

# 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:

1 Section 1. Section 119-b of the vehicle and traffic law is renumbered  
2 119-c and a new section 119-b is added to read as follows:

3 § 119-b. Impaired. Impairment is reached when a driver has voluntarily  
4 consumed or ingested alcohol or any substance listed in section thirty-  
5 three hundred six of the public health law and cannabis and concentrated  
6 cannabis as defined in section 222.00 of the penal law to the extent  
7 that the driver has impaired, to any extent, the physical and mental  
8 abilities which a driver is expected to possess in order to operate a  
9 vehicle as a reasonable and prudent driver.

10 § 2. The vehicle and traffic law is amended by adding a new section  
11 120-a to read as follows:

12 § 120-a. Intoxication. Intoxication is a greater degree of impairment  
13 which is reached when a driver has voluntarily consumed or ingested  
14 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.

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1 the driver is incapable, to a substantial extent, of employing the phys-  
2 ical and mental abilities which a driver is expected to possess in order  
3 to operate a vehicle as a reasonable and prudent driver.

4 § 3. Subdivisions 1, 2 and 3 of section 1194 of the vehicle and traf-  
5 fic law, as added by chapter 47 of the laws of 1988, paragraph (a) of  
6 subdivision 2 as amended by chapter 196 of the laws of 1996, paragraphs  
7 (b) and (c) of subdivision 2 as amended by chapter 489 of the laws of  
8 2017, clause (A) of subparagraph 1, subparagraphs 2 and 3 of paragraph  
9 (b) and subparagraphs 1, 2 and 3 of paragraph (c) of subdivision 2 as  
10 amended by chapter 27 of the laws of 2018, subparagraphs 1 and 2 of  
11 paragraph (d) of subdivision 2 as amended by chapter 732 of the laws of  
12 2006, and item (iii) of clause c of subparagraph 1 of paragraph (d) of  
13 subdivision 2 as amended by section 37 of part LL of chapter 56 of the  
14 laws of 2010, are amended to read as follows:

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

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

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

34 2. Chemical tests. (a) When authorized. Any person who operates a  
35 motor vehicle in this state shall be deemed to have given consent to a  
36 chemical test of one or more of the following: breath, blood, urine, or  
37 [~~saliva~~] oral/bodily fluid, for the purpose of determining the alcoholic  
38 and/or drug content [~~of the blood~~] provided that such test is adminis-  
39 tered by or at the direction of a police officer with respect to a chem-  
40 ical test of breath, urine or [~~saliva~~] oral/bodily fluid or, with  
41 respect to a chemical test of blood, at the direction of a police offi-  
42 cer[+]

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

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

54 ~~(3) for the purposes of this paragraph, "reasonable grounds" to~~  
55 ~~believe that a person has been operating a motor vehicle after having~~  
56 ~~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~~

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

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

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

41 ~~c. Any commercial driver's license which has been revoked pursuant to~~  
42 ~~paragraph (c) of this subdivision based upon a finding of refusal to~~  
43 ~~submit to a chemical test, where such finding occurs within or outside~~  
44 ~~of this state, shall not be restored for at least eighteen months after~~  
45 ~~such revocation, nor thereafter, except in the discretion of the commis-~~  
46 ~~sioner, but shall not be restored for at least three years after such~~  
47 ~~revocation, nor thereafter, except in the discretion of the commis-~~  
48 ~~ioner, if the holder of such license was operating a commercial motor vehi-~~  
49 ~~cle transporting hazardous materials at the time of such refusal. Howev-~~  
50 ~~er, such person shall be permanently disqualified from operating a~~  
51 ~~commercial motor vehicle in any case where the holder has a prior find-~~  
52 ~~ing of refusal to submit to a chemical test pursuant to this section or~~  
53 ~~has a prior conviction of any of the following offenses: any violation~~  
54 ~~of section eleven hundred ninety-two of this article; any violation of~~  
55 ~~subdivision one or two of section six hundred of this chapter; or has a~~  
56 ~~prior conviction of any felony involving the use of a motor vehicle~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 [~~(5)~~] (2) Any false statement by an applicant or any other person in  
4 support of an application for a court order shall subject such person to  
5 the offenses for perjury set forth in article two hundred ten of the  
6 penal law.

7 [~~(6)~~] (3) The chief administrator of the courts shall establish a  
8 schedule to provide that a sufficient number of judges or justices will  
9 be available in each judicial district to hear oral applications for  
10 court orders as permitted by this section.

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

17 § 4. The subparagraph heading and clauses a and b of subparagraph 7 of  
18 paragraph (e) of subdivision 2 of section 1193 of the vehicle and traf-  
19 fic law, the subparagraph heading as added by chapter 312 of the laws of  
20 1994, clause a as amended by chapter 732 of the laws of 2006, and clause  
21 b as separately amended by chapters 3 and 571 of the laws of 2002, are  
22 amended to read as follows:

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

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

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

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

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

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

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