring the accused to submit to a chemical test to determine the alcoholic and/or drug content of [~~his~~] **such accused's** blood [~~and~~] **and/or oral/bodily fluids and** ordering the withdrawal of a blood **and/or oral/bodily fluid** sample in accordance with the provisions of paragraph (a) of subdivision four of this section. When a judge or justice determines to issue an order to compel submission to a chemical test based on an oral application, the applicant therefor shall prepare the order in accordance with the instructions of the judge or justice. In all cases the order shall include the name of the issuing judge or justice, the name of the applicant, and the date and time it was issued. It must be

signed by the judge or justice if issued in person, or by the applicant if issued orally.

[~~(5)~~] **(2)** Any false statement by an applicant or any other person in support of an application for a court order shall subject such person to the offenses for perjury set forth in article two hundred ten of the penal law.

[~~(6)~~] **(3)** The chief administrator of the courts shall establish a schedule to provide that a sufficient number of judges or justices will be available in each judicial district to hear oral applications for court orders as permitted by this section.

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

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

Suspension pending prosecution; excessive blood alcohol content **or impairment by a drug or drugs**. a. Except as provided in clause a-1 of this subparagraph, a court shall suspend a driver's license, pending prosecution, of any person charged with a violation of subdivision two, two-a, three**, four** or four-a of section eleven hundred ninety-two of this article who, at the time of arrest, is alleged to have had .08 of one percent or more by weight of alcohol in such driver's blood **or is alleged to have been impaired by the ingestion of a drug or drugs** as shown by chemical analysis of blood, breath, urine or [~~saliva~~] **oral/bodily fluid**, made pursuant to subdivision two or three of section eleven hundred ninety-four of this article**, or the driver makes a statement admitting to driving while intoxicated by alcohol or any substance or combination of substances or while impaired by a drug or drugs**.

b. The suspension occurring under clause a of this subparagraph shall occur no later than at the conclusion of all proceedings required for the arraignment and the suspension occurring under clause a-1 of this subparagraph shall occur immediately after the holder's first appearance before the court on the charge which shall, whenever possible, be the next regularly scheduled session of the court after the arrest or at the conclusion of all proceedings required for the arraignment; provided, however, that if the results of any test administered pursuant to section eleven hundred ninety-four of this article are not available within such time period, the complainant police officer or other public servant shall transmit such results to the court at the time they become available, and the court shall, as soon as practicable following the receipt of such results and in compliance with the requirements of this subparagraph, suspend such license. In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of section 100.40 of the criminal procedure law and there exists reasonable cause to believe either that (a) the holder operated a motor vehicle while such holder had .08 of one percent or more by weight of alcohol in [~~his or her~~] **such holder's** blood as was shown by chemical analysis of such person's blood, breath, urine or [~~saliva~~] **oral/bodily fluid, or was impaired by the ingestion of a drug**

or drugs as supported by such chemical test analysis, made pursuant to the provisions of section eleven hundred ninety-four of this article or by an evaluation conducted by a certified drug reconciliation expert, or any portion thereof, or the driver makes a statement admitting to driving while intoxicated by alcohol, a substance or combination of substances or while impaired by a drug or drugs; or (b) the person was the holder of a class DJ or MJ learner's permit or a class DJ or MJ driver's license and operated a motor vehicle while such holder was in violation of subdivision one, two and/or three of section eleven hundred ninety-two of this article. At the time of such license suspension the holder shall be entitled to an opportunity to make a statement regarding these two issues and to present evidence tending to rebut the court's findings.

§ 5. Section 1192 of the vehicle and traffic law is amended by adding two new subdivisions 13 and 14 to read as follows:

13. It shall be an affirmative defense to a charge under subdivision four or four-a of this section that the operator suffered an allergic reaction or medical emergency rather than being impaired by a substance or combination of substances. The defendant shall be subject to the rules of reciprocal discovery under article two hundred forty-five of the criminal procedure law for any medical records or documentation related to the affirmative defense. Provided, however, that no defense shall be available if any such consumed or ingested substance is contained in section thirty-three hundred six of the public health law.

14. The commissioner and the commissioner of the division of criminal justice services shall collect data on the number of traffic stops, arrests and convictions for driving under the influence of drugs or combination of drugs and alcohol under subdivision four or four-a of this section. It shall report the number of traffic stops, arrests and convictions by race, sex, age and national origin and provide an annual report to the governor, the speaker of the assembly and the temporary president of the senate.

§ 6. This act shall take effect on the first of November next succeeding the date on which it shall have become a law and shall expire and be deemed repealed 5 years after such effective date.