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MICHAEL V. COCCOMA
DEPUTY CHIEF ADMINISTRATIVE JUDGE
COURTS OUTSIDE NEW YORK CITY

MEMORANDUM

May 9, 2011

TO: All Judges Exercising Criminal Jurisdiction
FROM: Hon. Michael V. Coccoma *MVC*
SUBJECT: Leandra's Law – Mandatory Imposition of Ignition Interlock Devices *mts*

As you know, since August 15, 2010, Leandra's Law has mandated the use of ignition interlock devices for defendants convicted of certain crimes, including convictions for misdemeanor or felony DWI under VTL §1192(2), (2-a) or (3).

Since that date, we have received many questions about the details of the law's implementation -- including queries about whether judges have the discretion to ignore its provisions. (We do not.) In addition, we have received reports of ministerial and substantive difficulties in the statute's application around the State, resulting in needless delays and extra work for our clerical staff.

To assist in addressing these concerns, I am attaching herewith a copy of a memorandum issued by Counsel's Office on the subject last summer. If you have any further general questions about the statute, or queries regarding the appropriate application of Leandra's Law to a given sentence, feel free to call the City, Town and Village Courts Resource Center (800) 232-0630 or Paul McDonnell at Counsel's Office (212-428-2150).

MVC:jdr

Attachment

c: Hon. A. Gail Prudenti
Hon. Anthony V. Cardona
Hon. Thomas Mercure
Hon. Henry J. Scudder
Administrative Judges 3 - 10
Diane Schilling, Esq.
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ANN PFAU
Chief Administrative Judge

JOHN W. McCONNELL
Counsel

MEMORANDUM

August 13, 2010

TO: All Judges
Exercising Criminal Jurisdiction

FROM: John W. McConnell
Paul McDonnell

SUBJECT: Child Passenger Protection Act -- Leandra's Law

As you are aware, late last year the Governor signed into law the Child Passenger Protection Act, also known as "Leandra's Law" (L 2009, ch 496; attached). A principal purpose of the law is to protect children in motor vehicles by increasing criminal penalties for people who are convicted of driving while intoxicated (DWI) with a child under sixteen in the car. The child safety provisions of the act went into effect on December 18, 2009.

Leandra's Law also dramatically expands the use of ignition interlock devices in New York. The law requires that any driver convicted of misdemeanor or felony DWI offenses under VTL §1192(2), (2-a) or (3), install and maintain an ignition interlock device on any motor vehicle the driver owns or operates, regardless of whether a child was in the vehicle at the time of the offense. To carry out this directive, courts must sentence defendants convicted of one of these offenses to a period of probation or a conditional discharge in addition to any jail or prison term, and must include the condition that defendants install and maintain vehicle ignition interlock devices. The law also requires interlock devices as a condition of probation or conditional discharge in sentencing for several penal law offenses.

The provisions relating to the mandatory imposition of a sentence of probation or conditional discharge and the installation of ignition interlock devices becomes effective on Sunday, August 15, 2010. The remainder of this memorandum outlines the "child-in-vehicle" provisions and the interlock device provisions of Leandra's Law, and describes several new operational practices to assist courts in complying with this law.

I. Child-in-Vehicle Provisions

A. **Vehicle and Traffic Law**

1. **Aggravated DWI - with a child.** A new subdivision (b) of Vehicle and Traffic Law § 1192(2-a) provides that it is a class E felony offense for a person to operate a motor vehicle in violation of VTL § 1192(2), (3), (4) or (4-a) with a passenger who is fifteen years of age or younger. Thus, first time offenders who commit the misdemeanor offense of driving while intoxicated by alcohol or impaired by drugs or a combination of drugs and alcohol will now face a class E felony charge if a child under the age of sixteen is in the motor vehicle.

The existing offense of aggravated DWI - per se, where a person operates a vehicle with a blood alcohol content of .18 or greater, has been relocated within a new subdivision (a) of VTL § 1192(2-a). It is not enhanced under Leandra's Law, remaining a class A misdemeanor for a first offense (VTL § 1193(1)(b)).

2. **Sentence ranges.** A person convicted of aggravated DWI - with a child, is subject to the same sentence ranges as a person convicted of other class E felony offenses. Thus, the court may impose a non-jail term of conditional discharge or probation, or may impose a jail term up to one year, including a "split" sentence, or may impose an indeterminate prison term up to 1 1/3 years to 4 years. However, an unconditional discharge is not permitted (VTL § 1193(7)(e)). As with other VTL § 1192 offenses, a sentence of probation or conditional discharge must include a fine (VTL § 1193(7)(e)), although the fine ranges vary with the offense and whether it the defendant's first offense or the defendant is a repeat offender. The fine ranges are set forth in VTL § 1193(1).

3. **License revocation.** A first offense carries a mandatory revocation of one year. Where the defendant has been convicted within the prior ten years of VTL § 1192(2), (2-a), (3), (4) or (4-a), the mandatory revocation is eighteen months (VTL § 1193(2)).

4. **Plea restrictions.** Any plea of guilty entered by a defendant charged with aggravated DWI - with a child, must include at least a plea of guilty to VTL § 1192(2), (2-a) or (3) unless "the district attorney, upon reviewing the available evidence, determines that the charge of [aggravated DWI] is not warranted" (VTL § 1192(10)(d)). Significantly, this prevents a first offender charged with aggravated DWI from pleading to driving while ability impaired under VTL § 1192(1) without the district attorney's representation that the higher charge is "not warranted." Even where the district attorney make such a representation, the court is nonetheless required to "set forth upon the record the basis for such disposition" (*Id.*).

5. **Mandatory screening.** At arraignment, or at the court's discretion at any time prior to sentence, the court must order a defendant charged with aggravated DWI - with a child, to submit to screening for alcohol or substance abuse and dependency. If the screening indicates that the defendant is abusing or dependent on alcohol or drugs, the court must further order the defendant to undergo a formal alcohol or substance abuse and dependency assessment (VTL § 1198-a(2)).

6. **Responsibility of Law Enforcement Officers; Mandatory Reporting to Child Protective Services.** VTL § 1192(12)(b) has been amended to require a law enforcement officer to note in the descriptive section of a simplified traffic information the remark "C.I.V." (Child in Vehicle) whenever a driver is charged with a violation of VTL § 1192(2), (2-a), (3), (4) or (4-a) and a child under the age of sixteen was present in the motor vehicle. More significantly, where the driver is a parent, guardian or custodian of a child in the vehicle, the law enforcement officer must also "report or cause a report to be made" to Child Protective Services pursuant to Article 6 of the Social Services Law.

7. **Interlock Device.** A court must sentence a defendant convicted of VTL § 1192(2-a) to a period of probation or a conditional discharge, a condition of which must be the installation of an ignition interlock device in any motor vehicle owned or operated by a defendant. As more fully described below, this is in addition to any other sentence, including jail or state prison, that the court imposes, and runs consecutively to any term of imprisonment.

B. Penal Law

Leandra's Law amends four penal law provisions by adding a new aggravating element to offenses where a defendant drives while intoxicated and causes injury or death to a child under the age of sixteen present in the motor vehicle. The new amendments are as follows:

1. **Vehicular assault in the first degree** (PL § 120.04(6)). Vehicular assault in the second degree is elevated to the class D felony offense of vehicular assault in the first degree where it is established that the person "commits such crime while operating a motor vehicle while a child who is fifteen years of age or less is a passenger in such motor vehicle and causes serious physical injury to such child."
2. **Aggravated vehicular assault** (PL § 120.04-a(6)). Vehicular assault in the second degree is elevated to the class C felony offense of aggravated vehicular assault where it is established that, while engaged in reckless driving, the person "commits such crime while operating a motor vehicle while a child who is fifteen years of age or less is a passenger in such motor vehicle and causes serious physical injury to such child."
3. **Vehicular manslaughter in the first degree** (PL § 125.13(6)). Vehicular manslaughter in the second degree is elevated to the class C felony offense of vehicular manslaughter in the first degree where it is established that the person "commits such crime while operating a motor vehicle while a child who is fifteen years of age or less is a passenger in such motor vehicle and causes death to such child."
4. **Aggravated vehicular homicide** (PL § 125.14(7)). Vehicular manslaughter in the second degree is elevated to the class B felony offense of aggravated vehicular homicide where it is established that, while engaged in reckless driving, the person "commits such crime while operating a motor vehicle while a child who is fifteen years of age or less is a passenger in such motor vehicle and causes death to such child."

II. Ignition Interlock Device Provisions

A. VTL §§ 1192(2), (2-a) or (3)

Leandra's Law requires a court to impose a sentence of probation or a conditional discharge as part of every conviction for driving while intoxicated under VTL § 1192(2), (2-a) or (3), regardless of whether jail or prison time is imposed (PL § 60.21).¹ The court must also include as a condition of probation or conditional discharge that the defendant install and maintain a functioning ignition interlock device on any motor vehicle he or she owns or operates.² This period of probation or conditional discharge shall run consecutively to any period of imprisonment the court may impose and "commences when the defendant is released from imprisonment."³ As a result, even state prison terms for felony DWI charges require a sentence of probation or conditional discharge consecutive to the prison term, as well as a condition that the defendant install an ignition interlock device on any cars the defendant owns or operates.⁴ The new law also amends the Executive Law to provide that the Board of Parole must require as a condition of any parole or conditional release for defendants convicted of "a felony as defined in [VTL § 1193(1)(c)]" that the defendant install and maintain an ignition interlock device in accordance on any motor vehicle he or she owns or operates (*see* Executive Law § 259-c(15-a)). Accordingly, a defendant released on parole or conditional release after being sentenced to a state prison term under VTL § 1192 (2), (2-a) or (3) will be concurrently supervised by both the Department of Probation and Correctional Alternatives (DPCA) and the Division of Parole.

B. *Penal Law Offenses (PL §§ 120.03, 120.04, 120.04-a, 125.12, 125.13 and 125.14)*

Ignition interlock devices are also required where the court sentences a defendant to a period of probation or conditional discharge for any penal law offense of which an essential element is an

¹ The interlock provisions do not apply to convictions for driving while impaired by drugs (VTL § 1192(4)), or driving while impaired by a combination of drugs and alcohol (VTL § 1192(4-a)). Moreover, VTL § 1192(2), (2-a)(a) and (3) exclusively involve driving while intoxicated by alcohol. Thus, the only instance where an ignition interlock device is mandated for driving while impaired by drugs or a combination of drugs and alcohol is when VTL § 1192(4) or (4-a) is an element of a conviction under VTL § 1192(2-a)(b), aggravated DWI – with a child.

² The definition of motor vehicle does not include all-terrain vehicles (*see* VTL §§ 125(d), 2281), boats (*see* Navigation Law § 49(a)) or snowmobiles (*see* VTL § 125(c)). It does, however, include motorcycles (VTL § 123). Unfortunately, none of the interlock providers qualified in New York will install an interlock device on a motorcycle; thus, a defendant who owns a motorcycle will be unable to operate it while a condition requiring installation of an interlock is in place (*see* VTL § 1198(9)).

³ Leandra's Law therefore carves out an exception to the mechanics of a "split sentence," where a defendant serves a period of probation, the first part of which is concurrently satisfied by a local jail sentence (PL § 60.01(2)(d); *see also* *People v Zephrin*, 14 NY3d 296 [2010]). Under PL § 60.21, any period of probation must now be added to the end of any jail term imposed for a conviction of VTL § 1192 (2), (2-a) or (3).

⁴ The statute does not specify the duration of the term of probation or conditional discharge that is to be added to the period of imprisonment. Instead, it provides that the court "shall sentence such person to a period of probation or conditional discharge in accordance with the provisions of section 65.00 of [the Penal Law]." Although a sentence to a period of probation or conditional discharge following a state prison term or a jail term longer than six months may itself be at odds with various provisions of PL Article 65, the legislature presumably intended courts to adopt the periods of probation set forth in PL § 65.00 (3) and the conditional discharge periods as set forth in PL § 65.05 (3).

alcohol-related violation of any provision of VTL § 1192. Six Penal Law offenses fall within the statute,⁵ and they are treated differently than convictions under the Vehicle and Traffic Law. For instance, while the court must impose an interlock condition as part of any sentence of probation or conditional discharge for these Penal Law offenses, it may not include probation or conditional discharge in a sentence to a term of imprisonment (except where the court imposes a traditional split sentence as provided in PL § 60.01(c)). Instead, for defendants subjected to a state prison term, Leandra's Law amended the Executive Law to direct the Board of Parole to include the ignition interlock requirement as a condition of the defendant's parole or conditional release (*see* Executive Law § 259-c (15-a)). There is no provision, however, that authorizes a court to mandate installation of an interlock device where it sentences a defendant solely to a jail term of one year or less.

⁵ The six penal law crimes that potentially fall within this category are: vehicular assault in the first and second degrees (PL §§ 120.03 and 120.04); aggravated vehicular assault (PL § 120.04-a); vehicular manslaughter in the first and second degrees (PL §§ 125.12 and 125.13); and aggravated vehicular homicide (PL § 125.14).

C. Duration of the interlock condition

VTL Offenses

When imposing a sentence of probation or conditional discharge for a conviction under VTL § 1192 (2), (2-a) or (3), the court must order the defendant to use ignition interlock devices for at least six months (VTL §§ 1193 (1)(b)(ii) and (1)(c)(iii)). However, where a defendant is convicted of VTL § 1192 (2) or (3) and has previously been convicted of one or more of those offenses within the preceding five years, the court must order such devices for the entire period of license revocation, which may be up to eighteen months (see VTL § 1193 (1-a)(c)). Of course, the court is also authorized to maintain the condition for the entire period of probation or conditional discharge.

Penal Law Offenses

Leandra's Law does not set forth any minimum period of an interlock condition imposed for a violation of one of the six penal law sections that have as an essential element a violation of VTL § 1192(2), (2-a) or (3). The law only requires that where the defendant is sentenced to a term of probation or conditional discharge, the court must order an interlock as a condition. Thus, any subsequent termination of the interlock condition must be made under CPL 410.20, which allows the court to "modify or enlarge the conditions of a sentence of probation or of conditional discharge at any time prior to the expiration or termination of the period of the sentence."

D. The cost of the ignition interlock device

The projected cost of an ignition interlock device ranges from \$75 to \$115 per month and installation and removal fees range from \$40 to \$100. The total cost for a six month period will therefore be approximately \$500 to \$800, which is to be paid by the person subject to the condition (VTL § 1198(5)(a)). However, the statute also provides that where "the court determines such person is financially unable to afford such cost," the court may impose a payment plan or waive the cost altogether. To assist the court in determining whether to waive part or all of the costs, or help approve a payment plan, DPCA has designed a financial disclosure form that the defendant must complete in connection with the application. DPCA regulations provide that three copies of the form must be submitted to the court prior to sentencing, and that the court should retain one copy and provide the other copies to the prosecutor and defense counsel. (9 NYCRR 358.8). The financial disclosure form may be found on both the DPCA and UCS websites. Where the court grants the application to waive any part or all of the costs, the ignition interlock manufacturers must bear the cost.

E. Monitoring the Interlock Conditions of Probation or Conditional Discharge

Leandra's Law requires DPCA to promulgate regulations to govern "the monitoring of compliance by persons ordered to install and maintain ignition interlock devices" and to establish standards for monitoring by departments of probation and other agencies (VTL § 1193(1)(g)). After a lengthy development process, DPCA issued these rules as Part 358 of Title 9 NYCRR. A copy of the rules may be found on the websites of both DPCA and the Unified Court System. In brief, the rules call for the City of New York, and each county outside the City of New York, to establish plans to provide for monitoring defendants sentenced to probation or a conditional discharge with an interlock condition. Every plan must designate the probation department as monitor for all interlock

cases made as a condition of a sentence of probation, but may designate an alternate agency to monitor interlock conditions imposed pursuant to a sentence of a conditional discharge (9 NYCRR 358.4(c)).

DPCA regulations provide for three different classes of interlock devices, and direct that the monitoring agency, not the court, determine the appropriate class of device for each defendant. Class I devices have reporting capabilities, store data for later downloading, are programmable and possess anti-tampering features. Class II devices have all of the features of a Class I device plus photographic identification procedures. Class III devices contain all the features of a Class II device, but also provide significantly more sophisticated features such as GPS tracking, real-time data reporting and infra-red or other low-light camera capability. Not surprisingly, class III devices are typically more expensive than Class I or Class II devices.

The regulations divide New York State into four regions and require manufacturers in each region to ensure that defendants need travel no more than fifty miles to have an interlock device installed. Currently, seven ignition interlock manufacturers have been approved to provide ignition interlock device in New York, and each region will be serviced by at least four different companies. Under the regulations, defendants may choose the manufacturer and model of device within their designated Class (9 NYCRR 358.4(d)(1)).

A defendant must install interlocks within ten business days after the interlock condition takes effect, and must submit proof of compliance to the court or monitor within three business days of installation (9 NYCRR 358.7(c)(1)). Defendants sentenced to probation who live outside the county of the sentencing court will have their probation supervision transferred to the county where the defendant resides (CPL 410.80). Defendants sentenced to a conditional discharge who live outside the county of the sentencing court will be monitored by the monitoring agency of the defendant's county of residence, but the original sentencing court will retain jurisdiction over the case. Any violations of the conditional discharge will be directed to the original sentencing court (9 NYCRR 358.7(b)(2)). Out of state residents convicted in New York are subject to the provisions of Leandra's Law, and the rules governing the interstate compact for adult offender supervision under Executive Law § 259-mm control. Where a defendant is not subject to the compact, the monitor will cooperate with a qualified manufacturer to allow for regular reporting to the monitor, and the sentencing court will retain jurisdiction of the case (9 NYCRR 358.7 (b)(4)).

It is now a class A misdemeanor for any defendant to operate a motor vehicle in violation of an interlock condition (VTL § 1198(9)(d)).

Effective Dates

Signed by Governor Paterson on November 18, 2009, Leandra's Law became effective on December 18, 2009; provisions requiring ignition interlock devices only become effective on August 15, 2010; the act does not apply to any offenses "committed before the date of the enactment." Thus, although the interlock provisions become effective on Sunday, August 15, 2010, those provisions apply to sentencing for any offense committed on or after November 18, 2009.

Any questions regarding the issues raised in this memorandum may be referred to Paul McDonnell in Counsel's Office at (212) 428-2150. For operational questions, please contact Trial Court Operations.

cc: Hon. Ann Pfau
Hon. Michael Coccoma
Hon. Fern Fisher
Hon. Lawrence K. Marks
Ronald Younkings
Nancy Mangold

CHAPTER TEXT:

LAWS OF NEW YORK, 2009

CHAPTER 496

AN ACT to amend the vehicle and traffic law and the penal law, in relation to operating a motor vehicle while under the influence of alcohol or drugs with a child as a passenger and to amend the executive law, in relation to installation of an ignition interlock device

Became a law November 18, 2009, with the approval of the Governor. Passed on message of necessity pursuant to Article III, section 14 of the Constitution by a majority vote, three-fifths being present.

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

Section 1. Subdivision 2-a of section 1192 of the vehicle and traffic law, as amended by chapter 746 of the laws of 2006, is amended to read as follows:

2-a. Aggravated driving while intoxicated[~~per se~~]. (a) *Per se*. No person shall operate a motor vehicle while such person has .18 of one per centum or more by weight of alcohol in such person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva made pursuant to the provisions of section eleven hundred ninety-four of this article.

(b) *With a child*. No person shall operate a motor vehicle in violation of subdivision two, three, four or four-a of this section while a child who is fifteen years of age or less is a passenger in such motor vehicle.

§ 2. Subdivision 12 of section 1192 of the vehicle and traffic law, as amended by chapter 732 of the laws of 2006, is amended to read as follows:

12. Driving while intoxicated or while ability impaired by drugs--serious physical injury or death or child in the vehicle. (a) In every case where a person is charged with a violation of subdivision two, two-a, three, four or four-a of this section, the law enforcement officer alleging such charge shall make a clear notation in the "Description of Violation" section of a simplified traffic information (i) if, arising out of the same incident, someone other than the person charged was killed or suffered serious physical injury as defined in section 10.00 of the penal law; such notation shall be in the form of a "D" if someone other than the person charged was killed and such notation shall be in the form of a "S.P.I." if someone other than the person charged suffered serious physical injury; [provided] and (ii) if a child aged *fifteen years* or less was present in the vehicle of the person charged with a violation of subdivision two, two-a, three, four or four-a of this section; such notation shall be in the form of "C.I.V.". Provided, however, that the failure to make such [notation] notations shall in no way affect a charge for a violation of subdivision two, two-a, three, four or four-a of this section.

(b) Where a law enforcement officer alleges a violation of paragraph (b) of subdivision two-a of this section and the operator of the vehicle is a parent, guardian, or custodian of, or other person legally respon-

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

sible for, a child aged fifteen years or less who is a passenger in such vehicle, then the officer shall report or cause a report to be made, if applicable, in accordance with title six of article six of the social services law.

§ 3. Paragraphs (b) and (c) of subdivision 1 of section 1193 of the vehicle and traffic law, paragraph (b) as amended by chapter 669 of the laws of 2007, paragraph (c) as amended by chapter 732 of the laws of 2006 and subparagraphs (i) and (ii) of paragraph (c) as amended by chapter 343 of the laws of 2007, are amended to read as follows:

(b) Driving while intoxicated or while ability impaired by drugs or while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs; aggravated driving while intoxicated; misdemeanor offenses. (i) A violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article shall be a misdemeanor and shall be punishable by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in a penitentiary or county jail for not more than one year, or by both such fine and imprisonment. A violation of paragraph (a) of subdivision two-a of section eleven hundred ninety-two of this article shall be a misdemeanor and shall be punishable by a fine of not less than one thousand dollars nor more than two thousand five hundred dollars or by imprisonment in a penitentiary or county jail for not more than one year, or by both such fine and imprisonment.

(ii) In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, ~~the court shall require that any person who has been convicted of a violation of subdivision two-a of section eleven hundred ninety-two of this article and who is sentenced to a period of probation, to install and maintain, as a condition of such probation and in accordance with section eleven hundred ninety-eight of this article, a functioning ignition interlock device in any vehicle owned or operated by the person during the term of such probation, provided,~~ the court shall also sentence such person convicted of a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article to a period of probation or conditional discharge, as a condition of which it shall order such person to install and maintain, in accordance with the provisions of section eleven hundred ninety-eight of this article, an ignition interlock device in any motor vehicle owned or operated by such person during the term of such probation or conditional discharge imposed for such violation of section eleven hundred ninety-two of this article and in no event for less than six months. Provided, however, the court may not authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked pursuant to the provisions of this section.

(c) Felony offenses. (i) A person who operates a vehicle (A) in violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of this article after having been convicted of a violation of subdivision two, two-a, three, four or four-a of such section or of vehicular assault in the second or first degree, as defined, respectively, in sections 120.03 and 120.04 and aggravated vehicular assault as defined in section 120.04-a of the penal law or of vehicular manslaughter in the second or first degree, as defined, respectively, in sections 125.12 and 125.13 and aggravated vehicular homicide as defined in section 125.14 of such law, within the preceding ten years, or (B) in violation of paragraph (b) of subdivision two-a of section eleven hundred ninety-two of this article shall be guilty of a

class E felony, and shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

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

(iii) In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, the court shall also sentence such person convicted of a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article to a period of probation or conditional discharge, as a condition of which it shall order such person to install and maintain, in accordance with the provisions of section eleven hundred ninety-eight of this article, an ignition interlock device in any motor vehicle owned or operated by such person during the term of such probation or conditional discharge imposed for such violation of section eleven hundred ninety-two of this article and in no event for a period of less than six months. Provided, however, the court may not authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked pursuant to the provisions of this section.

§ 4. Subdivision 1 of section 1193 of the vehicle and traffic law is amended by adding a new paragraph (g) to read as follows:

(g) The division of probation and correctional alternatives shall promulgate regulations governing the monitoring of compliance by persons ordered to install and maintain ignition interlock devices to provide standards for monitoring by departments of probation, and options for monitoring of compliance by such persons, that counties may adopt as an alternative to monitoring by a department of probation.

§ 5. Subdivisions 1, 2, 3 and 4 and paragraph (a) of subdivision 5 of section 1198 of the vehicle and traffic law, as amended by chapter 669 of the laws of 2007, are amended to read as follows:

1. Applicability. The provisions of this section shall apply throughout the state to each person required or otherwise ordered by a court as a condition of probation or conditional discharge to install and operate an ignition interlock device in any vehicle which he or she owns or operates.

2. Requirements. (a) In addition to any other penalties prescribed by law, the court [may] shall require that any person who has been convicted of a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article, or any crime defined by this chapter or the penal law of which an alcohol-related violation of any provision of section eleven hundred ninety-two of this article is an essential element, [~~and who has been sentenced to a period of probation;~~] to install and maintain, as a condition of probation or

conditional discharge, a functioning ignition interlock device in accordance with the provisions of this section and, as applicable, in accordance with the provisions of subdivisions one and one-a of section eleven hundred ninety-three of this article; provided, however, the court may not authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked except as provided herein. For any such individual subject to a sentence of probation, installation and maintenance of such ignition interlock device shall be a condition of probation.

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

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

3. Conditions. (a) Notwithstanding any other provision of law, the commissioner may grant a post-revocation conditional license, as set forth in paragraph (b) of this subdivision, to a person who has been convicted of a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article and who has been sentenced to a period of probation or conditional discharge, provided the person has satisfied the minimum period of license revocation established by law and the commissioner has been notified that such person may operate only a motor vehicle equipped with a functioning ignition interlock device. No such request shall be made nor shall such a license be granted, however, if such person has been found by a court to have committed a violation of section five hundred eleven of this chapter during the license revocation period or deemed by a court to have violated any condition of probation or conditional discharge set forth by the court relating to the operation of a motor vehicle or the consumption of alcohol. In exercising discretion relating to the issuance of a post-revocation conditional license pursuant to this subdivision, the commissioner shall not deny such issuance based solely upon the number of convictions for violations of any subdivision of section eleven hundred ninety-two of this article committed by such person within the ten years prior to application for such license. Upon the termination of the period of probation or conditional discharge set by the court, the person may apply to the commissioner for restoration of a license or privilege to operate a motor vehicle in accordance with this chapter.

(b) Notwithstanding any inconsistent provision of this chapter, a post-revocation conditional license granted pursuant to paragraph (a) of this subdivision shall be valid only for use by the holder thereof, (1) enroute to and from the holder's place of employment, (2) if the holder's employment requires the operation of a motor vehicle then during the hours thereof, (3) enroute to and from a class or course at an accredited school, college or university or at a state approved institution of vocational or technical training, (4) to and from court ordered probation activities, (5) to and from a motor vehicle office for the transaction of business relating to such license, (6) for a three hour consecutive daytime period, chosen by the department, on a day during

which the participant is not engaged in usual employment or vocation, (7) enroute to and from a medical examination or treatment as part of a necessary medical treatment for such participant or member of the participant's household, as evidenced by a written statement to that effect from a licensed medical practitioner, (8) enroute to and from a class or an activity which is an authorized part of the alcohol and drug rehabilitation program and at which participant's attendance is required, and (9) enroute to and from a place, including a school, at which a child or children of the participant are cared for on a regular basis and which is necessary for the participant to maintain such participant's employment or enrollment at an accredited school, college or university or at a state approved institution of vocational or technical training.

(c) The post-revocation conditional license described in this subdivision may be revoked by the commissioner for sufficient cause including but not limited to, failure to comply with the terms of the condition of probation or conditional discharge set forth by the court, conviction of any traffic offense other than one involving parking, stopping or standing or conviction of any alcohol or drug related offense, misdemeanor or felony or failure to install or maintain a court ordered ignition interlock device.

(d) Nothing contained herein shall prohibit the court from requiring, as a condition of probation or conditional discharge, the installation of a functioning ignition interlock device in any vehicle owned or operated by a person sentenced for a violation of subdivision two, two-a, or three of section eleven hundred ninety-two of this chapter, or any crime defined by this chapter or the penal law of which an alcohol-related violation of any provision of section eleven hundred ninety-two of this chapter is an essential element, if the court in its discretion, determines that such a condition is necessary to ensure the public safety. Imposition of an ignition interlock condition shall in no way limit the effect of any period of license suspension or revocation set forth by the commissioner or the court.

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

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

4. Proof of compliance and recording of condition. (a) ~~[if the court imposed]~~ Following imposition by the court of the use of an ignition interlock device as a condition of probation or conditional discharge it shall require the person to provide proof of compliance with this section to the court and the probation department where such person is under probation or conditional discharge supervision. If the person fails to provide for such proof of installation, absent a finding by the court of good cause for that failure which is entered in the record, the court may revoke, modify, or terminate the person's sentence of probation or conditional discharge as provided under law.

(b) When a court imposes the condition specified in subdivision one of this section, the court shall notify the commissioner in such manner as the commissioner may prescribe, and the commissioner shall note such condition on the operating record of the person subject to such conditions.

(a) The cost of installing and maintaining the ignition interlock device shall be borne by the person subject to such condition unless the court determines such person is financially unable to afford such cost whereupon such cost may be imposed pursuant to a payment plan or waived. In the event of such waiver, the cost of the device shall be borne in accordance with regulations issued under paragraph (g) of subdivision one of section eleven hundred ninety-three of this article or pursuant to such other agreement as may be entered into for provision of the device. Such cost shall be considered a fine for the purposes of subdivision five of section 420.10 of the criminal procedure law. Such cost shall not replace, but shall instead be in addition to, any fines, surcharges, or other costs imposed pursuant to this chapter or other applicable laws.

§ 5-a. Subdivisions 8 and 9 of section 1198 of the vehicle and traffic law, as amended by chapter 669 of the laws of 2007, are amended to read as follows:

8. Employer vehicle. Notwithstanding the provisions of subdivision one and paragraph (d) of subdivision nine of this section, if a person is required to operate a motor vehicle owned by said person's employer in the course and scope of his or her employment, the person may operate that vehicle without installation of an approved ignition interlock device only in the course and scope of such employment and only if the employer has been notified that the person's driving privilege has been restricted under the provisions of this article or the penal law and the person whose privilege has been so restricted has provided the court and probation department with written documentation indicating the employer has knowledge of the restriction imposed and has granted permission for the person to operate the employer's vehicle without the device only for business purposes. The person shall notify the court and the probation department of his or her intention to so operate the employer's vehicle. A motor vehicle owned by a business entity which business entity is all or partly owned or controlled by a person otherwise subject to the provisions of this article or the penal law is not a motor vehicle owned by the employer for purposes of the exemption provided in this subdivision. The provisions of this subdivision shall apply only to the operation of such vehicle in the scope of such employment.

9. Circumvention of interlock device. (a) No person whose driving privilege is restricted pursuant to this article or the penal law shall request, solicit or allow any other person to blow into an ignition interlock device, or to start a motor vehicle equipped with the device, for the purpose of providing the person so restricted with an operable motor vehicle.

(b) No person shall blow into an ignition interlock device or start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to a person whose driving privilege is so restricted.

(c) No person shall tamper with or circumvent an otherwise operable ignition interlock device.

(d) No person subject to a court ordered ignition interlock device shall operate a motor vehicle without such device.

(e) In addition to any other provisions of law, any person convicted of a violation of paragraph (a), (b) ~~(c)~~, (c), or (d) of this subdivision shall be guilty of a Class A misdemeanor.

§ 6. Subdivision 2 of section 1198-a of the vehicle and traffic law, as added by chapter 732 of the laws of 2006 and subparagraph (ii) of

paragraph (b) as amended by chapter 345 of the laws of 2007, is amended to read as follows:

2. Procedure. (a) Mandatory screening; when authorized. Upon the arraignment of, or at the discretion of the court, prior to the sentencing of any person who (i) at arraignment is charged with or prior to sentencing convicted of a first violation of operating a motor vehicle in violation of subdivision one, two or three or paragraph (b) of subdivision two-a of section eleven hundred ninety-two of this article while such person has less than .15 of one per centum by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva made pursuant to the provisions of section eleven hundred ninety-four of this article, or in violation of subdivision four of such section eleven hundred ninety-two, or (ii) has refused to submit to a chemical test pursuant to section eleven hundred ninety-four of this article, the court shall order such person to submit to screening for alcohol or substance abuse and dependency using a standardized written screening instrument developed by the office of alcoholism and substance abuse services, to be administered by an alcohol or substance abuse professional.

(b) Mandatory assessment; when authorized. The court shall order a defendant to undergo a formal alcohol or substance abuse and dependency assessment by an alcohol or substance abuse professional or a licensed agency: (i) when the screening required by paragraph (a) of this subdivision indicates that a defendant is abusing or dependent upon alcohol or drugs; (ii) following the arraignment of any person charged with or, at the discretion of the court, prior to the sentencing of any person convicted of a violation of subdivision one, two, three, four or four-a of section eleven hundred ninety-two of this article after having been convicted of a violation of any subdivision of section eleven hundred ninety-two of this article or of vehicular assault in the second or first degree, as defined, respectively, in sections 120.03 and 120.04 of the penal law or of aggravated vehicular assault, as defined in section 120.04-a of the penal law or of vehicular manslaughter in the second or first degree, as defined, respectively, in sections 125.12 and 125.13 of the penal law or of aggravated vehicular homicide, as defined in section 125.14 of such law within the preceding five years or after having been convicted of a violation of any subdivision of such section or of vehicular assault in the second or first degree, as defined, respectively, in sections 120.03 and 120.04 of the penal law or of aggravated vehicular assault, as defined in section 120.04-a of the penal law or of vehicular manslaughter in the second or first degree, as defined, respectively, in sections 125.12 and 125.13 of the penal law or of aggravated vehicular homicide, as defined in section 125.14 of such law, two or more times within the preceding ten years; or (iii) following the arraignment of any person charged with or, at the discretion of the court, prior to the sentencing of any person convicted of operating a motor vehicle in violation of subdivision two or three or paragraph (b) of subdivision two-a of section eleven hundred ninety-two of this article while such person has .15 of one per centum or more by weight of alcohol in the person's blood as shown by a chemical analysis of such person's blood, breath, urine or saliva made pursuant to the provisions of section eleven hundred ninety-four of this article or in violation of paragraph (a) of subdivision two-a of section eleven hundred ninety-two of this article.

(c) Mandatory assessment; procedure. The assessment ordered by a court pursuant to this section shall be performed by an alcohol or substance

abuse professional or a licensed agency which shall forward the results, in writing, to the court and to the defendant or his or her counsel within thirty days of the date of such order.

§ 7. Section 120.04 of the penal law, as amended by chapter 746 of the laws of 2006, is amended to read as follows:

§ 120.04 Vehicular assault in the first degree.

A person is guilty of vehicular assault in the first degree when he or she commits the crime of vehicular assault in the second degree as defined in section 120.03 of this article, and either:

(1) commits such crime while operating a motor vehicle while such person has .18 of one per centum or more by weight of alcohol in such person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva made pursuant to the provisions of section eleven hundred ninety-four of the vehicle and traffic law;

(2) commits such crime while knowing or having reason to know that: (a) his or her license or his or her privilege of operating a motor vehicle in another state or his or her privilege of obtaining a license to operate a motor vehicle in another state is suspended or revoked and such suspension or revocation is based upon a conviction in such other state for an offense which would, if committed in this state, constitute a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law; or (b) his or her license or his or her privilege of operating a motor vehicle in the state or his or her privilege of obtaining a license issued by the commissioner of motor vehicles is suspended or revoked and such suspension or revocation is based upon either a refusal to submit to a chemical test pursuant to section eleven hundred ninety-four of the vehicle and traffic law or following a conviction for a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law;

(3) has previously been convicted of violating any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law within the preceding ten years, provided that, for the purposes of this subdivision, a conviction in any other state or jurisdiction for an offense which, if committed in this state, would constitute a violation of section eleven hundred ninety-two of the vehicle and traffic law, shall be treated as a violation of such law[-];

(4) causes serious physical injury to more than one other person; [or]

(5) has previously been convicted of violating any provision of this article or article one hundred twenty-five of this title involving the operation of a motor vehicle, or was convicted in any other state or jurisdiction of an offense involving the operation of a motor vehicle which, if committed in this state, would constitute a violation of this article or article one hundred twenty-five of this title[-]; or

(6) commits such crime while operating a motor vehicle while a child who is fifteen years of age or less is a passenger in such motor vehicle and causes serious physical injury to such child.

If it is established that the person operating such motor vehicle caused such serious physical injury or injuries while unlawfully intoxicated or impaired by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, then there shall be a rebuttable presumption that, as a result of such intoxication or impairment by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, such person operated the motor vehicle in a manner that caused such serious physical injury or injuries, as required by this section and section 120.03 of this article.

Vehicular assault in the first degree is a class D felony.

§ 8. Section 120.04-a of the penal law, as added by chapter 345 of the laws of 2007, is amended to read as follows:

§ 120.04-a Aggravated vehicular assault.

A person is guilty of aggravated vehicular assault when he or she engages in reckless driving as defined by section twelve hundred twelve of the vehicle and traffic law, and commits the crime of vehicular assault in the second degree as defined in section 120.03 of this article, and either:

(1) commits such crimes while operating a motor vehicle while such person has .18 of one per centum or more by weight of alcohol in such person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva made pursuant to the provisions of section eleven hundred ninety-four of the vehicle and traffic law;

(2) commits such crimes while knowing or having reason to know that: (a) his or her license or his or her privilege of operating a motor vehicle in another state or his or her privilege of obtaining a license to operate a motor vehicle in another state is suspended or revoked and such suspension or revocation is based upon a conviction in such other state for an offense which would, if committed in this state, constitute a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law; or (b) his or her license or his or her privilege of operating a motor vehicle in this state or his or her privilege of obtaining a license issued by the commissioner of motor vehicles is suspended or revoked and such suspension or revocation is based upon either a refusal to submit to a chemical test pursuant to section eleven hundred ninety-four of the vehicle and traffic law or following a conviction for a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law;

(3) has previously been convicted of violating any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law within the preceding ten years, provided that, for the purposes of this subdivision, a conviction in any other state or jurisdiction for an offense which, if committed in this state, would constitute a violation of section eleven hundred ninety-two of the vehicle and traffic law, shall be treated as a violation of such law;

(4) causes serious physical injury to more than one other person; ~~or~~

(5) has previously been convicted of violating any provision of this article or article one hundred twenty-five of this title involving the operation of a motor vehicle, or was convicted in any other state or jurisdiction of an offense involving the operation of a motor vehicle which, if committed in this state, would constitute a violation of this article or article one hundred twenty-five of this title ~~or~~;

(6) commits such crime while operating a motor vehicle while a child who is fifteen years of age or less is a passenger in such motor vehicle and causes serious physical injury to such child.

If it is established that the person operating such motor vehicle caused such serious physical injury or injuries while unlawfully intoxicated or impaired by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, then there shall be a rebuttable presumption that, as a result of such intoxication or impairment by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, such person operated the motor vehicle in a manner that caused such serious physical injury or injuries, as required by this section and section 120.03 of this article.

Aggravated vehicular assault is a class C felony.

§ 9. Section 125.13 of the penal law, as amended by chapter 746 of the laws of 2006, is amended to read as follows:

§ 125.13 Vehicular manslaughter in the first degree.

A person is guilty of vehicular manslaughter in the first degree when he or she commits the crime of vehicular manslaughter in the second degree as defined in section 125.12 of this article, and either:

(1) commits such crime while operating a motor vehicle while such person has .18 of one per centum or more by weight of alcohol in such person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva made pursuant to the provisions of section eleven hundred ninety-four of the vehicle and traffic law;

(2) commits such crime while knowing or having reason to know that: (a) his or her license or his or her privilege of operating a motor vehicle in another state or his or her privilege of obtaining a license to operate a motor vehicle in another state is suspended or revoked and such suspension or revocation is based upon a conviction in such other state for an offense which would, if committed in this state, constitute a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law; or (b) his or her license or his or her privilege of operating a motor vehicle in the state or his or her privilege of obtaining a license issued by the commissioner of motor vehicles is suspended or revoked and such suspension or revocation is based upon either a refusal to submit to a chemical test pursuant to section eleven hundred ninety-four of the vehicle and traffic law or following a conviction for a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law;

(3) has previously been convicted of violating any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law within the preceding ten years, provided that, for the purposes of this subdivision, a conviction in any other state or jurisdiction for an offense which, if committed in this state, would constitute a violation of section eleven hundred ninety-two of the vehicle and traffic law, shall be treated as a violation of such law[-];

(4) causes the death of more than one other person; [or]

(5) has previously been convicted of violating any provision of this article or article one hundred twenty of this title involving the operation of a motor vehicle, or was convicted in any other state or jurisdiction of an offense involving the operation of a motor vehicle which, if committed in this state, would constitute a violation of this article or article one hundred twenty of this title[-]; or

(6) commits such crime while operating a motor vehicle while a child who is fifteen years of age or less is a passenger in such motor vehicle and causes the death of such child.

If it is established that the person operating such motor vehicle caused such death or deaths while unlawfully intoxicated or impaired by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, then there shall be a rebuttable presumption that, as a result of such intoxication or impairment by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, such person operated the motor vehicle in a manner that caused such death or deaths, as required by this section and section 125.12 of this article.

Vehicular manslaughter in the first degree is a class C felony.

§ 10. Section 125.14 of the penal law, as added by chapter 345 of the laws of 2007, is amended to read as follows:

§ 125.14 Aggravated vehicular homicide.

A person is guilty of aggravated vehicular homicide when he or she engages in reckless driving as defined by section twelve hundred twelve of the vehicle and traffic law, and commits the crime of vehicular manslaughter in the second degree as defined in section 125.12 of this article, and either:

(1) commits such crimes while operating a motor vehicle while such person has .18 of one per centum or more by weight of alcohol in such person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva made pursuant to the provisions of section eleven hundred ninety-four of the vehicle and traffic law;

(2) commits such crimes while knowing or having reason to know that: (a) his or her license or his or her privilege of operating a motor vehicle in another state or his or her privilege of obtaining a license to operate a motor vehicle in another state is suspended or revoked and such suspension or revocation is based upon a conviction in such other state for an offense which would, if committed in this state, constitute a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law; or (b) his or her license or his or her privilege of operating a motor vehicle in this state or his or her privilege of obtaining a license issued by the commissioner of motor vehicles is suspended or revoked and such suspension or revocation is based upon either a refusal to submit to a chemical test pursuant to section eleven hundred ninety-four of the vehicle and traffic law or following a conviction for a violation of any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law;

(3) has previously been convicted of violating any of the provisions of section eleven hundred ninety-two of the vehicle and traffic law within the preceding ten years, provided that, for the purposes of this subdivision, a conviction in any other state or jurisdiction for an offense which, if committed in this state, would constitute a violation of section eleven hundred ninety-two of the vehicle and traffic law, shall be treated as a violation of such law;

(4) causes the death of more than one other person;

(5) causes the death of one person and the serious physical injury of at least one other person; ~~or~~

(6) has previously been convicted of violating any provision of this article or article one hundred twenty of this title involving the operation of a motor vehicle, or was convicted in any other state or jurisdiction of an offense involving the operation of a motor vehicle which, if committed in this state, would constitute a violation of this article or article one hundred twenty of this title~~[-]~~; or

(7) commits such crime while operating a motor vehicle while a child who is fifteen years of age or less is a passenger in such motor vehicle and causes the death of such child.

If it is established that the person operating such motor vehicle caused such death or deaths while unlawfully intoxicated or impaired by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, then there shall be a rebuttable presumption that, as a result of such intoxication or impairment by the use of alcohol or a drug, or by the combined influence of drugs or of alcohol and any drug or drugs, such person operated the motor vehicle in a manner that caused such death or deaths, as required by this section and section 125.12 of this article.

Aggravated vehicular homicide is a class B felony.

§ 11. Section 259-c of the executive law is amended by adding a new subdivision 15-a to read as follows:

15-a. Notwithstanding any other provision of law, where a person is serving a sentence for a violation of section 120.03, 120.04, 120.04-a, 125.12, 125.13 or 125.14 of the penal law, or a felony as defined in paragraph (c) of subdivision one of section eleven hundred ninety-three of the vehicle and traffic law, if such person is released on parole or conditional release the board shall require as a mandatory condition of such release, that such person install and maintain, in accordance with the provisions of section eleven hundred ninety-eight of the vehicle and traffic law, an ignition interlock device in any motor vehicle owned or operated by such person during the term of such parole or conditional release for such crime. Provided further, however, the board may not otherwise authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked pursuant to the provisions of the vehicle and traffic law.

§ 12. The penal law is amended by adding a new section 60.36 to read as follows:

§ 60.36 Authorized dispositions; driving while intoxicated offenses.

Where a court is imposing a sentence for a violation of subdivision two, two-a, or three of section eleven hundred ninety-two of the vehicle and traffic law pursuant to sections 65.00 or 65.05 of this title and, as a condition of such sentence, orders the installation and maintenance of an ignition interlock device, the court may impose any other penalty authorized pursuant to section eleven hundred ninety-three of the vehicle and traffic law.

§ 13. The penal law is amended by adding a new section 60.21 to read as follows:

§ 60.21 Authorized dispositions; driving while intoxicated or aggravated driving while intoxicated.

Notwithstanding paragraph (d) of subdivision two of section 60.01 of this article, when a person is to be sentenced upon a conviction for a violation of subdivision two, two-a or three of section eleven hundred ninety-two of the vehicle and traffic law, the court may sentence such person to a period of imprisonment authorized by article seventy of this title and shall sentence such person to a period of probation or conditional discharge in accordance with the provisions of section 65.00 of this title and shall order the installation and maintenance of a functioning ignition interlock device. Such period of probation or conditional discharge shall run consecutively to any period of imprisonment and shall commence immediately upon such person's release from imprisonment.

§ 14. If any provision of this act or its application to any person or circumstance is held invalid, this invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

§ 15. This act shall take effect on the thirtieth day after it shall have become a law; provided that section five of this act and the amendments made to subparagraph (ii) of paragraph (b) of subdivision 1 of section 1193 of the vehicle and traffic law made by section three of this act, except for those amendments concerning a violation of subdivision 2-a of section 1192 of the vehicle and traffic law, shall take effect on the two hundred seventieth day after it shall have become a law; provided, further, that this act shall not apply to any offense committed before the date of enactment, and that section five of this

act shall apply only to individuals sentenced on or after the date such section becomes effective; provided, further, that rules and regulations may be issued in accordance with such sections prior to the effective date; provided, further, that the amendments to section 1198 of the vehicle and traffic law made by sections five and five-a of this act shall not affect the repeal of such section and shall be deemed repealed therewith.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

MALCOLM A. SMITH
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

STATUS:

**A40008 Rules (Weisenberg) Same as Uni. S 66008 DILAN
Vehicle and Traffic Law**

**TITLE....Relates to operating a motor vehicle while under the influence of
alcohol or drugs with a child passenger**

This bill is not active in the current session.

11/17/09referred to transportation

11/17/09reported referred to codes

11/17/09reported referred to ways and means

11/17/09reported referred to rules

11/17/09reported

11/17/09rules report cal.685

11/17/09ordered to third reading rules cal.685

11/17/09message of necessity - 3 day message

11/17/09passed assembly

11/17/09delivered to senate

11/18/09REFERRED TO RULES

11/18/09SUBSTITUTED FOR S66008

11/18/093RD READING CAL.7

11/18/09MESSAGE OF NECESSITY - 3 DAY MESSAGE

11/18/09PASSED SENATE

11/18/09RETURNED TO ASSEMBLY

11/18/09delivered to governor

11/18/09signed chap.496