

STATE OF NEW YORK

3981--C

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, JACKSON -- 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 -- 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 a drug as defined in section one hundred
5 fourteen-a of this article to the extent that the driver has impaired,
6 to any extent, the physical and mental abilities which a driver is
7 expected to possess in order to operate a vehicle as a reasonable and
8 prudent driver.
9 § 2. The vehicle and traffic law is amended by adding a new section
10 120-a to read as follows:
11 § 120-a. Intoxication. Intoxication is a greater degree of impairment
12 which is reached when a driver has voluntarily consumed or ingested

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

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

5 § 3. Subdivision 1, the opening paragraph of paragraph (a) and subpar-
6 agraph 1 of paragraph (b) of subdivision 2 and paragraphs (a), (b), (c),
7 subparagraph 4 of paragraph (d), and paragraph (e) of subdivision 3 of
8 section 1194 of the vehicle and traffic law, as added by chapter 47 of
9 the laws of 1988, the opening paragraph of paragraph (a) of subdivision
10 2 as amended by chapter 196 of the laws of 1996, subparagraph 1 of para-
11 graph (b) of subdivision 2 as amended by chapter 489 of the laws of 2017
12 and clause (A) of subparagraph 1 as amended by chapter 27 of the laws of
13 2018, are amended to read as follows:

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

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

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

33 Any person who operates a motor vehicle in this state shall be deemed
34 to have given consent to a chemical test of one or more of the follow-
35 ing: breath, blood, urine, or [~~saliva~~] oral/bodily fluid, for the
36 purpose of determining the alcoholic and/or drug content [~~of the blood~~]
37 provided that such test is administered by or at the direction of a
38 police officer with respect to a chemical test of breath, urine or
39 [~~saliva~~] oral/bodily fluid or, with respect to a chemical test of blood,
40 at the direction of a police officer:

41 (1) If: (A) such person having been placed under arrest; or (B) after
42 a breath and/or oral/bodily fluid test indicates the presence of alcohol
43 and/or a drug or drugs in the person's system; or (C) with regard to a
44 person under the age of twenty-one, there are reasonable grounds to
45 believe that such person has been operating a motor vehicle after having
46 consumed alcohol in violation of section eleven hundred ninety-two-a of
47 this article; and having thereafter been requested to submit to such
48 chemical test and having been informed that the person's license or
49 permit to drive and any non-resident operating privilege shall be imme-
50 diately suspended and subsequently revoked, or, for operators under the
51 age of twenty-one for whom there are reasonable grounds to believe that
52 such operator has been operating a motor vehicle after having consumed
53 alcohol in violation of section eleven hundred ninety-two-a of this
54 article, shall be revoked for refusal to submit to such chemical test or
55 any portion thereof, whether or not the person is found guilty of the
56 charge for which such person is arrested or detained, refuses to submit

1 to such chemical test or any portion thereof, [~~unless a court order has~~
2 ~~been granted pursuant to subdivision three of this section,~~] the test
3 shall not be given and a written report of such refusal shall be imme-
4 diately made by the police officer before whom such refusal was made.
5 Such report may be verified by having the report sworn to, or by affix-
6 ing to such report a form notice that false statements made therein are
7 punishable as a class A misdemeanor pursuant to section 210.45 of the
8 penal law and such form notice together with the subscription of the
9 deponent shall constitute a verification of the report.

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

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

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

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

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

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

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

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

55 (4) If the court is satisfied that the requirements for the issuance
56 of a court order pursuant to the provisions of paragraph (b) of this

1 subdivision have been met, it may grant the application and issue an
2 order requiring the accused to submit to a chemical test to determine
3 the alcoholic and/or drug content of [~~his~~] such accused's blood [~~and~~]
4 and/or oral/bodily fluids and ordering the withdrawal of a blood and/or
5 oral/bodily fluid sample in accordance with the provisions of paragraph
6 (a) of subdivision four of this section. When a judge or justice deter-
7 mines to issue an order to compel submission to a chemical test based on
8 an oral application, the applicant therefor shall prepare the order in
9 accordance with the instructions of the judge or justice. In all cases
10 the order shall include the name of the issuing judge or justice, the
11 name of the applicant, and the date and time it was issued. It must be
12 signed by the judge or justice if issued in person, or by the applicant
13 if issued orally.

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

20 § 4. The subparagraph heading and clauses a and b of subparagraph 7 of
21 paragraph (e) of subdivision 2 of section 1193 of the vehicle and traf-
22 fic law, the subparagraph heading as added by chapter 312 of the laws of
23 1994, clause a as amended by chapter 732 of the laws of 2006, and clause
24 b as separately amended by chapters 3 and 571 of the laws of 2002, are
25 amended to read as follows:

26 Suspension pending prosecution; excessive blood alcohol content,
27 intoxication or impairment by a drug or drugs. a. Except as provided in
28 clause a-1 of this subparagraph, a court shall suspend a driver's
29 license, pending prosecution, of any person charged with a violation of
30 subdivision two, two-a, three, four or four-a of section eleven hundred
31 ninety-two of this article who, at the time of arrest, is alleged to
32 have had .08 of one percent or more by weight of alcohol in such driv-
33 er's blood or is alleged to have been impaired by the ingestion of a
34 drug or drugs as shown or supported by chemical analysis of blood,
35 breath, urine or [~~saliva~~] oral/bodily fluid, made pursuant to subdivi-
36 sion two or three of section eleven hundred ninety-four of this article,
37 or by an evaluation conducted by a certified drug recognition expert, or
38 any portion thereof, or if the driver made a statement admitting to
39 driving while intoxicated by alcohol or by any substance or combination
40 of substances, or while impaired by a drug or drugs.

41 b. The suspension occurring under clause a of this subparagraph shall
42 occur no later than at the conclusion of all proceedings required for
43 the arraignment and the suspension occurring under clause a-1 of this
44 subparagraph shall occur immediately after the holder's first appearance
45 before the court on the charge which shall, whenever possible, be the
46 next regularly scheduled session of the court after the arrest or at the
47 conclusion of all proceedings required for the arraignment; provided,
48 however, that if the results of any test administered pursuant to
49 section eleven hundred ninety-four of this article are not available
50 within such time period, the complainant police officer or other public
51 servant shall transmit such results to the court at the time they become
52 available, and the court shall, as soon as practicable following the
53 receipt of such results and in compliance with the requirements of this
54 subparagraph, suspend such license. In order for the court to impose
55 such suspension it must find that the accusatory instrument conforms to
56 the requirements of section 100.40 of the criminal procedure law and

1 there exists reasonable cause to believe either that (a) the holder
2 operated a motor vehicle while such holder had .08 of one percent or
3 more by weight of alcohol in [~~his or her~~] such holder's blood as was
4 shown by chemical analysis of such person's blood, breath, urine or
5 [~~saliva~~] oral/bodily fluid, or was impaired by the ingestion of a drug
6 or drugs as supported by such chemical test analysis made pursuant to
7 the provisions of section eleven hundred ninety-four of this article or
8 by an evaluation conducted by a certified drug recognition expert, or
9 any portion thereof, or the driver made a statement admitting to driving
10 while intoxicated by alcohol or by a substance or combination of
11 substances, or while impaired by a drug or drugs; or (b) the person was
12 the holder of a class DJ or MJ learner's permit or a class DJ or MJ
13 driver's license and operated a motor vehicle while such holder was in
14 violation of subdivision one, two and/or three of section eleven hundred
15 ninety-two of this article. At the time of such license suspension the
16 holder shall be entitled to an opportunity to make a statement regarding
17 these two issues and to present evidence tending to rebut the court's
18 findings.

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

21 13. It shall be an affirmative defense to a charge under subdivision
22 three of this section that the operator suffered an allergic reaction or
23 medical emergency rather than being impaired by a substance or combina-
24 tion of substances. The operator must provide written notice of the
25 intent to assert the affirmative defense and shall be subject to the
26 rules of reciprocal discovery under article two hundred forty-five of
27 the criminal procedure law for any medical records or documentation
28 related to the affirmative defense.

29 14. The commissioner and the commissioner of the division of criminal
30 justice services shall collect data on the number of traffic stops,
31 arrests and convictions for driving while intoxicated by a substance or
32 combination of substances under subdivision three of this section, or
33 while impaired by a drug or a combination of drugs or a combination of
34 drugs and alcohol under subdivision four or four-a of this section. It
35 shall report the number of traffic stops, arrests and convictions by
36 race, sex, age and national origin and provide an annual report to the
37 governor, the speaker of the assembly and the temporary president of the
38 senate.

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